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COMMONWEALTH OF PENNSYLVANIA
Raymond P. Shafer, Governor

Debates of the Pennsylvania Constitutional Convention of 1967-1968

VOLUME II

Journals of the Convention
February 12 to February 29, 1968
and Index

THE PENNSYLVANIA CONSTITUTIONAL CONVENTION
Hon. Raymond J. Broderick, *President*
John W. Ingram, *Executive Director*
Harrisburg, Pennsylvania
December, 1969

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PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 **Monday, February 12, 1968** **Number 41**

The Convention was called to order at 1:30 p.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND FRANCIS CARR, of the Church of the Resurrection, Philadelphia, Pennsylvania, offered the following prayer:

In the Name of the Father, and of the Son and of the Holy Spirit. Amen.

We wish to thank Thee, Almighty God, for a safe journey back to the Capitol today. During this past weekend each delegate has had the privilege of praying to You in his own particular place of worship.

Whilst Your only Son was on earth, He assured us that: "Where two or more are gathered together in My Name, there will I be in the midst of them." Creator of the World, we are gathered in this assembly in Your Name today.

Throughout history God has chosen particular persons for specific duties, whether great or small. Moses was the chosen instrument to lead the Israelites out of the bondage of Egypt into the promised land of milk and honey. The only begotten Son of God was chosen to lead the world out of the darkness and slavery of sin. Abraham Lincoln was the chosen instrument to lead this country out of slavery.

You have chosen men and women as delegates to this Convention who have a full and an unselfish love of God and their fellowmen in their hearts. The remarkable progress that they have accomplished in this Convention has been a source of admiration, not only to the people of Pennsylvania, but to all the States of this Union.

Bless their efforts, Lord. Let Your parting blessing on the closing day of this Convention to each member of this Convention be, "Well done, good and faithful servant. Because thou hast been faithful in a few things I will appoint thee over many things."

In Nomine Patris, et Filii, et Spiritus Sancti. Amen

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

SECRETARY MICHENER. Mr. President, the following members have made requests for leaves of absence:

The delegate from the 36th District, DELEGATE TATE, for February 12;

The delegate from the 33rd District, DELEGATE GOUGER, for February 12;

The delegate from the 48th District, DELEGATE HORNE, for February 13;

The delegate from the 37th District, DELEGATE REA, for February 12;

The delegate from the 45th District, DELEGATE CAPUTO, for February 9;

The delegate from the 35th District, DELEGATE CUNNINGHAM, for February 15 and 16.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

QUORUM CALL

PRESIDENT BRODERICK. We will now take the roll call to determine if a quorum is present. The delegates will indicate their presence by voting "aye."

The roll was recorded as follows:

Allison	Cunningham	Keller, M	Richter
Amsterdam	Curran	Kelly	Roberts
Aurentz	Dailey	Krill	Sahli
Bagenstose	Desmond	Leach	Scales
Baldus	Devlin	Lee, L	Scarlett
Baldwin	Dumbauld	Leinbach	Scott
Banes	Erwin	Leonard	Sebastian
Barron	Fagan	Levin	Shapiro
Barry	Fawcett	Manderino	Sharp
Bashoff	Feather	Mangery	Shettig
Benedict	Filson	Markley	Shively
Benfield	Fineman	Mattioni	Shoemaker
Bloom	Fleming	McGeary	Shrager
Braham	Fohl	McGlynn	Silverman
Brennan	Forster	Meyer	Solomon
Broderick	Fortney	Michener	Sprogell
Brown	Gehrlein	Miller, D	Stout
Buck	Goldstein	Miller, R	Strickler
Bunting	Griffith	Moorhead	Swope
Burkholder	Hannum	More	Thomson
Butera	Harding	Morton	Thornburgh
Cain	Hatter	Nelson	Tomascik
Camardella	Heyburn	O'ban	Tully
Caputo	Himes	O'bin	Van Sant
Caron	Hocker	Otto	Waldron
Casey	Hook	Pelletier	Warman
Clark	Horne	Popil	Welsh
Clinger	Huggins	Pott	Westerberg
Conley	Irvis	Powell	Whittum
Corey	Jirolamo	Prendergast	Wilcox
Cortese	Johnson	Rappaport	Wilmarth
Cosetti	Kauffman	Redick	Woodring
Croop	Keller, J.	Reynolds	Woodside

PRESIDENT BRODERICK. One hundred and thirty-two delegates having been recorded, a quorum is present.

The Chair also notes the presence of the following delegates:

Aberman	Gray	Michael	Quiles
Fay	King	Murray	Rovner
Gerber	Laputka	O'Donnell	Ruth
Goldman	Lee, K.	Pasquerilla	Stroup

SCHEDULE FOR THE WEEK

PRESIDENT BRODERICK. The Chair would just like to make a brief announcement and state that today we are going to continue in session until about 7 o'clock this

evening. Tomorow and every day this week, we will start at 9 a.m. and continue until around 7 or later, depending upon the desire of the delegates.

This week we must complete the second consideration of all our proposals. There have been many very excellent suggestions that have been considered and made to the Rules Committee for expediting our work. Your officers agree with the Rules Committee that we can complete this job on schedule without making drastic changes and debating changes in our rules. Debate and discussion are absolutely necessary if we are going to produce understanding, but I implore you, please be brief. Remember, today being Lincoln's birthday, do not forget the Gettysburg Address was only 10 sentences long. If he could do it, so can we.

CALENDAR

COMMITTEE PROPOSAL No. 4 ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 4, Printer's No. 12,** entitled:

Amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

On the question,

Will the Convention agree to the proposal on second consideration?

LEONARD AMENDMENT TO PROPOSAL No. 4

PRESIDENT BRODERICK. We now take up Proposal No. 4, printer's No. 12. Will the Convention agree to advance Proposal No. 4 to third consideration?

The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, I read in place an amendment to Proposal No. 4.

PRESIDENT BRODERICK. In accordance with our procedure that we discussed, Delegate Leonard and Delegate Woodring, it would be appreciated if you would come up forward and take the mike, either the forward one to the right or the left, because I think it will expedite the conduct of the work in connection with amendments.

Will the clerk please read the amendment?

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE LEONARD offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 14), page 1, lines 11 to 15 by striking out "(a) The affairs of the Commonwealth," in line 11, all of lines 12 to 14 and "audited regularly." in line 15 and inserting: All fiscal affairs of the Commonwealth, including those of any body created, funded, or financially aided by the Commonwealth shall be audited regularly.

Amend Sec. 1 (Sec. 14), page 2, lines 2 to 19 by striking out all of said lines

Amend Sec. 2 (Sec. 26), page 2, line 23 by striking out "Budget" and inserting: Budgets

Amend Sec. 2 (Sec. 26), page 2, lines 27 and 28 by striking out "debt service, authority rentals and"

Amend Sec. 2 (Sec. 26), page 2, line 28 by striking out "by" and inserting: for

Amend Sec. 2 (Sec 26), page 2, line 29 by inserting after "programs": and

Amend Sec. 2 (Sec. 26), page 2, line 30 by striking out "receipts" and inserting: revenues

Amend Sec. 2 (Sec. 26), page 3, lines 1 and 2 by striking out "Proposed expenditures shall not exceed the estimated receipts"

Amend Sec. 2 (Sec. 26), page 3, line 2 by striking out "receipts" and inserting where it appears the second time: revenues

Amend Sec 2 (Sec 26), page 3, line 5 by striking out "receipts" and inserting: revenues

Amend Sec. 2 (Sec 26), page 3, line 8 by inserting after "financed": by appropriations

Amend Sec 2 (Sec. 26), page 3, line 9 by striking out "appropriations"

Amend Sec. 2 (Sec. 26), page 3, line 16 by striking out "debt service, authority rentals and"

Amend Sec. 2 (Sec. 26), page 3, line 17 by inserting after "EACH": proposed

Amend Sec. 2 (Sec. 26), page 3, line 18 by striking out "receipts," and inserting: revenues,

Amend Sec. 2 (Sec. 27), page 3, lines 22 to 25 by striking out "and Financial" in line 22, all of lines 23 and 24 and "fiscal year" in line 25 and inserting: —(a)

Amend Sec 2 (Sec. 27), page 3, line 26 by striking out "receipts" and inserting: revenues

Amend Sec. 2 (Sec. 27), page 3, line 27 by inserting after "appropriations.": Legislation authorizing borrowing by any authority or agency shall be considered an appropriation.

Amend Sec. 2 (Sec 27), page 3, line 28 by striking out "(2) Approve" and inserting: (b) The General Assembly shall approve

Amend Sec. 2 (Sec. 27), page 3, lines 29 and 30; page 4, lines 1 and 2 by striking out all of said lines and inserting: (c) All estimates of anticipated receipts from any source whatsoever shall be as finally certified by the Governor

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard to make his statement.

DELEGATE LEONARD. Thank you, Mr. President

This amendment, incidentally, is being cosponsored—if there is such a thing as sponsoring amendments—by Judge Woodring and Delegate Wilcox, who is the co-chairman of the subcommittee that developed this proposal, and Delegate Pott, who is the co-chairman of the Taxation Committee. These are the matters we have had a chance to speak to in our own committee, and I feel certain that we can get pretty close to unanimous consent on agreement to this amendment.

After Thursday's session, with the discussion we had on the questions, I gave the matter a lot of thought and I have spoken to many people about some of the wording that was in this proposal. Some of the wording would create technical problems and other wording, as I could see, would have created problems that we had not been looking for. Therefore, I spent time in developing this amendment.

Now what it is intended to do is this: It is intended to eliminate some of the technical problems that apparently have arisen with respect to the amendment. It eliminates

what some may have called "legislation" even though initially we did not think that it was. We feel, the way the comments and questions were going, that there were some who felt there was legislation in here so we eliminated that portion which we thought may have been considered legislation. We also eliminated something that unfortunately was getting to be considered as having political overtones, and this was done so that we would not have anything of such a divisive nature come before this Convention.

What we now have is this: We have an audit provision that will require or make all government fiscal affairs to be audited, and it will require these audits to be in accordance with high standards. I am satisfied at this point that the legislature will move expeditiously to implement this section of the Constitution when it becomes adopted.

No. 2, it leaves in the requirement for a balanced budget, which requirement we must have because Proposal No. 3, our state debt proposal, does not require the kind of balanced budget that the former section of the Constitution dealing with state debt had required by way of case law. So Section 26 is left in there, substantially. We changed the word "receipts" to "revenues" just for the sake of clarity.

It provides, of course, for a capital budget and it provides that the Governor shall submit a five-year financial plan.

Also, the amendment eliminates as a requirement of the General Assembly that they approve a balanced budget and it eliminates the requirement that the General Assembly approve the five-year financial plan. It was generally developed, and now I believe it is generally conceded, that it would be of no value for the General Assembly to go through the motions of approving a balanced budget or approving a five-year financial plan because the appropriation bills are the manner in which the General Assembly appropriates money for a budget, and since each appropriation bill must be balanced, we have achieved our purpose there. We are having the capital budget approved by the General Assembly on an annual basis and it would be of no avail to require the General Assembly to approve a five-year plan which in the next year they would not approve or would change around. It is certainly proper, and would be proper, for the General Assembly to approve the five-year plan if it saw fit, but we do not want to make it as a constitutional requirement.

It also clarifies the fact that any money spent for capital improvements would have to be spent as a result of appropriation. I do not think there is much of a question that money spent by the government can only be spent by appropriation, but it was not as clear as it could be in this proposal that money spent for capital improvements would have to be spent by appropriation.

Particularly with respect to the authorities, it was considered that there may have been a loophole inadvertently left in here that the authorities can still be used for debt. Even though such debt is within the debt limit of the Commonwealth, it conceivably could have been—I do not say it would have—that the General Assembly would have authorized debt to the authority; therefore, the spending of that money would not have been by way of appropriation.

Finally, over on the last page, page 4, we say, "all estimates and anticipated revenues or receipts from any source whatsoever as finally certified by the Governor," rather than to say "shall be made only by the Governor," which is maybe a little difficult. Anybody can make estimates of revenues if they so wish, but the ones that will count will be only those as finally certified by the Governor. There is no time limit in here as to when such certification shall take place but, hopefully, it is the intent and was the intent of our committee that the certification of revenues by the Governor would take place prior to the time that the budget was adopted or that the appropriation bill was adopted. This is not now clearly stated in this amendment. Thank you, Mr. President.

PRESIDENT BRODERICK. Thank you, Chairman Leonard.

The Chair recognizes Delegate Fineman

DELEGATE FINEMAN Mr. President, on Friday of this past week, Chairman Leonard was good enough to meet with me at considerable length to discuss committee Proposal No. 4. I had the benefit of his thinking during that meeting and he had the benefit of my thinking and what little experience in this field I could bring to bear on the subject matter. Many of the amendments that are being offered today by Chairman Leonard are the result of that conversation. But quite frankly, these amendments are very extensive amendments, and in all candor I must say to the Chair that I am not in any intelligent position to decide whether or not these amendments are proper amendments, simply because I have not had an opportunity to review them. I see them, as do all of the delegates here, for the first time as they were handed to me just moments ago Notwithstanding that we are operating on a very tight time schedule, I do not believe that we should be called upon to cast a vote on something that we have not had an opportunity to intelligently review and look at, and the exigencies of the short remaining period of time allowed to us to turn out a work product is certainly no excuse for turning out something that does not reflect the best thinking on the subject matter.

It may very well be that these amendments are in good order, although I immediately see something that would cause me to raise an eyebrow and it may very well be that they are not in good order. For instance, I bring to your attention that one of the first amendments on the first page says that all fiscal affairs of the Commonwealth, including those of any body created, funded or financially aided by the Commonwealth shall be audited regularly. This is a clear mandate to audit, by the Commonwealth, all of the many bodies that are beneficiaries of state moneys. This could create an impossible auditing task. We give every school district in the Commonwealth of Pennsylvania money; we give towns, cities, boroughs and counties, money; we give institutions of all kinds money—hospitals, universities, colleges. From where would the manpower come if there was a clear mandate in the Constitution that they must be audited? I recall telling Chairman Leonard very clearly that I agreed that anybody who is the beneficiary of state moneys should be audited if the Commonwealth can do the job, but the authorization should be in the law. But to clearly mandate that they shall be audited might create an impossible auditing job. I would suggest that we might think twice about language such as this which would clearly mandate such an audit. This, on a brief, hurried reading immediately comes to my attention, and there may be other things in these amendments.

I would suggest that it would be in good order and might make for a much more intelligent amendment that

we could vote upon if this amendment would not be put before the delegates at the present moment for determination and would be held over until later this afternoon or until an opportunity has been given to those delegates who are interested in Proposal No. 4 to look at the amendments.

PRESIDENT BRODERICK. Delegate Fineman, do I take it you are making a request that this matter of the Leonard amendments be held for awhile today until the delegates have had an opportunity to go over them? Does anybody have objection to that?

The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I would like first to interrogate Chairman Leonard.

PRESIDENT BRODERICK. Is it on this question?

DELEGATE HOCKER. In respect to the question, yes, sir.

PRESIDENT BRODERICK. I understand that our chairmen have all agreed to be interrogated so you may proceed.

DELEGATE HOCKER. Mr. Leonard, I would ask you what you have done with Section 1, paragraph B, in respect to your amendments on pre and post?

DELEGATE LEONARD. Eliminated it.

DELEGATE HOCKER. You have eliminated it entirely?

DELEGATE LEONARD. Yes, sir.

DELEGATE HOCKER. Well that sounds real good. I am very happy.

MOTION TO PASS OVER AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, he gave me a very lovely answer and I liked it very much, but I would like to go a little further than my good friend, Delegate Fineman. I would like to make a motion that this proposal and the amendments go over until tomorrow to give us time to look at the amendments and the proposal in the new light. That is a motion, Mr. President.

PRESIDENT BRODERICK. That is seconded by Delegate Fineman.

As I understand your motion, you want Proposal No. 4, printer's No. 12, with the amendment just offered to go over until tomorrow.

DELEGATE HOCKER. Yes, sir, to give us a chance to sleep, not on it but with it.

PRESIDENT BRODERICK. Let me ask the delegate if he would consider it sufficient sleeping time if he would have three or four hours on it today?

DELEGATE HOCKER. No, sir, that is not time enough for me.

PRESIDENT BRODERICK. You have all heard the motion by Delegate Hocker, and it has been seconded by Delegate Fineman, that this Proposal No. 4, printer's No. 12, go over until tomorrow for the purpose of considering the amendments that have just been offered by Delegate Leonard.

Is there any objection to that motion?

The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, I think it would be helpful to the delegates if we could have some reading on what kind of additional amendments are in the hopper for this particular Section 4. We would then be able to judge better, I believe.

PRESIDENT BRODERICK. My understanding is that the Chair can answer that. We have up here at the podium two amendments that were offered last week by Delegate Amsterdam, one by Delegate Murray and one by Delegate Goldman. I am not sure whether those amendments are going to be offered now in view of the amendment that has just been offered by Delegate Leonard. Is there any way we could get a count on that? May I ask Delegate Amsterdam if his amendments are going to be pursued further?

DELEGATE AMSTERDAM. Mr. President, I would have no idea until I have an opportunity to study the amendments that have been suggested by the chairmen. When we have an opportunity to look those over, they may very well have been covered by the amendment now being offered.

PRESIDENT BRODERICK. The Chair has asked that a clean copy of this amendment by Delegate Leonard be prepared and worked right into the proposal so that you will be able to read it, and that will be distributed in about two or three hours. That will aid you in your determination of the effect of these amendments.

The Chair is going to ask again and I will not put it to a vote unless there is an objection—does anyone have an objection to the motion offered by Delegate Hocker?

DELEGATE HOCKER. Mr. President, you are bending my motion. My motion is that it will go over until tomorrow. Now you are talking about two or three hours. That is not tomorrow, Mr. President.

PRESIDENT BRODERICK. No, we are not changing your motion. Two or three hours is when we are going to give them the clean copy so that they will be able to sleep with it.

DELEGATE HOCKER. Fine, I like this.

PRESIDENT BRODERICK. I knew that was the part of the motion that you wanted to remain in.

The Chair recognizes Delegate Caron.

DELEGATE CARON. Before the motion is voted upon, is it possible for me to ask the chairman of the committee why some of the changes were made? I would like to have some information to sleep on.

PRESIDENT BRODERICK. Yes, indeed, he is there to answer your questions.

DELEGATE CARON. If Mr. Hocker would be kind enough to bear with me, I have one question that I do not understand.

I was a member of the subcommittees that were involved here and I presume there is a very logical and good reason for the elimination of the discussion with reference to postaudit and preaudit. I was curious as to whether or not you would be kind enough to comment on it.

DELEGATE LEONARD. The reason that it was eliminated was it got to be way out of proportion to its original intent. The original intent was that there would not be any offices named in the Constitution, that there merely be a separation of the powers of preaudit and postaudit. It stumbled through committee and came out with a couple of constitutional names. Then it got to the amendments that were being proposed on the floor, which would have made it a little bit more involved. I thought that instead of resolving the problem, we may have been creating a tremendous problem and I thought I would suggest it be deleted. We have the guidelines in the first

paragraph, and I feel quite certain that there has been enough said on this that the legislature, when it reconvenes, will consider appropriate legislation to take care of this problem.

DELEGATE CARON. As long as that is in the record, I have no particular quarrel with the thing, except that I feel very strongly that at this moment—Mr. Leonard used the word "political," so I will use it—if political aspects were involved in suggesting that this be removed, I feel very strongly that the political aspects involved have a direct responsibility to the people that when the legislature reconvenes, they act accordingly in a manner of attempting to evaluate the problem of postaudit and preaudit.

Thank you.

PRESIDENT BRODERICK. Thank you, Delegate Caron.

PROPOSAL No. 4 PASSED OVER

PRESIDENT BRODERICK. The motion is before the floor that this Proposal No. 4, printer's No. 12, go over until tomorrow.

I say again, does anyone object?

The Chair hears no objection; therefore, the motion is unanimously carried and the proposal will go over until tomorrow.

The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I think I should make just one observation on the last remarks made here giving the impression that political overtones are behind the changes that have been placed before this Convention on Committee Proposal No. 4.

Let me assure you that I have considerable knowledge of what these political overtones are supposed to be, and I want to say that they are not. There are no partisan, political overtones in this matter; there are, certainly, practical professional overtones in this matter, and this is why I questioned the language that was in Committee Proposal No. 4.

Thank you.

PRESIDENT BRODERICK. Thank you, Delegate Swope.

COMMITTEE PROPOSAL No. 5 ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 5, Printer's No. 14,** entitled:

Amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

On the question,

Will the Convention agree to the proposal on second consideration?

PRESIDENT BRODERICK. We will now move to the next number on the calendar, which is Proposal No. 5, printer's No. 14.

Will the Convention agree to advance Proposal No. 5, printer's No. 14, to third consideration? That is the question before us and I understand that we have a list up here at the desk of about 20 amendments to Proposal No. 5, printer's No. 14.

I am going to ask that the chairmen of the committee, Chairmen Leonard and Woodring, remain at the forward mike on the right, and we will recognize the delegates for the introduction of amendments. We have here a list of those which have been prepared.

CAMARDELLA AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. First of all, we have Delegate Camardella. You have an amendment here. Do you wish to offer it?

DELEGATE CAMARDELLA. I wish to withdraw my amendment.

PRESIDENT BRODERICK. We will mark it "withdrawn."

SHOEMAKER AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. We have an amendment here by Delegate Shoemaker, which is an amendment we have marked tentatively as No. 2 for the purpose of expediting business. It is to amend Section 1-A, page 2.

I understand you have No. 1, but this is the one we would like to take up now, if that is agreeable to you.

DELEGATE SHOEMAKER. It is, Mr. President.

PRESIDENT BRODERICK. An amendment is offered by Delegate Shoemaker to Proposal No. 5, printer's No. 14.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SHOEMAKER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 2, lines 25 to 28, by striking out all of said lines.

Amend Sec. 1 (Sec. 1A), page 2, line 29, by striking out "(5)" and inserting: (4)

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. Do you wish to make a statement in connection with this amendment?

DELEGATE SHOEMAKER. I do, Mr. President.

I will try to be in accord with the comment the Chair made earlier, being in agreement that words are like leaves, where they most abound, much fruit or sense beneath is rarely found.

The amendment which I propose is merely to delete that special provision for veterans' organizations, granting them something that other organizations of similar character do not have.

Like many other people who have been here on the floor, I, too, have served in the armed services of the United States and I suspect I love my country just as much as each of you do.

I agree with the premise that being a citizen creates, in addition to the rights that we get from our country, a certain duty and obligation to our country, and having fulfilled that duty by serving in the armed forces, I do not conceive of anything in our Constitution or the concept of our country that should then give me an additional benefit or an additional right for having done so. I think you all must concur that the nature of veterans' organizations has changed somewhat over the years and is perhaps no longer such an important part of our society as we would be led to believe by placing a specific amendment in the Constitution granting a special favor to those who served their country.

I, therefore, feel that we should strike this clause from the proposed proposal as indicated in the amendment. Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I would like to speak to a point of personal privilege as well as on this amendment, if I may.

PRESIDENT BRODERICK. Would you speak on the amendment first?

DELEGATE SOLOMON. Yes, sir.

Mr. President, members of the Convention, I believe that the amendment offered by our delegate is perhaps well taken from his point of view, but from those of us who have had the onus or the burden of taking care of those who have borne the battle, and their children, we have seen the likes of this amendment and this type of expression in our public life ever since we returned from Service. In this regard I do not have to point out to you that once the battle was over, forces within our country under the guise of the Hoover Commission, and others, attempted to equate veterans' suffering, the treatment of wounded and disabled veterans as something beneath contempt. In this regard, Mr. President, it was my intention to rise and ask the chairman, Judge Woodring, whether or not he fully intended to take away from our paraplegics the benefit given to them by constitutional amendment by the people of this Commonwealth, exempting their real estate from property tax. I do understand that Judge Woodring at this point said that it was his intention that this constitutional amendment provision giving to those of our men who suffered the misfortune of losing one or more members of their bodies in Service exemptions from the real estate property tax. The word "infirm," if we understand it now from what the delegate has said, would not protect those who have been singled out by their State as having rendered meritorious service and be given this exemption.

I now say to you that it is not intended that what has been given by the Commonwealth to our paraplegics be then incorporated within Proposal No. 5 and not be left to an assembly that might, perhaps, in the future, equate veterans' sufferings with general sufferings.

I think that any of you who have spent any time with the people of this State should know that there is something different about those who suffer and have infirmities, both physical and mental, by reason of having served in the armed forces. They have always been the beneficent objects of the bounty of this Commonwealth and of this Country and we would like to preserve it.

When I oppose the amendment I am not interested in or worrying about any bar or anything else in the State. I say to you, if it were not for the veterans' organizations within this State, the type of hospitalization and care which our men are now receiving would not be given to them under the name of economy.

Mr. President and members of this Convention, only last week I had my son here, recently returned from Vietnam; I am speaking perhaps to my own self interests. They are coming back the same way—wounded, disabled and in need of treatment. They will not get this treatment unless we have organizations such as the American Legion, the VFW, the Jewish War Veterans, the DAV to stand behind them after the battle is over and they have been forgotten. I had a very fine friend once who spoke to the Fifth Army as I was about to leave for England. Her name was Clair Booth Luce. She was of another party. Here is what she said:

> Our God and our soldiers we alike adore
> On the brink of danger
> And not before.
> After deliverance, both alike we requited
> Our God is forgotten
> And our soldiers slighted.

Vote Mr. Shoemaker's amendment down.

PRESIDENT BRODERICK. The Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, I say amen to that. I would just like to call attention to the fact that many of us have comrades who fought in the various wars of this country and we have had a good many in our generation who were denied the privileges and the niceties of home life for many years during the wars. When they came back they wanted a home of their own and a place where they could assemble, a place where they could carry on their Americanism programs. I say to you that there are no organizations in this country that do more for Americanism than the veterans' organizations. I think it would be a shame, when we have recognized them as we have in the past, to now at this Convention say that times have changed, in the midst of this war that we are engaged in in Vietnam. These boys coming home from Vietnam will have an opportunity to become members of these various organizations. They want a place to go; they want to be among friends. I think it is absolutely ridiculous to even think of considering an amendment of this sort.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. I might say I am almost shocked to find it necessary to speak on this amendment in opposition. I, too, am a veteran of the Second World War and I was 50 years of age when I volunteered and went to boot camp. I am associated with many of the veterans' organizations which have a long and honorable career in the life of our country. If anybody wants to know how well they are thought of, ask the President of the United States and ask the Members of Congress of the United States and they will tell you to a man that they are happy and glad that these veterans' organizations do exist so that they can give benefits to the man who has borne the battle, who has left his legs on the battlefield, or who laid down his life, so that his widow and his orphans may have some benefits put through the Congress and signed by the President of the United States.

To say that this is unusual is not saying quite what is the fact. From the time of the American Revolution, when this small nation along the seacoast of the Atlantic Ocean fought for its freedom from the mother country, all the way down through all the wars in the history of our Republic, the men who have volunteered and who otherwise got into the armed service of our country have been given some recognition of gratitude and thankfulness on the part of the people of the United States. I say to you that these organizations have helped hundreds of thousands of veterans, who were due to have benefits under the laws of our country; to obtain those benefits because many of them did not have enough knowledge of the laws that were enacted in their behalf to get these benefits. If it were not for these little posts all over the State of Pennsylvania

and throughout the United States from top to bottom from east to west and from north to south, a lot of these men who have privileges coming to them from the government would never have known about it except for the service officers of these various veterans' organizations.

Mr. President, I regret that it is necessary for us to speak here today in order to preserve this benefit for the men of our country who have fought and died in battle.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I do not want to quarrel with my good friend, Delegate Strickler. The only expression I want to give to this is the fact that this thing we are dealing with now, this amendment, is not 90-some years old, Mr. President; this was done by an amendment to the Constitution in the last 40 years, and the people have spoken. The people have said, this is what we want to do. This is not Benjamin Franklin, John Hancock and the other people who wrote the original Constitution; this is a mandate by the people of the Commonwealth of Pennsylvania.

Mr. President, I hope there will not be too much conversation on the part of this amendment. I hope it will be voted down.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. President, I think it is a shame that we should even speak on such an amendment. I think I say "Amen" to the previous speakers, that is understood.

But I want to call your attention to another factor here, and that is that there has been nobody in this Convention more anxious than I to see a sweeping reform in the matter of tax exemptions. As a matter of fact, if you will examine the proposal I made, you will see a proposal to rip them all out. If that would have carried, of course, that would have answered the whole problem. Here we are singling out from existing tax exemptions a single, small factor in the whole picture of tax exemptions, a very small factor percentagewise or dollarwise. To single out for that punishment the veterans' organizations of Pennsylvania, who certainly have served the citizens of Pennsylvania and the nation, to me seems very despicable.

I hope there are very few votes for this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leinbach.

DELEGATE LEINBACH. Mr. President, I could not sleep tonight if I did not rise in opposition to this amendment.

It just bears out what I have said several times here that too many Americans have a short memory of the sacrifices of those who shed their blood on the field of battle.

I hope this amendment will be soundly defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bagenstose.

DELEGATE BAGENSTOSE. Mr. President, honorably discharged servicemen and servicewomen have given dedicated service to our God and country to help those who are in need. They have contributed to disabled veterans, given scholarships to students, supported parades on all holidays, conducted military funerals and have aided in many other community affairs. The least we can do is to continue this exemption for these people who have given our State the safety of the world.

PRESIDENT BRODERICK. Thank you, Delegate Bagenstose.

The Chair recognizes Delegate Redick.

DELEGATE REDICK. Mr. President and delegates, being a past leader of the Veterans of Foreign Wars in Allegheny County, I could stand at this microphone and talk to you for possibly a day or two on this. I realize it is wrong, Mr. President, I promise you I will not.

I would like to go on record and also ask the good friends of mine here assembled to defeat this amendment.

Thank you very much.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sahli.

DELEGATE SAHLI. Mr. President, the comradeship known only to veterans can best be expressed through the means of their various veterans' associations. As a past commander of the American Legion Post, I can say that only through these organizations do the veterans in need receive the care and the attention and the interest that is due them.

I would urge opposition to this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. I move we close discussion and go to an immediate vote.

PRESIDENT BRODERICK. Thank you Are the delegates ready for the question?

The Chair wishes to recognize Delegate Woodring.

DELEGATE WOODRING. Mr. President, at the risk of being procedurally out of order, I think it is necessary for the committee to state the intent on one point, namely, that brought up by Delegate Solomon, whether or not this provision, which is subsection (c) of Section 1A, beginning on line 22 of page 2, excludes the blind veterans, the paraplegics and other specified types of wounded and disabled veterans and I say, without fear of contradiction, for the committee that the intent which this expresses, or was intended to express, is to include and continue the exemptions for such people which were put into effect back in 1923 by special referendum of the people of the Commonwealth.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, we have Judge Woodring's statement and we have it on record in this Convention. The fact of its having been a constitutional amendment, I believe, should have some place either in this proposal or in the spread of the schedule as an expression of intent so that a later Assembly need not act upon that. We would like to have that affirmatively in this. I do want to say, Mr. President, that when I rose I did not know what the delegate's amendment was, but I was trying to get back to our blind and paraplegics. It was just a happenstance that I was where I could be called.

If it is possible, Judge Woodring, to use some language of preservation before this proposal comes up on the third reading, I would be very happy. I know this was your intention but I wanted to make sure it would be so interpreted by those who would come after us.

Thank you.

PRESIDENT BRODERICK. Thank you.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Shoemaker?

The roll was recorded as follows:

YEAS—12

Baldus	Filson	Michener	Shoemaker
Bunting	Hook	Morton	Sprogell
Dumbauld	Michael	Sebastian	Thornburgh

NAYS—120

Aurentz	Desmond	Kelly	Reynolds
Bagenstose	Devlin	Krill	Richter
Baldwin	Erwin	Laputka	Roberts
Banes	Fagan	Lee, L.	Rovner
Barron	Fay	Leinbach	Sahli
Barry	Fawcett	Leonard	Scales
Bashoff	Feather	Levin	Scarlett
Benedict	Fineman	Mangery	Scott
Benfield	Fleming	Markley	Shapiro
Bloom	Fohl	Mattioni	Sharp
Braham	Forster	McGeary	Shettig
Brennan	Fortney	McGlynn	Shively
Broderick	Gehrlein	Meyer	Shrager
Brown	Gerber	Miller, D.	Solomon
Buck	Goldstein	Miller, R.	Stout
Burkholder	Gray	Moorhead	Strickler
Butera	Griffith	More	Stroup
Cain	Hannum	Nelson	Swope
Camardella	Harding	O'Donnell	Thomson
Caputo	Hatter	Orban	Tomascik
Caron	Heyburn	Orbin	Tully
Casey	Himes	Otto	Van Sant
Clark	Hocker	Pasquerilla	Waldron
Clinger	Horne	Pelletier	Warman
Corey	Huggins	Popil	Westerberg
Cortese	Jaroiamio	Pott	Whittum
Cosetti	Johnson	Prendergast	Wilcox
Cunningham	Kauffman	Quiles	Wilmarth
Curran	Keller, J.	Rappaport	Woodring
Dalley	Keller, M.	Redick	Woodside

NOT VOTING—31

Aberman	Gabreski	Lane	Powell
Allison	Goldman	Leach	Rea
Amsterdam	Gouger	Lee, K.	Ruth
Baldrige	Henderson	Manderino	Scranton
Conley	Hostetler	Musselman	Silverman
Croop	Irvis	Murray	Tate
Donaldson	King	Pechan	Welsh
Donolow	Kline	Percey	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

RAPPAPORT AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. And now the Chair recognizes Delegate Rappaport who I understand has an amendment.

DELEGATE RAPPAPORT. Mr. President, I might say in introduction that I voted "nay" on the previous amendment and agree very heartily with the sentiments expressed by my learned friend, the delegate from Butler County.

I have an amendment to the same section involving veterans' posts. After granting the exception it would read, "provided that no exemption hereunder shall be granted for that part of such premises which is regularly used for the sale and/or consumption of alcoholic beverages." We have a constant problem of not the legitimate veterans' posts—

PRESIDENT BRODERICK. Would Delegate Rappaport yield until we have the clerk read his amendment?

DELEGATE RAPPAPORT. Surely. I am very sorry.
PRESIDENT BRODERICK. Thank you.

On the question recurring,
Will the Convention agree to the proposal on second consideration?
DELEGATE RAPPAPORT offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 2, line 28, by removing the semi-colon after "purposes" and inserting: , provided that no exemption hereunder shall be granted for that part of such premises which is regularly used for the sale and/or consumption of alcoholic beverages:

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, this amendment is not directed at legitimate veterans' activities. We are all aware of them. They perform great services. I know of several posts that spend great amounts of money every year entertaining veterans at the Valley Forge Hospital and at the Philadelphia Naval Hospital. Such activities should be encouraged and are in the public interest.

This amendment is directed rather at those taprooms which operate under the guise of a veterans' post whose only raison d'etre is to be open on Sunday and to sell whiskey cheaper than a neighboring taproom can and thus are in competition with private industry. A privately-owned taproom has to pay considerable taxes every year to the Commonwealth, both real estate taxes directly or indirectly and license fees, and is very strictly supervised by the Pennsylvania Liquor Control Board. These speakeasies exist, hiding behind the flag of patriotism when they have no right to and perform no social purpose.

I would, therefore, ask that my amendment be adopted. I state specifically, it is directed only to limit the exemption to those parts of the premises which are used for the proper patriotic purposes of the veterans' organizations. Any place where alcohol is regularly consumed or sold loses its exemption pro rata. This is not directed at the occasional party, but at the regular business of sale and consumption of alcoholic beverages.

PRESIDENT BRODERICK. The Chair recognizes Chairman Woodring.

DELEGATE WOODRING. Mr. President, I would like to call on the chairman of the subcommittee, Delegate Gerber.

PRESIDENT BRODERICK. Delegate Gerber, do you wish to be recognized?

DELEGATE GERBER. Mr. President, in response to Delegate Rappaport's statement, I would suggest that he may not be fully aware of all the facts. The good work done by the various veterans' organizations in our Commonwealth was eloquently spoken about by former Lieutenant Governor Strickler, former Congressman Swope, Delegate Redick, Delegate Solomon, Delegate Bagenstose, former Representative Hocker, and the many others. I think it should be noted that the funds from much of this work come from the opportunities that these organizations have to maintain this place of sociability. Were they not able to have this bar, as Delegate Rappaport calls it, they would not have the funds, you see, to be able to function in the eleemosynary manner in which they do. The laws

of our Commonwealth no longer permit them to have slot machines to work the way they did many, many years ago before it was illegal. At the present time the only funds that the veterans' organizations have is the legitimate operation of the bar.

I must add something else, too. These bars are also licensed under a club license. These bars are also watched, these bars are also disciplined by the State Liquor Control Board. I might also add they do not have a monopoly to function on Sunday. They are not speakeasies; they are legitimate, legal bona fide licensed liquor-selling establishments. Other legal, bona fide liquor-selling establishments also are open on Sundays, whether it be the Moose, the Eagles or the Elks or private country clubs or various private clubs, which Delegate Rappaport may be more familiar with in the city of Philadelphia in view of the fact that he is a city boy, such as, the Locust Club, the Racket Club or the Union League.

I think it would be rather unfair to single out the veterans' organizations who use these moneys initially for the benefit of the various enterprises, described much more eloquently than I could, by General Strickler and the other men who spoke earlier. I think these facts should be made known.

Finally, a third point: Our committee did a little bit of study here. We also learned that in many of these veterans' posts the only room they have is where the bar is. Now when do we decide what is going to be tax exempt? Only during the hours when the bar is open? Only during the hours when the bar is closed? They use that same room for meeting purposes and for planning of their various functions at the Valley Forge General Hospital or Coatesville or the various other institutions of that nature that this Commonwealth is fortunate enough to have in its midst. Therefore, fellow delegates, Mr. President, I would urge the defeat of this amendment on the basis of the deep, in-depth and sound study by our committee.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Baldus.

DELEGATE BALDUS. Mr. President, I rise as a member of the Subcommittee on Taxation and as a member of the Committee on Taxation and State Finance. I would like to state my understanding of what the intention of the committee was in adopting the language that is now proposed to be amended. I participated in the drafting of the language of Section 4 on page 2 of the printer's number before us. It was my understanding that this language was intended to restrict the exemption only to that property which is used for benevolent, charitable or patriotic purposes. As I understood our discussion, there was never any understanding that property used regularly and continually for the sale of alcoholic beverages was property used either for benevolent, charitable or patriotic purposes. I, therefore, state that it is my understanding that the Committee on Taxation and State Finance, in adopting the language which is now before us in the committee proposal, would accomplish the very objective that is proposed by the amendment being offered by Mr. Rappaport.

DELEGATE GERBER. Mr. President, may I answer Delegate Baldus's statement one moment?

PRESIDENT BRODERICK. Yes, indeed. Do you stand to be interrogated, Delegate Baldus, by Delegate Gerber?

DELEGATE BALDUS. Yes.

DELEGATE GERBER. Delegate Baldus, is it not true that the words of that portion which you stated dealt with the situation where the bar was solely for the purpose of liquor-selling and sociability and in no way had anything connected with the purpose of the organization in its veterans' activities?

DELEGATE BALDUS. The language states in the proposal, Delegate Gerber, "actually and regularly used for benevolent, charitable or patriotic purposes". It was my understanding that the intent was that if a bar, as is the case in many veterans' clubs, is used solely for that purpose or 95 per cent of the time for that purpose, that it would not be entitled to an exemption. However, when the property is used less frequently than that for the sale of alcoholic beverages, then I think it would be a case for the court to decide.

DELEGATE GERBER. Thank you. That is the point I wanted to make. Thank you very much, Delegate Baldus.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. After 45 years or 50 years of experience with veterans' clubs, I know that in our neighborhood particularly—and I can speak for my neighborhood and the veterans' clubs that I have been in—I do not see how on earth you can tax the premises used for alcoholic beverages. I think we are undertaking something here of an imaginative nature which could not be done because most of these clubs—I would say about, if I had to make an estimate, 50 to 75 per cent or better than that, or 80 per cent—are clubs that you could not segregate the premises used for the sale of alcoholic beverages and for club purposes.

I think the greatest thing that has been overlooked in this entire matter is the fellowship which is created here in these clubs by having the alcoholic beverages. I doubt very much if this patriotic spirit, which we all have and of which we now speak, could be carried on by these clubs, by these veterans' organizations, if you taxed them or if you segregated it, and it would be just the same as cutting off their right arm for carrying on their patriotic purposes. I would absolutely ask the delegates here to vote this down.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Reynolds.

DELEGATE REYNOLDS. Mr. President, I rise to oppose that amendment by Delegate Rappaport. The Liquor Control Board supervises the action of all clubs and they see to it that these clubs are operated for members only; that is their job. If you are going to take away from them their social rooms—I do not like to call them bars—I do not believe we ought to say that our veterans' clubs are bars. I think they are social rooms for their families and for themselves to have a place where they can go and will not be exposed to the high prices of a taproom. A taproom is not in competition with them, because they are not allowed to sell at certain hours that the taprooms are. The small profit they make out of that will help to keep them going. As Delegate Bloom said, you cannot segregate the bar or the social room from the other places in these small clubs because sometimes it is just one room partitioned off.

I think it is a shame that we would even come here and try to reduce the pleasure that they would have with their friends and with their families. I hope that we will vote it down.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Fawcett.

DELEGATE FAWCETT. Mr. President, I call for the question.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. May I rise to a question of personal privilege, Mr. President?

PRESIDENT BRODERICK. You may, Delegate Manderino.

DELEGATE MANDERINO. On the last amendment, my light flashed on and then off and the clerk informs me that no vote was recorded. May I please be recorded as "no," and may an engineer be sent up to check the button.

PRESIDENT BRODERICK. We shall have the engineer sent up there immediately and shall spread your remarks on the record.

The Chair recognizes Delegate Fawcett.

DELEGATE FAWCETT. Mr. President, may I correct my statement? I call for the end of the debate, a vote on the debate.

PRESIDENT BRODERICK. Yes. Are the delegates ready for the question?

DELEGATE RAPPAPORT. Mr. President, may I have 30 seconds?

PRESIDENT BRODERICK. Delegate Rappaport is entitled to have 30 seconds to answer and then we are going to vote on the question. Proceed.

DELEGATE RAPPAPORT. I wish to state that we have discussed this very thoroughly. I do not want to answer the debate, although I note that there is apparently a very serious disagreement on the committee. However, I might say in response to Delegate Gerber that I am not a member of any club which serves alcoholic beverages on Sunday. I might also state that I am not a member of the Union League; I am not a member of the Rittenhouse Club; I am not a member of the Philadelphia Club; I am not a member of the Locust Club; and I am authorized by Delegate Gray to state that he is not a member of any of these clubs either.

PRESIDENT BRODERICK. We now unlock the voting machine. The question is,

Will the Convention agree to the amendment offered by Delegate Rappaport?

The roll was recorded as follows:

YEAS—15

Baldus	Cunningham	Hook	Sebastian
Barry	Dumbauld	Michael	Shapiro
Conley	Filson	Michener	Shoemaker
Cosetti	Himes	Rappaport	

NAYS—115

Allison	Curran	Kelly	Redick
Amsterdam	Dailey	Krill	Reynolds
Aurentz	Desmond	Laputka	Richter
Bagenstose	Devlin	Leach	Roberts
Baldwin	Erwin	Lee, K.	Rovner
Banes	Fawcett	Lee, L.	Sahli
Barron	Fay	Leinbach	Scales
Bashoff	Feather	Manderino	Scarlett
Benedict	Fineman	Mangery	Scott
Benfield	Fleming	Markley	Sharp
Bloom	Fohl	Mattioni	Shettig
Braham	Forster	McGeary	Shively
Brennan	Fortney	McGlynn	Shrager
Broderick	Gehrlein	Meyer	Stout
Brown	Gerber	Miller, D.	Strickler
Buck	Goldstein	Miller, R.	Swope
Bunting	Gray	Moorhead	Thomson
Burkholder	Griffith	More	Thornburgh
Butera	Hannum	Morton	Tomasacik
Cain	Hatter	Murray	Tully
Camardella	Heyburn	Nelson	Van Sant
Caputo	Hocker	O'Donnell	Waldron
Caron	Huggins	Orban	Warman
Casey	Irvis	Orbin	Westerberg
Clark	Jirolamo	Otto	Whittum
Clinger	Johnson	Pasquerilla	Wilcox
Corey	Kauffman	Popil	Woodring
Cortese	Keller, J	Poit	Woodside
Croop	Keller, M	Prendergast	

NOT VOTING—33

Aberman	Henderson	Musselman	Scranton
Baldrige	Horne	Pechan	Silverman
Donaldson	Hostetler	Pelletier	Solomon
Donolow	King	Percey	Sprogell
Fagan	Kline	Powell	Stroup
Gabreski	Lane	Quiles	Tate
Goldman	Leonard	Rea	Welsh
Gouger	Levin	Ruth	Wilmarth
Harding			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

CARON AMENDMENTS TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Mr. President, I read in place and present the following amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE CARON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 2, line 18, by striking out "regularly stated"

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Mr. President, I would like to have each amendment taken as it comes and disposed of before doing all of them.

PRESIDENT BRODERICK. Yes, we are going to take them one at a time. The first amendment is the one that was just read by the clerk. Is that correct?

DELEGATE CARON. Yes, sir.

When I came to this Convention I was warned there was a considerable number of lawyers who made up the body of this group and I just want to announce publicly that I have received my law degree since being here.

The reason that I have suggested the elimination of the words "regularly stated," which, in effect, returns this phrase back to the original Constitution, is that essentially the purpose of some of the thoughts and thinking was to tighten up on the exemptions as now interpreted, and in this particular case the insertion of the words "regularly stated" tends to loosen rather than tighten same.

Under the circumstances I feel that if we return to the original wording as is indicated in the constitution now in effect, we are not only maintaining the present status but

also are keeping the exemptions where we think they should be.

Thank you.

PRESIDENT BRODERICK. Has the chairman of the committee any comment in connection with this amendment?

The Chair recognizes Chairman Woodring.

DELEGATE WOODRING. Mr. President and fellow delegates, the 1873 Constitution permits the General Assembly to exempt actual places of religious worship. I think that provision must be read in its historical context and that when that constitutional provision was adopted, a place of religious worship was usually a very modest building on a commons or at a corner of the municipality or a country road intersection and was a very modest little holding. Today the growth of the holdings of religious institutions has attained a place that was thoroughly unforeseen in past generations to the point that there is a definite squeeze and hardship on the tax base of the various municipalities.

The reason that the committee by a rather generous majority included the words "regularly stated" places of religious worship is in an effort to restrict the exemption to the purpose of the institutions as it was originally understood. Therefore, Mr. President, as one of the chairmen of the committee, I oppose the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Only the fact that rather than restricting it, as the Judge has indicated, in actuality, according to the legal interpretations that I have heard, it loosens it. So it does not do what we thought it would do.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Caron?

The roll was recorded as follows:

YEAS—40

Allison	Caputo	Filson	Michener
Amsterdam	Caron	Fleming	More
Barron	Casey	Gehrlein	Murray
Barry	Cunningham	Harding	Nelson
Benedict	Curran	Heyburn	Otto
Benfield	Dailey	Huggins	Sebastian
Broderick	Desmond	Irvis	Strickler
Buck	Dumbauld	Markley	Swope
Bunting	Fawcett	Mattioni	Van Sant
Burkholder	Fay	McGlynn	Tully

NAYS—86

Aurentz	Feather	Lee, K.	Roberts
Bagenstose	Fineman	Lee, L.	Ruth
Baldus	Fohl	Leinbach	Sahli
Baldwin	Forster	Leonard	Scales
Banes	Fortney	Levin	Scarlett
Bashoff	Gerber	Manderino	Scott
Bloom	Goldstein	Mangery	Shettig
Braham	Gray	Meyer	Shively
Brennan	Griffith	Michael	Shoemaker
Brown	Hannum	Miller, D.	Solomon
Butera	Hatter	Miller, R.	Sprogell
Cain	Himes	Moorhead	Stout
Camardella	Hocker	Morton	Thomson
Clark	Hook	Orban	Tomascik
Clinger	Horne	Pasquerilla	Warman
Conley	Jirolamo	Pott	Westerberg
Corey	Johnson	Powell	Whittum
Cortese	Kauffman	Prendergast	Wilcox
Croop	Keller, J.	Redick	Wilmarth
Devlin	Keller, M.	Reynolds	Woodring
Erwin	Krill	Richter	Woodside
Fagan	Leach		

NOT VOTING—37

Aberman	Kelly	Pechan	Shapiro
Baldrige	King	Pelletier	Sharp
Cosetti	Kline	Percey	Shrager
Donaldson	Lane	Popii	Silverman
Donolow	Laputka	Quiles	Stroup
Gabreski	McGeary	Rappaport	Tate
Goldman	Musselman	Rea	Thornburgh
Gouger	O'Donnell	Rovner	Waldron
Henderson	Orbin	Scranton	Welsh
Hostetler			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE CARON offered an amendment which was read by the clerk as follows:

Amend Sec. 1 (Sec. 1A), page 2, line 19, by striking out "Actual places" and inserting: Places

Amend Sec. 1 (Sec. 1A), page 2, lines 21 and 22, by striking out all of said lines and inserting a semi-colon

On the question,

Will the Convention agree to the amendment?

DIVISION OF AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Again I would like to express my thinking to the group here. The word "actual," as I interpret it, could create serious problems. Over a period of many, many years the courts have upheld what we mean by places of burial. I also understand that any time you insert another word, theoretically you give it a new meaning or at least a different intent. The problem with the use of the word "actual" is that at this point it becomes confusing. What does it really mean? Does it mean only the place where you put the body? Does it mean the roadway that leads to the burial place of the body? Therefore, I think that in the interpretation of the words "actual place of burial" we create a real problem for the courts to decide in the years ahead.

The other portion of it is pertaining to the language whereby an organization or person derives no profit from the operation of the cemetery. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, while the copies are being distributed, I would like to point out that this proposed amendment by Delegate Caron does two things: One, it endeavors to delete the word "actual" in the definition of burial places; and secondly, it strikes out a rather long clause at the end of the provision.

If it is in order, Mr. President, I would like to move or suggest that we vote on these two propositions. I think they are entirely separate and I think that we might consider them separately, if that is not out of order.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I would make the same motion. It was my intention when I stood up to have them voted on separately if possible.

PRESIDENT BRODERICK. Would you explain again

how you want them separated, Delegate Woodring. Do you want to vote on Section 1 first? Delegate Caron, this is your amendment. Would you have any objection to having it considered as two separate amendments?

DELEGATE CARON. No, sir. I have another amendment ready. I would accept the suggestion of voting on line 19, the word "actual".

PRESIDENT BRODERICK. Will the Convention agree to consider this as two amendments in order to expedite the work of the Convention? Is there anyone who objects? The Chair hears no objection so we will now consider these two amendments being offered by Delegate Caron. The first amendment would be the first sentence: "Amend Sec. 1 (Sec. 1A), page 2, line 19, by striking out 'Actual places' and inserting 'Places' ". Is that correct?

The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President and fellow delegates, I spoke to this at some length during the interrogation period on Friday morning last. I endeavored to explain that it has come to the attention of the committee during the public hearings and otherwise that in not a few instances throughout the Commonwealth, rather substantial holdings of real estate exist wherein one or a few bodies are buried and, perhaps, a small portion of that tract will actually be developed as a burial ground while the balance of the premise might be sold off as a development area or otherwise. The committee, therefore, felt very strongly on the need to insert the word "actual" before the words "places of burial," "actual places of burial." I stated last Friday that it was the intent of the committee that this would, of course, include the gateway into the burial grounds; it would include the lanes and roads, the paths leading to the various graves and portions of the cemetery; but that only those portions which are actually used as a cemetery or place of burial would be exempt under this provision.

I, therefore, in view of the expressed intent of the committee, would recommend that we vote "no" on this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I am waiting for the second section of this proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Mr. President, I have one question which maybe you could clarify, Delegate Woodring.

I am concerned as to whether, for example, the roads and the administration building would be exempt under this present proposal?

DELEGATE WOODRING. The answer is yes.

DELEGATE MORTON. They may be considered actual places of burial then?

DELEGATE WOODRING. They would be considered as a part of the establishment of the actual place of burial.

DELEGATE MORTON. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Thank you.

The only answer I have to that is that others in the legal profession have interpreted otherwise when you start saying that actual place of burial is where you put the body.

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President and fellow delegates, I rise in support of this amendment.

I am sure that we are getting again, by inserting this word, into an area which is legislative and not constitutional. The legislature has ample authority to make restrictions in the laws pertaining to exemptions of these burial places. I fear very much that by voting on this particular question to allow the word "actual" to be inserted here again, we are invading the province of the legislature.

I am sure that death and taxes and maybe polluted water and sewage are things that we can no longer avoid, but certainly we should have the greatest reverence and respect for places of burial.

I am sure that the particular evil to which Delegate Woodring refers could be very easily cured by legislation.

I also want to add that the Internal Revenue Service has a close tie and rope and hold on the corporations involved in the administering of burial places. I, therefore, respectfully ask the delegates to support this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Just a brief word in answer to that, the word "actual" was borrowed from the 1873 Constitution which starts out: "Actual places of religious worship, places of burial," and so on, it being a word of art in the 1873 Constitution as it pertains to places of religious worship, the committee saw fit to borrow it and insert it in this connection.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Caron?

The roll was recorded as follows:

YEAS—49

Allison	Cortese	Goldstein	Morton
Banes	Cunningham	Harding	Murray
Barron	Curran	Hook	Nelson
Brennan	Dailey	Huggins	Orban
Brown	Desmond	Irvis	Reynolds
Buck	Devlin	Jirolamo	Sahli
Bunting	Dumbauld	Kauffman	Scales
Burkholder	Erwin	Keller, J.	Sebastian
Butera	Fay	Mandarino	Solomon
Camardella	Filson	Mattioni	Strickler
Caputo	Fleming	Meyer	Swope
Caron	Gehrlein	More	Tully
Casey			

NAYS—84

Amsterdam	Feather	Lembach	Rovner
Aurentz	Fineman	Levin	Ruth
Bagenstose	Fohl	Mangery	Scarlett
Baldus	Forster	Markley	Scott
Baldwin	Fortney	McGlynn	Sharp
Barry	Gerber	Michael	Shively
Bashoff	Griffith	Michener	Shoemaker
Benedict	Hannum	Miller, D.	Sprogell
Benfield	Hatter	Miller, R	Stout
Bloom	Heyburn	Moorhead	Thornburgh
Braham	Himes	O'Donnell	Tomascik
Broderick	Hocker	Otto	Van Sant
Cain	Horne	Pasquerilla	Waldron
Clark	Johnson	Pelletier	Warman
Clinger	Keller, M.	Popil	Welsh
Conley	Kelly	Pott	Westerberg
Corey	Krill	Powell	Whittum
Cosetti	Laputka	Prendergast	Wilcox
Croop	Leach	Redick	Wilmarth
Fagan	Lee, K	Richter	Woodring
Fawcett	Lee, L.	Roberts	Woodside

NOT VOTING—30

Aberman	Henderson	Orbin	Shapiro
Baldrige	Hostetler	Pechan	Shettig
Donaldson	King	Percey	Shrager
Donolow	Kline	Quiles	Silverman
Gabreski	Lane	Rappaport	Stroup
Goldman	Leonard	Rea	Tate
Gouger	McGeary	Scranton	Thomson
Gray	Musselman		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. Now we consider the second part of this amendment which you have before you.

The second part reads:

Amend Sec. 1 (Sec. 1A), page 2, lines 21 and 22, by striking out all of said lines and inserting a semicolon.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron who proposed the amendment.

DELEGATE CARON. Mr. President, that amendment I would like to suggest we drop because of another amendment which you should have. I am not sure the rest of them do. It is one in which the committee will agree to the wording.

PRESIDENT BRODERICK. You are, therefore, withdrawing this amendment?

DELEGATE CARON. The second part has been substituted with this one here, which you also have.

I will read that if I may.

PRESIDENT BRODERICK. Just a minute until we see if we have that one.

DELEGATE CARON. It is the fourth one down which says: "and no substantial part of whose activity consists".

PRESIDENT BRODERICK. Just a minute, Delegate Caron. I do not think we have that amendment you are talking about.

First of all, is there any objection to Delegate Caron's withdrawing the second part of this amendment that has been distributed?

The Chair hears none.

We will consider the second part withdrawn.

We do not have the amendment as yet to which you are referring. Would you offer the next amendment and then we will come back to it?

The clerk will now read the amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE CARON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 2, line 21, by striking out "and not regularly engaged" and inserting: and no substantial part of whose activity consists

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. When you receive this, please strike out the first three lines including the word "places". The amendment being offered at this time by Delegate Caron starts out with "Amend Sec. 1 (Sec. 1A), page 2, line 21, by striking out 'and not regularly engaged' and inserting 'and no substantial part of whose activity consists' ". Is that correct?

The Chair recognizes Delegate Clinger.

DELEGATE CLINGER. Mr. President, just a point of inquiry. What amendment was withdrawn? I thought that was the one that was withdrawn.

PRESIDENT BRODERICK. No, he withdrew the second part of the last amendment that we voted on. We had divided it into two halves and the second half of it he withdrew.

DELEGATE CLINGER. It is my understanding that that is precisely the one that we have now.

PRESIDENT BRODERICK. I am told that it is not. It does not read exactly the same.

The Chair recognizes Delegate Caron.

DELEGATE CARON. The reason for the suggested change in terminology from "and not regularly engaged" to "and no substantial part of whose activity consists" again is by reason of a legal interpretation. I have been advised by those who know that this terminology that I have suggested as an amendment more explicitly explains and defines the fact that what we are really getting at is tightening up on those engaged in the work, and if we establish this terminology, we eliminate the profit motive that currently occasionally gets by under the present interpretation.

Therefore, I would like to suggest that the body approve to change the words from "and not regularly engaged" to read "and no substantial part of whose activity consists".

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins.

DELEGATE HUGGINS. Mr. President, I think it is appropriate that we in the Convention deal with the article concerning burial after we hear the public opinion toward our Convention to this date. I think it is also appropriate that we think in terms of some things that were raised probably in the committee but maybe should be made more specific to the delegates here in this hall.

Pennsylvania has three types of cemetery associations: those directly managed by churches and synagogues, nonprofit cemeteries and profit-motivated corporations. All three of these associations in the State have opposed this proposal on the basis of the limitations of the sale of personal property, for instance, burial vaults, memorials and flowers. Do not let that sway you. You are in the Convention. Nobody is going to give us a memorial. But I do think that we need to realize that such sales are by tradition normal and necessary to proper cemetery management; that cemeteries sell only to themselves in the same manner as cooperatives, motor clubs and similar organizations and not to the general public. Many cemeteries by their endowment have contractual agreements with their lot owners to supply these items as part of the service. Sales of these items are convenient and a satisfaction to lot owners. Certain cemeteries with insufficient income from land or services need such additional income to meet the mounting costs that we are trying to place upon them, and the cemetery receives the smallest portion of the burial dollar and that is the only one who gives continued service beyond those final moments with the flowers and the nice words with which I am familiar in my profession.

I think this amendment is necessary in this document that we are trying to write for the future. I do not think we can stifle or suffocate an organization and I do not

think that we can really make only those pay who could afford to pay, for at the same time in doing this we are going to make those suffer who can ill afford to suffer.

It is for this reason that I support the amendment offered by Delegate Caron.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Thank you, Mr. President, I would direct a question to the chairman of the committee, if I could, with regard to this amendment.

PRESIDENT BRODERICK. Proceed with your question.

DELEGATE SHOEMAKER. Am I not correct that the profit-making corporations which operate cemeteries are now taxable under the present Constitution and the present law?

DELEGATE WOODRING. Yes, Delegate Shoemaker, that is correct.

DELEGATE SHOEMAKER. Then this exclusion would not affect them in any event?

DELEGATE WOODRING. No.

DELEGATE SHOEMAKER. Thank you.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Caron?

The roll was recorded as follows:

YEAS—100

Allison	Cunningham	Jirolamo	Orban
Amsterdam	Curran	Johnson	Otto
Aurentz	Dailey	Kauffman	Pasquerilla
Bagenstose	Desmond	Keller, J.	Pelletier
Baldus	Devlin	Krill	Popil
Baldwin	Dumbauld	Laputka	Pott
Banes	Erwin	Leach	Prendergast
Barron	Fagan	Lee, K.	Reynolds
Barry	Fawcett	Lee, L	Richter
Beshoff	Fay	Lembach	Ruth
Benedict	Filson	Levin	Scott
Benfield	Fineman	Mangery	Sebastian
Brennan	Fleming	Markley	Sharp
Brown	Fohl	Mattioni	Shoemaker
Burkholder	Gehrlein	McGeary	Shrager
Butera	Gerber	McGlynn	Solomon
Cain	Goldstein	Meyer	Stout
Camardella	Griffith	Michael	Strickler
Caputo	Hannum	Michener	Swope
Caron	Harding	Miller, R.	Tomascik
Casey	Hatter	More	Tully
Clinger	Hook	Morton	Welsh
Corey	Horne	Murray	Westerberg
Cortese	Huggins	Nelson	Wilmarth
Cosetti	Irvis	O'Donnell	Woodside

NAYS—33

Bloom	Forster	Moorhead	Thomson
Braham	Fortney	Powell	Thornburgh
Broderick	Heyburn	Roberts	Van Sant
Buck	Himes	Rovner	Waldron
Bunting	Hocker	Sahli	Warman
Clark	Keller, M.	Scales	Whittum
Conley	Kelly	Scarlett	Wilcox
Croop	Miller, D.	Shively	Woodring
Feather			

NOT VOTING—30

Aberman	Henderson	Orbin	Scranton
Baldrige	Hostetler	Pechan	Shapiro
Donaldson	King	Percey	Shettig
Donolow	Kline	Quiles	Silverman
Gabreski	Lane	Rappaport	Sprogell
Goldman	Leonard	Rea	Stroup
Gouger	Mandarino	Redick	Tate
Gray	Musselman		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

PRESIDENT BRODERICK. And now I understand Delegate Caron has another amendment.

The clerk shall read that amendment.

I am told that copies of this have been distributed.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE CARON offered the following amendment which was read by the clerk:

Amend Section 1, (Sec. 1A), page 2, lines 29 and 30 by striking out: but in the case in line 29 and all of line 30

Amend Section 1, (Sec. 1A), page 3, lines 1 and 2, by striking out all of said lines and inserting a period.

On the question,

Will the Convention agree to the amendment offered by Delegate Caron?

The Chair now recognizes Delegate Caron.

DELEGATE CARON. As a member of the subcommittee of this particular group since its inception when we first discussed these various problems, I have been concerned with the wording and terminology that we came up with in relation to institutions of purely public charity. The longer I listened to all the experts, the more confused I got and the more I realized that at least in my book I have the deep conviction that most of the problems created throughout the Commonwealth are created by local choice. In most cases, as far as I can determine, our people have been with complete authority to levy taxes or to grant exemptions or to not grant them, depending upon the law and the circumstances, and yet time after time, by reason of local public pressure or local public opinion, exemptions have been given which have not been spelled out within the provisions of the Constitution. Consequently, I think that basically our problem here is one of local enforcement rather than of changing the language of the Constitution.

I am also concerned, as some of the other delegates are, that in the use of this new terminology we are actually opening the door for not covering—or at least for a determination by the courts as to whether they will be covered—the YMCA and the campsites, the Boy Scouts and things like this which, in my opinion, may or may not be under this particular terminology. Therefore, in order to again go back to the established practices that have been built up by a long series of court cases over the years, I have suggested that we return to the original language, providing for tax exemptions to institutions of purely public charity, and I will allow it to stand on the merits of yesterday for the future of tomorrow.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I am obliged to resist the motion for this amendment and to suggest that we vote against it and defeat it. I am glad that the amendment was offered, however, because it affords me an opportunity to correct a statement which I made to the Convention in good faith last Friday when I told you that, in my opinion, the exemptions of fraternity houses might be denied and that they might become taxable. When I went home Saturday night, in my local paper I found an

article in which the Supreme Court, by not acting, affirmed a decision which the Superior Court refrained to make because it divided evenly; thereby, a decision of Thomas F. Lansberry, presiding specially in courts of Lehigh County, ruled that fraternity houses form an integral part of the educational function, and therefore continued the exemption which they had theretofore enjoyed.

This subsection 5 on which the amendment is now offered has to do with such charities, purely public charities, "institutions of purely public charity," which are the constitutional words from the 1873 document. However, the committee is well aware, as I have formerly briefly referred to, of the fact that municipalities are losing more and more of their tax rolls and the breadth of their tax base. This latter clause which the amendment would delete was deliberately inserted by the committee in order to avoid and eliminate some of the abuses which have crept into the exemption clause for institutions of purely public charity. I think that it would be a mistake to adopt this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Horne.

DELEGATE HORNE. Mr. President, may I ask Delegate Woodring a question? I think I know the answer and I believe it is apropos of this section.

PRESIDENT BRODERICK. You may proceed.

DELEGATE HORNE. Does this section or does this Proposal No. 5 in any way change the tax-exempt status of nonpublic schools?

DELEGATE WOODRING. Mr. President, the answer is no.

PRESIDENT BRODERICK. Are there any other questions?

The Chair recognizes Delegate Caron.

DELEGATE CARON. Mr. President, again I would like to question the Judge. Under the present interpretation, as I get it, much of the property adjacent to schools used for purposes of the schools is now tax-exempt, but when you get into the use of the words "actually" and "regularly" and "only that portion thereof," again I understand that this could change the legal interpretation of what the tax exemption would be, based on today and based on the change in the terminology.

I do not pretend to be a lawyer nor an individual who has a real knowledge on this; I am only expressing the thoughts that have been expressed to me.

DELEGATE WOODRING. Mr. President, the intent of the Committee on Taxation and Finance concerning nonpublic schools is that their real estate will continue to be exempt as heretofore for all of their holdings which are necessary and an integral part of the institution. This would include the administration building, obviously; it would include the gymnasium; it would include the classrooms, the laboratories; it would include, according to this decision with which our Supreme Court just last week did not disagree, dormitories and other buildings for necessary housing, et cetera, et cetera, and so forth.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, I would like to speak in opposition to this amendment. The history of exemptions, particularly for purely public charities, has been one of constant expansion. More and more real estate, in some counties enormous tracts of real estate, have been acquired by these public charities. This necessarily chips away at the tax base. It means that the individuals who retain their own homes or their own businesses then are paying all the taxes while the others ride free.

I feel that the proposal as written by the committee does help to tighten this matter up. I certainly oppose any loosening of it.

PRESIDENT BRODERICK. Does Delegate Murray wish to be recognized?

DELEGATE MURRAY. Yes, Mr. President. I would like to ask one short question here. Orphanages naturally would come under public charity. But how about the eating hall of an orphanage if it was not in the same building? Would that be exempt?

DELEGATE WOODRING. I could not hear, Delegate Murray.

DELEGATE MURRAY. In the line of orphanages, if the eating hall of an orphanage was not in the same building, would that be exempt?

DELEGATE WOODRING. I would think it is very definitely a part of the service which the truly public charity administers.

DELEGATE MURRAY. How about a parking lot for an orphanage?

DELEGATE WOODRING. I am advised by the chairmen of the subcommittee, both of them in unison said, "Exempt."

DELEGATE MURRAY. And the same with an outdoor playground facility?

DELEGATE WOODRING. That is certainly exempt.

DELEGATE MURRAY. Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. I wonder if Delegate Woodring would mind being interrogated on the subject of this amendment?

PRESIDENT BRODERICK. He has already agreed.

DELEGATE O'DONNELL. Delegate Woodring, in my county we have had two cases which may be relevant to this inquiry. One concerned the Freedoms Foundation at Valley Forge. A great part of the exemption of the Freedoms Foundation was struck off and therefore the property was subjected to tax because it was not regularly engaged and used for the purposes of the institution.

In like manner, a good part of reserve acreage acquired by the Church Farm School on Route 30 near Exton, Pennsylvania, was subjected to tax for the same reason. Based not only on these two cases but on others of which I have heard, I have the impression that under the law now, holdings by public charities which are not regularly used for the purposes of the institution are already subject to the tax. Am I in error?

DELEGATE WOODRING. Mr. President, I think the answer is "yes" and "no." I think there is a great disparity or lack of uniformity in the administration of the law throughout the Commonwealth. In many jurisdictions it is now taxable; in other jurisdictions it is not. One of the purposes of this amendment to our present Constitution is to make it more uniform.

Have I answered the delegate's question?

DELEGATE O'DONNELL. I think you have, Delegate Woodring. My problem is that the Supreme Court has had approximately 90-some odd years to forge out the precise limits and precise meaning of the present language. I am wondering if we are not inviting them to spend another 90 years trying to hack out precisely what this change effects.

DELEGATE WOODRING. Mr. President, in an effort to give a more precise answer to the delegate's question, I would say that I am not personally informed on the two specific examples which the delegate has stated and I would like to call on Delegate Gerber, a co-chairman of the subcommittee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, Chairman Woodring, Delegate O'Donnell, fellow delegates, I think the answer to the question of Delegate O'Donnell is that with specific reference to the Freedoms Foundation case, I am sure you recall that the Freedoms Foundation used only a very small portion of a rather large estate for the facility of the Freedoms Foundation, so it was determined that because of that the entire estate should not be deemed exempt and that portion of it which was not should continue on the county tax assessment rolls as a ratable.

DELEGATE O'DONNELL. Yes, and I helped to participate in that case to make it subject to tax. I thought I understood the law to be just exactly as here.

DELEGATE GERBER. I think, unfortunately, Delegate O'Donnell, that in certain counties it is not as it was, due to your efforts as a counselor in that case.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Caron?

The roll was recorded as follows:

YEAS—39

Allison	Curran	Harding	Pelletier
Barry	Desmond	Levin	Scott
Brennan	Devlin	Manderino	Sebastian
Bunting	Dumbauld	Mattioni	Shrager
Burkholder	Fay	McGlynn	Solomon
Butera	Feather	More	Stout
Caputo	Filson	Murray	Tully
Caron	Gehrlein	Nelson	Welsh
Casey	Goldstein	O'Donnell	Woodside
Cortese	Hannum	Orban	

NAYS—87

Amsterdam	Dailey	Kelly	Richter
Aurentz	Erwin	Krill	Roberts
Bagenstose	Fagan	Leach	Rovner
Baldus	Fawcett	Lee, K.	Ruth
Baldwin	Fineman	Lee, L.	Sahli
Banes	Fohl	Leinbach	Scales
Barron	Forster	Mangery	Scarlett
Benedict	Fortney	McGeary	Shapiro
Benfield	Gerber	Meyer	Sharp
Bloom	Griffith	Michael	Shively
Braham	Halter	Michener	Shoemaker
Broderick	Heyburn	Miller, D.	Sprogell
Brown	Himes	Miller, R	Strickler
Buck	Hocker	Moorhead	Thomson
Camardella	Hook	Morton	Thornburgh
Clark	Huggins	Orbin	Van Sant
Clinger	Irvis	Otto	Westerberg
Conley	Jirolanio	Popil	Whittum
Corey	Johnson	Pott	Wilcox
Cosetti	Kauffman	Powell	Wilmarth
Croop	Keller, J.	Rappaport	Woodring
Cunningham	Keller, M	Reynolds	

NOT VOTING—37

Aberman	Gray	Markley	Scranton
Baldrige	Henderson	Musselman	Shettig
Bashoff	Horne	Pasquerilla	Silverman
Cain	Hosteller	Pechan	Stroup
Donaldson	King	Percey	Swope
Donolow	Kline	Prendergast	Tate
Fleming	Lane	Quiles	Tomascik
Gabreski	Laputka	Rea	Waldron
Goldman	Leonard	Redick	Warman
Gouger			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BURKHOLDER AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Burkholder.

DELEGATE BURKHOLDER. Mr. President, I read in place and offer the following amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BURKHOLDER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 3, line 2, by inserting after "institution.": That portion of summer campsites owned by recognized public charities which are used each summer for camping purposes shall be deemed to be "regularly used" within the meaning of this clause.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Burkholder.

DELEGATE BURKHOLDER. Mr. President, this is the YMCA and the Boy Scout camping amendment. It is designed for the purpose of being sure that campsites, which are regularly used in the summer by the Boy Scouts and the YMCA to provide camping facilities for the needy boys and girls at low prices, can be free of tax.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I believe I speak for the committee when I say that this amendment should be denied and defeated. There is nothing especially harmful in the amendment, but when it is stated that it is to cover the Boy Scouts and the Girl Scouts, also I would suggest the YMHA and a great many other institutions, by including the campsites by a rule of construction, with which Delegate Burkholder is thoroughly familiar, more so than I, perhaps by reason of his seniority in office, I would suggest that we exclude, or we very possibly might exclude, many other institutions and worthy causes. I think for that reason alone the motion ought to be denied and defeated. However, in accordance with statements made at the interrogation period on this proposal last Friday, it was thoroughly understood, and the intent of the committee and the intent of the proposal was stated, that if campsites of charitable institutions are regularly used or used with some degree of regularity, they should be included in the exemption clause.

PRESIDENT BRODERICK. The Chair recognizes Delegate Burkholder.

DELEGATE BURKHOLDER. Mr. President, I would just like to point out that the camps of the YMCA and the camps of the Boy Scouts and the camps of all the other organizations that Delegate Woodring mentioned provide means for camping for youngsters who do not have the money to go to professional camps, which are very expensive. It is this type of activity that, after at least 30 years of YMCA experience, I have learned is one of the best tools for character building among young people. In

spite of the fact that at the interrogation Judge Woodring said that such places would be exempt, I do not feel that judges in the future necessarily would have to exempt them because most of those places are used in summer months; they certainly are not used in midwinter months. There may be some activity in the late spring and early fall, but they are not regularly used and, therefore, it seems to me that this Convention should not remove from the exemption rolls types like that which are presently exempt.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I would like to interrogate Delegate Burkholder.

PRESIDENT BRODERICK. Would you stand for interrogation, Delegate Burkholder, by Delegate Jirolanio?

DELEGATE BURKHOLDER. Yes indeed.

PRESIDENT BRODERICK. You may proceed.

DELEGATE JIROLANIO. Delegate Burkholder, would this amendment protect the same public charities if they also used camps in the wintertime for their own purposes?

DELEGATE BURKHOLDER. If they were used regularly, undoubtedly it would protect them, but most of the equipment which YMCAs, for example, have do not lend themselves for use in the wintertime; they do not have the heating facilities and they do not have the protection. A lot of the camping is done in tents or in shelters which are open at the sides and are not suitable for winter camping. The time for camping is summertime.

DELEGATE JIROLANIO. Would not this amendment actually take away from a public charity if they had a winter camp? This language would designate that all they would be interested in would be summer camps and not winter camps. You would be taking something away from the very groups that you would like to help. Is that not so?

DELEGATE BURKHOLDER. I had not intended it that way.

DELEGATE JIROLANIO. Look at it once.

DELEGATE BURKHOLDER. I see the word "summer."

DELEGATE JIROLANIO. Would you not be hurting your own public charity? Why not strike out the word "summer" and just use the word sites owned by them regardless of whether it is summer or winter?

DELEGATE BURKHOLDER. If you will move to amend the amendment by striking out "summer," I will second the motion.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. President, I rise to oppose the amendment and call the attention of the Convention to a fact that has not been brought forth in this particular amendment, and that is, the great, great majority of the property to be exempted under this exemption is located in those local governments in Pennsylvania which are the smallest, the poorest and the least able financially to stand these exemptions. I think the amendment should fall.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Burkholder?

The roll was recorded as follows:

YEAS—24

Allison	Benedict	Dumbauld	Sahli
Amsterdam	Benfield	Fagan	Sebastian
Aurentz	Bunting	Gehrlein	Shapiro
Banes	Burkholder	King	Strickler
Barron	Butera	Michener	Stroup
Barry	Clinger	Otto	Warman

NAYS—108

Baldus	Fleming	Leonard	Reynolds
Bloom	Fohl	Levin	Richter
Braham	Forster	Manderino	Rovner
Brennan	Fortney	Mangery	Ruth
Broderick	Gerber	Markley	Scales
Brown	Griffith	Mattioni	Scarlett
Camardella	Hannum	McGeary	Scott
Caputo	Harding	McGlynn	Sharp
Caron	Hatter	Meyer	Shively
Casey	Heyburn	Michael	Shoemaker
Clark	Himes	Miller, D.	Shrager
Conley	Hocker	Miller, R.	Solomon
Corey	Hook	Moorhead	Sprogell
Cortese	Horne	More	Stout
Cosetti	Irvis	Morton	Thomson
Croop	Jirolanio	Murray	Thornburgh
Cunningham	Johnson	Nelson	Tomascik
Curran	Kauffman	O'Donnell	Tully
Dalley	Keller, J.	Orben	Van Sant
Desmond	Keller, M.	Orbin	Waldron
Devlin	Kelly	Pasquerilla	Welsh
Erwin	Krill	Pelletier	Westerberg
Fawcett	Laputka	Popil	Whittum
Fay	Leach	Pott	Wilcox
Feather	Lee, K.	Powell	Wilmarth
Filson	Lee, L	Prendergast	Woodring
Fineman	Lembach	Redick	Woodside

NOT VOTING—31

Aberman	Donolow	Huggins	Rea
Bagenstose	Gabreski	Kline	Roberts
Baldrige	Goldman	Lane	Scranton
Baldwin	Goldstein	Musselman	Shettig
Bashoff	Gouger	Pechan	Silverman
Buck	Gray	Percey	Swope
Cain	Henderson	Quiles	Tate
Donaldson	Hosteller	Rappaport	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

HANNUM AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Hannum, who, I understand, has an amendment. If you will hand it up I will ask the clerk to read the amendment. As soon as it is ready, you may make a statement.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE HANNUM offered the following amendment which was read by the clerk:

Amend Sec. 1, (Sec. 1A), page 3, line 4 by inserting after "forest": and conservation

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, this morning I conferred with Dr. Maurice K. Goddard, the Secretary of Forests and Waters, who most of us know is certainly one of the ablest public servants in the United States and he has served under four great Governors, Governors Leader, Lawrence, Scranton and Shafer.

These additional two words merely contemplate conservation in its broadest sense, an open space for the next century. By open space I mean water and fields, also game sanctuaries. I have spoken with Chairman Woodring; I have spoken with Delegate Nelson, and Delegate Nelson suggested that the words be "and/or". However, the gen-

tlemen who assisted in drafting this proposal tell me that, as drafted, this contemplates forests by itself and conservation in addition.

The only possible objection, fellow delegates, that I could visualize or contemplate in connection with this is that it would be possible for some selfish person to abuse this for tax avoidance. But this is true in any other situation and although people sometimes do play tax games, they do not do it for long in this country.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring for a statement.

DELEGATE WOODRING. Mr. President, if this amendment were sponsored by anybody other than His Honor, I would oppose it vehemently, because the reason for which the exemption is granted is that forest lands are lacking on the question of conservation. Therefore, they are two entirely different concepts.

The great majority of land which is truly held for conservation is owned by the Commonwealth. In not a few of the so-called northern tier counties, the majority of the land in those counties is actually owned by the Commonwealth or its various departments, such as Forests and Waters. Those lands, of course, are already conservation lands. Some of them are forest lands. All of those lands are already exempt because they are public lands used for a public purpose.

I am informed by the Department of Forests and Waters that in fact the department does make a token payment to the municipalities in lieu of some taxes. However, I am also told it is a very nominal sum and is not the equivalent of the tax to which the municipalities are entitled.

However, as I stated at the outset, it is not my purpose to personally resist this amendment. If the Convention feels that it is safe to include the term "conservation," I will abide by it.

I think I must say, in all honesty, I personally will vote against the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, I most completely respect the comments of Committee Chairman Woodring. However, I would say, sir, that possibly I have additional information which I received this morning and I am privileged to say that Dr. Goddard has suggested to me that this would be a proper amendment and, in Dr. Goddard, I think we can have the utmost confidence.

PRESIDENT BRODERICK. The Chair recognizes the secretary, Delegate Michener.

SECRETARY MICHENER. Mr. President, I am deeply confused by this amendment and I wonder if the learned Judge would consent to a couple of questions.

PRESIDENT BRODERICK. Would you consent to interrogation by Secretary Michener?

DELEGATE HANNUM. Yes.

PRESIDENT BRODERICK. The gentleman may proceed.

SECRETARY MICHENER. In my township we have two hunt clubs which have taken up a good deal of private land; they have done fine things with it, but they are men who are well able to pay their taxes. They are men who use this land only very occasionally, and I understand that if they put a $500 dam anywhere in this hunt club, they can take 300 or 400 acres of land out of taxation because they can then call it a conservation project and not a hunt club.

My only concern is, how do we protect ourselves against that frank misuse of land by people who are well able to pay their own way.

DELEGATE HANNUM. Mr. Secretary, I can only say this to you, sir: I do not believe that anyone who would try to use this particular amendment to some personal advantage, some hunt club or some other special interest group, would get away with it insofar as the legislature or courts are concerned. This is truly, sir, and I assure you, a bona fide suggestion for opportunity into the next century, and the century beyond that, for private enterprise to get its back and its effort into bona fide conservatism.

As I said earlier, sir, it is always possible for some special interest group to abuse something for a short time, but under our system, they will not get away with it.

SECRETARY MICHENER. Would we look then to the legislature to protect the definition of conservation here?

DELEGATE HANNUM. I believe, yes, sir, and then following the legislature, the courts.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pott.

DELEGATE POTT. Mr. President, I wish to plead a little surprise at what the most learned Judge has raised in his question and in his amendment because our committee requested the presence of Dr. Goddard. He was set up to come, but due to a conflict in schedule, he could not come. He sent his chief deputy or chief counsel and it was their recommendation, the department's recommendation, that this not be changed, and it was the unanimous opinion of the committee that we leave it as is and so it is in the provision or in the committee proposal.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I would ask leave to interrogate the learned gentleman who presented the amendment.

PRESIDENT BRODERICK. Delegate Hannum, would you stand for interrogation by Delegate Jirolanio?

DELEGATE HANNUM. Yes, sir.

PRESIDENT BRODERICK. He indicates that he will. You may proceed.

DELEGATE JIROLANIO. I had better do it now before he gets on the bench because I will not be able to interrogate him then. Well, I have to appear before him yet.

I would appreciate if you would define for me just exactly what you mean by the term "conservation."

DELEGATE HANNUM. Delegate Jirolanio, by that, sir, I mean conservation in the broadest possible sense; that is, water, game sanctuaries, cover for birds, things that are over and above our forest areas—marshland, for example. Does that explain it to you, sir?

DELEGATE JIROLANIO. No, it does not go far enough. Does it also include the lake where you have fish?

DELEGATE HANNUM. It could, yes, sir.

DELEGATE JIROLANIO. If you would have a private lake with fish in it and you would later use it commercially, that would be exempt. Is that what you would want it to be?

DELEGATE HANNUM. Sir, you would not use it pri-

vately. You would use it for conservation. It might be just as they have up in New York with these conservation easements where private people permit the public generally to come in to fish because they want to preserve open space and water and marshes, and the like.

DELEGATE JIROLANIO. But at these private fishing lakes, they would restrict the general public from coming in to fish and would allow only those persons to come in whom they would want. Would not that be so?

DELEGATE HANNUM. No, sir, that is not in contemplation that it would be used for any private interest.

DELEGATE JIROLANIO. But could it be, sir?

DELEGATE HANNUM. Sir, there are always people who can abuse things, but this we do not believe they would do in spirit.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sharp.

DELEGATE SHARP. Mr. President, I wonder if I might interrogate Delegate Hannum a moment.

Delegate Hannum, in the area that I come from there are sizable quantities of land which, following the extraction of the coal by the open-pit method of mining, are in turn backfilled and then planted. Is it your thought that these areas would fall within the conservation areas that you have talked about so that they in turn could be classified as tax exempt by the General Assembly?

DELEGATE HANNUM. Delegate Sharp, in answering your question, I am not familiar enough to speak with competence on this particular example that you suggest. If, in the public good, in the areas of conservation within that formula or that micrometric measure your suggestion would fit into that, I would say I firmly believe that this is contemplated, but it is not contemplated for anything that is in private or for any selfish interests, I assure you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. Mr. President, in support of the Judge's amendment, I would like to call attention to the fact that in this particular subdivision the language differs from the other exemptions. This is not an authorization to exempt by general law. It is merely an authorization to set up standards and qualifications for private forest preserves and make special provision for taxation thereof. It is quite different from the language of these other subsections.

PRESIDENT BRODERICK. Thank you, Delegate Nelson.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Hannum?

The roll was recorded as follows:

YEAS—44

Barron	Dumbauld	Meyer	Ruth
Brennan	Goldstein	More	Sahli
Brown	Hannum	Murray	Scales
Buck	Harding	Nelson	Sebastian
Bunting	Hatter	Orban	Shapiro
Clark	Heyburn	Orbin	Shettig
Cortese	Horne	Otto	Shoemaker
Curran	King	Pasquerilla	Strickler
Dailey	Laputka	Prendergast	Stroup
Desmond	Mangery	Reynolds	Waldron
Devlin	McGlynn	Roberts	Warman

NAYS—87

Amsterdam	Fawcett	Lee, L.	Rovner
Aurentz	Fay	Leinbach	Scarlett
Baldus	Feather	Leonard	Scott
Baldwin	Filson	Levin	Sharp
Banes	Fineman	Manderino	Shively
Barry	Fohl	Markley	Shrager
Bashoff	Forster	Mattioni	Sprogell
Benedict	Fortney	McGeary	Stout
Benfield	Gerber	Michael	Swope
Bloom	Griffith	Michener	Thomson
Braham	Himes	Miller, D.	Thornburgh
Broderick	Hocker	Miller, R.	Tomaselk
Camardella	Hook	Moorhead	Tully
Caputo	Irvis	Morton	Van Sant
Caron	Jirolanio	O'Donnell	Welsh
Casey	Johnson	Pelletier	Westerberg
Conley	Kauffman	Popil	Whittum
Corey	Keller, J.	Pott	Wilcox
Cosetti	Keller, M.	Powell	Wilmarth
Croop	Kelly	Rappaport	Woodring
Cunningham	Krill	Redick	Woodside
Erwin	Leach	Richter	

NOT VOTING—32

Aberman	Donaldson	Gray	Peehan
Allison	Donolow	Henderson	Percey
Bagenstose	Fagan	Hostetler	Quiles
Baldrige	Fleming	Huggins	Rea
Burkholder	Gabreski	Kline	Scranton
Butera	Gehrlein	Lane	Silverman
Cain	Goldman	Lee, K.	Solomon
Clinger	Gouger	Musselman	Tate

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

CAMARDELLA AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella, who has an amendment to offer.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE CAMARDELLA offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 3, line 10, by inserting after "provisions.": Any real estate with an assessed valuation of ten thousand dollars or less which is owned by a person sixty-five years of age or older, which has been owned by such person for at least the ten years prior to attaining age sixty-five and which is used as the principal homestead of such person shall be exempt from all local real estate taxes. The General Assembly may by general law provide for the carrying out of this subsection.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. I yield to Judge Woodring.

DELEGATE WOODRING. It is his proposal, sir. I think the delegate had better speak in favor of it because I am going to speak against it.

DELEGATE CAMARDELLA. Let your conscience be your guide.

DELEGATE WOODRING. Mr. President, I feel obliged on behalf of the committee to ask the Convention to defeat this proposal. It was considered at length. It is substantially the same proposition that was considered at

length by the committee. The committee rejected it and adopted subsection (c) of Section 5, which permits the General Assembly to establish as a class or classes of subjects of taxation the property or privileges of persons who, because of age, disability, infirmity or poverty, are determined to be in need of tax exemption. We feel that this is a more proper disposition of this subject. We feel that it is broader than the amendment which is now offered. I would like to be in favor of this amendment, Delegate Camardella, because of the specified age—I notice that I would qualify—but I feel morally obliged to oppose it.

DELEGATE CAMARDELLA. Mr. President and fellow delegates, I rise here to submit this proposal for all intents and purposes not to have this as a case of need or a case of want or welfare for our senior citizens; I rise at this time to appeal to the delegation of this Convention to make this a case of right for our senior citizens. Too many times and too often have our senior citizens had to give up their homes because of their taxations by the local government. I believe that it is a moral obligation of this Convention to vote on my proposal and to accept my proposal and to make this a case of right rather than a case of need or welfare. I plead to the delegates to vote in favor of this amendment.

PRESIDENT BRODERICK. Thank you, Delegate Camardella.

The Chair now recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, fellow members of the Convention, it is a great temptation to want to approve every such proposal as this because it is in the aid of the old and the infirmed. We must remember, however, that the thing we are concerned here with is preserving a broad tax base for the Commonwealth. Obviously a great deal of the public funds is now being invested in the support of the aged people. The alarming thing about this proposal is that now we are eroding that tax base from the other side in limiting the areas in which the Commonwealth can collect its moneys.

I want to call to the attention of the delegates the change which has taken place in modern times in the treatment of the aged. When I was young, as I remember it, there was no recourse for the aged except the poor farm. The old gentleman and old lady who had reached the end of their earning period might have their house and lot and no more, but they could not eat house and lot. They could live on it; perhaps they could get a mortgage and use that money; perhaps they could get a little second lien and use that money; but shortly they were at the end of their resources.

In modern times, much more justly, we consider whether these people are really in need and then endeavor to provide for that need. They are allowed to live in the property which they own. Now I am told that it is not the custom of the public authorities to sell for taxes these lands. I have been able to pay my own taxes up to the present time and I can assure you they have not sold mine, but I have talked with some of the mayors here and other knowledgeable persons and they tell me it is not the custom to sell the lands of these aged people so long as they occupy them. Therefore, it would appear that under the present tolerant provisions of the law, these old people can come to the end of their lives living in their homes which they enjoy.

Now we are asked to suspend or to forgive all taxes on those lands. Since the old people are living in their homes and not being disturbed, is it not apparent that this provision is not in the aid of the aged persons; it is in the aid of heirs of aged persons. In other words, why should we enable them to preserve their lands free to pass over to their descendants? As the law now is, the government can take what they have left, so that in modern times the old people can really eat up the last dollar of their own property and still be retained in some semblance of dignity to the end. That is no reason why we should forgive the taxes so that the property would go to their descendants free from taxes. The utmost that ought ever to be done is to allow a postponement of taxes, and I believe that even that is not warranted in these circumstances.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, I would like to interrogate Co-Chairman Woodring, if I may.

PRESIDENT BRODERICK. Chairman Woodring, a question by Delegate Barry. Proceed.

DELEGATE BARRY. Mr. President, you said that this provision broadens the suggested proposal. If the proposal's language is adopted, could not the General Assembly pass language similar to this proposed by Delegate Camardella?

DELEGATE WOODRING. Yes, the General Assembly may pass anything appropriate to the subject.

DELEGATE BARRY. In other words, they could pass this exact language or even broader language? This is just an example of what the General Assembly could do.

DELEGATE WOODRING. Is the gentleman suggesting that the subject matter of this amendment is legislative and not constitutional?

DELEGATE BARRY. No, I am suggesting that perhaps your statement that this is broader in your language is not correct. Actually your language is much broader in the proposal here.

DELEGATE WOODRING. That is not my opinion nor is it the intent of the committee. The committee intended to pass a broad opportunity to the General Assembly to adopt classes and standards on a needs basis, not on an age basis and not on a basis of assessed valuation. The proposed amendment says, "the assessed valuation of ten thousand dollars". Mr. President, I might point out to the members of the Convention that in not a few municipalities the assessment rate is 30 per cent, so that a $10,000 assessment might mean a $30,000 piece of real estate. It would be my opinion that the General Assembly would usurp its function if it starts granting exemptions for $30,000-parcels of real estate.

DELEGATE BARRY. But may I ask you, even in the example you give, since the General Assembly may, under the proposal, establish classes as to age, that they could do this very thing?

DELEGATE WOODRING. On a needs basis. The purport, the language and the committee intent of this portion of the proposal is that whatever exemption or whatever standards for exemption would be adopted would be primarily on a needs basis.

DELEGATE BARRY. I ask you again, if that is your intention, is not your language at fault then because you say of age, disability, infirmity or poverty? So age itself is one of the criteria the proposal suggests.

DELEGATE WOODRING. Mr. President, the delegate fails to read the concluding clause in the sentence, those people under the classes which have been enumerated who "are determined to be in need of tax exemption or of special tax provisions." If the need is there and if they otherwise qualify, then the General Assembly might grant the municipalities to grant exemptions or special tax provisions, but it is all based on a needs basis and not an arbitrary classification of age or valuation of property or any other arbitrary classification.

DELEGATE BARRY. Let me ask you another question. Does a paraplegic have to show need?

DELEGATE WOODRING. Yes, under this provision he would.

DELEGATE BARRY. In other words, if he is able to make his own income and livelihood and is successful financially, he is not entitled to the exemption as a paraplegic?

DELEGATE WOODRING. That is correct.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, Judge Woodring has touched briefly on the point I wanted to raise concerning this amendment, that is, disregarding the result that Delegate Camardella is trying to reach.

I think the amendment is very dangerously written in that the standard seems to relate to assessed valuation. It is unnecessary to point out to the delegates here, I think, that most counties have different ratios of assessed valuation to market value.

In my particular county, for instance, the ratio is somewhere between 20 per cent and 25 per cent which, in effect, would exempt a person owning a home in excess of $40,000 market value from paying taxes. I am not exactly sure that this is the kind of person you want to exempt.

PRESIDENT BRODERICK. The Chair recognizes Delegate Westerberg.

DELEGATE WESTERBERG. Mr. President, I would like to interrogate Delegate Camardella, please.

PRESIDENT BRODERICK. Do you wish to be interrogated, Delegate Camardella?

He indicates that he will stand for interrogation.

The gentleman may proceed.

DELEGATE WESTERBERG. Mr. President, have you made a study at all of how much tax base this would take out of local subdivisions, cities, boroughs and townships?

DELEGATE CAMARDELLA. I have not made a thorough study of it, but it is not a sizable amount. To my knowledge, it will only apply to a new account.

May I add a little more to this. If I can amend my amendment and instead of the word "assess" use "market valuation," I think that would be the proper language to put into this amendment.

As far as the cost to the local government, I have not made a survey; I have not gone into it too deeply, but I am sure this can be absorbed by the local government or the State, which will fall back to the local government.

DELEGATE WESTERBERG. That answers my question somewhat, but let me get to my next question. If this is put at market value, then could you give me any figures as to the percentage of tax money which would be taken out of local subdivisions?

DELEGATE CAMARDELLA. This is an unknown fact to me or anyone else, sir.

DELEGATE WESTERBERG. I am not sure whether it is an unknown fact to anybody else because there have been studies made on this. In lots of third class cities, townships and boroughs, it would take at least 30 per cent of the local tax assessments out of their local coffers, or local taxes out of their local coffers. Before anyone should vote for this amendment, I believe they should also think of where this money is going to come from and go into this and replace this, because it seems to me that when we do this, right away we are throwing all the tax burden onto the middle-aged people, and I guess I am a little above that right now, but those with the mortgages, paying for cars, paying for their children to go to college and now we are adding more tax burden onto them by relieving others.

I think that this is a very fine idea, and I assure you that the legislature has been working on this and trying to come up with a solution, but I do not believe that we are ready to replace this tax money right now. I would like to see you add to your amendment where this money is going to come from. Then I believe I would be more ready to vote for it.

PRESIDENT BRODERICK. Thank you, Delegate Westerberg.

The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. Mr. President, I have no objection at all to the purpose of this proposal, but whether it is market value or assessed value, it seems to me a mistake to put $10,000 in the Constitution.

We have made fun of the million dollars they put in as a debt limit back in 1874, and 50 years from now they might make fun of us for putting in $10,000 which then may be worth about a thousand.

PRESIDENT BRODERICK. Thank you, Delegate McGeary.

Are we ready for the question?

Do you wish to be heard, Judge Braham?

DELEGATE BRAHAM. I just want to call attention to one bill which is before the legislature now, which is House bill No. 1424 in the session of 1967, third reading, House of Representatives, August 8, 1967. That provision was that the residents of the Commonwealth over the age of 65 years who receive less than a specified amount of income annually may be exempt in whole or in part from the payment of per capita, wage or income taxes that the General Assembly may provide and, further, that the General Assembly may provide for the postponement or delay in whole or in part of local taxes on real estate on which they reside.

I am opposed to this proposition because it represents a taking from the public of taxing power the large amount of the tax which may be realized on real estate.

If we must do this for these aged persons, we had better do it from one side. Increase the grant to them, rather than begin by exempting whole classes of population from liability for taxation.

CAMARDELLA AMENDMENT TABLED

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. Mr. President, I would like to place an amendment to the amendment.

Any real estate owned by a person 65 years of age or older which is used as the principal homestead of such person may be exempted from local real estate taxes or have these taxes reduced.

PRESIDENT BRODERICK. Will the gentleman come forward and if he wishes to offer that as an amendment to the amendment, we are going to have to have it prepared?

Do you wish to offer it as an amendment or a separate amendment?

If there is no objection, we shall lay Delegate Camardella's amendment on the table until we have the Redick amendment to it prepared and we shall then proceed with the next amendment and come back to it.

On the question,
Will the Convention agree to table the amendment?
It was agreed to.

WILCOX AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilcox.

DELEGATE WILCOX. Mr. President, I offer an amendment at this time.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE WILCOX offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 2, lines 22 to 30; page 3, lines 1 and 2, by striking out all of said lines, and inserting: property in connection therewith, that portion of public property which is actually and regularly used for public purposes; that portion of the property owned and occupied by any branch, post or camp of honorably discharged servicemen or servicewomen which is actually and regularly used for benevolent, charitable or patriotic purposes; institutions of purely public charity, but only that portion of real property of such institution which is actually and regularly used for the purposes of the institution: Provided, That no exemptions shall be allowed under this clause (2) unless a method is established whereby the authority levying the tax may collect a fair and equitable payment in lieu of taxes from the owner or user of the classes of property enumerated in this clause (2); and further provided that in no event shall such fair and equitable payment exceed twenty-five percent of the real estate taxes which the authority levying the tax otherwise could have imposed upon such real estate in the preceding year if it were not so exempted.

On the question,
Will the Convention agree to the amendment?

DELEGATE WILCOX. Mr. President, may I speak on this amendment?

PRESIDENT BRODERICK. Yes, indeed. I understand, Delegate Wilcox, that copies have been distributed and we would like you to speak on it now.

DELEGATE WILCOX. This amendment is proposed by myself and Delegate Powell. I shall try to be brief, as Mr. Lincoln's example was.

When I first read my Taxation and Finance Manual prepared by Dr. Kurtzman, I was astonished to learn of the amount of tax-exempt property in our communities throughout the State. Particularly this was true in Pittsburgh where the amount was 33 per cent, in Philadelphia where it was 28-point-something per cent, and in some communities throughout the State where the exempt property is now over 50 per cent. We all recognize that these charities do fine work. I am involved in many of them myself and I feel it would not be the same State if we did not have their services.

But that is not exactly the question. These same charities pay for their light bills and their heat and they expect to, and they do, receive from the municipal areas around them a good deal in the way of services. Their roads are provided; their garbage disposal is provided; they all have police protection; they all have fire protection; and some of them get many other services.

In line with this, when the exemptions committee first came out to our overall committee with its proposal, it had a proposal, which I think was voted nine to one in favor of a governmental services proposition whereby these institutions of charity and all of the exempted people in this category with the sole exception of the actual place of worship, with the sole exception of the sanctuary, would pay a governmental services fee.

This was taken up by the overall committee and I believe I am right in saying that it passed by a vote of 22 to four. Then the committee heard from some groups which were affected by this and I think it reversed itself finally by a vote of 19 or 20 to 10, and hence the proposal as you have it in Proposition No. 5 was passed.

There is a considerable body of opinion, I think, which believes that these institutions, worthy as they are, should pay or pay something on the services they receive. The local taxing authorities are limited in the assets which they can reach for local tax purposes through real estate and through certain other catch-all provisions.

I noticed this last week in the Philadelphia Inquirer that the City Council of Philadelphia is negotiating now with the University of Pennsylvania trying to get some tax-exempt property back on the rolls or to make a compromise because the tax shelter in some cases may be being used for benefit to the university not exactly in line with the purposes.

I have nothing against the University of Pennsylvania; I went to school there. It is a great institution. But the same principle applies to all these things. Somebody has to pay for the firemen, for the police, for some of these other services which we all receive.

This amendment has the additional factor in it to reassure these institutions that never would the tax to which they would be subjected be larger than 25 per cent of the tax they would otherwise pay. All of these, I understand, are assessed now, although they are exempt; they are given an assessment which goes on the rolls and which is reported to the State. This would mean they would be guaranteed a 75 per cent tax break, and in many communities it might be a good deal more, depending on the services which that local community did give and felt that it was entitled to have.

I urge the adoption of this amendment to give the local units something in the way of compensation, for example, where a borough or a town has a large state institution or lots of public property or lots of charitable property. Let us give them something of a break.

I think that Delegate Powell also has something to say on this subject.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, it is difficult to speak against this amendment because it is sponsored, among others, by Delegate Wilcox, who is a subchairman of one of our committees and who has been a very faithful and loyal member of our committee. This question, however, has been debated and discussed and the committee has drawn its recommendation one way and then we have reconsidered and changed it and changed back again. We have given a great deal of time and thought and study and deliberation to this phase of our work. It was the consensus of the committee that, one, it would be impracticable to try to administer this type of a rebate. It is difficult to know just how much or how little should be contributed by any of these institutions that are purely public charities.

A sounder argument, I think, is that these institutions of purely public charity exist by reason of the alms giving, if we call it this, by the contributions that the men and women of this Convention make 12 months in the year, and the people all over the Commonwealth. The thoughtful, good citizens of our Commonwealth support and maintain these institutions of purely public charity.

To tell these institutions then, which are living by the benevolence that is given to them, that they must pay taxes and, thereby, increase the sum which they actually need in order to continue their charitable purposes, it seemed to the committee—it seems to me personally—that this is not logical and it is not practicable in administration.

Therefore, speaking on behalf of the committee, I do oppose it and recommend the proposed amendment be denied and defeated.

I would like in this connection to call upon one of my subchairmen of this Taxation Committee, Delegate Pott.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pott.

DELEGATE POTT. Thank you. Mr. President, Judge Woodring, I think it is only fair to tell the delegates that what Delegate Wilcox has said is absolutely true. Our subcommittee did put out a proposal, Proposal No. 1067, and this was done for a purpose. We wished to determine the feeling of the delegates to this Convention and also to the public; we wanted to hear from the people. Strange as it may seem, our proposal went through this Convention and it went through the public hearings, and it did not come back to us with any degree of feeling until January 15. At that time we were deluged by hospitals, all forms of charities, the universities, colleges, private schools, parochial schools, orphanages—everything that deals with and in the field of charity, public institutions—came to our committee and the people were heard. It was at that time when we were in debate with the standing committee and the debate became very hot and heated that I took the floor and said that it was very possible that because of this particular amendment, which we have put through, on the so-called service charge, the emotions which were aroused thereby and therefrom, that the whole work of this Convention could be defeated.

I am one who feels definite in my own mind, and I believe that I speak for many of the committee and the standing committee, that this would bring a disservice to the public charities and the educational institutions, both public and private. We would probably be increasing the amount of taxation which the individual taxpayers throughout the Commonwealth would have to bear if we were to place these real properties on the tax ratables.

Therefore, speaking, I believe, for the great majority of the standing committee, we would recommend that this amendment be defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. I would like to interrogate Delegate Wilcox.

PRESIDENT BRODERICK. Delegate Wilcox, would you stand for interrogation? He indicates that he will. You may proceed.

DELEGATE HOOK. Midway through your proposal you used the following language: ". . . clause (2) unless a method is established . . ." do we read into this language that you are going to have the General Assembly establish a method.

DELEGATE WILCOX. Yes, that is the intent.

DELEGATE HOOK. Now, Delegate Wilcox, is it also your intent that all forms of local government, including counties, school districts and other subdivisions have the right to levy such a tax?

DELEGATE WILCOX. Yes, that is the intent also.

DELEGATE HOOK. You are not limiting this to only those who provide services?

DELEGATE WILCOX. No, that is right.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. In reference to this amendment, I rise, of course, to support it and read from an editorial from the Bulletin which refers to our original amendment of the standing committee and subcommittees and proposal 1067 which was introduced and passed:

> The Pennsylvania Constitutional Convention's Taxation and State Finance Committee has premised its deliberations on a quite obvious fact. Shrinking municipal tax bases weaken local government, and nothing shrinks these bases faster than exemptions from payment of real estate taxes, prime sources of municipal income.

It refers to a tax-exempt study made in 1957. In keeping with this study, I received a copy of this study and quickly— and bear with me on this—analyzed the districts the delegates came from and tied in the municipalities that have more than a 50 per cent exemption tax base into the delegates of this Convention. If I can quickly read through these, I will continue.

District 9. Delegates Desmond, Heyburn and Harding.
Thornbury in Delaware County.
District 13. Delegates Forster, Strickler and Burkholder.
West Donegal and Martic in Lancaster County.
District 15. Delegates Hocker, Woodside and Swope.
Susquehanna and Williams in Dauphin County.
District 18. Delegates Clark, Jirolanio and Woodring.
East Stroudsburg in Monroe County.
District 20. Delegates Lee, Wilmarth and Roberts.
Susquehanna, Lanesboro, Brooklyn and Ararat

in Susquehanna County; Hunlock in Luzerne County; Palmyra in Pike County; Canaan in Wayne County.

District 23. Delegates Himes, Wilcox and Dailey.
Mansfield, Wellsboro, Charlestown, Bloss, Elk and Lawrence in Tioga County; Clinton and Brady in Lycoming County.

District 25. Delegates Clinger, Westerberg and Gabreski.
Tionesta, Howe and Green in Forest County; Polk in Venango County; Watson, Farmington and Conewago in Warren County.

District 27. Delegates Croop, Fortney and Percey.
Kelly and Hartley in Union County; Penn in Snyder County; Mahoning in Montour County.

District 28. Delegates Michael, Shoemaker and Ruth.
Loganville, Fawn and Fairview in York County.

District 30. Delegates Nelson, Orban and Dumbauld.
Hollidaysburg and Allegheny in Blair County; Hyndman and Liberty in Bedford; Casselman in Somerset County.

District 33. Delegates Barron, Keller and Gouger.
Green and Quincy in Franklin County; Smithfield in Huntingdon County.

District 34. Delegates McGeary, Shively and Sharp.
Logantown in Clinton County; State College, Rush and College in Centre County.

District 35. Delegates Pasquerilla, Cunningham and Shettig.
Daisytown and Loretto in Cambria County.

District 41. Delegates Baldrige, Leach and Filson.
Farmington and Limestone in Clarion County; South Bend in Armstrong County.

District 42. Delegates Waldron, Cosetti and Fagan.
Crescent and Moon in Allegheny County.

District 46. Delegates Bloom, Hook and Stout.
Rimersberg in Clarion County; Rices Landing in Greene County; Cecil in Washington County.

I also made a quick analysis of the counties that are over 33 per cent exempt. The counties are Centre County, 74 per cent exempt; and Clinton County, 36 per cent exempt. They are represented by Delegates McGeary, Shively and Sharp. Dauphin County, 40 per cent exempt; Forest County and Warren County, 56 per cent and 72 per cent exempt; Montour County and Union County, 70 per cent and 40 per cent exempt; Susquehanna County, 33 per cent exempt; and, of course, Tioga County, 36 per cent exempt.

There are a number of cities that are over 33 per cent exempt: Pittsburgh, for one, Johnstown, for another, and I could go on to five or six others.

I would like to point out, gentlemen, that we all have this problem. Most of us right here in this assembly have this problem of exemption in our own bailiwicks. I hope, if you determine this is not the method to solve it, that we come up with a solution to the problem.

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilcox.

DELEGATE WILCOX. In short summary, I would like to say that this does not change the exemptions themselves and it does have a 75 per cent tax-free matter in it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. On behalf of the committee, I think two things should be made clear that I do not think have been touched upon at this point.

In the last 15 years, to my knowledge—maybe it was 20 years—there have been two commissions that have studied the provisions of the Pennsylvania Constitution. These commissions are known as the Woodside Commission—Judge Woodside is here as a delegate—the second commission is known as the Scranton Commission—former Governor Scranton is here as a delegate. Neither of these commissions recommended changing the provisions of exemptions for institutions of purely public charity in any way and certainly not going as far as the Wilcox-Powell Amendment.

Secondly, I might add that our study shows clearly that to permit this amendment would only create a situation in the Commonwealth that would cost the taxpayers more money because by imposing this rather difficult method of money collection, which may seem sound in principle but rather impractical in practice, could drive certain charities out of business and would put the responsibility of fulfilling this need on the General Assembly through its appropriations.

I, therefore, on behalf of our subcommittee and standing committee, in conjunction with Co-chairman Pott and Chairman Woodring, respectfully urge the defeat of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President and delegates, since part of my district was brought into this discussion and when only a part of a statement is made and not the entire statement, we are most liable to draw a wrong conclusion.

Danville, in Montour County, happens to be fortunate in having within its confines of Mahoning Township two great hospital institutions. One is the great State mental hospital, one of the largest in the State, doing an exceptional job, the other is the great Geisinger Memorial Hospital, doing one of the outstanding jobs in the United States in the medical field. Certainly these two institutions could not be called upon to contribute taxes to any community because it takes millions and millions of dollars to support them.

In Union County we are talking about Bucknell University and we are talking about the Federal Penitentiary. These are the exceptions. Where are you going to get any contribution from these to supply the 25 per cent? I just want to point this out because they are in my district. I have to mention Bloomsburg State College, which is in Columbia County. Bloomsburg is part of my district. This distorts the facts without telling what these institutions are.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, as a representative and delegate from one of the districts which was mentioned by the distinguished delegate in his most interesting compendium of facts, I would suggest that in my district, while we are not unlearned and we have a college, we have hospitals as well. I would point out that I am most heartily in favor of this motion as a theory; however, Mr. President, since I have been to this Convention and have been thinking about the subject, I have failed to conceive

—and that does not surprise me a bit—and no delegate has been able to conceive a practical means of accomplishing the purpose of this amendment. I suggest that like the Gordian knot it defies solution and that the solution is not summarily to slice it through as this amendment proposes.

I would, accordingly, for the reasons that I have suggested and those of the other speakers opposed to this amendment, suggest that it be defeated.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, may I interrogate Delegate Gerber for a moment?

PRESIDENT BRODERICK. You may proceed.

DELEGATE MICHENER. Delegate Gerber, sometime ago your committee brought in a proposal on exemptions and I was very much in favor of it. It was roughly the Powell and Wilcox amendment. I heard it discussed then, and I, myself, I must say, did not see any booby trap in it. I objected that night, if you remember, to another proposal which has since been voted down, I am glad to say. I was not smart enough to see the problem here, but after your committee released this I received some 40 telegrams,—more perhaps—60 telephone calls and letters galore on the impropriety of the State of Pennsylvania removing certain things from taxation exemption. Mr. Gerber, did other delegates have that same experience of great pressure from our society, or was that merely because I happen to be the secretary?

DELEGATE GERBER. Mr. Secretary, I would like to change the word from pressure to information, but I think that we all received the communications that you speak of. I know that as co-chairman of the committee I received in excess of some 200 communications, and I know that Chairman Pott, Chairman Woodring and Chairman Leonard did as well.

DELEGATE MICHENER. Would it be your considered judgment, Chairman Gerber, that if this amendment were adopted that entire pressure would again fall on all of us?

DELEGATE GERBER. There is no question that it would, Mr. Michener. I would go so far as to say that we had the opportunity to hear from the institutions of higher education, various hospital groups, orphanages, private schools, YMCAs, YWCAs, the Boy Scouts, Jewish Community Centers, and various other institutions of purely public charities who informed us that they do not feel that they could continue to exist and fulfill their responsibilities to society in the way that they have and in the way they would like to continue if this amendment were passed.

DELEGATE MICHENER. And you would hold that what your committee has brought on the floor in Proposal No. 5 is a reasonable solution to this problem?

DELEGATE GERBER. Yes, sir.

PRESIDENT BRODERICK. And now the Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I had assured myself that I would keep my peace, but now I find I must try to get some information. First of all, initially, may I say, Mr. President, that the problem of charges in lieu of services is one with which the local government committees and the Local Government Commission have contended over the past number of years without much success. One phase of our entire problem in this entire proposal that has bothered me is the provision on page 3, Section c, of reimbursement out of the General Fund. I think now I must say something about that because if that provision would stand, all these tax exemptions which we are now writing into the Constitution will come out of the General Fund eventually to be reimbursed to the local districts. So I direct this question—and perhaps Delegate Gerber can answer me—if this amendment now proposed, the propriety of which I doubt, were not adopted, is there any prohibition which would keep the General Assembly from passing such a law known generally as "an in lieu of service law"?

DELEGATE GERBER. Delegate Stroup, to my knowledge, no. As I understand the Constitution as it presently is written, it is permissive. The constitutional language is permissive to the General Assembly. Therefore, the General Assembly, continuing the permissive language, would be able to function within that latitude. Now I am not a member of any court, nor have I ever been, so I cannot guess what the language of the General Assembly will pass and how it will stand up under a court fight. But it would seem to me that you have the latitude to initiate legislation within the framework.

DELEGATE STROUP. Mr. President, I thank the gentleman. He has confirmed my own suspicions on this particular subject.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President and fellow delegates, I rise in opposition to the Powell-Wilcox amendment. We all know that this is a serious problem, that is, the exemption of real estate. However, the picture is always not as bad as has been painted by the statistics which were cited a few minutes ago. For example, Moon Township in Allegheny County was cited as an example where this is a very unfair working of the laws. In Moon Township is located the Allegheny County Airport. When it was first constructed back in the early '50s, it was out, of course, in the countryside with only a few country roads directed in and around the area. Today, even though the airport itself is exempt, there are literally hundreds of businesses which have been built up as satellites around that particular complex, so rather than being injurious to that community, there has been a bonanza because of the businesses, motels, all types of commercial enterprises. I am sure if we would look at some of these other areas which have been cited where there are colleges, where there are hospitals, where there are other facilities which are exempt, we would see that rather than having taken away, these particular types of institutions have brought business and employment to these communities.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kelly.

DELEGATE KELLY. I would like to ask Delegate Gerber a question, please.

PRESIDENT BRODERICK. Delegate Gerber, would you please answer Delegate Kelly's question?

DELEGATE GERBER. I would be delighted, sir.

DELEGATE KELLY. Maybe you can clear up this question for me. I thought it was pretty well cleared up before. I wrote a letter to a hospital in Philadelphia, a private hospital, the Misericordia, not too large, since they all were so much interested in this tax-exemption problem. I asked why they should be exempted, what did they offer in the way of services that they were not paid for. The answer came back to me in this respect. She said, "To

your question as to how much free clinical service we gave last year, according to our audit for the fiscal year ending June 1967, we rendered free care for the fiscal year to a total amount of $504,000 in- and out-clinic performance."

I want to know, since it seems so many people want to find out, what is causing all this service and how much they should receive for it. I think this is a pretty free estimate of what we get back from these hospitals.

DELEGATE GERBER. Mr. President, I do not know what the question is. I agree with the study Delegate Kelly has come up with and our committee has gone into this study on these facts, but I do not know what the question is. I did not hear a specific question.

PRESIDENT BRODERICK. Do you have a question, Delegate Kelly, that you would like Delegate Gerber to answer?

DELEGATE KELLY. Yes, the question is: Are we steering away from this now? I thought it was settled before.

DELEGATE GERBER. Mr. President and Delegate Kelly, no, we are not steering away from it in the committee's proposal; however, the amendment will mitigate against these institutions and will make it more difficult for them to provide the free care that you accurately described that Misericordia Hospital in Philadelphia does and, I might add, that most all of our hospitals in the Commonwealth of Pennsylvania do provide, as Delegate Croop stated is provided up in his district and in various other districts throughout the Commonwealth of Pennsylvania.

PRESIDENT BRODERICK. In other words, Delegate Gerber has been talking against the amendment being offered by the delegate.

DELEGATE GERBER. Yes. I repeat again, for the benefit of the delegates, and if I have confused anyone—I hope I have not—it is the position of Delegate Woodring, Delegate Pott and myself that we respectfully urge the delegates here assembled to vote "nay" on the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. I wonder if I may interrogate Delegate Gerber a bit further. I am confused by one of his answers.

DELEGATE GERBER. Mr. President, I agree to be interrogated.

PRESIDENT BRODERICK. We have a prior agreement that the chairmen of the committees will stand for interrogation. You may proceed.

DELEGATE O'DONNELL. Delegate Gerber, I thought I understood this until you answered Senator Stroup's question. I note in subsection C, appearing on the third page of Committee Proposal No. 5, specifically on line 19, you indicate that no exemption from any tax upon real estate shall be granted "hereunder" except by laws providing for reimbursement. When I read this at first, I read the word "hereunder" to refer to exemptions granted under subsection C only.

DELEGATE GERBER. That is correct.

DELEGATE O'DONNELL. In other words, you would then as a committee state the intent of your committee to be that there shall be no exemption granted under subsection C except where there will be reimbursement to the local taxing authority. Is that correct?

DELEGATE GERBER. That is correct.

DELEGATE O'DONNELL. In other words, on the general subject of the exemption applicable to institutions of public charity, there is no requirement that the General Assembly reimburse local taxing units?

DELEGATE GERBER. That is correct.

DELEGATE O'DONNELL. Thank you very much.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. I only have a few words to say. It seems to me that this is a very serious subject. I think our country was founded upon charity. I can remember the days when we did not have all these institutions and everybody took care of their neighbors. Today the State is called upon to take care of our neighbors and we have gone into that particular phase, and I guess necessity has made us do it. But I think we would be destroying one of the greatest elements of our democracy if we tax those who give to these charities. The government gives us an exemption because we give; we do not have to pay any income tax on it. I think this would be a terrible precedent if we put into our Constitution to allow the legislature to tax any of our charities for any of the services that are now rendered by our government, county or state, and so forth.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Wilcox?

The roll was recorded as follows:

YEAS—11

Baldwin	Himes	Michener	Wilcox
Buck	Hook	Powell	Whittum
Bunting	Michael	Shoemaker	

NAYS—123

Aberman	Dalley	Krill	Richter
Amsterdam	Desmond	Laputka	Roberts
Aurentz	Devlin	Leach	Rovner
Bagenstose	Dumbauld	Leinbach	Ruth
Baldus	Erwin	Leonard	Sahli
Banes	Fagan	Levin	Scales
Barron	Fawcett	Manderino	Scarlett
Barry	Fay	Mangery	Scott
Bashoff	Feather	Markley	Sebastian
Benedict	Fineman	Mattioni	Shapiro
Benfield	Fohl	McGeary	Sharp
Bloom	Forster	McGlynn	Shively
Braham	Fortney	Meyer	Shrager
Brennan	Gehrlein	Miller, D.	Solomon
Broderick	Gerber	Miller, R.	Sprogell
Brown	Goldstein	Moorhead	Stout
Burkholder	Griffith	More	Strickler
Butera	Hannum	Morton	Stroup
Cain	Harding	Murray	Swope
Camardella	Halter	Nelson	Thomson
Caputo	Heyburn	O'Donnell	Thornburgh
Caron	Hocker	Orban	Tomasclk
Casey	Horne	Orbin	Tully
Clark	Huggins	Otto	Van Sant
Clinger	Jirolanio	Pasquerilla	Waldron
Conley	Johnson	Popil	Welsh
Corey	Kauffman	Pott	Westerberg
Cortese	Keller, J.	Prendergast	Wilmarth
Croop	Keller, M.	Rappaport	Woodring
Cunningham	Kelly	Redick	Woodside
Curran	King	Reynolds	

NOT VOTING—29

Allison	Goldman	Lane	Quiles
Baldrige	Gouger	Lee, K.	Rea
Cosetti	Gray	Lee, L.	Scranton
Donaldson	Henderson	Musselman	Shettig
Donolow	Hostetler	Pechan	Silverman
Filson	Irvis	Pelletier	Tate
Fleming	Kline	Percey	Warman
Gabreski			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

REDICK AMENDMENT TO CAMARDELLA AMENDMENT

PRESIDENT BRODERICK. I understand we have ready the amendment being offered by Delegate Redick to the Camardella amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE REDICK offered the following amendment to the Camardella amendment which was read by the clerk:

Amend page 1 of the amendments by striking out lines 1 to 11 and inserting in lieu thereof: Amend Sec. 1 (Sec. 1A), page 3, line 10, by inserting after "provisions.": Any real estate owned by a person sixty-five years of age or older, which is used as the principal homestead of such person may be exempt from local real estate taxes or have these taxes reduced.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. Mr. President, my purpose for this amendment to the amendment was to remove the "shall" mandatory and these fantastic figures out and to make it permissive to a local government. At this time I would like to yield to my cosponsor, Charles Murray.

PRESIDENT BRODERICK. The Chair has looked over this amendment being offered by Delegate Redick and it is apparent that it is, as written, an amendment that stands on its own and not really an amendment to the Camardella amendment. I, therefore, rule that we should vote on the Camardella amendment and then vote on the Redick amendment.

The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, the description that was handed out was the rewording of the Camardella amendment with the changes. This was done in the back. I think it is a typing item. The actual changes to the Camardella amendment, if I may have the permission to read them, was taking the Camardella amendment, and on the first line striking out "with an assessed valuation" and on the second line striking out "of ten thousand dollars or less", then going down to the fourth line and striking out "which has been owned by such persons for at least ten years prior to attaining age sixty-five and" and then dropping down and striking out the word "shall" on the eighth line and replacing it with the word "may" and also on the eighth line striking out the word "all", then dropping down to the ninth line and striking out "the General Assembly may by", striking out the tenth line and the eleventh line and adding to the rear of the section, "or have these taxes reduced."

It is, in effect, an amendment to the amendment. Unfortunately the preparation is a little confusing.

PRESIDENT BRODERICK. Let me talk to the Parliamentarian to see what we have here. The Chair will accept it as an amendment to an amendment after hearing the explanation. We will proceed. Do you want to make a statement in connection with this, Mr. Redick?

DELEGATE REDICK. No, with the exception of the statement I made. I would like to yield to my cosponsor, Delegate Murray. He has a few remarks to make.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Thank you, Mr. President.

Mr. President and fellow delegates, there is a very serious desire on the part of many of the delegates to help our senior citizens. I think that should be put in the right light.

The amendment by which we propose changing Delegate Camardella's amendment, we feel does just that. It is flexible, workable, and above all, it is permissive.

Property values will change. Therefore, we felt that that item should not be in the Camardella amendment.

Living in a homestead for 10 years is an intangible item. People could have their property condemned; they could be forced to move for many, many reasons. Therefore, this item would be basically permissive as far as tax reduction or tax exemption is concerned.

Thank you, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, on behalf of the committee, I think it is appropriate to argue against, or at least to state a position against, the amendment to the amendment.

It states, as the Camardella amendment itself, an entirely different concept than was subscribed to by the Committee on Taxation.

Therefore, we oppose it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cain.

DELEGATE CAIN. I would like to ask a question of Delegate Murray or Delegate Redick, either one.

PRESIDENT BRODERICK. Would you stand to be interrogated, Delegate Murray, by Delegate Cain?

DELEGATE MURRAY. It would be my pleasure, Mr. President.

PRESIDENT BRODERICK. The gentleman may proceed.

DELEGATE CAIN. I am concerned about what type of formula you had in mind when you say, "or have these taxes reduced". You leave this open; it is not a finished statement. What type of formula did you have in mind for that?

DELEGATE MURRAY. The intent was that it would be left open to the individual conditions of the local taxing authorities.

DELEGATE CAIN. With all type of flexibility?

DELEGATE MURRAY. That is correct.

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. Without wishing to prolong debate, I merely want to point out and urge defeat of this amendment to the amendment, because, perhaps, the most obsolete number that is in it is the 65 years of age. Ten or 20 years from now we may find senior citizens 95 years old.

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins.

DELEGATE HUGGINS. Thank you, Mr. President.

I might point out that there are already senior citizens 95. I want to say here, I think the amendment is sound, based on other constitutions and not in such a specific way as that of our sister State of New Jersey, or of one which has been on the records for a number of years, the State

of Florida, concerning homestead provisions for people on retirement.

I will have to speak for this, because I think the key to it is permissive, which gives the local unit the option to decide whether a tax break would be given or not. I think, too, constitutional respect and not legalistic poverty control means much more to someone on pension than the present wording of the amendment suggested by the Committee on Taxation and Finance.

I think, Mr. President, that a man walks tall when his respectability is maintained. Retirement is, in our tradition, respectable, but it will not be if it is interpreted under the heading of poverty or sickness or illness as the present article reads.

We may veto this amendment based on the curious assumption that this expedient item is one that isolates a section of our population. Not everyone can retire as an executive or as one of a chosen and honored profession. Not everyone can be assured of maintaining their respectability of first-class citizenship on a second-class salary.

I think that a majority of our citizens have and will retire on incomes less than respectability allows. I do not know anybody on retirement who wants to go to a poverty program to ask for help, and I do know too many people on pension who want to sell their homes so they can maintain some kind of a thread of respectability.

I do not think this particular amendment, in any way, threatens anybody. It is leaving it at local option—permissive. I think, too, that it adds a decent shred of respectability to something which now is strictly amendment procedure and isolated from the responsibility and respectability of being a person.

Thank you.

PRESIDENT BRODERICK. Delegate Gerber.

DELEGATE GERBER. Mr. President, will Delegate Huggins be interrogated?

DELEGATE HUGGINS. Oh, yes, Mr. President.

PRESIDENT BRODERICK. You may proceed.

DELEGATE GERBER. Would Delegate Huggins read line 9 and line 10 on page 3?

DELEGATE HUGGINS. On page 3, lines 9 and 10, "infirmity or poverty are determined to be in need of tax exemption"? Yes, sir.

DELEGATE GERBER. Delegate Huggins, is it your position that the clause "are determined to be in need of tax exemption or special tax provisions" places those classes of people described by the amendment in a strictly poverty test?

DELEGATE HUGGINS. Categorically, yes.

DELEGATE GERBER. Is it your position, Delegate Huggins, that the word "poverty" as a word is not in keeping with the language you like to see in the Constitution?

DELEGATE HUGGINS. I think "poverty" is a word which has been overplayed to defrock the personhood of man's character, and I think it has been used in a legalistic and political sense to do less for a man than man should have done.

DELEGATE GERBER. Delegate Huggins, do you have any suggestions for a word which would be synonymous with the spirit of subsection (c) that would not violate such spirit?

DELEGATE HUGGINS. A suggestion for a word other than "poverty"? Yes, sir.

DELEGATE GERBER. Mr. President, I think the committee understands Delegate Huggins's position. I want to make it clear that the committee is not lacking in empathy or sympathy with the words expressed by Delegate Huggins earlier, but many of us, maybe have less of a command of the English language and might not be able to express ourselves nearly as well. I do not mean to be cute when I say that.

The point here is that we do understand the problem, but this was the best way that we thought we could approach it. If there is a better way to approach it, we have no pride of authorship on any specific word.

DELEGATE HUGGINS. I think "taxing exemption for the maintenance of dignity" might even [illegible] than this.

DELEGATE GERBER. Mr. President, I [illegible] respond, I appreciate the spirit of Delegate [illegible] expression. However, there are no words of ardent meaning in our structure, either in case law or the statutory law, that would give the courts of the future an opportunity to understand what those words mean. Therefore, possibly lacking the vocabulary we should have, we are stuck with this word until we can find one that the courts would understand to express this meaning. We do appreciate the spirit expressed by Delegate Huggins because it is precisely this spirit that gave birth to subsection (c).

DELEGATE HUGGINS. May I reply, Mr. President? I would say that I think it is extremely gratifying to hear of your concern in dealing with words, which mean a great deal in law, but I do not think words ever replace people. I think that it might be good to struggle through with something which at least caters to a person's integrity, such as this amendment, than to mess around with one which is coddled to one's breast like "poverty." I think people are more important than words, regardless of how historically beautiful they are.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I am constrained to rise and state why I cannot support this amendment. I do this because I am totally sympathetic to the philosophy that is contained within the amendment, namely, to give aid to our elderly citizens who are in need of aid in the form of tax relief. But I have to look at this amendment from the standpoint of whether or not it is a workable proposition as a practical matter.

I do not believe it is a workable proposition. I think the language is vague; it invites litigation and confusion. For instance, it says: "Any real estate owned by persons sixty-five years of age or older". What is the situation where you have a husband and wife owning real estate as tenants by the entireties, with the husband 65 and the wife 60? Is there an exemption to be provided there? Does that qualify or does it not qualify?

It says this real estate can be exempt if it is used as the principal homestead. I have some worry about what constitutes a "principal homestead." For instance, a residence is used in Bucks County during the warm months of the year, for six months, by one family who also has another residence in, let us say, an urban area for the other six months of the year. Which of these two residences constitutes the "principal homestead"?

I am also concerned that the blanket exemption is in no way related to the question of need. There are many persons 65 years of age or older who, from the stand-

point of income, are not in need of this kind of tax relief, and I would be hesitant about affording a blanket exemption to this kind of taxpayers.

And so for these reasons, I must vote against this proposal, although I am totally sympathetic to the purpose that is sought to be accomplished.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I am sympathetic also, but if I can still read, I think, Mr. Fineman—and I hope he agrees with me once—it reads: "The General Assembly may, by general laws establish as a class or classes." Now that is all you need in order for you to proceed. Prior to this I do not think you could set up class or classes. And then it goes on to say, "of taxation the property or privileges of persons who, because of age, disability. . .' You would, Mr. Fineman, if I read this properly, do just what this says, only in maybe more clarifying language, on the floor of the House and the Senate, and I would prefer that to writing it in the Constitution. I think that this amendment, although I agree with it, is legislation. I do not think that it belongs in the Constitution of Pennsylvania.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michael.

DELEGATE MICHAEL. Mr. President, I think Mr. Hocker made the point I was about to make. The objections brought up by Mr. Fineman, concerning assessments refer to things that should not go into the Constitution. Mr. Hocker has pointed out we are making provisions here for the General Assembly to do this for people who are aged, infirmed, poverty stricken. These things can be done and can be worked out in greater detail then we can do here on the floor of the Convention where we do not have the actual information. We have expressed our feeling that these people do need the aid, and I think all of us would agree with the philosophy of both the amendment and the amendment to the amendment.

Because I feel these are not constitutional matters, that the committee has provided the constitutional method for the legislature to take care of them, we should vote against both proposals.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, I have received well over 100 letters on this problem and one thing has shaken me to my roots really is that not one single letter has said the person over 65 who needs help should get it. Every single letter has said that when a person reaches 65 he should be exempt from taxation. That is the thought that is circulating and, if we adopt this amendment, it will be an invitation for everybody in the State to put dreadful pressure upon his agencies of local government. It may be that what the people who wrote to me had in mind was that people over 65 who needed it should have this relief, but that is not what they are saying. They are viewing the happy day when age 65 comes and they are released from all taxation. Therefore, I read both the Camardella amendment and the Redick amendment to the amendment as an extension of that thought and I can only see a situation in which, under both of these, in a few short years I am going to be eligible for complete exemption of taxation of everything I own. Frankly, I do not need it and I believe that a majority of the citizens of this State do not need it and they do not want it. I think we had better follow the good advice of Mr. Fineman and follow a legislative pattern, not a constitutional pattern.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. At this time, Mr. President, I would like to move the question.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Redick to the Camardella amendment?

The roll was recorded as follows:

YEAS—12

Camardella	Fagan	Murray	Otto
Harding	Mangery	O'Donnell	Powell
Huggins	McGlynn	Orbin	Redick

NAYS—121

Aberman	Cunningham	King	Sahli
Amsterdam	Curran	Krill	Scales
Aurentz	Dalley	Laputka	Scarlett
Bagenstose	Desmond	Leach	Scott
Baldus	Dumbauld	Leinbach	Sebastian
Baldwin	Erwin	Leonard	Shapiro
Banes	Fawcett	Levin	Sharp
Barron	Fay	Manderino	Shettig
Barry	Feather	Mattioni	Shively
Bashoff	Fineman	Markley	Shoemaker
Benedict	Fohl	McGeary	Shrager
Benfield	Forster	Meyer	Sprogell
Bloom	Fortney	Michael	Stout
Braham	Gehrlein	Michener	Strickler
Brennan	Gerber	Miller, D.	Stroup
Broderick	Goldstein	Miller, R.	Swope
Brown	Griffith	Moorhead	Thomson
Bunting	Hannum	More	Thornburgh
Buck	Hatter	Morton	Tomasdk
Burkholder	Heyburn	Nelson	Tully
Butera	Himes	Orban	Van Sant
Cain	Hocker	Pasquerilla	Waldron
Caputo	Hook	Popil	Warman
Caron	Horne	Pott	Welsh
Casey	Jirolanio	Prendergast	Westerberg
Clark	Johnson	Rappaport	Whittum
Clinger	Kauffman	Reynolds	Wilcox
Conley	Keller, J.	Richter	Wilmarth
Corey	Keller, M.	Rovner	Woodring
Cosetti	Kelly	Ruth	Woodside
Croop			

NOT VOTING—30

Allison	Gabreski	Lane	Quiles
Baldrige	Goldman	Lee, K.	Rea
Cortese	Gouger	Lee, L.	Roberts
Devlin	Gray	Musselman	Scranton
Donaldson	Henderson	Peehan	Silverman
Donolow	Hostetler	Pelletier	Solomon
Filson	Irvis	Percey	Tate
Fleming	Kline		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

CAMARDELLA AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. Now we will immediately vote on the Camardella amendment.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Camardella?

The roll was recorded as follows:

YEAS—11

Camardella	Harding	Orbin	Mangery
Caputo	Huggins	Otto	McGlynn
Fay	Jirolanio	Powell	

NAYS—122

Aberman	Cunningham	Krill	Sahli
Amsterdam	Curran	Laputka	Scales
Aurentz	Dailey	Leach	Scarlett
Bagenstose	Desmond	Leinbach	Scott
Baldus	Devlin	Leonard	Sebastian
Baldwin	Dumbauld	Levin	Shapiro
Banes	Erwin	Manderino	Sharp
Barron	Fagan	Markley	Shettig
Barry	Fawcett	Mattioni	Shively
Bashoff	Feather	McGeary	Shoemaker
Benedict	Fineman	Meyer	Shrager
Benfield	Forster	Michael	Sprogell
Bloom	Fortney	Michener	Stout
Braham	Fohl	Miller, D.	Strickler
Brennan	Gehrlein	Miller, R.	Stroup
Broderick	Gerber	Moorhead	Swope
Brown	Goldstein	More	Thomson
Buck	Griffith	Morton	Thornburgh
Bunting	Hannum	Nelson	Tomascik
Burkholder	Hatter	O'Donnell	Tully
Butera	Heyburn	Orban	Van Sant
Cain	Himes	Pasquerilla	Waldron
Caron	Hocker	Popil	Warman
Casey	Hook	Pott	Westerberg
Clark	Horne	Prendergast	Welsh
Clinger	Johnson	Rappaport	Whittum
Conley	Kauffman	Reynolds	Wilcox
Corey	Keller, J.	Richter	Wilmarth
Cortese	Keller, M.	Rovner	Woodring
Cosetti	Kelly	Ruth	Woodside
Croop	King		

NOT VOTING—30

Allison	Gouger	Lee, L.	Rea
Baldrige	Gray	Murray	Redick
Donaldson	Henderson	Musselman	Roberts
Donolow	Hosteller	Peehan	Scranton
Filson	Irvis	Pelletier	Silverman
Fleming	Kline	Percey	Solomon
Gabreski	Lane	Quiles	Tate
Goldman	Lee, K.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHOEMAKER AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I read in place and present the following amendment:

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHOEMAKER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 3, lines 6 to 21, by striking out all of said lines

Amend Sec. 1 (Sec. 1A), page 3, line 22, by striking out "(d)" and inserting: (c)

Amend Sec. 1 (Sec. 1A), page 3, line 30, by striking out "(c)" and inserting: (d)

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I am vastly concerned by the general liberal trend which is expressed in Section (c), and what I have attempted to do here is merely to delete it. I probably should have included—and if this amendment were to pass, would do so—and should have reinserted the language in the present Constitution, or at least some of it, relating to certain classes which were intended to fall within the special Section (c), particularly that language concerning paraplegics and certain special exemptions for need.

What concerns me here is a trend which we, as a constitutional body, would be mandating—not saying the General Assembly must, but giving them the incentive and impetus to move forward and then turning right around and trying to give the General Assembly the impossible problem of finding some other source to meet this same need. It seems to me that the General Assembly should not be tied up in the position that the only way it can do anything for these classes of people is exempt their real estate. This is basically what is implied by this Section (c). Then, of course, the General Assembly right away would turn around and find some other place to tax to make up the lost dollars.

I do not think this Section (c) belongs in the Constitution and, therefore, I move to delete it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. If the Chair please, I rise in support of the amendment, and note that I have prepared an amendment myself which deletes the same provision as Delegate Shoemaker but preserves the provision relating to the blind, paraplegic, or double or quadruple amputee. I note that that provision in the present Constitution is only a couple of years old. It does have a new provision in it, as has been pointed out to me by Delegate Gerber, and I take it that Delegate Shoemaker's amendment is substantially the same as the one that I propose.

I have voted up to this point not to take away any tax exemptions that are at present in the law because I think they are part of the social fabric of our society. The Commonwealth is not ready to have exemptions taken away from charitable institutions or other worthy things as they now already exist. However, I feel that the field of tax exemption is one where there should be no further enlargement of tax exemptions and I believe that this present proposal is actually very harmful in nature.

Delegate Powell has pointed out the large number of communities that have their tax bases eroded away by tax exemptions. We cannot take away many of the things that are a part of our society now, but certainly we can preserve the tax base as it now exists.

However distasteful it is to rise and say that we do not wish real estate of elderly people to be exempted, nevertheless, I must point out that this amendment gives local communities that power to hear pleadings on the question whether or not they should exempt elderly people, for example, or poor people. I have been a solicitor for many public bodies and I find that would be an intolerable situation at any public meeting, to have very deserving people come up and plead for help and to be forced to turn them down. Tax collection is an ugly task at best. It is a necessary thing. Even Saint Matthew in the Gospels, I recall, was up in a tree when Christ first saw him and he was a tax collector.

I feel, fellow delegates, that this would be an intolerable situation to local communities. They would be hit over the head forever and a day to extend these exemptions. They could not live; there would be hanging parties every day; there would be changes of administration. How could a school board look in the eye of a 65-year-old and say, we are going to have to collect taxes from you even though you do not have children in our schools. I feel that we are putting an intolerable burden on local communities and I speak very strongly against the adoption of this proposal. I, therefore, ask support for this amendment in the form that I propose to present it, which is the same as Delegate Shoemaker's amendment with the present provision as to the blind, paraplegic and other disableds.

PRESIDENT BRODERICK. Delegate Woodring wishes to be recognized.

DELEGATE WOODRING. Mr. President, on behalf of the committee, we oppose this amendment. The committee worked diligently, I would say, on this particular portion of the proposal. They adopted it by a vote of 30 to 0, and I would like chairman Pott of the subcommittee to speak concerning this.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Pott.

DELEGATE POTT. Mr. President, Judge Woodring, fellow delegates, we envision this provision which is new, as you all know, as something which will give those who are in need in our Commonwealth some consideration. We surmise that there will be clarification by the General Assembly; there will be some kind of a sound need-test to determine those who qualify. We believe that this is consistent with what Delegate Barry has inferred, that is, only if the local governments want to do it.

But what we have created here as far as the disabled veteran is concerned is, we have broadened that interpretation. Also, we have taken care of those, as Delegate Fineman, Delegate Camardella and everyone else who have deep concern to take care of the aged and those who are in need of some tax relief so that they will be able to live and maintain their own homes, and that they will have a sense of dignity, to which we all subscribe. This was the feeling of our committee which is very sensitive, believe me, to the social economic requirements of our citizens. Therefore, we would respectfully recommend that you leave the proposal as is and vote against this proposed amendment.

Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Horne.

DELEGATE HORNE. Mr. President, in behalf of Matthew, I must tell Delegate Barry that it was Zaccheus who was up in the tree.

PRESIDENT BRODERICK. I just want you to know he fooled me.

The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. In that same class were publicans and sinners also.

PRESIDENT BRODERICK. And now the Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, a few moments ago I was forced to speak out against an amendment which would have broadened Section (c) so widely that it simply should not have been passed. I now find myself obligated to point out, having attended the sessions in which Section (c) was most hotly debated in Delegate Pott's committee, that this section is the conscience of this Constitution, and we should not turn our back on it lightly. This is the conscience of the Constitution in which we say we will, as a great and wealthy Commonwealth, do all we can to help the truly poor and indigent. We have broadened the base a little bit, which I think the entire committee wanted to do. I can testify to the anguish with which each word of this was weighed, from the part I took in the debate and the meetings I had with Chairman Leonard over individual words. I recommend the passage of this proposal as written with great force. I do not think we would be happy with the amendments which strike it out and tomorrow morning we would come back here and revise it ourselves, I am sure, after we thought it over.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. I am very sorry, Mr. President. Just a moment, please.

I believe that Delegate Shoemaker has brought to our attention again the reimbursement phase of this entire problem which has disturbed me.

There is presently quite a trend in the General Assembly—I believe I am quite sure of this—to grant some exemption to our elderly citizens, of one type or another. If that is done under subsection (c), then, of course, this reimbursement for such an exemption would come out of the general fund, if I read it correctly.

I would call the attention of those who have drafted this particular subsection (c) that the word "hereunder" is very, very broad. It might better be stated specifically as under subsection (c), so that there would be no question as to how broad that word "hereunder" might be as to the whole subsection (1A).

I rise to that position particularly on this particular amendment.

PRESIDENT BRODERICK. Thank you.

The Chair recognizes Delegate Barry.

DELEGATE BARRY. May I briefly, Mr. President, get myself down out of the tree. As a counsel for various tax collectors, I do not want Delegate Michener's remarks about having a conscience pass by without some comment.

I, too, feel that we owe an obligation socially to the class of people mentioned in this proposal, but I do not feel it should be a responsibility of local communities or even the Commonwealth. It goes beyond the powers of the Commonwealth and the finances of the Commonwealth to substantiate such a program.

I am in favor of Medicare, of a $1,200 exemption in the Federal income tax laws for those over 65, and measures of that type, but I feel this is pernicious to the financial structure of the Commonwealth and especially to the local communities, to the counties and especially to the cities, boroughs and townships.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Shoemaker?

The roll was recorded as follows:

YEAS—11

Barry	Heyburn	Shoemaker	Wilmarth
Bunting	Moorhead	Solomon	Woodside
Fawcett	Morton	Thomson	

NAYS—120

Amsterdam	Curran	Krill	Reynolds
Aurentz	Dailey	Laputka	Richter
Bagenstose	Desmond	Leach	Rovner
Baldwin	Devlin	Lee, K.	Ruth
Baldus	Dumbauld	Leinbach	Sahli
Banes	Erwin	Leonard	Scales
Barron	Fagan	Levin	Scarlett
Bashoff	Fay	Manderino	Scott
Benedict	Feather	Mangery	Sebastian
Benfield	Fineman	Markley	Shapiro
Bloom	Fohl	Mattioni	Sharp
Braham	Forster	McGeary	Shettig
Brennan	Fortney	McGlynn	Shively
Broderick	Gehrlein	Meyer	Shrager
Brown	Gerber	Michener	Sprogell
Buck	Goldstein	Miller, D.	Stout
Burkholder	Griffith	Miller, R.	Strickler
Butera	Hannum	More	Stroup
Cain	Hatter	Murray	Swope
Camardella	Himes	Nelson	Thornburgh
Caron	Hocker	O'Donnell	Tomascik
Casey	Hook	Orban	Tully
Clark	Horne	Orbin	Van Sant
Clinger	Huggins	Otto	Waldron
Conley	Jirolanio	Pasquerilla	Warman
Corey	Johnson	Popil	Welsh
Cortese	Kauffman	Powell	Westerberg
Cosetti	Kelly	Pott	Whittum
Croop	Keller, J.	Prendergast	Wilcox
Cunningham	King	Rappaport	Woodring

NOT VOTING—32

Aberman	Gabreski	Keller, M.	Percey
Allison	Goldman	Kline	Quiles
Baldrige	Gouger	Lane	Rea
Caputo	Gray	Lee, L.	Redick
Donaldson	Harding	Michael	Roberts
Donolow	Henderson	Musselman	Scranton
Filson	Hostetler	Pechan	Tate
Fleming	Irvis	Pelletier	Silverman

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BARRY AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry who, I understand, has an amendment of a similar nature that he would like to offer.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BARRY offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 3, lines 6 to 21, by striking out all of said lines, and inserting: (c) Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double or quadruple amputees, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, fellow delegates, this proposal, in effect, preserves the provision relating to the blind, the paraplegics, double or quadruple amputees, which is, at present, in the Constitution and which is of recent origin, but takes out the other provisions of paragraph (c) on page 3 of the committee's proposal.

I believe that this is the proper way to have consideration by the electorate of an item of this type. If we wish to exempt real estate of other people who are, because of their age, disability, infirmity or poverty, in need, I think it should be by the amendment process, but I want certainly to preserve the present provision in the Constitution which is of recent origin and has been approved by the electorate.

I urge the passage of this amendment.

PRESIDENT BRODERICK. I think we have heard sufficient discussion in connection with the pros and cons of this amendment.

Are we ready for the question?

The question recurs,

Will the Convention agree to the amendment offered by Delegate Barry?

The roll was recorded as follows:

YEAS—33

Aberman	Curran	Mangery	Shoemaker
Banes	Cunningham	Moorhead	Shrager
Barron	Dailey	Otto	Solomon
Barry	Fawcett	Powell	Stout
Bashoff	Feather	Redick	Thomson
Bloom	Himes	Richter	Warman
Braham	Hocker	Ruth	Welsh
Bunting	Laputka	Scott	Woodside
Clinger			

NAYS—95

Amsterdam	Dumbauld	Leach	Reynolds
Aurentz	Erwin	Lee, K.	Rovner
Bagenstose	Fay	Leinbach	Sahli
Baldus	Fohl	Leonard	Scales
Baldwin	Forster	Levin	Scarlett
Benedict	Fortney	Manderino	Sebastian
Benfield	Gehrlein	Mattioni	Shapiro
Brennan	Gerber	McGeary	Sharp
Broderick	Goldstein	McGlynn	Shively
Brown	Griffith	Michael	Sprogell
Buck	Hannum	Michener	Strickler
Burkholder	Hatter	Miller, D.	Stroup
Butera	Heyburn	Miller, R.	Swope
Camardella	Hook	More	Thornburgh
Caputo	Horne	Murray	Tomascik
Caron	Huggins	Nelson	Tully
Casey	Jirolanio	Orban	Van Sant
Clark	Johnson	O'Donnell	Waldron
Conley	Kauffman	Orbin	Westerberg
Corey	Keller, J.	Pasquerilla	Whittum
Cortese	Keller, M.	Popil	Wilcox
Croop	Kelly	Pott	Wilmarth
Desmond	King	Prendergast	Woodring
Devlin	Krill	Rappaport	

NOT VOTING—35

Allison	Fleming	Kline	Percey
Baldrige	Gabreski	Lane	Quiles
Cain	Goldman	Lee, L.	Rea
Cosetti	Gouger	Markley	Roberts
Donaldson	Gray	Meyer	Scranton
Donolow	Harding	Morton	Shettig
Fagan	Henderson	Musselman	Silverman
Filson	Hostetler	Pechan	Tate
Fineman	Irvis	Pelletier	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BALDUS AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. Our next amendment is being offered by Delegate Baldus. I have been advised that copies of his amendment have been distributed.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BALDUS offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 3, line 2 by striking out "purposes" and inserting: principal purpose

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I would say on behalf of the committee that this proposed amendment by Delegate Baldus returns the form of the proposal, if this is adopted, to more nearly conform to the intent of the committee. Therefore, we are in favor of this amendment.

PRESIDENT BRODERICK. I, therefore, understand that the committee is in agreement with the Baldus amendment.

DELEGATE WOODRING. It is, Mr. President. This is purely correctional.

PRESIDENT BRODERICK. The Chair recognizes Delegate Brennan.

DELEGATE BRENNAN. No, I am sorry, it is not.

Mr. President, at the last part of the year this was passed by the committee, on January 30, 1968, yes, 21; no, 4; abstaining, 1.

PRESIDENT BRODERICK. We had better have Delegate Baldus talk on the amendment.

DELEGATE BALDUS. Mr. President, I have before me a paper that was presented to the members of the Taxation Committee which offered to them five alternate proposals. It was at this meeting that the delegates debated hotly the question of the breadth of the purely public charity exemptions. The language that was before the delegates on the proposal that was adopted, except for linguistic changes which are not material here and were to be worked out by the lawyers, stated "used for the principal purposes of the institution," and this language was approved by the standing committee. It was sent to a subcommittee of lawyers who met with the Attorney General's office and later came up with the present language "actually and regularly". But in the process of those changes, the words "principal purpose" were changed without a vote of the committee to "purpose".

It is for this reason that I am submitting this correctional amendment, to conform this language to the language that was agreed upon when this issue was debated and decided upon. It is correct that the paper Delegate Brennan has was approved by the committee, but this issue was never raised at that meeting, and the language that is now being offered here is the language that reflected the true intention of the committee.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, may I speak in behalf of Delegate Brennan with whom I have discussed this matter. He feels that the insertion of the word "principal" before the word "purposes" creates an uncertainty in the field of tax exemption from the present article as it now exists. He feels, for example, that dormitories of universities are now going to be taxed because the principal purpose of a university is not to house students; it is to give education. He feels at least and I feel that there is some doubt about this matter and that since this is going to create a tremendous amount of litigation to determine the exact meaning of this provision as revised, it should be let alone. This could, for example, I feel, cause the taxation of all the sleeping rooms in the YMCA because the principal purpose of a YMCA is not to house people; it is another purpose. I feel that if this is construed strictly by the courts—and there is no way now to know how it is going to be construed—there will be an adverse effect upon institutions of purely public charity which are certainly to be helped by us.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I would like to say that I hesitate to debate against Delegate Brennan, but I am satisfied that on the record on the 24th day of January, the standing committee approved this phraseology: "property of an institution of purely public charity actually and principally used for the principal purposes of the institution." You will note that the words "principal" and "principally" both occur.

For this reason and for other reasons, all of these five subdivisions were handed the language. It was then handed to a committee of attorneys who consulted with the office of the Attorney General, I believe. I am advised by our staff member that thereafter no official action was taken. The only official action taken was the last action taken by the committee, incorporating the use of "principal purpose" and, therefore, I think it is not improper to adopt this amendment.

PRESIDENT BRODERICK. Are we ready for the question?

The Chair recognizes Delegate Banes.

DELEGATE BANES. I rise and state that I agree with Delegate Brennan and Delegate Barry in their interpretation of this particular phrase. I do not see the materiality of what happened at the particular committee meeting when this particular problem was discussed. They are talking and reporting as to what their opinion was.

I believe definitely to add the word "principal" at this time would be a word of limitation to the intention of this particular article. It would detract and therefore open the door for litigation, as has been pointed out by Delegate Barry.

If it is a word of limitation, why should we open the door for litigation and, in effect, take away all the beautiful exemptions we have been talking about here which our delegates on the committee have brought forth, that

it was their intention to allow dormitories, nurses' homes, et cetera, to be tax exempt.

If this is a word of limitation, it opens the door, and unless there is an absolute need for it, I will oppose this particular amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Manderino.

DELEGATE MANDERINO. May I interrogate one of the co-chairmen, please?

PRESIDENT BRODERICK. Yes, they will stand for interrogation.

DELEGATE MANDERINO. If the word "principal" is inserted, the principal purpose of a hospital is to heal the sick, not to feed the hungry. Would a cafeteria then in a hospital, that portion of the real estate being used for the hospital cafeteria, come within the principal purpose of the institution, and if it does, how does the word "principal" change the meaning, or is it not intended to?

DELEGATE POTT. Delegate Manderino, it was not the intention of the committee that the cafeteria or the snack bar run by the ladies' auxiliary or anything else should be taxed. Speaking maybe for some of the members of the committee and certainly for myself and, I believe, Delegate Gerber, we would just as soon see it left the way it is in the original proposal and leave the word "principal" out.

DELEGATE MANDERINO. I kind of agree, but may I ask further, if the word "principal" does go in, is it the intent of those who feel that it should go in that it would not apply either, let us say, to roads or parking lots of a hospital or school, or a dormitory connected with a university? Is it the intent that those would be within the principal purpose of the institution?

DELEGATE POTT. Correct.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I rise to speak in opposition to this amendment. I think it is a dangerous amendment, one which could be used to harass and tax unfairly institutions of purely public charity. It is not a grammatical change, in my opinion; it is a change in substance and, as a practical matter, this Constitution is going to mean at the local level what the local assessor says it means. The burden is going to be placed on the taxpayer to change that meaning.

I think we have changed this exemption very drastically with the language which is now in the proposal, that the property has to be actually and regularly used for the purposes of the institution.

I think it would be a mistake as a matter of policy if we were to insert the additional qualifying language "principal purpose."

I agree with Delegate Manderino that if the committee intends not to make subject to tax those facilities within the institution which are not directly related to its principal purpose, and this is what Delegate Pott says was the intention of the committee, or at least it was his intention, then I believe the language should stay as it is and this amendment should be defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. I think what Delegate Casey just said is adequately demonstrated by a comparison of the language "purposes of the institution," which is now in the proposal and the language which would be substituted by the amendment "principal purpose," singular, "of the institution," which clearly is a substantive change and not just a grammatical change, in my opinion.

Therefore, I rise to speak against the amendment as well.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, I rise to speak against the amendment, also.

Many of the things I was about to say Senator Casey enumerated. I also feel that the waiting rooms in hospitals would lose their exemption, things of this nature, with this type of wording. I think it is dangerous and should definitely be left out.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, for only one statement. The reason the wording came out the way it did prior to the amendment was to preclude against a series of litigations as questions would arise as to what is the principal purpose. I think Delegate Brennan expressed our position most cogently and most adequately. I concur with my co-chairman, Delegate Pott, and would urge the defeat of this amendment.

PRESIDENT BRODERICK. Are we ready for the question?

The question recurs,

Will the Convention agree to the amendment offered by Delegate Baldus?

The roll was recorded as follows:

YEAS—13

Aberman	Cosetti	Powell	Thornburgh
Baldus	Keller, J.	Shrager	Whittum
Bashoff	Michener	Thomson	Wilcox
Braham			

NAYS—113

Amsterdam	Dalley	Krill	Richter
Aurentz	Desmond	Laputka	Roberts
Bagenstose	Devlin	Leach	Rovner
Banes	Erwin	Lee, K.	Ruth
Barron	Fagan	Leinbach	Sahli
Barry	Fawcett	Leonard	Scales
Benedict	Fay	Levin	Scarlett
Benfield	Feather	Manderino	Scott
Bloom	Fohl	Mangery	Sebastian
Brennan	Forster	Mattioni	Shapiro
Broderick	Fortney	McGeary	Sharp
Brown	Gehrlein	McGlynn	Shively
Buck	Gerber	Michael	Shoemaker
Bunting	Goldstein	Miller, D.	Sprogell
Burkholder	Griffith	Miller, R.	Stout
Butera	Hannum	More	Strickler
Cain	Hatter	Murray	Stroup
Camardella	Heyburn	Nelson	Swope
Caputo	Himes	O'Donnell	Tomasetk
Caron	Hocker	Orban	Tully
Casey	Hook	Orbin	Van Sant
Clark	Horne	Otto	Waldron
Clinger	Huggins	Pasquerilla	Warman
Conley	Jirolanio	Popil	Welsh
Corey	Johnson	Pott	Westerberg
Cortese	Kauffman	Prendergast	Wilmarth
Croop	Keller, M.	Redick	Woodring
Cunningham	Kelly	Reynolds	Woodside
Curran			

NOT VOTING—37

Allison	Goldman	Lane	Percey
Baldrige	Gouger	Lee, L.	Quiles
Baldwin	Gray	Markley	Rappaport

Donaldson	Harding	Meyer	Rea
Donolow	Henderson	Moorhead	Scranton
Dumbauld	Ho.tetler	Morton	Shettig
Ellson	Irv.s	Musselman	Silverman
Fineman	King	Pechan	Solomon
Fleming	Kline	Pelletier	Tate
Gabreski			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

LEVIN AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The next amendment is being offered by Delegate Levin.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE LEVIN offered the following amendment which was read by the clerk:

Amend Sec. 2, page 4, line 7 by striking out "a new section," and inserting: two new sections

Amend Sec. 2, page 4, by inserting after line 27: Section 1D. Sales Tax Limitation.—No State or local sales tax may be levied on any foods, whether solid or liquid, except alcoholic beverages, or on any items of clothing actually worn and not carried as an accessory to items of clothing, nor may any State or local sales tax be levied on paper items necessary for health and sanitation, nor on any medications.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Levin to make a statement in connection with his proposed amendment.

DELEGATE LEVIN. Mr. President and delegates, just as we need exemptions from taxation, we certainly need limitations on taxation. The statement of Delegate Gerber was not convincing enough in the light of Proposal No. 5, and I have carefully studied Sections (b), (c), (d) and (e) and could not determine that it covered the problem of limitations but rather centered its attention on exemptions only.

However, if Delegate Gerber can point out the area of discussion that hits on the problem of limitation, I will be happy to withdraw my proposal. I would be remiss if I did not attempt to bring to your attention this new and different concept on taxation and problems arising thereunder. The thrust of this amendment is to put restraints on the Commonwealth and foreclose the privilege of the Commonwealth to tax basic essentials for the survival of our citizens.

We are here to develop a document which should, number one, not allow the government to abuse the people; and number two, not allow excessive demands of the people from the government. With this basic thought in mind, it is imperative that we consider the untouched field of tax limitations.

In light of the above, I would like to point out that this great Commonwealth has been reported to be one of the most prolific producers of agricultural products.

In a recent publication which I received over the weekend, the Pan American publication on productivity, there appeared a very excellent article on Pennsylvania and I want to quote just a few passages from that particular article:

> The State of Pennsylvania is agressively pushing new programs to find world markets for its wide variety of industrial and agricultural products.
>
> Pennsylvania's export sales last year neared a total of $2 billion, up from $1.5 billion in 1966.
>
> The State's agricultural products, which account for almost half the export total, will be promoted vigorously this year.
>
> While generally thought of as an industrial State, Pennsylvania is a major agricultural producer as well. Some 43% of the State's wage earners are employed in agriculture and its allied enterprises, and cash income from the production of 80,000 farms approaches the billion-dollar mark.
>
> Pennsylvania is a national leader in the production of mushrooms (about 27% of the world production), cigar leaf tobacco, sausage products, scrapple, pretzels, potato chips, Christmas trees, apples, and eggs.

In light of the tremendous production of foodstuffs in the State of Pennsylvania and in light of the fact that we must restrict the Commonwealth in taxing certain items of necessity, I submit that this particular proposal is a necessary addition to this document which we are trying to form.

In certain areas of Canada, the government set out to use its productivity to the benefit of its citizens and, in effect, some areas have become tax free.

In that particular article, and I would like to quote some of its philosophy so this can be a matter of record:

> Out of all sound philosophy flows good principles and values. All governmental policies and administrative action should be based on certain fundamental principles and values pertaining to the proper governing of men and nations.
>
> The policies, programs and institutions in which such values and principles are embodied must change with the times to meet new circumstances, but fundamental principles and values themselves can and should be conserved.

With that in mind, Mr. President, I sincerely hope that we keep the direction of this assembly in the constitutional area in which we are delegated to improve. We should, of course, stay on the limited side of legislation and stay within the constitutional principles involved.

Thank you, Mr. President.

PRESIDENT BRODERICK. Does Chairman Woodring care to make a statement?

DELEGATE WOODRING. Mr. President, the committee, speaking on behalf of the committee, is in opposition to this amendment. I would like to call on Subchairman Gerber to speak to this subject.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, Chairman Woodring, Delegate Levin, fellow delegates, at the present time the General Assembly of Pennsylvania in its sales tax legislation does not tax the items listed here in this amendment and they are specifically excluded. From the best advisers that our committee was privileged to call upon for help in our efforts, we were advised that this was a legislative question and that our committee should not address itself to it specifically in consitutional language. I might add, I think it is a question that the General Assembly has treated delicately and with wisdom and that, in

following the advice of our counsel, it was our committee's opinion not to dwell on sales tax questions. I had the opportunity to speak with leaders of the General Assembly who advised me the same, and in sincere respect for their wisdom and their judgment and their experience in the area, I would urge the defeat of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Levin.

DELEGATE LEVIN. The purpose of this amendment is to foreclose the possibility of taxing these essential items in the foreseeable future. This particular amendment is not one of the General Assembly's decisions to tax or not to tax; this is an effort to definitely foreclose that avenue for taxation.

Thank you, Mr. President.

PRESIDENT BRODERICK. Are the delegates ready for the question?

The question recurs,

Will the Convention agree to the amendment offered by Delegate Levin?

The roll was recorded as follows:

YEAS—6

Bunting	Levin	Ruth	Scott
Camardella	O'Donnell		

NAYS—115

Aberman	Dailey	Leach	Rovner
Amsterdam	Desmond	Lee, K.	Sahli
Aurentz	Devlin	Leinbach	Scales
Bagenstose	Erwin	Leonard	Scarlett
Baldwin	Fagan	Manderino	Sebastian
Banas	Fawcett	Mattioni	Shapiro
Barron	Fay	McGeary	Sharp
Bashoff	Feather	McGlynn	Shively
Benedict	Fohl	Michael	Shoemaker
Benfield	Forster	Michener	Shrager
Bloom	Fortney	Miller, D.	Sprogell
Brennan	Gehrlein	Miller, R.	Stout
Broderick	Gerber	Moorhead	Strickler
Brown	Goldman	More	Stroup
Buck	Goldstein	Morton	Swope
Burkholder	Hatter	Mirray	Thomson
Butera	Heyburn	Nelson	Tomascik
Cain	Himes	Orban	Tully
Caputo	Hocker	Otto	Van Sant
Caron	Hook	Pasquerilla	Waldron
Casey	Horne	Pelletier	Warman
Clark	Huggins	Popil	Welsh
Clinger	Irvis	Polt	Westerberg
Corey	Jirolanio	Powell	Whittum
Cortese	Johnson	Prendergast	Wilcox
Cosetti	Kauffman	Redick	Wilmarth
Croop	Keller, J.	Reynolds	Woodring
Cunningham	Krill	Richter	Woodside
Curran	Laputka	Roberts	

NOT VOTING—42

Allison	Fleming	King	Percey
Baldrige	Gabreski	Kline	Quiles
Baldus	Gouger	Lane	Rappaport
Barry	Gray	Lee, L.	Rea
Braham	Griffith	Mangery	Scranton
Conley	Hannum	Markley	Shettig
Donatdson	Harding	Meyer	Silverman
Donolow	Henderson	Musselman	Solomon
Dumbauld	Hostetler	Orbin	Tate
Filson	Keller, M.	Pechan	Thornburgh
Fineman	Kelly		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BUCK AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. And now we recognize Delegate Buck who has an amendment to offer.

DELEGATE BUCK. Mr. President, I offer an amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

Amend Sec. 1 (Sec. 1A), page 3, line 25, by inserting after "the": purpose of

Amend Sec. 1 (Sec. 1A), page 3, line 25, by inserting after "development,"; construction,

Amend Sec. 1 (Sec. 1A), page 3, line 27, by inserting after "areas": or promoting industrial or commercial development

Amend Sec. 1 (Sec. 1A), page 3, line 28, by inserting after "economy,"; or otherwise,

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Buck for a statement in connection with his amendment.

DELEGATE BUCK. Mr. President and fellow delegates, you will recall in the report of the Committee on Taxation and State Finance dealing with subsection (d), that it specifically empowers the General Assembly to establish certain safeguards, granting to local taxing authorities the discretion to grant special tax provisions with respect to real estate in redevelopment areas or in areas where deteriorating property could be improved through the efforts of the private sector of our economy, rather than forcing such improvement to be accomplished merely through public ownership or through governmental agencies or governmental financing.

My proposed amendment merely seeks to enlarge the scope of subsection (d) by extending it to real estate that is to be used for commercial or industrial purposes. In this connection I would like to direct a question to Judge Woodring for clarification of the meaning of the phrase in line 28 on page 3, "the medium of the private sector of the economy". Judge Woodring, would that include a nonprofit corporation organized by a community for the purpose of industrial development?

DELEGATE WOODRING. I would think so, Delegate Buck.

DELEGATE BUCK. If that clause is broad enough to include a nonprofit corporation organized by a community for industrial development purposes, I would like to delete from my proposed amendment the last two words that appear on the page, "or otherwise," and I would like to make this brief statement in support of this amendment.

As all of you know, in our State we have long recognized the importance of attracting new industries to promote the economic growth of Pennsylvania. One of the most effective agencies responsible for our success—and we have had some considerable success statewide—is the existence of nonprofit, community-organized, industrial-development corporations in virtually every community in our State. Acting in cooperation with the Pennsylvania Industrial Development Authority and financial institutions in what has become known as "The Pennsylvania 100 Percent Financing Plan for New Industry," we have brought many new industries into Pennsylvania that have meant thousands of new jobs and millions of dollars have been added to the real estate tax base. In order to enable the nonprofit industrial-development group to function effectively, an important aspect of its program is the acquisition of unim-

proved land that is to be held in ready reserve as industrial sites for industrial prospects. This means that the industrial development group must acquire the land, generally farm land, at prices considerably in excess of the fair market value which, as you know, is the basis of valuation for real estate tax purposes. As a result, the new purchase price establishes a higher fair market value which results in higher real estate taxes on the purchaser and much higher than circumstances justify.

The thrust of my proposed amendment will allow the legislature a further discretion to extend to industrial and commercial development the special relief provisions of section 1A (d) for a limited period of time. Such relief will, in effect, not disturb the tax base existing at the time of purchase, but in the long view, through conversion to industrial or commercial use, it will increase the local tax base and also overall employment in our State.

I, therefore, ask that this assembly support that amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, the committee is of the opinion that the purpose of this amendment is laudable. It is the very purpose that is being served by the Department of Commerce of the Commonwealth and by the chambers of commerce throughout the length and breadth of our great State. However, the concept that the committee endeavored to write into subsection (d), which is now sought to be amended, was not to provide for new construction or new development but it is for the upgrading of the deteriorating property, and the upgrading of the deteriorating property up to this time has been financed almost solely through large Federal grants, with or without restrictions, and/or by the grants of the Commonwealth. In order to promote and encourage the investment of private capital into the upgrading of the deteriorating sections, subsection (d) was incorporated. If we accept the amendment proposed by Delegate Buck and his colleagues, we are changing the entire philosophy of the Taxation Committee and we, therefore, oppose it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. I rise in support of this proposition, Mr. President. I quite agree with Judge Woodring that the intent shown by his committee does not include this. I believe that this matter is of much concern in the area from which Delegate Buck comes and also from which I come, due to the fact that we come from the two counties that probably have the largest public assistance rolls in the State of Pennsylvania.

This matter is of great concern to us as to industrial development and is now going at a very steady pace. Therefore, I urge the adoption of this because this definitely helps areas that are in need of such tax relief on property which we have to purchase.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President and fellow delegates, I, too, rise in support of this amendment. I spoke the other day and I will not reiterate. Briefly what happened to us was that an industry was pulled out from our community. Fortunately we were reading in the skies the handwriting of what was going to happen. Our industrial committee of the community had been organized some eight or nine years prior to this happening. We bought extensive lands and brought in new industries, which was just as important as rehabilitating this old one. We are still in the process of buying real estate on which new buildings will be constructed. This is absolutely as important as rebuilding the old and it is the thing that might keep Pennsylvania in the industrial business the way that the State has tried to do it during the past five to ten years. If you do not buy this real estate when it is available, you just do not get it at a good price when you need it. We have seen the price on real estate that was a couple hundred dollars an acre go to $3,000 an acre and we were glad to get it at that price. It may be there for the next five years; it is farm land, as has been previously referred to perhaps here, but with the industrial development program that you have to work with today to keep industry in Pennsylvania, you have to do this.

I do not live strictly in the coal-mining area, but I do live in the hard-coal-mining section of Pennsylvania; we are within a few miles. You all know what has happened there. If the cities of Scranton, Wilkes-Barre and Hazleton had not gone out and bought land and brought industries in, these large communities would be in terrible shape today, whereas they are not. Our smaller communities, which are on the fringe, have had to do the same thing and put a tax burden upon our industrial committees, which are public committees representing our communities. They are nonprofit organizations of this type and they do need this relief. Fortunately, many of the taxing bodies have leaned over backwards.

Perhaps in strict interpretation, the law violated it sometimes in order to cooperate because they know that when we bring in these industries, in time they will become taxpayers. They are operators; they are owners who build new homes and become taxpayers. Actually, the ultimate is a considerable tax increase, but there is that period of adjustment when you definitely need some relief from the current taxes because of some small township or town or borough where suddenly they get greedy. Based upon the price you pay for this real estate where they come in and tax you at 33-1/3 and 35 per cent of its value, you would have a burden and no money with which to pay it. So it is a temporary relief for which your local communities will return many, many dollars in a few years' time.

I urge the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, since the last several speakers have been from the smaller communities in Pennsylvania, I should simply like to say that we have the same problem in the southeastern part of the State where we find great competition from other parts of the country, particularly in the south where tax provisions and special tax deals are made and offered to these various industries, those who are already in our part of the country and to those we are trying to bring in. We have found through our various activities, by Chambers of Commerce, and otherwise, that if the Assembly would have the power under the proper circumstances to give tax abatement and tax relief, it would be tremendously helpful, and the delegates ought to understand that this is not something that is required; it is simply giving the power to the General Assembly to make

this type of tax concession where it is important to the economic health of the State.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, looking at your own serious and solemn face and looking about the hall, I appreciate that the time to bring up this amendment would probably not have been chosen with the likelihood of prognostication of dire results. Nonetheless, I would raise my small voice in seriously urging the consideration of this amendment for the laudatory purpose that it espouses.

I am, however, concerned in one area, and Delegate Buck has already alluded to that. I do not wish to prolong this any longer; I know you are hungry, and so forth. The psychology of the situation is something I cannot do anything about. However, Delegate Buck, I would ask you if you would accept an amendment to delete the last addition that you made in this particular amendment, the words being "or otherwise."

DELEGATE BUCK. Yes, I would.

PRESIDENT BRODERICK. As a matter of fact, I understood that he had withdrawn those words. I think we can consider his amendment as being before you with the words "or otherwise" withdrawn.

The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President and fellow delegates, I also rise in support of this particular amendment and urge its adoption.

In Allegheny County and our neighboring Westmoreland County, we have also had the very serious problem involving the abandonment of what was once considered invaluable real estate by some of our largest business corporations in the Nation, United States Steel, Jones and Laughlin, and others. In many communities where these companies owned millions of dollars worth of real estate and suddenly found it uneconomic to continue their operation, the devastating effect upon the local community really is difficult to spell out.

The adoption of this amendment will help provide a tool in this competitive world which we now face and I am certain that this Convention here has convened for one of the purposes, of course, to help provide for the future of this Commonwealth, a competitive environment.

I, therefore, respectfully urge the adoption of this particular amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, Delegate Buck having withdrawn "or otherwise" I will not need to ask him publicly what he meant; I will ask him privately later this afternoon. I rise in support of the amendment. I happen to have been a close friend and personal associate of a Governor who was very instrumental in starting PIDA and I consider myself a friend of two succeeding Governors who have built up the idea. In my judgment this is the local complement to PIDA, and I think it will help to increase the usefulness and the purpose of that great movement that started here some years ago.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. Mr. President, I want to tell you that Washington County says, "Amen." We need it bad; we have had a lot of developments, and if it was not for the development and the public spirit of our people there, we would be in very, very bad financial shape.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, I would like to speak against the amendment.

PRESIDENT BRODERICK. Proceed.

DELEGATE GERBER. On behalf of the committee, I would like to point to the spirit and the purpose of Section (d).

This was for the upgrading of deteriorating property through the medium of the private sector. It is for the improvement, development, reconstruction or rehabilitation of various blighted areas.

The purpose of the committee was to bring in the question and issue of blighted areas and rehabilitating areas by private funds. We addressed ourselves to the large blighted areas in the major urban sections of the Commonwealth, as well as certain parcels of real estate that were going downhill in the small towns, in the boroughs and the townships throughout the Commonwealth, in an effort to permit the various boards of assessment throughout the Commonwealth an opportunity to stimulate a situation which would bring the community up, rather than permit it constantly to go down. This was an effort to help the old towns, the towns down in my area, such as Conshohocken, West Conshohocken, Bridgeport, and the various sections of the Commonwealth that have little towns that have been going downhill over the years that need some financial incentive in the private area to get private funds to come in and help, and, secondly, to be able to get the private home owner himself to want to fix up his own home and to maintain it at a decent level without fear of reassessment at a higher level.

I must speak also against the amendment from another point of view, notwithstanding the large array of louder, impressive speakers who have spoken on its behalf.

First of all, our committee did interview a Mr. Cole of PIDA, the Pennsylvania Industrial Development Authority which Delegate Swope spoke of, and he stated that we do not need the words of the Buck amendment. These words were discussed at our standing committee meeting and we feared in our standing committee, and we feared greatly, as the delegate from Philadelphia pointed out, many times the fact that speculators would come into areas, rural areas and other sections of the Commonwealth, and purchase land for commercial and industrial purposes with the hope of maintaining a low tax base, if their expectations did not materialize.

The purpose of this amendment, on behalf of the committee, is not—and I repeat, is not—to help people make money by speculating wisely or unwisely. The purpose of this amendment is to be able to help the blighted areas of the Commonwealth and to be able to help the small towns and the small townships and boroughs where they have certain sections of their community going downhill.

We felt that, if we could stimulate private enterprise to take an interest in these problems, over the years we could raise the tax base of these communities; that we could increase the tax revenues in these communities and

at the same time have a more desirable place in which to live.

It was the fear—and I repeat again, it was the fear—of the committee that this might be abused. We debated this long into the night, and we felt that the Constitution was not the place to create financial opportunities for wealthy individuals to speculate. We feel that this would be detrimental. Moreover, this problem presently can be solved, the problem of which the proponents of this amendment speak. This problem can be solved by the Pennsylvania Industrial Development Authority. It is not as if the problem goes without a solution; rather, on the other hand, we feel that if this amendment succeeds, we are going to create economic problems whereby speculators can dominate certain communities in our Commonwealth.

On behalf of the committee, I respectfully urge the delegates here this afternoon to vote against the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, I speak against the amendment, in fact, against subparagraph (d) in the proposal. It seems to me that this type of provision is exactly what Delegate Gerber talks about, that it is an attempt by private capital to capitalize on these communities that are starting to deteriorate. The Federal Government, through redevelopment plans, and the State, with its assistance in the Federal redevelopment programs, have tried to put back into the local communities some value into their real estate. Pittsburgh, for example, is a fine example of what happened there, but it was Jones and Laughlin which extended its mill; it was National Tube in McKeesport which extended its mill; it was Equitable Gas Company which took away the whole area on the Point and built skyscrapers. They did not need support from local people; they did not need support from McKeesport, from Pittsburgh, from the school board. If they had bought the skyscrapers and the mills and got tax exemption in addition for a couple of years, it would have been a terrible blow to those local communities that are already going downhill and need that revenue and need it very badly and very deeply.

As the solicitor of one community in Allegheny County, the borough of Carnegie, which is in the throes of redevelopment, I speak with Delegate Gerber that this is a pernicious amendment and it should be carefully considered, as should the entire subsection of the proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Thank you, Mr. President.

Mr. President, I was a member of that Committee and, after reviewing this thing, I want to go on record in favor of this amendment. I see it basically permissive and I see a lot of good coming up out of it.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Buck.

DELEGATE BUCK. Mr. President, fellow delegates, you know I spent three days before I finally became aware of the sense of this Convention, and because I think I am now aware of the will of this Convention, I move the question.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Buck?

The roll was recorded as follows:

YEAS—90

Aberman	Cortese	Keller, J.	Sebastian
Amsterdam	Cosetti	Keller, M.	Shapiro
Bagenstose	Croop	Kelly	Sharp
Baldus	Cunningham	King	Shettig
Baldwin	Curran	Laputka	Shoemaker
Banes	Dailey	Leach	Shrager
Barron	Desmond	Lee, K.	Solomon
Benedict	Devlin	Mangery	Sprogell
Bloom	Erwin	Miller, D.	Stout
Braham	Fagan	More	Strickler
Brennan	Fawcett	Murray	Stroup
Broderick	Fay	Nelson	Swope
Brown	Feather	O'Donnell	Thornburgh
Buck	Forster	Orban	Tomascik
Bunting	Fortney	Orbin	Tully
Burkholder	Gehrlein	Otto	Van Sant
Butera	Goldstein	Prendergast	Waldron
Cain	Hatter	Rappaport	Warman
Camardella	Hook	Redick	Westerberg
Caron	Horne	Reynolds	Whittum
Casey	Huggins	Sabli	Wilcox
Clark	Jirolanio	Scales	Woodside
Clinger	Kauffman		

NAYS—40

Barry	Heyburn	McGeary	Richter
Bashoff	Himes	Michael	Rovner
Benfield	Hocker	Michener	Ruth
Caputo	Johnson	Miller, R.	Scarlett
Corey	Krill	Moorhead	Scott
Fohl	Leinbach	Morton	Shively
Gerber	Leonard	Pelletier	Thomson
Goldman	Levin	Popil	Welsh
Griffith	Manderino	Pott	Wilmarth
Hannum	Mattioni	Powell	Woodring

NOT VOTING—33

Allison	Fleming	Kline	Pechan
Aurentz	Gabreski	Lane	Percey
Baldrige	Gouger	Lee, L.	Quiles
Conley	Gray	Markley	Rea
Donaldson	Harding	McGlynn	Roberts
Donolow	Henderson	Meyer	Scranton
Dumbauld	Hostetler	Musselman	Silverman
Filson	Irvis	Pasquerilla	Tate
Fineman			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

STROUP AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I read in place and present an amendment to Proposal No. 5.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE STROUP offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 3, line 19 by striking out "hereunder" and inserting: under subsection (c) hereof

On the question,

Will the Convention agree to the amendment offered by Delegate Stroup?

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, just a brief statement.

I have been disturbed by the modification of the word "hereunder" in Section (c) because it occurred to me that it might very well be interpreted as referring to the whole Section 1A, and since this is a reimbursement factor that would come out of the General Fund, I want to be very positive that it is limited to the provisions of Section (c). For that reason I submit the clarifying amendment and I hope that the delegates will agree to go along with it.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I concur in what has been said by Delegate Stroup. I think it would be well if we adopt this amendment.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Stroup?

The roll was recorded as follows:

YEAS—131

Aberman	Curran	Laputka	Rovner
Amsterdam	Dalley	Leach	Ruth
Aurentz	Desmond	Lee, K.	Sahli
Bagenstose	Devlin	Leinbach	Scales
Baldus	Erwin	Leonard	Scarlett
Baldwin	Fagan	Levin	Scott
Banes	Fawcett	Manderino	Sebastian
Barron	Fay	Mangery	Shapiro
Barry	Feather	Mattioni	Sharp
Bashoff	Fohl	McGeary	Shettig
Benedict	Forster	McGlynn	Shively
Benfield	Fortney	Michael	Shoemaker
Bloom	Gehrlein	Michener	Shrager
Braham	Gerber	Miller, D.	Solomon
Brennan	Goldman	Miller, R.	Sprogell
Broderick	Goldstein	Moorhead	Stout
Brown	Griffith	More	Strickler
Buck	Hannum	Morton	Stroup
Bunting	Hatter	Murray	Swope
Burkholder	Heyburn	Nelson	Thomson
Butera	Himes	O'Donnell	Thornburgh
Cain	Hook	Orban	Tomascik
Camardella	Hocker	Orbin	Tully
Caputo	Horne	Otto	Van Sant
Caron	Huggins	Pelletier	Waldron
Casey	Jirolanio	Popil	Warman
Clark	Johnson	Pott	Welsh
Clinger	Kauffman	Powell	Westerberg
Corey	Keller, J.	Prendergast	Whittum
Cortese	Keller, M.	Rappaport	Wilcox
Cosetti	Kelly	Redick	Wilmarth
Croop	King	Reynolds	Woodside
Cunningham	Krill	Richter	

NAYS—0

NOT VOTING—32

Allison	Fleming	Kline	Percey
Baldrige	Gabreski	Lane	Quiles
Conley	Gray	Lee, L.	Rea
Donaldson	Gouger	Markley	Roberts
Donolow	Harding	Meyer	Scranton
Dumbauld	Henderson	Musselman	Silverman
Filson	Hostetler	Pasquerilla	Tate
Fineman	Irvis	Pechan	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

SOLOMON AMENDMENTS TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I read in place and present amendments to Proposal No. 5.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SOLOMON offered the following amendments which were read by the clerk:

Amend Sec. 1, page 1, line 4 by striking out "a new section is" and inserting: two new sections are

Amend Sec. 1, page 4, by inserting between lines 5 and 6: Section 1A1. Certain Disabled Veterans.—Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double or quadruple amputees, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein.

On the question,

Will the Convention agree to the amendments offered by Delegate Solomon?

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, delegates of the Convention, I am about to complete that portion of a sentimental journey that was started this morning.

This amendment merely reasserts that constitutional amendment which was passed by the people of Pennsylvania on November 7, 1961. This affirmatively places it in the Constitution. It is something that we not only owe to ourselves, but the state pride and its measured patriotism ought to be equal to this. I do not think that this is a matter that should be left to the General Assembly. I say to you that this will be Section 1A1. It will only state what the people of Pennsylvania indicated by their vote back in 1961, just less than seven years ago.

I would ask that all of you support this. I spoke at length this morning; there were many others who spoke. If you have any pride at all in the performance of those who gave this type of burning devotion, then I would ask you to support this amendment. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, fellow delegates, there has been considerable debate on this subject and I do not propose to take up further time. It was the conclusion of the members of the committee that subsection (c) not only provided for that which Delegate Solomon's proposal would provide, but that it ever broadens it. The original language in the present Constitution is on a needs basis for these cripples and the blind and otherwise disabled veterans. That is still on a needs basis. "If the State Veterans' Commission determines that such persons are in need of the tax exemptions"—excuse me, I am reading from the amendment—the presently effective Constitution provides that "if the State Veterans' Commission determines that such persons

are in need of the tax exemptions granted herein"—and I am reading from today's Constitution. It has always been ever since this was adopted in 1923 and ever since it has been on a needs basis. Proposal No. 5, in subsection (c), puts this same thing on a needs basis.

I think that the only question before the Convention, if I may try to define the question, is whether the Constitution shall in and of itself grant the exemption without any limitations, qualifications or standards, or whether standards shall be effected and then the exemption may be granted by the General Assembly. It seems to me that is the issue here. There is no intent to deprive a worthy veteran of the exemption which he has heretofore enjoyed.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I would like to speak on this. There were other exemptions that appeared in the old Constitution, those relating to public charities and others. They have been preserved by specific language. I point to 1A, (1), (2), (3), (4) and (5). I say this to you, that 1A (c) actually speaks about the General Assembly providing by law for the reimbursement to local taxing authorities for this particular exemption given by the community to its paraplegics and its blind. There is a great deal of difference between a man who became blinded or lost his limb on the field of battle. I am saying this to you: We who worked so hard for the 1961 amendment do not want to have to go over this thing again. I say if there is any honor in this body, it will support this amendment.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, I am perhaps confused, but I wonder if Mr. Solomon could explain what difference there is, if any, between the language offered by this amendment and the amendment which was previously offered by Delegates Barry and Banes and voted down?

DELEGATE SOLOMON. Delegate Thornburgh, there happens to be a very essential difference. That amendment stated first that the provision of 1A (c) shall be revoked and in its place would be this paraplegic and blind language so that this body was not interested in revoking 1A (c). I want you to know that we were promised this morning that it was the intent that blind and paraplegics were to be given special treatment and that the exemption that they had under our present existing Constitution would continue.

I say we are duty bound; it presently is in the Constitution. It depends upon the will of the legislature; it contains language about reimbursing the local municipalities for the tax moneys that are lost. I say if your conscience and your patriotism cannot be touched on this, then nothing can get to you.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Mr. President, I would like to rise in opposition to the amendment and in support of the committee of which I was a member.

I think the real important point here to recognize is that Mr. Solomon in his amendment, if we go back to the old limits, the exemption is to blind, paraplegic and the double or quadruple amputees. The point made in the new section (c) is the fact that it broadens it and it covers other veterans who now are not able to be covered. Therefore, if we support the amendment, we are becoming restrictive; whereas, if we support the committee proposal, which I urge, we have actually said to our veterans, we are sorry for missing you before and now we want you back in here with the protection we can give you.

DELEGATE SOLOMON. May I speak to this? I ask Mr. Caron or any of the others who are so interested in the nicety of language to turn to section 1A (c) and show me where the word "veteran" appears in that section. It does not.

DELEGATE GERBER. Mr. President, if I may answer the question on behalf of the committee, it does not appear for the simple reason that the purpose and the thrust of section 1A (c) was on a need basis and not on a veteran test basis.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. I have one question which without getting emotional I may not be able to understand. As I understand, under the present Constitution for veterans, they get a tax exemption and the municipality bears its loss. Under your 1(c), if you granted this tax exemption, the legislature would have to reimburse the municipality. Is that correct?

DELEGATE GERBER. No, Mr. Morton, I would like to address your attention, if I might please, to line 13 where it says, "The Commonwealth, or any other taxing authority, may adopt or employ such class or classes and said standards and qualifications and, except for taxes upon the sale or use of personal property, may impose taxes, grant exemptions or make special tax provisions in accordance therewith" and therefore might I add, Mr. Morton, that this permits the local municipality to determine on its own the need test.

DELEGATE MORTON. When I read line 19 though, which says, "the General Assembly except by laws providing for the reimbursement of local taxing authorities by or through the Commonwealth for revenue losses occasioned by such exemption," I read the whole paragraph to mean that the General Assembly sets the test and if this says the veteran is exempt, then it must reimburse the local municipality. Is that an incorrect interpretation?

DELEGATE GERBER. Mr. President, I do not like to use the word "incorrect" but I think it fits in this case because the intent of the committee was to create an alternative situation for the General Assembly. Keeping in mind the problems that were presented to our committee pursuant to the amount of tax-exempt property in the local municipalities, it was our thought that in view of the fact that we were broadening an exemption, if the General Assembly in its wisdom decided that it should assume the responsibility therefor, it should then reimburse the municipality. On the other hand, if the General Assembly felt that it should adopt enabling legislation which will permit the municipalities to make these decisions, it could do that as well.

What we intended to do here was to create an alternative opportunity for the General Assembly whereby in

its wisdom it could determine whether or not it should pursue this course and thereby reimburse, or whether or not it should enact enabling legislation which would permit the local municipality or the local taxing authority to do it on its own, in which case there would be no reimbursement because obviously the purpose of reimbursement is only if the General Assembly determines that there should be an exemption. If a local municipality on its own volition determines that there should be an exemption, the issue does not go up to the General Assembly for reimbursement.

DELEGATE MORTON. Am I correct then—this is the first time I understood this interpretation—the General Assembly could do two things with veterans. For example, they could say, one, you are exempt from real estate taxes, in which event they would have to reimburse the local community; or they would have to say, two, you can be exempt if the local community will determine that you are exempt, and if the local community says that you are exempt, then you are exempt and they get no reimbursement from the State?

DELEGATE GERBER. When you say they get no reimbursement, you mean the municipality, and that is correct. The answer to your double-edged question is, "yes."

Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Clinger.

DELEGATE CLINGER. Mr. President, I would like to have Delegate Gerber answer this question: Would there be a hiatus created here as to the veterans to whom Mr. Solomon is referring? In other words, will the General Assembly be required to enact legislation to continue their present tax-exempt status?

DELEGATE GERBER. No, Delegate Clinger, there would not be a hiatus, because it would be thought that this Convention in its wisdom would adopt a schedule—

DELEGATE CLINGER. How is that? You would include a schedule?

DELEGATE GERBER. Yes, sir, we would. And we propose to do so.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President and fellow delegates, to rely on a schedule which we have not yet seen in a matter so important as this seems to me to be a rather weak reed. This amendment is before us. It gives these particular veterans something that the people only six years ago said they should have. I can see no good reason why this particular provision should not be included and I certainly urge your support for it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. Mr. President, I rise in support of the amendment. Note this—perhaps it has been noted—but in the present constitutional provision it says that veterans who meet the requirements shall be exempt. In the present proposal, it is purely discretionary. I think it can only be interpreted as a slap in the face to the veterans and is taking away from them something that is now guaranteed to them in the Constitution. When we think how many there are who are blind, paraplegic, double or quadruple amputees and are determined to be in need, not by the legislature, by legislative standards, but by the State Veterans' Commission, I strongly urge the support of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Laputka.

DELEGATE LAPUTKA. Mr. President, I also rise in support of this amendment. I simply refer to a remark made by Delegate Hocker, I think it was, at the time, who said that this was a mandate of the people passed some 20 years ago, and the amendment to which he was referring, this was a mandate of the people that was passed not less than six years ago.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendments offered by Delegate Solomon?

The roll was recorded as follows:

YEAS—110

Abernan	Corey	Keller, M.	Redick
Amsterdam	Cortese	Kelly	Reynolds
Aurentz	Cosetti	King	Richter
Ragenstose	Croop	Laputka	Roberts
Baldus	Cunningham	Leach	Ruth
Baldwin	Curran	Lee, K.	Sahil
Banes	Dailey	Leinbach	Scales
Barron	Desmond	Levin	Scott
Barry	Devlin	Manderino	Sebastian
Bashoff	Erwin	Mangery	Shapiro
Benedict	Fagan	Mattioni	Sharp
Benfield	Fay	McGeary	Shrager
Bloom	Fohl	McGlynn	Solomon
Braham	Forster	Miller, D.	Spragell
Brennan	Gehrlein	Moorhead	Stout
Broderick	Gerber	More	Strickler
Brown	Goldman	Morton	Stroup
Buck	Goldstein	Murray	Swope
Bunting	Griffith	Nelson	Thomson
Burkholder	Hannum	O'Donnell	Tomascik
Butera	Himes	Orban	Tully
Cain	Hocker	Orbin	Van Sant
Camardella	Hook	Otto	Warman
Caputo	Horne	Popil	Welsh
Caron	Irvis	Pott	Wilcox
Casey	Jirolanio	Powell	Wilmarth
Clark	Kauffman	Rappaport	Woodside
Conley	Keller, J.		

NAYS—18

Clinger	Johnson	Scarlett	Waldron
Fawcett	Krill	Shettig	Westerberg
Feather	Michael	Shively	Whittum
Fortney	Michener	Thornburgh	Woodring
Heyburn	Miller, R.		

NOT VOTING—35

Allison	Gouger	Lee, L.	Prendergast
Baldrige	Gray	Leonard	Quiles
Donaldson	Harding	Markley	Rea
Donolow	Hatter	Meyer	Rovner
Dumbauld	Henderson	Musselman	Scranton
Filson	Hosteller	Pasquerilla	Shoemaker
Fineman	Huggins	Pechan	Silverman
Fleming	Kline	Pelletier	Tate
Gabreski	Lane	Percey	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

BARRY AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The next amendment being offered is by Delegate Barry. I am going to ask the clerk to read the amendment. Copies have been distributed or are now being distributed.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BARRY offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 3, line 30, page 4, lines 1 to 5, by striking out all of said lines

On the question,

Will the Convention agree to the amendment offered by Delegate Barry?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President and fellow delegates, there is a famous Congressman who boasts that he has never voted against a benefit or for an appropriation. We, I think, have reached that stage of our deliberations on the tax-exemption clause. We have not narrowed any existing tax exemptions appreciably and we have broadened several others and created some new ones. This last one which relates to exempting new construction for a period up to two years is, I believe, not in the best interest of the average taxpayer who is going to pick up the tab for the home builder who builds 100 houses, we will say, and does not sell all of them or for somebody who builds an addition to his house and is granted a privilege of tax exemption for two years. It is up to us to determine where we are going to draw the line.

If you want to finance this type of thing, all right, do it deliberately and responsibly, but know what you are doing. You are paying it out of your own pocket and you are asking the other taxpayers of the Commonwealth of Pennsylvania to pay it out of their pockets. The realtors, the Home Builders Association and other groups have an interest in this type of litigation. Just last year the court of Montgomery County declared a similar statute without this constitutional amendment to be unconstitutional.

We have here an opportunity to vote on whether we want to extend our tax exemption to something I personally feel should not be exempted.

PRESIDENT BRODERICK. The Chair recognizes Chairman Woodring.

DELEGATE WOODRING. Mr. President, fellow delegates, this improvement to real estate which is contemplated in subsection (e) is restricted to residential real estate. It is limited in space of time to not more than two years. It is designed, and the committee has written it into this proposal, in order to help recondition depressed areas where owners of real estate do not see fit to build and improve, and the minute they make the improvement they get an increased tax assessment, and also for the building and development of areas where private capital is unwilling to take the risk of coming into the community because as soon as they start developing the assessment is placed upon the improved real estate. This would permit the General Assembly to set up standards and to make special tax provisions for this two-year period following improvement so that there would not be an immediate increase in the tax assessment which would thereby discourage the improvement and/or the building.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry for the purpose of asking a question.

DELEGATE BARRY. Chairman Woodring, you state that this will be used to lower assessments in depressed areas. However, this could be in any of the various counties surrounding Philadelphia or in Philadelphia, or in any area. It is not by its language confined to depressed areas. It could be anywhere, could it not?

DELEGATE WOODRING. It could be anywhere and depressed areas are not limited to Philadelphia either.

DELEGATE BARRY. No; but it could be for a $60,000 residence, could it not?

DELEGATE WOODRING. It could be and the development of such a property would probably be for the best interests, so the committee thought to promote that sort of building would be for the best interest of the community.

DELEGATE BARRY. So this is not confined to depressed areas. It could be anywhere, any type of residential construction?

DELEGATE WOODRING. It includes any kind of improvement by construction, yes, sir.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rovner.

DELEGATE ROVNER. Mr. President, fellow delegates, as a member of the standing committee, I was against this proposal. And if I may, before I give you my reasons why, I would like to correct, I believe, a certain statement that was just made because, in my opinion, the preceding section takes care of the situation that was just discussed by the chairman of our committee.

The reason I am for this amendment is because, number one, I believe that this section, if it were to be placed in the Constitution, would do away with the philosophy of uniform taxation. I know that our great State has been noted for its uniform taxation and we can be very proud of the fact that we have that. Number two, it picks out one element about a private sector—that is, the home-building sector—of our community, and it gives it a special tax break. I do not believe that this is needed because it would also give a special tax break for $50,000-homes, $100,000-homes, high-rise types of apartments, and so forth.

At the present time, fellow delegates, we do have the tax assessment bodies throughout the State that provide for this. I am sure there is a time element now of lapses between the building of the home and the tax assessment.

I would like to respectfully and strongly urge all the delegates here to vote for this amendment so that we can have a uniform taxation program, and not give to any one sector, and that is the home-building association, any tax exemption because we do not give this to grocery stores to build up a milk route. This is not given so, therefore, I think it is wrong and I would be in favor of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil.

DELEGATE POPIL. Mr. President, I would like to speak in opposition to the amendment. I have had a bit of experience in this field, being a member of the board of assessment; as a matter of fact, Chairman of the Board of Assessment in Lackawanna County. My interpretation of the proposal as presented is actually to legalize what is being done presently by many, many boards throughout the Commonwealth. In conferences and in conventions with boards of assessment, certain tax provisions and certain reductions of assessment are

being granted presently to home builders. During the time that a house or a group of houses are being constructed there are special tax provisions granted to that builder. When this was discussed in committee sessions, it was decided that inasmuch as this is being practiced at the present time why not make it constitutionally proper and make provisions for it in the Constitution; therefore, I would suggest that we vote "no" against the amendment as presented.

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, I would like to interrogate Delegate Woodring or Delegate Gerber, perhaps.

DELEGATE GERBER. I will take it, Mr. President.

PRESIDENT BRODERICK. We have a volunteer. Proceed.

DELEGATE WELSH. Delegate Gerber, am I correct as I read this, for example, that Section 1A, subsections (c), (d) and (e) are basically one package?

DELEGATE GERBER. Mr. President, Delegate Welsh, no.

DELEGATE WELSH. If the answer is no, I would like to ask you to explain the difference.

DELEGATE GERBER. Mr. President, Delegate Welsh, fellow delegates, I think that the debate we have had here this afternoon on subsection (c) speaks for itself, and without attempting to bore or to keep the people here any longer, unless further questioned, I will not dwell on subsection (c), because I think that we have talked about it enough and what we hope it will do. All subsection (c) does is place the exemption test for the individuals on a needs basis.

With reference to subsection (d), the purpose of subsection (d) as drafted by the committee was to stimulate private funds into the sector of improving, developing, reconstructing and rehabilitating real estate in order to upgrade deteriorating property areas in the Commonwealth.

With reference to subsection (e), the purpose of this subsection and its discussion came about as a result of a Supreme Court decision which held an act of the General Assembly unconstitutional. Said act provided that there would be a delay on an interim reassessment of construction of residential property. That was a statewide delay or statewide abatement by the General Assembly in each of the municipalities.

What we are doing here is giving each municipality the opportunity to determine for itself whether or not it wants to stimulate residential construction within its borders. The purpose of it is this: Today inventory is being taxed, or may be taxed. This is the only area of economy where this can happen. We are concerned with the fact that you can tax the inventory of houses as they are going up, that you can tax the inventory of multiple dwellings as they are going up, because this has been a debilitating factor in introducing development in certain areas. We have heard testimony on this from many able intelligent witnesses who gave us these facts.

As Delegate Popil, who is a member of the Board of Assessment of Lackawanna, pointed out, what has happened in many counties and many areas is that the boards of assessment have turned their backs because they felt that they should stimulate this type of construction, but in so turning their backs they were committing what amounts to an illegal act. We do not want these boards of assessment to feel that they have to continue to commit what amounts to an illegal act in order to give to the construction of residential homes and that industry the same tax benefits that every other commercial industrial industry has in Pennsylvania, and that is, not to be taxed on inventory.

DELEGATE WELSH. One more question: Was this subsection (e) the result possibly of a proposal introduced by you, Delegate Gerber?

DELEGATE GERBER. It was a proposal that I introduced along with two other delegates, if I recall accurately.

DELEGATE WELSH. It seems to me—not because it is your proposal, but I am just trying to categorize the thing in my own mind—that I have to object to this and speak in favor of the amendment striking it out. In Section 1A, under exemptions, subsection (a), on one hand, it seems to me, that we are trying to tighten up the tax structure in this State, then as we get over to the next page in (c), (d) and (e), we are trying to loosen it up again.

For that reason I speak in opposition to subsection (e) and, therefore, in favor of the amendment striking it down because it seems to me it is clearly inconsistent.

Thank you, Mr. President.

DELEGATE GERBER. Mr. President, may I respond, please?

PRESIDENT BRODERICK. Yes, please.

DELEGATE GERBER. On the other hand, Mr. President and fellow delegates, the purposes of (c), (d) and (e) were to create economic stimuli in Pennsylvania whereby we could have better and more tax ratables on our list in our counties. The purpose of these three sections, particularly (d) and (e), was to create a climate whereby in (d) we could bring in private funds to stimulate people who have private funds to take a part in rehabilitating and redeveloping communities. By so doing they would be given a limited delay on their tax reassessment in the hope that this would do two things.

Number 1, it would raise the standard of the community; number 2, it would give the community a higher tax base after the period expired. Pursuant to Section (e), it is found that where you have residential homes, the property on which they are located is assessed at a greater value than before the homes were built there.

If you do not have sufficient stimulation for this purpose, you are only going to keep your tax ratables at a low level. But just as important, it was our position that—unfortunately, this industry had to turn to the Constitution to gain help as a result of the Howell case. It was our opinion that the only way we could equalize the tax structure and economy pursuant to the home-construction industry, as well as other industries, was to grant them this opportunity for an exemption.

The committee proposal had tightened up (d), but the Convention loosened it up rather considerably just a few moments ago. If we are going to concern ourselves with the development of industrial and commercial land speculation, it would certainly seem to me that it would be grossly unfair to the home-building industry to put them in a unique tax position where they and only they suffer from having their inventory taxed.

DELEGATE WELSH. Just one more remark. I rise again just to make a statement to the effect that this very same thing contained in your proposal, subsections (c),

(d) and (e), are the very same things that the Local Government Committee turned down and voted down. That was only about two weeks ago.

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, may I interrogate Delegate Gerber for one second?

PRESIDENT BRODERICK. Yes.

DELEGATE ABERMAN. One of the amendments that we have just approved was Mr. Buck's amendment, Mr President, which inserted after the word "development" on line 25, the word "construction."

I am a little puzzled at this point. I rise, by the way, so you will not misconstrue my intention, to speak against the proposed amendment being offered here.

You now have inserted in (d) the words "construction of real estate," with special tax exemptions being applicable for a limited time. You now have in (e), construction of residential real estate, for two years.

I wonder whether or not, now that your scheme, as it were, for (d) has been violated—

DELEGATE GERBER. Please do not call it a scheme; call it a plan.

DELEGATE ABERMAN. I did not infer a nefarious meaning to the word "scheme." I was using the word "schematic," Mr. President. I wonder whether or not, Mr. President, you might consider the word "construction," if it was limited only in one area, for residential real estate, might not rightly remove the necessity for (e) at this point?

DELEGATE GERBER. Mr. President, in response to Delegate Aberman's question, in view of the fact the committee rejected the thoughts of the Buck amendment, it was our opinion that subsection (e) was required.

Frankly, I have not had the opportunity to give it sufficient thought on the floor today to determine whether or not the Buck amendment solves the problem that (e) hopes to solve. I do not think it does because we are directing our attention, Mr. President, to a specific problem that we think concerns the development of needed housing units for the growing population of the Commonwealth.

The information which was presented in our committee clearly showed us that Pennsylvania was in need of this type of help. The General Assembly, in its wisdom, attempted to help it. The Supreme Court in a case said they could not do it because the Constitution would not let them. What we are trying to do here is to meet the needs expressed both by the General Assembly of the Commonwealth for which, I, for one, as one of the delegates here, have a great deal of respect, and, secondly, by the Supreme Court.

DELEGATE ABERMAN. I asked a short interrogation and got a long answer.

DELEGATE GERBER. You know me better than that, do you not?

DELEGATE ABERMAN. The answer is that you feel that (e) must be maintained and, therefore, I speak against the proposed amendment. That was the point I was trying to make.

DELEGATE GERBER. Thank you very much, Mr. Aberman.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Very shortly, Mr. President, I would like to speak against the proposed amendment. I am aware of the prior legislative provision which provided such an exemption as this proposal intends to provide. I think the basic underlying theory was good. I am aware of the Agway Case which said that you could not do it. I think the principle is no different, absolutely no different—in opposition to what Mr. Rovner says—than the principle contained in Section (b) on page 3 whereby an exemption is provided for the inventory of private forest preserves.

I think the theories are exactly the same; I do not look at it as a special benefit for home builders because, as everyone knows who has ever worked in this area, this tax if assessed is passed directly along in the price of the residential home when it is sold or occupied. But I must point out that I do not necessarily agree with section (e) as drawn, and by that I mean I do not think that the exemption should be left up to the whim of the local taxing authority. It is either a good principle or a bad principle and you buy it in that fashion. If you do buy it, it is a good principle. I think it should remain and not put the home builders into conflict with the local taxing authorities. I speak against the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, I rise in support of the amendment for striking off this particular section.

For most of the day here we have debated and discussed the help and needs of the disabled, the poor, the poverty stricken, the rehabilitation, the improvement of real estate, and this particular section is special legislation; it is class legislation; and I think it could be termed a steal. There are no standards here which could be applicable. This would be purely for special interests.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rovner.

DELEGATE ROVNER. Mr. President, I would like to point out in addition to what I said before, number one, in Section (d) of this proposal it refers to deteriorating properties. In Section (e) of the proposal, I believe the intent is for new construction of homes or apartments which can be, as I said before, luxury apartments and also luxury homes. But I think the most important question that we have to resolve in our minds is the philosophy of the tax umbrella. Are we going to make this umbrella so large that we are going to include a private sector of our economy? Are we going to enlarge the tax umbrella that we are going to make a special class of home builders? I think if we do this, we are making a grave mistake. I would urge all the delegates here to vote "yes" for this proposal.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Barry?

The roll was recorded as follows:

YEAS—40

Banes	Clinger	King	Ruth
Barron	Fagan	Mattioni	Scarlett
Barry	Fay	McGeary	Scott
Bashoff	Feather	Moorhead	Shoemaker
Braham	Gehrlein	More	Shrager
Buck	Hannum	Morton	Silverman
Bunting	Himes	Orbin	Solomon
Caputo	Hook	Powell	Welsh
Caron	Irvis	Roberts	Wilmarth
Casey	Jirolanio	Rovner	Woodring

NAYS—93

Aberman	Devlin	Leach	Richter
Amsterdam	Erwin	Lee, K.	Sahli
Aurentz	Fawcett	Leinbach	Scales
Baldus	Fleming	Leonard	Sebastian
Baldwin	Fohl	Levin	Shapiro
Benedict	Forster	Manderino	Sharp
Benfield	Fortney	Mangery	Shettig
Bloom	Gerber	Markley	Shively
Brennan	Goldman	McGlynn	Sprogell
Broderick	Goldstein	Michael	Stout
Brown	Griffith	Michener	Strickler
Burkholder	Harding	Miller, D.	Swope
Butera	Heyburn	Murray	Thomson
Cain	Hocker	Nelson	Thornburgh
Camardella	Horne	O'Donnell	Tomascik
Clark	Huggins	Orban	Tully
Conley	Johnson	Otto	Van Sant
Corey	Kauffman	Pelletier	Waldron
Cortese	Keller, J.	Popil	Warman
Croop	Keller, M.	Pott	Westerberg
Cunningham	Kelly	Rappaport	Whittum
Curran	Krill	Redick	Wilcox
Dailey	Laputka	Reynolds	Woodside
Desmond			

NOT VOTING—30

Allison	Fineman	Lane	Percey
Bagenstose	Gabreski	Lee, L.	Prendergast
Baldrige	Gouger	Meyer	Quiles
Cosetti	Gray	Miller, R.	Rea
Donaldson	Hatter	Musselman	Scranton
Donolow	Henderson	Pasquerilla	Stroup
Dumbauld	Hostetler	Pechan	Tate
Filson	Kline		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I do not want to quarrel with the Chair, but if my memory serves me, I was told that we were going to adjourn or recess at 7 o'clock, Mr. President, and it is now five after seven.

DELEGATE WOODRING. Mr. President, would the gentleman from Northampton yield?

PRESIDENT BRODERICK. Would the gentleman yield to the chairman of the committee?

DELEGATE WOODRING. Mr. President, I would merely like to point out that this clock is a little bit fast.

PRESIDENT BRODERICK. I want to point out something that is more serious. We have five more amendments to consider on this section and I was hoping that we could finish this proposal this evening.

The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Let us recess and come back after that. You are going to get everybody so groggy they would not know what they are looking at or what they are reading.

PRESIDENT BRODERICK. I am willing to abide by the feeling of the delegates, but frankly, we have five more amendments and I think if we move this thing quickly we can be out of here by 7:30. Let us try.

WESTERBERG AMENDMENT TO PROPROSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Westerberg.

DELEGATE WESTERBERG. Mr. President, I have an amendment here to Proposal No. 5, printer's No. 14, that amends Section 1, subsection 1A, page 3, line 30 and page 4, line 1.

On the question recurring,

Will the Convention agree to Proposal No. 5 on second consideration?

DELEGATE WESTERBERG offered the following amendment which was read by the clerk.

Amend Sec. 1 (Sec. 1A), page 3, line 30; page 4, line 1, by striking out "laws set up standards and qualifications by which local taxing authorities may," and inserting: law

On the question,

Will the Convention agree to the amendment offered by Delegate Westerberg?

PRESIDENT BRODERICK. The Chair recognizes Chairman Woodring.

DELEGATE WOODRING. Mr. President, I think the Westerberg amendment is meritorious and I would move that we vote for it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Westerberg?

The roll was recorded as follows:

YEAS—120

Baldwin	Devlin	Lee, K.	Ruth
Banes	Erwin	Leinbach	Sahli
Bagenstose	Fagan	Leonard	Scales
Barron	Fawcett	Levin	Scarlett
Barry	Fay	Manderino	Scott
Bashoff	Feather	Mangery	Sebastian
Benedict	Fleming	Markley	Shapiro
Benfield	Fohl	Mattioni	Sharp
Brennan	Forster	McGeary	Shettig
Broderick	Fortney	McGlynn	Shively
Brown	Gehrlein	Michael	Shoemaker
Buck	Gerber	Michener	Shrager
Bunting	Goldman	Miller, D.	Silverman
Burkholder	Goldstein	Moorhead	Solomon
Butera	Griffith	More	Sprogell
Cain	Hannum	Morton	Stout
Camardella	Heyburn	Murray	Strickler
Caputo	Himes	Nelson	Swope
Caron	Hocker	O'Donnell	Thomson
Casey	Hook	Orban	Tomascik
Clark	Horne	Orbin	Tully
Clinger	Johnson	Otto	Van Sant
Conley	Kauffman	Pelletier	Waldron
Corey	Keller, J.	Popil	Warman
Cortese	Keller, M.	Pott	Welsh
Croop	Kelly	Rappaport	Westerberg
Cunningham	King	Redick	Whittum
Curran	Krill	Reynolds	Wilcox
Dailey	Laputka	Richter	Wilmarth
Desmond	Leach	Roberts	Woodring

NAYS—3

Bloom	Huggins	Powell

NOT VOTING—40

Aberman	Dumbauld	Irvis	Percey
Allison	Filson	Jirolanio	Prendergast
Amsterdam	Fineman	Kline	Quiles
Aurentz	Gabreski	Lane	Rea
Baldrige	Gouger	Lee, L.	Rovner
Baldus	Gray	Meyer	Scranton
Braham	Harding	Miller, R.	Stroup
Cosetti	Hatter	Musselman	Tate
Donaldson	Henderson	Pasquerilla	Thornburgh
Donolow	Hostetler	Pechan	Woodside

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

AMENDMENTS DEFERRED

PRESIDENT BRODERICK. And now I am going to ask the clerk to read the next amendment which is being offered by Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, at this time I would like to defer my amendment to a later time, a later date.

PRESIDENT BRODERICK. Do I understand you do not wish to offer your amendment?

DELEGATE CAMARDELLA. Not at this time.

PRESIDENT BRODERICK. Does Delegate Leinbach have an amendment?

DELEGATE LEINBACH. Mr. President, I would like to defer that until tomorrow morning. There is another thing I want to look into, please.

PRESIDENT BRODERICK. Of course by deferring we are not accomplishing very much, but let us proceed to the next one.

Does Delegate Shapiro have an amendment?

MOTION TO ADJOURN

PRESIDENT BRODERICK. The Chair recognizes Delegate Van Sant.

DELEGATE VAN SANT. Since you admit we are not accomplishing much, I move that we adjourn.

PRESIDENT BRODERICK. We have a motion to adjourn. It has been moved by Delegate Van Sant, seconded by Delegate Bagenstose.

On the question,

Will the Convention agree to the motion?

It was not agreed to.

SHAPIRO AMENDMENTS TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I read in place and present amendments to Proposal No. 5.

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendments which were read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, line 10, by striking out "OR ANY OTHER SPECIAL"

Amend Sec. 2 (Sec. 1C), page 4, line 13, by inserting after "services": and not subject to local taxation

Amend Sec. 2 (Sec. 1C), page 4, line 15, by striking out "an amount" and inserting: gross receipts tax revenues

Amend Sec. 2 (Sec. 1C), page 4, line 18, by striking out "in the preceding year." and inserting a period

Amend Sec. 2 (Sec. 1C), page 4, lines 25 to 27, by striking out all of said lines and inserting: That real property of public utilities which is not used or useful in furnishing their public utility services shall remain subject to local taxation.

On the question,

Will the Convention agree to the amendments offered by Delegate Shapiro?

QUESTION OF PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport. For what purpose does the gentleman rise?

DELEGATE RAPPAPORT. I rise to a question of parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE RAPPAPORT. Have we finished all amendments dealing with all issues besides that of public utilities?

PRESIDENT BRODERICK. We understand that we have. Is that so? Yes.

DELEGATE RAPPAPORT. Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, I have one amendment which does not relate to public utility, which has not come from the drafting bureau yet.

PRESIDENT BRODERICK. We have not received that amendment, or at least I have not seen it. We will take it when we get it.

The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I think that we have all lobbied for and against the utility amendments sufficiently, and I am not going to direct my attention to the merits of Section 1(c) itself.

The purpose of my amendment is primarily to deal with two problems which presently exist in 1(c), as I read it. The committee made a change in the last sentence of 1(c), which was intended, I think, to correct an oversight on the part of the committee with respect to certain particular utility properties in the city of Philadelphia and perhaps in one or two other locations in the State.

The purpose as stated by the committee when they offered the amendment was to make sure that certain real estate, which is specifically subject to tax at present, real estate of, I believe, transportation companies and railroads, that is, local transportation companies and railroads, specifically taxable at present to make sure that they would remain taxable.

However, the language adopted, I think, would also mean that real estate of utilities which is presently devoted to a purpose not within the existing exemption but, for example, either gas or electric company or telephone company property presently used as offices which is subsequently converted to a use or a purpose for which the law would presently give an exemption would, under the language adopted by the committee, I believe, remain subject to tax. I do not think this was intended by the committee. That is one of the purposes of my amendment.

The other purpose of my amendment providing for striking out the words "in the preceding years," is directed at this particular problem: The fact that the General Assembly is directed by 1(c) to provide for the annual distribution among local taxing authorities of the tax equal to the amount which local taxing authorities throughout the Commonwealth could have collected had exempt properties been instead subject to real estate tax.

This is to be based, according to the present wording of 1(c), on the taxes that could have been applied on the real estate in the preceding year. I suggest that it would be an impossibility or an impracticability, or at least very, very difficult, for any state official to collect sufficient information as to the taxes that could have been

collected throughout the Commonwealth in the preceding year in time to make distribution in the following year.

I, therefore, suggest deletion of the words "in the preceding year." The balance of the amendment, I believe, will clarify and correct the language in those two respects.

LEINBACH AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Leinbach.

DELEGATE LEINBACH. Mr. President, Delegate Shapiro's amendment takes care of what I proposed in mine.

I, therefore, withdraw my amendment.

PRESIDENT BRODERICK. Thank you. We will mark yours "withdrawn."

In connection with the Shapiro amendment, the Chair has been advised by the Parliamentarian that in connection with the first line of your amendment, amending Section 2, page 4, line 10, by striking out "or any other special", this was the wording inserted by a prior amendment. The only way that can be changed is by a motion to reconsider the vote by which that was adopted.

I understand we have the same thing in connection with the last part of your amendment, amending Section 2, subsection 1(c), page 4, striking out all of said lines and inserting "that property of public utilities which is not used or useful in furnishing their public utilities services shall remain subject to local taxation." I am advised that may already have been amended.

The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. May I make this suggestion: Take your comments in reverse order of comments of counsel.

I have suggested the substitution on line 13 of the words "and not subject to local taxation", which would be my reason for reinstating the original language.

Secondly, as to the first comment, I think that the same purpose could be served, if I may, by instead of striking out "or any other special" if I would insert "after taxes" in substitution for "gross receipts taxes". I think we would then get the same purpose.

MOTION TO TABLE AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, on behalf of the subcommittee and the Committee on Taxation and State Finance, I would like at this time to make a motion to table the Shapiro amendment, take up what I know to be an amendment not dealing with public utilities introduced by Delegate Barry, to vote on the package without getting into public utilities and, looking at the hour and knowing the weariness of our committee and our chairman, to take up the issue on utilities tomorrow and to conclude the rest of our debate here tonight on the section that we have dwelt on all day. I think that we would be doing a service to the Convention by giving it an opportunity to, with a fresh mind and fresh eyes, think clearly about the questions that are going to come up on the utility section, which is something of a departure from what we have been debating here today. Therefor, I move to table the Shapiro amendment.

PRESIDENT BRODERICK. Before you make that motion, let me just point out to you that the Chair has already ruled that the first part and the last part of the Shapiro amendment are not acceptable amendments because there should be motions to reconsider the vote by which the previous amendments adopted that language. This is the ruling of the Parliamentarian on that. My question is whether under those circumstances Delegate Shapiro wants to withdraw his amendment and resubmit it as a motion to reconsider or whether he wants to limit his amendment to the language upon which I have not commented.

SHAPIRO AMENDMENT WITHDRAWN

DELEGATE SHAPIRO. I am afraid that it would not accomplish the purpose if I did the latter. I wonder if I could withdraw it at this time and submit it tomorrow?

PRESIDENT BRODERICK. Very well, we will consider it withdrawn, which takes care of your purpose, Delegate Gerber. Do you now want to take up the Barry amendment?

DELEGATE GERBER. Yes, you are right, Mr. President. I want to thank you very much for the courtesy extended to the committee.

PRESIDENT BRODERICK. Do we have the Barry amendment? While we are having copies run off, we will have the clerk read the amendment.

MEETING OF JUDICIARY COMMITTEE

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, while we are waiting I thought it might be appropriate to announce that there will be a meeting of the Judiciary Committee in the House Majority Caucus Room immediately following the termination of this session, assuming that we terminate within any reasonable period of time. I thought that might also encourage us to terminate at this time, because it is quite obvious that if we are going to get into the public utility amendment, it will literally be hours.

BARRY AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. I understand the motion has been made that we consider the Barry amendment, and after the consideration of the Barry amendment the Chair will accept a motion to adjourn.

DELEGATE GERBER. That was the request of the committee, Mr. President.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BARRY offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1A), page 3, lines 22 to 30, by striking out "The General Assembly may by general laws set up standards" in line 22, all of lines 23 to 29 and "(e)" in line 30

On the question,

Will the Convention agree to the amendment offered by Delegate Barry?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, I will be short because this is a simple proposition.

In 1965, after two sessions of the General Assembly had approved an amendment, the electorate voted an amendment to the Constitution exempting from occupational privilege taxes, at the discretion of local authorities, persons deriving less than $1,000 a year from an occupation. The tax committee has taken that out of its proposal and I find that that was intentional because they had been advised that the amount of money is very small involving these refunds to people earning less than $1,000. However, I submit to the floor that it should be reinstated; money is not the only thing at issue here.

If, for example, there is $200,000 involved statewide in a year, this means that there are 20,000 people who would be deprived of this refund of $10. I know personally of many cases where a kid will go out and work at an amusement park and earn $25. Ten dollars of that is taken out and becomes part of the occupational privilege tax. This leaves a bad taste in the mouths of a lot of people. I asked our counsel today—we did not have time to get to it, but I am sure the Legislative Journals of those two sessions when this amendment was passed are full of objections by people who are tied up in this type of thing which makes people despair of government.

I earnestly suggest to you that we reinstate this amendment. Money is not the only thing at issue; it is people in the coils of big government. We are saddled with a uniformity provision in Pennsylvania that is very restrictive. This will solve that problem.

I earnestly ask you to give a break to these people and save the legislators' already tin ears, because I am sure they will have a lot of gripes if you do not.

PRESIDENT BRODERICK. The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. Mr. President, this is another of those cases where we are trying to put a figure, an exact dollar figure, in the Constitution, which I think is entirely misplaced.

PRESIDENT BRODERICK. The Chair recognizes Chairman Woodring.

DELEGATE WOODRING. Mr. President, the committee considered this proposal. This was often debated in committee. We felt it was covered in subsection (c) which takes care of the right to exempt on a needs basis, which would include the college student.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Barry?

The roll was recorded as follows:

YEAS—28

Amsterdam	Bunting	Fagan	Murray
Aurentz	Burkholder	Fay	Roberts
Banes	Caputo	Irvis	Shapiro
Barron	Casey	Jirolanio	Shrager
Barry	Cosetti	Mattioni	Silverman
Bashoff	Curran	McGlynn	Solomon
Braham	Dailey	Miller, D.	Warman

NAYS—100

Aberman	Fleming	Lee, K.	Sahli
Bagenstose	Fohl	Leinbach	Scales
Baldwin	Forster	Leonard	Scarlett
Benedict	Fortney	Levin	Scott
Benfield	Gehrlein	Manderino	Sebastian
Bloom	Gerber	Mangery	Sharp
Brennan	Goldman	McGeary	Shively
Broderick	Goldstein	Michael	Shoemaker
Brown	Griffith	Michener	Sprogell
Buck	Hannum	Moorhead	Stout
Camardella	Harding	More	Strickler
Caron	Heyburn	Morton	Stroup
Clark	Himes	Nelson	Swope
Clinger	Hocker	O'Donnell	Thomson
Conley	Hook	Orban	Thornburgh
Corey	Horne	Orbin	Tomascik
Cortese	Huggins	Otto	Tully
Croop	Johnson	Pelletier	Waldron
Cunningham	Kauffman	Popil	Welsh
Desmond	Keller, J.	Powell	Westerberg
Devlin	Keller, M.	Pott	Whittum
Erwin	Kelly	Rappaport	Wilcox
Fawcett	Krill	Redick	Wilmarth
Feather	Laputka	Reynolds	Woodring
Fineman	Leach	Richter	Woodside

NOT VOTING—35

Allison	Gabreski	Lee, L.	Quiles
Baldrige	Gouger	Markley	Rea
Baldus	Gray	Meyer	Rovner
Butera	Hatter	Miller, R.	Ruth
Cain	Henderson	Musselman	Scranton
Donaldson	Hostetler	Pasquerilla	Shettig
Donolow	King	Pechan	Tate
Dumbauld	Kline	Percey	Van Sant
Filson	Lane	Prendergast	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

RESOLUTION

PLEDGE OF ALLEGIANCE

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. Mr. President, I have a resolution which I think is most appropriate and I would like to present it this afternoon or this evening, if in order. We did not have the time this morning to present any resolutions.

PRESIDENT BRODERICK. We will recognize you for a resolution.

DELEGATE REDICK. Mr. President and delegates, it is an honor to have this privilege to submit this resolution at this most appropriate time today, Lincoln's birthday. As a matter of fact, it is most appropriate at any time.

Mr. President, I offer the following resolution:

In the Constitutional Convention, March 12, 1968.

The flag of our Nation symbolizes those principles, such as the freedom to live, to speak, to worship and to program our lives according to our wills and abilities for which one million Americans have sacrificed their lives since the birth of this flag. Thousands of other Americans have suffered disabilities today because they had the courage to fight for democracy. These are the thoughts we should keep in mind as we pledge allegiance to the flag; therefore be it

RESOLVED, That, the United States flag being a part of this convention, it would be appropriate that this convention go on record by adding to our opening ceremonies

each day the pledge of allegiance to the flag of our Country.

JOHN J. REDICK.

PRESIDENT BRODERICK. The resolution will be referred to the Committee on Rules.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban, our Vice President, who has the adjournment resolution.

DELEGATE ORBAN. Mr. President, I move that this Convention do now adjourn until Tuesday, February 13, 1968, at 9:00 a.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Orban that this Convention do now adjourn until Tuesday, February 13, 1968, at 9:00 a.m., e.s.t.

The motion was agreed to and (at 7:26 p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

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The Convention was called to order at 9 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND R. BLAIR MOFFETT of the First Presbyterian Church, Wellsboro, Pennsylvania, offered the following prayer:

Let us pray:

Father, we have before this body a great and complex task. Not only do we deal with the body of man-made laws which are difficult enough, but even more we seek justice. So we ask for wisdom, Lord.

Each of us comes from a specific background and thus with certain pressures and preconceptions. We ask, Lord, that You will purify our motives and give us courage to stand for the best of which we are capable.

Sometimes, Father, we cherish exaggerated ideas of our own importance. When we are given authority, we tend to forget who we are and who You are.

As we look ahead, help us to remember those whose hopes for justice ride on our efforts today and grant us humility.

We pray this morning for wisdom, for courage, and for humility. Amen.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

DELEGATE MICHENER. Mr. President, I bring you a very good omen indeed. For the first time in the history of this Convention there are no requests for leaves of absence.

PRESIDENT BRODERICK. I wish to applaud that.

QUORUM CALL

PRESIDENT BRODERICK. We will now have the roll call to determine whether a quorum is present.

All those present will please vote "yea."

The roll was recorded as follows:

Aberman	Devlin	Lee, K.	Richter
Amsterdam	Dumbauld	Leinbach	Roberts
Aurentz	Erwin	Leonard	Rovner
Bagenstose	Fagan	Levin	Ruth
Baldrige	Fawcett	Manderino	Sahli
Baldus	Fay	Mangery	Scales
Baldwin	Feather	Markley	Scarlett
Banes	Filson	Mattioni	Scott
Barron	Fineman	McGeary	Sebastian
Benfield	Fleming	McGlynn	Shapiro
Bloom	Fohl	Michael	Shettig
Braham	Fortney	Michener	Shively
Brennan	Goldman	Miller, D.	Shoemaker
Broderick	Goldstein	Miller, R.	Shrager
Brown	Gray	Moorhead	Silverman
Buck	Griffith	More	Solomon
Bunting	Hannum	Morton	Sprogell
Burkholder	Harding	Murray	Stout
Butera	Hatter	Nelson	Strickler
Cain	Henderson	O'Donnell	Stroup
Camardella	Himes	Orban	Swope
Caputo	Hocker	Orbin	Tate
Caron	Hook	Otto	Thomson
Casey	Huggins	Pasquerilla	Thornburgh
Clark	Irvis	Pelletier	Tully
Clinger	Jirolanio	Percey	Van Sant
Conley	Johnson	Popil	Waldron
Corey	Kauffman	Pott	Warman
Cortese	Keller, J.	Powell	Welsh
Cosetti	Keller, M.	Prendergast	Westerberg
Croop	Kelly	Rappaport	Whittum
Cunningham	King	Rea	Wilcox
Curran	Krill	Redick	Wilmarth
Dalley	Laputka	Reynolds	Woodring
Desmond	Leach		

PRESIDENT BRODERICK. The electronic roll call tabulator indicates that we have present 138 delegates, which constitutes a quorum.

The Chair also notes the presence of the following delegates:

Allison	Forster	Heyburn	Scranton
Barry	Gabreski	Kline	Sharp
Bashoff	Gehrlein	Lee, L.	Tomascik
Benedict	Gerber	Meyer	Woodside
Donaldson	Gouger	Quiles	

PRESIDENT BRODERICK. We will move on to our calendar and take up the position on the calendar where we left off last night at 7:30 p.m.

We will take up Proposal No. 5, printers No. 14.

CALENDAR

COMMITTEE PROPOSAL No. 5, ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 5, Printer's No. 14,** entitled:

Amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

On the question,

Will the Convention agree to the proposal on second consideration?

RECOMMENDATIONS TO EXPEDITE PROCEDURE

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilmarth.

DELEGATE WILMARTH. Mr. President, before we go on with the business of the morning, I have some suggestions that I would like to present to the Rules Committee which might expedite what we are doing and I wonder if it would be in order if I do it at this time?

PRESIDENT BRODERICK. The Chair hears no objection.

DELEGATE WILMARTH. Mr. President, I am sure that not only myself but others are concerned that we are taking a great deal of time to expedite what we are trying to do in this Convention. I would like to very quickly make three proposals to the Rules Committee that might help us in our endeavors.

The first proposal is this: that every amendment should carry the signatures of 15 sponsors before being given our consideration. This is no attempt to try to throttle amendments from the floor, but I have observed, as have many others, that many of our amendments have fallen by a very few "yea" votes and a preponderance of "nay" votes. I actually feel that if our delegates would try to consolidate and get together and have enough backing, such as 15 sponsors, that we could probably expedite this and carry on our deliberations in a much quicker manner than we are presently doing.

The second proposal is that after presentation every amendment should be carried over for at least one day before debate by this body. I say this with all sincerity. I am terribly concerned that we are receiving amendments that we have to pass on with snap judgment, that we do not have ample opportunity to study, and that we are doing an injustice to this body and to our Constitution in passing on them so quickly that we, in many instances, distort the meaning of the original proposal. I think that this should be given every consideration. I honestly believe that we must have time to study these amendments.

If you will recall, the original proposal must on first reading go over at least 24 hours, and I feel that amendments are as important as is the proposal itself. Many times I am sure that they are more important. We do have ample time to study the original proposal, but we have no time to study the amendments which in many cases distort, change, perhaps by only one word, but do change the intent of the original proposal. I think that it is a terrific injustice to this body that we pass on amendments as rapidly as we do.

The third proposal is that the section amended shall be presented in its entirety in a printed form as amended. What I am actually saying is that if we have the amendment printed, that section printed that is being amended, so that we can actually look at it, then I am sure that I, and others, will stop marking up our original proposals to the place where it is impossible for us to read them. I believe, Mr. President, that these proposals would certainly expedite the action of this Constitution and we will do a better job.

I move, Mr. President, that the Rules Committee give this immediate consideration and I hope that I have a second and the backing of this delegate body.

DELEGATE BROWN. I second that.

PRESIDENT BRODERICK. It has been seconded by Delegate Brown and so, therefore, we will present your suggestions immediately to the Rules Committee for their consideration. I would suggest that if you have those proposals of yours in writing that you hand it up so we can present them accurately to the Rules Committee.

SCHEDULE FOR THE DAY

PRESIDENT BRODERICK. Before recognizing Delegate Hocker, the Chair wants to point out that today we started at 9 o'clock and we plan to keep going until 7 or 7:30 or perhaps even 8 o'clock this evening, depending on a normal time for a break. We must complete the second consideration of all proposals this week, and at the rate we went yesterday it would very much look like we will probably be here this weekend unless we step up our pace.

AMENDMENT PROCEDURE

PRESIDENT BRODERICK. The Chair has taken upon itself to do something to expedite the consideration of amendments. Sitting at this table down here from now on will be our First Vice President Bob Casey and our Second Vice President Frank Orban. I am going to ask them to please sit down here. They are going to serve as a committee, together with our Assistant Parliamentarian and Solicitor, Tom Balaban, and the attorney for that particular committee whose proposals are under consideration. The four of them will be there to accept amendments prior to and during the session. The purpose of this committee is to eliminate, as much as possible, duplicate amendments, to talk to delegates and advise the delegates that their amendment is similar to another's, to see if you cannot get together on a combined amendment and, also, to set up the amendments in the order of the proposal itself so that we can go through the proposal in some order. The amendments will, therefore, be handed up to the Chair from that committee. I am asking right now if Vice President Frank Orban and Vice President Bob Casey will take their positions down there with Tom Balaban, whom you now know, and Mr. Goldberg, who is the attorney for this committee, whom you also know, and in this way we hope to organize and expedite amendments.

HOCKER AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. And now, without further waste of time, the Chair recognizes Delegate Hocker for his amendment.

DELEGATE HOCKER. Mr. President, I read in place and present an amendment to Proposal No. 5.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE HOCKER offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, lines 8 to 27 by striking out all of said lines and inserting: Section 1C. Public Utilities.—The real property of public utilities is and shall be subject to real estate taxes imposed by local taxing authorities, unless the General Assembly imposes a uniform State tax upon the real property of public utilities which is used in the production, rendition or distribution of public utility services. The annual gross amount of such State tax shall equal the total amount of real property taxes which all the local taxing authorities of the Commonwealth could have imposed upon such public utility real property in the preceding year had such property been subject to local taxation. Should the General Assembly impose such a real property tax, the proceeds after the cost of collection shall be distributed annually to the local taxing authorities, in an equitable manner to

be determined by law which shall be based solely on (1) the percentage of tax exempt public utility real property in the Commonwealth which is located in each local taxing authority and (2) the percentage of the population of the Commonwealth in each local taxing authority. All real property of public utilities subject to local taxation at the time of the adoption of this section shall remain subject to local taxation.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, first of all, you and I and the Parliamentarian agreed on some changes at the top of this amendment. This is printer's No. 14. It would be section 1-C, page 4, lines 8 to 27.

PRESIDENT BRODERICK. You are correct.

DELEGATE HOCKER. Thank you, Mr. President.

Mr. President, I realize that I am swimming against the tide here, and I slept with this also last night. I guess after I am through here this morning I will not have a telephone at home—thank God for that—and I heat with electricity; that will probably be turned off, and the only gas I have will probably be on my stomach; and I probably will have to ride Greyhound instead of the railroad; and then when I get home I will not have any water to take a bath.

Mr. President, fellow delegates, I have been a member of the House, as you know, for 20 years. I have fought this same battle for 20 years and I have been unsuccessful. The reason for that is the powerful lobby that the public utilities have. Now I was hoping, and I am still hoping, that with a new set of faces, and with people who were not sent here for any specific purpose, other than to help other people in the Commonwealth of Pennsylvania, that I could see a little ray of hope in what I am trying to do.

First of all, my amendment, if you read it carefully, would place a real estate tax on public utilities which they have dodged or ducked since the beginning of this great Commonwealth. They have always been successful in knocking down any taxes. If the legislature fails to do this, then the local political subdivisions, the local people, will have an opportunity to do it.

The way this proposal is written in the bill I think is a raid on the taxpayers of Pennsylvania, and it would not be paid by the utilities; it would be paid by the Commonwealth of Pennsylvania. We have a gross receipts tax, yes, but if you would follow out the mandate of the proposal, it would take $17 million out of this budget which you are insisting be presented as a balanced budget, and if you have this book, you will find that the gross receipts tax in here is a part of the balance. What would that mean? That would mean that if you take $17 million out of the general fund, they would have to go elsewhere for taxes.

I am quite sure that the utilities would be strong enough in their lobby and in their endeavors on Capitol Hill to reject an increase in the gross receipts tax. So what would this mean? You say, what is $17 million out of a $2-billion budget? Well, I shall tell you what it is.

One time, years ago, we in the legislature had to put a penny a bottle on soft drinks in the Commonwealth of Pennsylvania. We took money from the kids to gather $25 million to balance the budget. You take $17 million out of this budget and you are going to have something either that bad or worse.

Mr. President, in my county, in Dauphin County, the utilities—and I spoke of this in the committee meetings—have an assessed value of $3 million. Now this means well over $10 million in real value. This is quite a hunk to take from the taxpayers of the Commonwealth, of Dauphin County in particular, to carry the load for these people. They demand, and rightfully so, that they shall have fire protection, that they shall have police protection, and they are entitled to it. But in return for this, Mr. President, I think they should pay the local community some form of taxation.

Mr. President, that is all I have to say at the present time and I shall stand for interrogation at this time.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring. Did you wish to make a comment at this time as chairman of the committee?

DELEGATE WOODRING. Not at this time, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, I would like Delegate Hocker to know that while he is taking his cold bath, he will not be alone. Where I live, the man to my immediate right is chief counsel to the West Penn Power Company and the man who lives behind me is his first assistant. So I think that many of us will be subject to a little scrutiny as a result of this amendment.

It seems to me, Mr. President, if I may ask a few questions of Mr. Hocker, that there are three principal questions, as well as certain minor questions, that we as delegates need to have answered with respect to this amendment.

The first major question which I have is in relation to comparing this amendment to the committee's proposal. I would like to know how we figure out the total amount of money that will be reimbursed to local government, the method of figuring that sum.

My second question is, how is the money, the total amount, then to be distributed? What formula will be employed to distribute the money to local government under both Delegate Hocker's amendment and the committee proposal?

Thirdly, and perhaps most importantly, where does this money come from? I wish Delegate Hocker would first address himself to the question of how the total amount is figured under both of these proposals?

DELEGATE HOCKER. Delegate Scales, in answer to your question, I will yield to my cosponsor, the gentleman from Lackawanna, Delegate Ed Popil.

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil.

DELEGATE POPIL. Thank you very much. Delegate Scales, we know, in determining the assessed valuation of any type of property, we must first determine and establish the market value.

Each county in the Commonwealth has a board of assessment and revision of taxes. Their responsibility is, first, to establish a market value on property, and in this case the market value of property owned by utilities would be established. Then a ratio would be applied to the market value to establish the assessed valuation.

My feeling is that after the ratio has been established, this figure then will be presented to the State, to the legislature. All these figures will be compiled by the legislature. They in turn will come up with a millage rate to determine the amount of tax. I am getting a little ahead of my story.

Getting back to the local level—after the assessed valuation has been determined, then you apply the total millage rate in the particular county. You multiply that by the assessed valuation and this determines the amount of tax that the utilities should pay to the local county.

This in turn will be handed over to the legislature. They will know the amount that a particular county should receive. From that they are able to base the tax return after coming up with a total millage for the entire State based on the population of the particular county.

I presume that this percentage will be used to return to the local municipality the amount of tax due on the utilities.

DELEGATE SCALES. Is there any difference between Delegate Hocker's amendment and the committee proposal as far as this problem is concerned, determining the total figure to be used?

DELEGATE POPIL. I do not believe there is any difference.

DELEGATE SCALES. Is there any serious administrative problem in arriving at these figures, or are they figures that in the normal course of events would be easily available?

DELEGATE POPIL. Yes, they would be very easily available, because this is the responsibility of the local boards of assessment and this is a matter, of course, in determining market and assessed valuations.

I might state, which is very, very important, the Pennsylvania State Tax Equalization Board presently does have figures as far as the utilities are concerned. As a matter of fact, they have figures of all counties as to the assessed valuation of a particular county.

However, it is important that these figures be updated, because in many, many counties throughout the Commonwealth the figures for the utilities are not up to date because, actually, there was no reason to bring them up to date since they do not pay a real estate tax. I know that many of the assessment boards have been lax in determining the correct market value of a property and in turn determining the assessed valuation. So it would be very, very important in both proposals that the market value and assessed valuation figures be updated.

DELEGATE SCALES. Mr. President, as I understand the Hocker amendment, there is a significant difference between the Hocker amendment and the committee proposal in terms of how local government then receives the reimbursement and which communities get how much money. I think that is an important consideration. I wish Delegate Hocker would comment on that feature of his amendment.

DELEGATE HOCKER. Delegates Scales, I would refer you to our legal brain in this amendment, a man who I think is very capable in this field, Delegate Baldus.

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus.

DELEGATE BALDUS. Thank you, Mr. President.

The difference between the method of distribution of funds that would be paid to the State under the proposal and the amendment is quite different. I believe it is one of the strong features of the amendment being offered.

Under Proposal No. 5, the distribution to each local community will be based on the proportion of all the total tax receipts paid in the State to local government that is collected by each local taxing authority.

Stated another way, the local governments which collect the greatest dollar amount of taxes will receive proportionately the greatest share of the fund which is to be distributed from the Commonwealth.

The difficulty with the proposal distribution formula is that it takes no account for communities which have a very large percentage of their real estate tied up in exempt public utility property. For example, the community of Springdale, with which I am familiar, in Allegheny County has an assessed valuation of some $18 million; $16 million of that property is exempt.

Under the proposal of the committee, this community would receive no greater proportionate share of the total fund than would a community that had no utility property. We believe that this is a fundamental inequity and that communities which have a high percentage of utility property should receive special consideration.

So it is for this reason that the proposed amendment would change the factors to be considered by the legislature in adopting a distribution formula to include two considerations: One, the percentage of tax exempt public utility property in each community. Therefore, a community like Peach Bottom, a community like Springdale, which have a very high percentage of exempt utility property would receive special consideration. They would receive a higher return of the funds.

Second consideration that the legislature would look to would be the percentage of the total population in each community. This is a realization that the amount of exempt utility property should not be the only consideration, but that the number of people in the community and their needs should also be considered.

To give you an example of the type of formula that the General Assembly could come up with under our proposal, I suggest to you this type of decision that they might make: The General Assembly would make a decision between the weighting of the funds. If they have a total fund, they have to decide how much of this fund will be weighted for the exempt utility property and how much will be weighted for population. An example of the type of law they could pass is as follows: The percentage of tax-exempt utility property shall be weighted, as an example, 40 per cent, and the percentage of population shall be weighted 60 per cent. The figures could vary. They could be 50-50, 70-30; that would be within the discretion of the legislature. Taking, however, the example of 40 per cent weighting on utility property and 60 per cent on population, the General Assembly would then take the total fund that was collected and multiply that total fund by 40 per cent to determine the amount that would be returned on the basis of the amount of exempt utility property. Having determined what that fund was, 40 per cent of the total, for example, they would then multiply each community's proportionate share of all the exempt utility property. They would do the same with population.

We believe that this formula in the amendment provides a flexibility that would reflect the real problem that has been created by exempt utility property as well as the needs of the people, and for that reason we think

is more equitable, and more fair than Proposal No. 5, which bases the return simply on the amount of tax that each local community pays. Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair would like now to recognize Delegate Rappaport who has been standing there at the microphone for awhile.

DELEGATE RAPPAPORT. Thank you, Mr. President. I would like to ask the delegate from Dauphin one simple question.

Sir, is it your intent that pipelines, or other transmission companies, and other similar enterprises which may own fee simple interests for easements, for rights of way, and other interests less than fee simple, for the transmission of commodities or power, or anything of value, be included within this section as being taxable?

DELEGATE HOCKER. Mr. President, I would answer the gentlemen this way: Any part of it that did not fall into the category of machinery would be taxable. I would hope so, Delegate Rappaport.

DELEGATE RAPPAPORT. Is it your intent, sir?

DELEGATE HOCKER. It is my intent, yes.

DELEGATE RAPPAPORT. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, I would like to ask Delegate Hocker a question, if I may?

Delegate Hocker, is it true that what we are intending to accomplish by this particular section is to subject the utilities to some form of local taxation under which they must accept some burden of supporting the local taxing communities?

DELEGATE HOCKER. The answer is yes.

DELEGATE GOLDMAN. If that is true, Delegate Hocker, in your comments you stated—I may be paraphrasing this wrongly, but I believe you stated—that to allow the legislature to run the risk of raising the gross receipts tax would be subjecting them to an undue burden because the utilities would be able to lobby too effectively against the increase of such a tax rate. Would not the same be true in subjecting the legislature to the undue pressures of the utility companies in, say, establishing a millage rate of .01 and thereby resulting in a same inequitable or insufficient amount of tax?

DELEGATE HOCKER. In answer to the gentleman, we think we have taken care of that in here that it would be subject to the same millage they would have in the local area.

DELEGATE GOLDMAN. Exactly the same millage? They must be the same moneys?

DELEGATE HOCKER. I will let Delegate Baldus answer that. He has come up with all the figures. We tried to make it fair and equitable the whole way across the Commonwealth.

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus.

DELEGATE BALDUS. Delegate Goldman, the millage that would be charged by the State would, of course, not be the same as that charged by local government. The purpose of this proposal is to provide a fund that is equal to the fund that would have been collected by all the local communities had they charged their normal rate of taxation. The millage rate that would be charged by the State will be that millage rate which must be multiplied by the fair market value of all the utility property in the Commonwealth that is needed to create the fund, that would have resulted had all the local governments taxed according to their millage rates. So the millage rate would be different, but the fund would be the same.

DELEGATE GOLDMAN. You are going to create in a fund, which the State will control, exactly the same amount of money that the local communities could have collected together, collectively?

DELEGATE BALDUS. Yes sir.

DELEGATE GOLDMAN. Now is not this imposing a type of tax on utilities which is not imposed upon anyone else? I am not necessarily defending utilities, but do not utilities already pay a gross receipts tax which no other type of business entity pays?

DELEGATE BALDUS. Some utilities pay a gross receipts tax, yes. Water companies do not.

DELEGATE GOLDMAN. Is not that imposing upon those utilities an additional tax burden that no one else, that no other type of business enterprise has the burden to accept or pay?

DELEGATE BALDUS. No other business pays gross receipts tax. All businesses other than utilities pay local real estate tax.

DELEGATE GOLDMAN. They all pay income taxes, too?

DELEGATE BALDUS. Yes.

DELEGATE HOCKER. I would like to elaborate on that. All your corporations within the Commonwealth pay a corporate net income tax to the Commonwealth of Pennsylvania and still pay real estate taxes. They do not pay a gross receipts tax, but they do pay a corporate net income tax.

DELEGATE GOLDMAN. Delegate Hocker, my point is this: All corporations in this State pay an income tax on their net earnings that they have received.

DELEGATE HOCKER. That is right.

DELEGATE GOLDMAN. We now have a situation where all other corporations, except utilities, do pay a real estate tax; utilities are exempt from it; but in return, they are paying a gross receipts tax to the State that no other corporation pays.

What we are trying to do—and I think this is a good idea—is to equalize these types of taxes. I just wonder if you are going to charge them exactly the same tax that they otherwise would have paid, if you are then not putting them in a completely reverse position and penalizing them for then being a utility.

DELEGATE HOCKER. I do not think we are. I think—and I will go back to what I said—they have a gross receipts tax without any tax on real estate, where your corporation, such as a steel company and everybody else that is incorporated, has just another tax that falls within the different category which was set up by the legislature, which they call corporate net income.

I might say that they even go farther with them. They make them pay it. I do not know what they are paying now, but I have seen them pay 75 per cent ahead of time in order to balance our budget.

DELEGATE GOLDMAN. Delegate Hocker, you and I have been together in a great many issues on this. I have to speak out against the amendment. I believe we would be penalizing the utilities in imposing this type of a tax, rather than simply trying to equalize the tax problem that now exists.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I would like to ask Delegate Baldus a question.

PRESIDENT BRODERICK. Yes, I am sure he will stand for interrogation. You may proceed.

DELEGATE KAUFFMAN. Delegate Baldus, would you direct my attention to the language in the committee proposal which would preclude consideration of the factors relating to distribution, which you mentioned in discussing distribution? As I read the language, it is far broader than the language of your proposed amendment.

DELEGATE BALDUS. Yes, the language is broader. It gives the legislature a far broader discretion.

DELEGATE KAUFFMAN. Would not the legislature, in fact, be able to consider every one of the factors which you mentioned in support of your amendment?

DELEGATE BALDUS. Yes.

DELEGATE KAUFFMAN. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I have a very simple mind. I would like to interrogate first the committee and then Delegate Baldus in connection with this proposal.

Specifically, my question is this to the committee: Is it not a fact that the 1873 Convention thought that it was abolishing the exemption from taxation which applied to utilities by simply leaving it out of the Constitution, only to find later that the Supreme Court, in effect, put it back in on the theory that it should have been specifically mentioned as no longer eligible for the exemption?

PRESIDENT BRODERICK. I understand you have a question directed to the chairman of the committee, as well as to Delegate Hocker.

Would you want to go first, Delegate Hocker?

DELEGATE HOCKER. No, let the committee answer. I have disagreed with the committee, so I will let them take on that part.

DELEGATE WOODRING. Mr. President, it is true that the 1873 Convention and Constitution made no mention of the public utility exemption, but public utilities were always exempt theretofore. The Supreme Court, subsequently, held that there was no need, inasmuch as they already had been exempt, that there was no need to specifically renew that exemption. Therefore, they have been held to be exempt ever since that time.

PRESIDENT BRODERICK. Does that answer your question, Delegate O'Donnell?

DELEGATE O'DONNELL. Yes, sir, that answers the first part. Now as to the second part, I should like to know if Delegate Baldus would permit himself to be interrogated.

PRESIDENT BRODERICK. Delegate Baldus is now recognized to answer your question.

DELEGATE O'DONNELL. Delegate Baldus, as I understand your proposal, the utilities would then, in effect, pay an amount which would be identical to the amount which they would have paid had they been subject to local real estate taxation. Is this not correct?

DELEGATE BALDUS. Yes, sir.

DELEGATE O'DONNELL. If that is correct, then why not have the utilities simply be subject to local taxation and let it go at that?

DELEGATE BALDUS. The reason that the taxation subcommittee did not make such a recommendation and that the proponents of this amendment have not adopted that position is the concern expressed by many delegates and by many other individuals, that this would permit communities which have a very high proportion of their real estate used for public utility purposes, this direct taxation would permit a windfall to those communities. That is the basis of the theory against the direct taxation by local communities, that this would be disruptive of utility procedures and it would create difficulties at a local level.

It is for that reason that the committee rejected the theory of direct taxation by local government, and rather it provided in the alternative, for a taxation at the state level with redistribution to the local communities.

The point of our proposal is that this redistribution should be based on both population and the amount of exempt property.

DELEGATE O'DONNELL. Just one more if I may.

DELEGATE BALDUS. Yes.

DELEGATE O'DONNELL. My understanding of taxation would indicate to me, at least, that a community, for example, which had a large steel mill in it, or a large commercial property of almost any kind, under the same theory, could be considered as having enjoyed the advantage of a windfall, as the expression is given.

Why should there be a difference between my community which has an enormous steel mill and therefore enjoys a windfall and a township which adjoins my community—which is a fact, by the way—Schuylkill Township in Chester County, which has an enormous utility plant and receives no taxation from it whatever? Why should they not be entitled to the same "windfall" by virtue of the fact that they have an enormous industry right on their premises?

I am asking this question of Delegate Baldus.

DELEGATE BALDUS. The only difference which I can see is that "windfall" by definition results from a sudden change in the status quo. A change in local taxation would create a substantial increase in the tax receipts of communities with a lot of exempt utility property. You are right and your basic theory is correct; there is no difference except for the fact that this would create a substantial change in the financial condition of the local communities that have a larger percentage of their property in public utilities.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Leinbach.

DELEGATE LEINBACH. Mr. President, if I am in order at this point, I rise to object to this amendment. May I proceed?

PRESIDENT BRODERICK. Yes, indeed. You have been recognized.

DELEGATE LEINBACH. Last Thursday there was distributed to the delegates of this Convention, a statement about utility taxes. That statement alleges many facts, but does not say where they were gotten and offers no proof that they are true.

Over the weekend, I have reviewed the testimony given before our committee by people who did provide the source of the facts to which they testified. I also spoke to Chairman Bloom of the Public Utility Commission, who certainly knows what he is talking about in the field of public utilities. The only possible conclusion

is that the statement has played fast and loose with the truth.

For example, the statement says that Pennsylvania utilities alone, of all utilities operating in the United States, are exempt from paying real estate taxes. I have in my hand a statement taken from the State Tax Guide published by the Thomas Clearing House which shows that there are nine States which exempt some or all utilities from real estate taxes. But aside from that error, the statement on the point is extremely misleading. It gives Ohio as an example. It says: "Ohio utilities pay both real estate taxes and gross receipts taxes." What the statement fails to tell you, however, is that Ohio utilities pay nothing to the State but corporate net income or capital stock taxes, whereas Pennsylvania utilities are paying these taxes to the tune of about $70 million a year, as shown by the Department of Revenue reports.

The statement also states that rates for power, water and gas in Ohio are lower than here, whereas telephone and railroad charges are almost identical. I have in my hand a publication of the Federal Power Commission showing the average residential bills for power in each of the 50 States. In Ohio, a householder using 500 kilowatt hours pays $10.37; in Pennsylvania, he pays $9.50. If he uses 750 kilowatt hours, he pays $14.32 in Ohio, and $13.39 in Pennsylvania.

I also have in my hand a comparison prepared by the Bell Telephone Company, showing monthly charges for telephone service in cities of comparable size in Ohio and Pennsylvania. In a city the size of Allentown, the residential subscriber in Ohio pays $5.50; in Pennsylvania he pays $4.95. For a business subscriber, the Ohio cost is $15.35; the Pennsylvania cost is $10.25.

There are no reliable statistics in water rates. Common sense should tell us that water rates differ greatly from one community to another, depending on the nearness to clean water supplies, and that there is no logical basis for saying that the water rates in one State are higher or lower than those in another State.

Another part of the statement says that water companies are perhaps the biggest land owners of all utilities, but statistics in the Public Utility Commission show that, in terms of investment, the water companies own less than seven per cent of all utility lands in Pennsylvania. The statement says that the utilities should be willing to pay their fair share of taxes the same as any other business enterprises. In statistics derived from the Department of Revenue, it was demonstrated to my committee that out of every $100 of income available to pay taxes, utilities paid $14.70 to the State; whereas, the average for other types of business enterprises is just $9.00. I cannot say what the utilities are willing to pay, but the fact is that they do pay more than their fair share of taxes now.

The statement says that the Federal income tax savings of the 1963-64 cut, or the tremendous savings they have obtained due to the seven per cent investment credit, never saw the darkness of their customers' pockets. Chairman Bloom tells me that this remark is wholly false. The Public Utility Commission requires the power companies to file statements every three months showing their earnings. Whenever those earnings are excessive, the commission demands and gets a rate cut. Numerous cuts have been made since the Federal income tax rate was reduced from 52 per cent to 48 per cent.

As for the investment tax credit, the rate for the power companies is three per cent, not seven per cent. In all cases the commission reduces the utilities' rate base by the amount of the investment tax credit so that the consumers benefit. The statement says that, with the exception of New York, New England, Minnesota, Wisconsin, Iowa and Northern Michigan, wholesale, and in most cases, consumer rates are lower than here. I have no idea what is meant by wholesale power rates, but from the same Federal Power Commission publication I referred to earlier, I can say that as to consumer rates, the statement is simply untrue. For a residential consumer using 500 kilowatt hours per month, there are 35 States where his bill would be higher than it would be in Pennsylvania. If you use 750 kilowatt hours, there would still be 33 States where his bill would be higher than in Pennsylvania. In fact, most of the 14 or so States cheaper than Pennsylvania are those where the Federal Government has put in huge, wholly tax-free power projects.

I hold no brief for public utilities. I have no stock or other investment in them or in any other company, but I am convinced that if we further increase the tax burden on utilities and thereby increase utility rates so that they are no longer competitive in surrounding States, we will have reduced the attractiveness of Pennsylvania to the new industries and do a disservice to the people of the Commonwealth. The taxes we would gain would be a drop in the bucket to the jobs and revenues we would lose because of the discouragement to the development of new industry. Pennsylvania's entire economy would suffer and we could be cutting off our noses to spite our faces.

I, therefore, urge you, my fellow delegates, to defeat this amendment and support our committee's proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. In answer to the gentleman, and I do not know whether he wants an answer, but I would like to say that the document which he has, I had absolutely nothing to do with and I am not a disciple of Milton Shapp; I voted against him.

I yield to Delegate Scales to answer the gentleman; he has some figures.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. I do not particularly have any figures, as Delegate Hocker has suggested, but I think that Delegate Leinbach's statement really goes to the very heart of the matter. If it is true, as he has suggested, that the consumer rates may be lower, I would suggest that the reason that is true is at the expense of the local communities which provide the services for these utilities and which do not receive reimbursement.

I would like to ask you, Delegate Hocker, or some other member at his discretion, such as Delegate Baldus, exactly where the money will come from? I think that is the crucial question. Who ultimately will bear the expense and bear the cost, and what is the fairest way for that cost to be borne under these two different proposals?

DELEGATE HOCKER. Delegate Scales, Mr. President.

PRESIDENT BRODERICK. Yes. The Chair recognizes you.

DELEGATE HOCKER. In answer to Delegate Scales, I shall yield to our good friend, delegate and professor, Delegate Cosetti.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. I am getting a bonus from this Convention. Besides getting a law degree, I am getting to be made a member of the teaching profession.

PRESIDENT BRODERICK. Be careful of those degrees which Delegate Hocker confers.

DELEGATE COSETTI. As I see these two proposals, the committee's proposal places the incidence of the tax in the first instance on the general fund of the Commonwealth. It requires the General Assembly to appropriate the funds to reimburse the local communities. They have some discretion as to how they do that; they could do it from the gross receipts tax. But the incidence in the first case is on the General Assembly and the general fund.

As I see it in the amendment which is being presented, the incidence would be on a uniform real estate tax to be imposed by the General Assembly upon the utilities clear across the State.

I am not talking about the final incidences of the tax, but in the initial incidence, the amendment would be upon the utilities, and in the committee's proposal, it would be on the general fund, as I see it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Amsterdam, who is right there at the microphone.

DELEGATE AMSTERDAM. Thank you, Mr. President.

I, as a director and member of the executive committee of one of the important utilities in the State, the Philadelphia Electric Company, requested certain information from them with regard to the very matter which we are discussing today. I would like to ask the gentlemen who are proposing the amendment whether they find anything wrong with the information which was given to me as follows.

I am told that a local real estate tax on electric utilities would divert a disproportionate amount of the tax revenue into sparsely settled communities, because the utilities have very large and growing investments in steam-, hydro-, and nuclear-electric-generating facilities. As an example, I am told that in Peach Bottom Township, York County, which is a community in which the Philadelphia Electric Company has recently built a nuclear-generating station and is building two additional nuclear-generating stations, they have a population of 1,325 citizens. If they were subject to local real estate taxes on these facilities, it would produce tax revenue in that township which is estimated at $850 per capita, compared with a statewide average of real estate taxes which amounts to $72 per capita; that is for the year 1963.

So that one of the elements that is propounded by the amendment, which is based on the real estate actually in the community to the extent that that is made a part of the General Assembly's formula, would make a very disproportionate amount of tax available to a small community, where really very little in the way of services is demanded by that facility because the company itself provides the facility, taking the water directly out of the river, and all the rest of it.

I am told further that this same situation applies on a very much larger scale to the Keystone and Conemaugh generating stations in central Pennsylvania, with customers in the eastern part of the State, the southeastern part primarily, being required to pay for taxes on these projects without receiving any tax benefit whatsoever, to the extent that any part of the formula is based on the real estate actually in the taxing community.

I am further informed that the residential rates of Pennsylvania electric utilities are lower than the national average and lower than those prevailing in the other major centers of the United States.

It is for this reason that we have been able in southeastern Pennsylvania to attract a great many manufacturing institutions and companies to the great benefit of the area. We have been enabled to have substantial increase in employment and have really used that as one of the main bases for having utility users, ordinary corporations, come into our part of the country.

I am told that the imposition of these additional taxes which will be required under the amendment which is proposed here today would result in higher rates or deferral of rating decreases. This would have the effect, according to the company that is giving me this information, of practically wiping out the differential between residential rates in Pennsylvania and the national average and, thus, greatly narrowing the favorable differential compared with the major centers shown for other States.

I wonder whether the proponents of the amendment have any reason to believe that any of these facts are inaccurate?

DELEGATE HOCKER. Delegate Amsterdam, in answer to you I would ask Delegate Cosetti, if he is available, to answer you. I think he has these figures.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. I was just going to say that neither of the proposals would permit a windfall to apply to local communities, so that in neither of these proposals is that question at issue, I think, because both of these proposals require that the State only return to the local community in the aggregate the amount that the local communities would have collected if a local tax were imposed. Both of them limit the amount of distribution to the amount that would have been taxed locally.

The difference between the two proposals, as I see it, is that the committee's proposal looks to the General Assembly to reimburse the local communities by some method, this same amount. I think the amount being talked about at the committee meetings came from an estimate, I believe, by Mr. Dunlap who said that in the survey which he took he believes that the utilities would have paid approximately $17 million to local communities in the State if they were taxed at the same rate that the local communities tax other properties. That $17 million—I do not know whether that is accurate or not—but presuming that it is accurate, both of these proposals speak to that $17 million. They say, in effect, that $17 million should be returned to the local communities. The committee's proposal makes the assumption that it should come from the gross receipts tax which the utilities are now paying. The amendment says that the General Assembly should levy a uniform tax to collect an additional $17 million from the utilities and then distribute them.

There would be no windfall, as I see it, in either proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I am sorry but I do not understand the response. I understood that

the committee proposal did not require that a real estate tax should be imposed on a utility in addition to the gross receipts tax, which means, if I understand it correctly, that the amendment, which does have such a proposal in it, would require an additional sum of money, either $17 million or some other sum of money, to be paid by the utility which would, of course, have to be passed on to the users of electricity in favor of it being distributed in the areas that the amendment talks about, one of the two elements being where the real estate is located. It seems to me that the amendment does exactly what this memorandum given to me indicates. I do not understand whether Delegate Cosetti is agreeing with it or disagreeing with it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. The committee's proposal says "gross receipts or any other special taxes imposed by the Commonwealth." It would actually permit the General Assembly to levy another tax in the future if it were not called a gross receipts tax. It would permit the General Assembly to levy a special tax in lieu of local taxes. The amendment specifically suggests that it should be a real estate tax. From an economic point of view, there is some merit to that. As an economist we are always talking about the allocation of resources and that you should never attach special taxes to certain resources and not attach them to others. In effect, what the Commonwealth's tradition has done is the fact that if we do not tax the real estate of utilities, we are unfairly treating that resource in that all the costs attendant to the use of real estate are not paid by those people who use it. Consequently, the committee's amendment addresses itself to that question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bagenstose.

DELEGATE BAGENSTOSE. Mr. President, I rise against this amendment because the gross receipts tax presently enforced is a good vehicle to collect this tax since it would avoid implementing of a new and costly tax-collecting procedure in our Commonwealth.

Since the General Assembly has the authority to increase the gross receipts tax to cover the $17 million package by reimbursing the local taxing authorities, I have faith that they will do their job.

I would like to ask two questions of Delegate Hocker.

PRESIDENT BRODERICK. Delegate Hocker will respond.

DELEGATE BAGENSTOSE. Delegate Hocker, did you consider this high additional expense which your proposal would trigger?

DELEGATE HOCKER. Mr. President, I see no high additional expense. All the figures that are needed are available on Capitol Hill today. They are over in the State Tax Equalization Board. Each assessor turns in both taxable and exempt property. Those figures are here. You also have a disbursing group within the Department of Revenue that returns—or within the Department of Insurance, I do not know which—that returns two per cent out-of-state insurance tax. If the administration in its wisdom wanted to do this, it could do it very efficiently and at a minimum cost.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bagenstose.

DELEGATE BAGENSTOSE. I do not agree with you in this respect, that this would require a lot of separate, additional billing, whereas, the gross receipts tax as presently enforced, if the General Assembly would increase that said tax to offset this $17-million package, it would just be a matter of multiplication as far as the taxpayers are concerned. Whereas, under your proposal this would require a separate billing and a lot of additional employes and expense. I would just like to ask you, in your opinion, is the mission of taking care of the local taxing authorities provided for in the committee proposal at a lower cost to the taxpayers?

DELEGATE HOCKER. I do not think so. I cannot see any difference in the two proposals. You are dealing with the same amount of money. You are going to have to return it one way or another. The State is going to have to collect either one of them and return it to the political subdivisions.

DELEGATE BAGENSTOSE. I just say in conclusion it is my personal opinion that this proposal would increase the cost substantially to do the same work that is already being done by the present gross receipts tax in the Commonwealth of Pennsylvania.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Miller.

DELEGATE R. W. MILLER. Mr. President, fellow delegates, I rise in opposition to this amendment. If this amendment is approved the people of Pennsylvania will be the losers. To illustrate, utilities will have to go to the Public Utility Commission for a rate increase. If it is not approved the utilities will be forced to cut costs in the areas of maintenance and service. Many of you who are served by small, independent public utilities are aware of the inferior services rendered by these firms. This is due in part to the fact that the public utilities are now paying more and higher taxes than any other group in the Commonwealth and funds are, therefore, not available to improve these facilities and services. If we subject utilities to property taxation, I can see nothing but further deterioration of the services to the people. On the other hand, if the rate increase is approved, the very people we have tried to help in the exemption section of this proposal will be paying for this tax through a rate increase. Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kauffman.

DELEGATE HOCKER. Mr. President, unless Delegate Kauffman wants to answer the gentleman directly as to cost, I think Delegate Aberman would like to answer Delegate Miller in respect to his direct question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Thank you, Delegate Hocker. I think that the preceding argument makes one fundamental assumption which everyone should keep very clearly in mind because I think it is fallacious, and that is, the only recourse for the public utility is to increase its rate. If we are correct, and I think the economics of this are correct, there is another way and that very simply is to give them a larger return on their invested capital, and that does not require a rate increase. Do not be confused by a chaotic argument that we are going to create havoc in the Commonwealth. All we are debating, and it is the old saying about keep your eye upon the

doughnut, is whether or not this exemption should be taken away from a public utility. This will not create chaos and havoc if it is done in an orderly manner, which is what these proposals say or what these proposals propose. The critical question is, there are other ways of accomplishing what we are attempting to do here and it does not necessarily presuppose a rate increase.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I would like to ask Delegate Hocker a question or two.

Delegate Hocker, is it not a fact that public utilities today pay the corporate net income tax?

DELEGATE HOCKER. No, I think they are exempt from corporate net income tax. They pay gross receipts.

DELEGATE KAUFFMAN. Delegate Hocker, I suggest that you investigate that because my information is that all public utilities pay the corporate net income tax.

DELEGATE HOCKER. I do not know whether they pay corporate net and gross receipts or not.

DELEGATE KAUFFMAN. Is it not a fact, Delegate Hocker, that all utilities pay the capital stock tax?

DELEGATE HOCKER. Yes.

DELEGATE KAUFFMAN. And is it not a fact that the only entities who pay the gross receipts tax are public utilities?

DELEGATE HOCKER. And all of them do not pay that.

DELEGATE KAUFFMAN. Well, but the only ones who do are public utilities?

DELEGATE HOCKER. Yes, you are correct, but all of them do not pay it, Delegate Kauffman.

DELEGATE KAUFFMAN. Is it not also correct, Delegate Hocker, that public utilities are assessed for the operating expenses of the Public Utility Commission?

DELEGATE HOCKER. That is correct, it is prorated.

DELEGATE KAUFFMAN. Is it not correct then that public utilities also pay real estate taxes on their nonoperating real estate?

DELEGATE HOCKER. That is correct. If they buy a farm and cut a right-of-way through it, the right-of-way is exempt and the rest of the farm is taxable.

DELEGATE KAUFFMAN. Then if my information is correct, and I am sure that you are going to check me on that, Delegate Hocker, the public utilities pay the corporate net income tax, they pay the capital stock tax, they pay the gross receipts tax, they contribute to the Public Utility Commission expenses and they pay real estate taxes on their nonoperating real estate. The only thing they do not pay directly now today is the local real estate taxes on their operating properties. However, they are the only entities in the Commonwealth that pay the gross receipts tax. Now would this not be grossly unjust to impose the tax which this proposed amendment would impose without abolishing or repealing the gross receipts tax?

DELEGATE HOCKER. That would be up to the wisdom of the legislature. If they think somebody is being abused, they could, in their wisdom, change it around anyway they wanted. In fact, the legislature has the right today to do exactly what we are trying to do right now with this amendment, but so far over a period of 100-some years, they have failed to do it.

DELEGATE KAUFFMAN. To follow Delegate Aberman's suggestion and keep our eye clearly on the ball, however, is it not a fact that, if this proposal were to become law, the public utilities in this Commonwealth would be discriminated against by paying a gross receipts tax and contribution to the Public Utility Commission expenses, which no other corporate entity in the entire Commonwealth would be called upon to pay, unless the legislature acted?

DELEGATE HOCKER. Unless the legislature acted, that would be true. I would hope that they would act, and I am not trying, Delegate Kauffman, to get any more money out of these people for state government. I am trying to get some money back in the political subdivision where they are furnishing the services for the utilities.

DELEGATE KAUFFMAN. Mr. President, I now rise to oppose this proposed amendment for many reasons, which I think the answers to the questions make obvious, but for the additional reason that I think we have to realize what we are considering here is not the proposed amendment as against nothing. We are considering the proposed amendment as against the committee proposal. One of the arguments that has been made in favor of this proposed amendment is that it will provide more income through tax dollars to the local communities in which these public utility facilities are located.

As I read this proposed amendment, that problem is very well taken care of by the language that such distribution shall be made by an equitable method having due regard for the proportion which the tax receipts of each such taxing authority bears to the tax receipts of all such taxing authorities.

In other words, there is no desire, as I understand this committee proposal, to favor public utilities. However, there is, in my opinion, the just desire to make certain that public utilities are not singled out and discriminated against.

Therefore, I urge that this proposed amendment be defeated.

Thank you, Mr. President.

DELEGATE HOCKER. Mr. President, I would like to draw to Delegate Kauffman's attention that if the present article, the committee's suggestion, stands, then the same people will be exempt who are exempt now on the gross receipts tax, which are the water companies in the Commonwealth of Pennsylvania, which have vast holdings, vast holdings of land for reservoirs and other types that go along with our utilities.

We are trying to include them all, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, will the chairman of the committee stand to be interrogated?

PRESIDENT BRODERICK. I think so. The Chair recognizes Delegate Woodring.

DELEGATE PASQUERILLA. Delegate Woodring, under your proposal, Section 1C, we have heard statements here that all public utilities are paying gross receipts taxes. Is that correct?

DELEGATE WOODRING. I do not know whether it is correct that you heard that or not, Delegate Pasquerilla.

DELEGATE PASQUERILLA. I heard a few minutes ago, somebody—

DELEGATE WOODRING. I think the statement is incorrect.

DELEGATE PASQUERILLA. The statement is incorrect. Therefore, we are to assume, if it is incorrect, that all public utilities are not paying a gross receipts tax?

DELEGATE WOODRING. That is correct, in that water companies presently do not.

DELEGATE PASQUERILLA. Are there any other gas companies or water companies combined which do not pay gross receipts tax?

DELEGATE WOODRING. This I cannot answer.

DELEGATE PASQUERILLA. Does the Philadelphia Gas pay a gross receipts tax?

DELEGATE WOODRING. Yes.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. I think I can help out a little on that. It is my understanding that the Philadelphia Gas Works, which is a municipal facility, is not subject to the tax. I think that is a fact.

DELEGATE WOODRING. Thank you for the correction. This is true for most of the Philadelphia utilities.

DELEGATE PASQUERILLA. Who operates the Philadelphia Gas Company, Mr. Amsterdam? Would you mind answering that?

DELEGATE AMSTERDAM. Yes. It is operated by a private company, the UGI, under a contract with the city of Philadelphia.

DELEGATE PASQUERILLA. Does the private company make any profit?

DELEGATE AMSTERDAM. I have not the slightest idea.

DELEGATE PASQUERILLA. I would imagine if it were a private concern, would you say that they are in the business to make a profit?

DELEGATE AMSTERDAM. All I can say is, if they are not, God help them.

DELEGATE PASQUERILLA. Thank you.

Delegate Woodring, under your proposal, those companies which do not pay gross receipts taxes, are they liable to pay other real estate taxes?

I think the whole crux of the problem that is facing us to make a decision is, is there an inequity or an unfairness in the fact that all public utilities are not paying gross receipts tax and has the committee's proposal limited the taxes to be rebated to local government to only those utilities who pay a gross receipts tax?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I think it might be appropriate at this moment to endeavor to define the position of the committee's proposal. We have heard a lot now, for about one hour and 25 minutes, about the purposes of the amendment which is proposed in counter-distinction to Proposal No. 5.

The primary purpose of Proposal No. 5 is to assist the municipalities, to obtain some money for them, not only by reason of public utility operations, but because their tax base has been shrinking for some several generations. In order to do this, Proposal No. 5, by its language, makes real estate of all public utilities taxable at the local level. As has been stated by several speakers, the collection of such a tax at the local level is not highly desirable. In fact it is highly undesirable for a number of reasons, such as the windfall situation, such as the fact that if a tax is imposed at the local level, the local municipality would receive the entire tax, whereas the people in a very much wider area or larger area, the people who are served by that utility would be paying for the tax by increased rates.

For a number of other reasons, therefore, the committee saw fit to propose in Section 1C that a fund which is already earmarked, which is already in effect, which is already collected, and the facilities for it are implemented, that we take a portion of this fund and return it to the local municipalities in order to afford some redress to the local municipalities, generally, but not specifically, by reason of the public utilities.

Leaving that for a moment, I think that maybe further answer ought to be made to the question which was raised by Delegate O'Donnell to Delegate Baldus: What is the difference between the taxing of a utility at the local level and taxing of a steel mill at the local level? Of course, the answer is very obvious although we do not have it on the record as yet, but the taxation on the steel mill is a local tax on local property by a company that operates purely locally. The tax on the public utility is a local tax by a local municipality on an installation or a very large, valuable property which does not operate locally, but it is situated, it happens by conincidence to be situated, in that particular municipality but it serves a very wide radius of our population, both geographically and per capita. Therefore, there is a big difference, and the treatment of the two properties should be considered separately.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I still would like to have an answer to my question, a very simple yes or no. Will public utilities that are not now paying gross receipts tax be paying real estate taxes the same as the other public utilities, which are to be deducted, under the proposal, from gross receipts?

DELEGATE WOODRING. The question, Mr. President, is veiled in some indefiniteness.

DELEGATE PASQUERILLA. This is the problem I am having, Mr. President.

DELEGATE WOODRING. If the question pertains, Mr. President, to the water company, the water utility, the answer is that if the General Assembly does not impose a gross receipts tax upon such public utilities, then the properties will become taxable at the local level, because Section 1C starts out: "The real property of public utilities"—and that means all public utilities—"shall be subject to real estate taxes imposed by local taxing authorities."

The only reason that some utilities would not pay the local receipts tax would be if the gross receipts tax is in lieu thereof, which is in the next following sentence.

Presently, water companies do not pay a gross receipts tax, therefore, they would immediately become taxable—when I say immediately, I mean in accordance with any schedule that is adopted in connection herewith, but they would, according to schedule, become taxable—at the local level for all their real estate, unless the General Assembly would invoke and impose a gross receipts tax on their properties.

DELEGATE PASQUERILLA. What would happen if the General Assembly would abolish the gross receipts tax?

DELEGATE WOODRING. On all utilities?

DELEGATE PASQUERILLA. Yes.

DELEGATE WOODRING. Then all the real estate of public utilities would become taxable at the local level because it is so provided in the very first sentence of section 1C: "The real property of public utilities shall be subject to real estate taxes imposed by local taxing authorities."

DELEGATE PASQUERILLA. Thank you.

PRESIDENT BRODERICK. Do you think we are about ready for the question here? As soon as we hear from the delegates who are on their feet, we are going to put the question. Let us see if we cannot expedite this.

The Chair recognizes Delegate Rovner.

DELEGATE ROVNER. Mr. President, I assure you that I shall keep this brief.

First of all, I would like to correct something that was stated here before about the Philadelphia Gas Company. In reading from the Commonwealth's general fund budget, as submitted by our Governor, it states in there that the gas company, and only the gas companies, effective the first of July, 1968, would be exempt from the gross receipts tax. When this would happen, immediately, the Philadelphia Gas Works would be subject to the local taxation of the city of Philadelphia. Therefore, I think that problem would be resolved.

I also, reading from the same manual, would like to point out that, effective July 1 of last year, your gross receipts taxes were raised from 14 to 20 mills, which, in dollars and cents, made an $18-million increase which would be approximately the same amount of money that would go back to the local governments in lieu of real estate taxes.

I am against this amendment and for the committee's proposal because I feel that the committee's proposal protects the consumer, and protects the average person here in the State of Pennsylvania.

Thank you very much.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, this question has been extensively debated and I must admit that I am still dumbfounded by the so-called "windfall" argument. As Delegate Woodring indicates, Jones & Laughlin or the plant in Fairless Hills or the Phoenix Steel Company in Phoenixville or Lukens in Coatesville pay a local tax imposed by a local municipality. But if they were utilities, they would not pay a local tax imposed by a local municipality on the theory that they serve a larger area. But does not all large industry everywhere serve a larger area? Certainly no one would suggest that the products of the Fairless Hills plant are consumed in Fairless Hills proper.

It would seem to me that there is no valid distinction whatever between a major industrial plant, whose products flow out through the length and breadth of the Commonwealth and the nation as a whole, and a utility whose services and products flow out over a larger area. The fact is, it strikes me, that the utility which comes and locates itself in my community, or in yours, enjoys the advantage of police protection, fire protection and other community services, the highway network, and the like, and brings to that community a great deal less than its brother industry. It brings less because, for some reason, the utility does not bring employment to the area as a general rule. A utility, for example, is a very, very modest employer.

I could give you some indications. We have two utility plants in Schuylkill Township which adjoins Phoenixville. One plant is an $18-million establishment that has 15 employes. We have another which has only three permanent employes. Therefore, our community does not receive the advantage of the earned income tax from those employes and does not enjoy the advantage of the occupation tax levied by the school district.

Consequently, the utility, it strikes me, uses the area's land and takes away a substantial part of the municipality's tax base without making a proportionate contribution.

Let us approach for a moment, if we may, the question of the gross receipts tax. It is true that a utility pays all the taxes that a normal corporation pays, as Delegate Kauffman has very well pointed out. It is equally true that only the utility pays a gross receipts tax, but remember something else, the utility enjoys an advantage which is unique, because only the utility has a guaranteed annual income. Only the utility is guaranteed by law to make a profit, a return on its investment. No other industry in the country enjoys a similar advantage. Every other industry rises or falls on the economic facts of life.

I suggest that the fundamental question comes down to this—and I have in mind the factors which Delegate Amsterdam mentioned. I have in mind—that a removal of the local tax exemption will almost unquestionably result in a rate increase, a factor which industry must consider when it contemplates locating in Pennsylvania. But is it not also a fact that if the present gross receipts tax is now turned over to the local municipalities in the form of payments in lieu of local taxation, that our legislature is going to have to do one of two things, either increase the gross receipts tax to replace that state revenue or it is going to have to find some other taxation source to replace that tax revenue and that inexorably will fall on the people of Pennsylvania, taken as a whole. In other words, the very same people who would pay the rate increase, therefore, the same factor that an industry desirous of locating in Pennsylvania would have to consider.

In conclusion, sir, I would say this: I am going to vote against this amendment despite the fact that I agree with the philosophy that utilities should be taxed. I have in here, myself, an amendment simply eliminating the tax on utilities.

I would ask this body to vote in favor of that, so that the municipality which has the utility within its borders will receive a fair, equal and just compensation by normal, economic laws as contrasted with the complicated, gymnastic formulas that are involved in both the committee proposal and in the amendment now on the floor.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I was disappointed to hear Delegate O'Donnell's punch line because all the statements which he made, I think, are good reasons to vote for this amendment.

I speak on behalf of it as a cosponsor of it. I would like to make three brief points which I think need emphasis

and have not been brought out here very much this morning.

One, and it is a point which Delegate O'Donnell just began to touch on, is that the historical basis of the gross receipts tax, as I understand it, is that it is a tax on the right to have a monopoly. Delegate O'Donnell talked about this in terms of the right to a guaranteed income. It is the tax on the right to have, own, operate and derive profits from a monopoly. Therefore, it stands on a different basis than the real estate tax or other taxes which have been discussed here this morning.

Secondly, as Delegate O'Donnell also touched briefly upon, the committee's proposal would deprive the Commonwealth general fund of substantial tax revenues. These tax revenues would have to be made up from other sources, whether it was an increase in the gross receipts tax or otherwise. The taxpayers of Pennsylvania would have to bear the burden ultimately to make up this deficit.

Thirdly, I would like to speak personally as a shareholder in some of these utilities that, in my mind, many of these utilities in Pennsylvania have been deriving a profit, which, in view of their special tax benefits, I think is unconscionable. I find it unconscionable as a shareholder; I find it unconscionable as a citizen of Pennsylvania; and I urge the support of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Thank you, Mr. President. I rise in support of the amendment. Mr. President, I think the people feel very strongly that the public utilities should pay more taxes. We are dealing with investors who own protected monopolies and the government guarantees them a profit. To compare them with other businesses and industries is wrong. They have no risk of loss; they have an absolute guarantee of profit.

I think that the paper that was handed out expressed the feelings of the people—the Milton Shapp paper—when it said, "It is time for Pennsylvania's sacred cow to give some more milk."

PRESIDENT BRODERICK. Delegate Powell, do you wish to be heard?

DELEGATE POWELL. Yes.

PRESIDENT BRODERICK. We are going to put the question just as soon as we hear from Delegate Powell, Delegate Levin, Delegate Leonard and Delegate Woodring. We will give Delegate Hocker a closing statement, although he has had about a dozen of them.

DELEGATE HOCKER. You never get too much.

DELEGATE POWELL. I will wait to hear from Delegate Hocker. I will sit down.

PRESIDENT BRODERICK. Thank you. We recognize Delegate Levin who has been standing for a short statement.

DELEGATE LEVIN. Mr. President and delegates, I submit that the entire paragraph from the word "unless" to the end is unconstitutional since it violates the uniformity clause in Article VIII. I would like an opinion from counsel.

I make this statement under one assumption, that all assessed value property to the real value ratio is different in every county within our Commonwealth and, therefore, any tax imposed by the State would have a variation as to the dollar return in any instance of its application. Delaware County has, I believe, 22.2 per cent of real value as the assessed value; Chester County differs and so do other counties. Therefore, this particular formula is inapplicable and unconstitutional, in my opinion.

PRESIDENT BRODERICK. Delegate Levin, I would appreciate it if you would talk to counsel. They are right here at the table and they will discuss it with you and give an opinion.

The Chair recognizes Delegate Leonard, who, I understand, wants to make a summary for the committee.

DELEGATE LEONARD. I do not want to make the summary for the committee, I will just speak as one of the co-chairmen, just to put this back into focus as to what the committee was trying to do.

Number one, the committee was not trying to levy a tax. We felt very definitely that the power to levy taxes rests with the General Assembly and that to do otherwise would be an infringement on their powers and way beyond the thought of what should be done constitutionally.

Number two, the thinking of the committee was that the local governments require revenue to take the place of that revenue which they are not getting from certain real property. Local governments have one tax base and that is a real estate tax base. This has been eroded over the years for good reasons as was discussed yesterday. What the committee was trying to do in proposing its amendment was to return to local government something that it should have had. The committee was not trying to penalize the utilities; they were trying to return to the local government that tax which the Commonwealth over the years has collected from utilities and only from utilities.

I, therefore, would hope that we would defeat the amendment that is on the floor.

PRESIDENT BRODERICK. I am going to violate my own rule and recognize Delegate Hook because he had been up there several times.

DELEGATE HOOK. Mr. President, thank you. I would like to interrogate Judge Woodring on one question.

Judge Woodring, there is a question in my mind and it has not been explained thoroughly enough for me to understand it. I talked to you earlier about your first sentence, "Real property of public utilities shall be subject to real estate taxes." I understand this to include all utilities. Is this correct?

DELEGATE WOODRING. That is correct. The statement of real property of public utilities without qualification means that there is no qualification; therefore it applies to all.

DELEGATE HOOK. This would take care of private water companies, the Philadelphia Gas Company, and any other municipally owned authority or company that operates?

DELEGATE WOODRING. It would apply to all types of public utilities.

DELEGATE HOOK. Then at the same time in your next sentence where it starts off, "Gross receipts or any other special taxes," this would mean that a company that does not pay gross receipts tax, the General Assembly would have to levy another type of tax against these particular companies.

DELEGATE WOODRING. Mr. President, it could operate that way. The reason that the committee put in its

own amendment "or any other special" was in the event that 20 years from now, some period of time in the indefinite future, the General Assembly, of course, could abolish the gross receipts tax and adopt some other special type of tax. In that contingency we wanted it covered so that even whether there was a gross receipts tax or not, this provision would continue to apply, and we, therefore, included the words "or any other special," meaning gross receipts or any other special types of taxes.

DELEGATE HOOK. From this explanation now, I am of the opinion that the legislature would have the authority to go ahead and levy a real estate tax against any type of authority, water company and so forth that is not presently covered by the gross receipts tax.

DELEGATE WOODRING. Let us be more specific. Let us talk about the water companies which presently are not subject to gross receipts tax. As I said previously, Mr. President, if they are not subject to gross receipts tax, they are by this proposal subject to local real estate tax. Therefore, the legislature would have the alternative to impose or see to it that a local real estate tax was imposed or to adopt a gross receipts tax as to those companies.

DELEGATE HOOK. As to those particular companies? Is that correct?

DELEGATE WOODRING. Yes.

DELEGATE HOOK. Then we are doing something by a constitutional amendment that the legislature has failed to do in the past. Is that correct?

DELEGATE WOODRING. That is correct.

PRESIDENT BRODERICK. I want to ask if Delegate Woodring has any other comments before we have Delegate Hocker sum up?

DELEGATE WOODRING. Mr. President, I would like to make a brief statement on a subject that has not been covered. I think it is appropriate and I think it should be said, and that is, that traditionally the public utilities, which serve all the people of the Commonwealth and the Commonwealth itself, are, in effect, partners. For this partnership the Commonwealth receives a gross receipts tax which is not imposed on any other type of corporation, and a very substantial one, $37 million, almost $40 million. The public utilities, on the other hand, the other side of the partnership, for its service, for its payment through its partner, receives a guaranteed right of reasonable profit on the invested capital, namely, about six percent. This is policed by what I have reason to believe, from personal experience and observation, to be a very competent Public Utility Commission, which is the watchdog over all the public utilities.

If one deals honorably one does not try to cheat one's partner. A partnership prospers if both partners cooperate and cooperate fairly and honestly. This has been the situation in the Commonwealth of Pennsylvania for these many scores of years.

There always arises a false prophet who tells the people that we will impose large taxation upon the real estate of public utilities, but we will not increase the rate. I say this is poppycock. It was endeavored to be answered this morning in a statement that there would be larger returns on invested capital. This might be correct, but it will take a keener brain and a younger mind than I have before I can realize it.

I envision the resources of the public utility as a glass of water and if the glass is filled to the brim, if there is another penny of expense imposed upon the operation of the public utilities, that drop of extra expense is going to run over into increased rates for the consumer. This is as true as though you continue to put additional drops into an already filled glass of water. It is bound to spill over.

Any increase to the tune of $17 million, $19 million, or $20 million of real estate on the public utility is going to mean that the public, the consumer, the citizens of the Commonwealth, are going to pay that additional amount in increased rates.

We had before our committee one whom I would call an independent economic expert and the one word of advice that I heard him give the members of the committee, in addition to supplying them with all the facts and figures and statistics which they sought, was, do not penalize, do not endeavor to punish. It is not the purpose of the Constitution of the great Commonwealth of Pennsylvania to punish anyone, certainly not a public utility which is one of the partners of the Commonwealth.

I say to you, delegates to this Convention, that this proposed amendment is an effort to penalize and to punish the utilities which have been faithfully serving us and constantly reducing our rates.

I say with all the sincerity at my command, we should vote this amendment down.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I would just like to answer the judge first. If we are all partners, some of us are getting cheated a little.

Mr. President, may I submit my attorney? I think Delegate Baldus can sum up what he wants to say in a minute and a half or two minutes and then I shall conclude. He is my lawyer, you know, and I think he is entitled to be heard.

PRESIDENT BRODERICK. You may proceed.

DELEGATE BALDUS. Mr. President, I shall be brief. I would like to respond to only two points. On the question of penalizing the utilities, I think this is an improper statement of what this amendment proposes to do. It has been suggested that it would be unfair to charge a gross receipts tax and a local real estate tax on the property of utilities. There are 24 other States in this nation which do just that; they charge a gross receipts tax and a local real estate tax on the property of utilities.

The discrimination in the past has been in favor of the utilities. This amendment will bring Pennsylvania in line with other States in our Nation.

The second point is, people are concerned that if a tax is imposed on utilities, this may be passed on to the consumers. There is no question it may be passed on, but the important thing is that we, through careful research in our committee, made a determination of how much it would cost the consumers in their utility bills if this tax were passed on. Our analysis shows that telephone rates would increase .6 of 1 per cent; it would increase electric utility bills 1.1 per cent; and the gas bills, if all of this tax were passed on, would increase by .2 of 1 per cent.

I submit that the amount of tax is a drop in the bucket. The amount that it would affect the consumers' bills is very slight, and I urge the adoption of this amendment because I believe it places the burden of paying this money where it belongs and that it provides for more equitable distribution of these funds.

I thank you, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hocker for a quick summary.

DELEGATE HOCKER. I shall be very quick, Mr. President. This all boils down to a very simple thing to me. It boils down to these two points: Do you want the public utilities to pay a tax or do you want to raid the general fund to the tune of $17 million? I was a legislator and I know how difficult $17 million is to come by. This is the only problem involved here.

I understand, and I was just told and was amazed to find out, that under the old utility law—and if anyone can dispute this, I wish he would rise in his place—in the city of Pittsburgh and in the city of Philadelphia, under the old law, the railroad company does pay taxes, or in lieu of taxes, on their buildings in Pittsburgh and Philadelphia. Now I never knew this, and if anyone can dispute this, I wish he would. It was given to me by a very able person.

Mr. President, the other argument is that everybody is crying for the public utilities and how bad they are going to be hurt. Well, I want to tell you something. You give me a monoply like they have in the Commonwealth of Pennsylvania, give me a territory that nobody can transgress on my business and it is not a competitive business, and I shall shout "Hallelujah" and I shall not cry.

Thank you, Mr. President.

PRESIDENT BRODERICK. The question recurs,

Will the Convention agree to the amendment presented by Delegate Hocker?

The roll was recorded as follows:

YEAS—49

Aberman	Feather	McGlynn	Rappaport
Baldus	Filson	Michael	Redick
Baldwin	Fineman	Michener	Reynolds
Banes	Henderson	Morton	Scales
Barry	Himes	Murray	Scott
Camardella	Hocker	O'Donnell	Shettig
Caputo	Huggins	Orbin	Shrager
Casey	Irvis	Pasquerilla	Silverman
Conley	King	Percey	Solomon
Cosetti	Kline	Popil	Stout
Donaldson	Mangery	Powell	Swope
Fagan	Mattioni	Quiles	Tate
Fay			

NAYS—101

Allison	Desmond	Kelly	Rovner
Amsterdam	Devlin	Krill	Sahli
Anrentz	Dumbauld	Laputka	Scarlett
Bagenstose	Erwin	Leach	Sebastian
Baldrige	Fawcett	Lee, K.	Shapiro
Barron	Fleming	Lee, L.	Sharp
Benedict	Fohl	Leinbach	Shively
Benfield	Forster	Leonard	Shoemaker
Bloom	Fortney	Levin	Sprogell
Braham	Gehrlein	Markley	Strickler
Brennan	Gerber	McGeary	Stroup
Broderick	Goldman	Meyer	Thomson
Brown	Goldstein	Miller, D.	Thornburgh
Buck	Gouger	Miller, R.	Tomascik
Bunting	Griffith	Moorhead	Tully
Burkholder	Hannum	More	Van Sant
Butera	Harding	Nelson	Waldron
Cain	Hatter	Orban	Warman
Caron	Heyburn	Otto	Welsh
Clark	Hook	Pelletier	Westerberg
Clinger	Jirolanio	Pott	Whittum
Corey	Johnson	Prendergast	Wilcox
Croop	Kauffman	Rea	Wilmarth
Cunningham	Keller, J.	Richter	Woodring
Curran	Keller, M.	Roberts	Woodside
Dailey			

NOT VOTING—13

Bashoff	Gray	Lane	Pechan
Cortese	Horne	Manderino	Ruth
Donolow	Hostetler	Musselman	Scranton
Gabreski			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

COSETTI AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. I read in place and present the following amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE COSETTI offered the following amendments which were read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, lines 19 to 21, by striking out "having due regard for the" in line 19, all of line 20, and "bears to the tax receipts of all such taxing authorities." in line 21, and inserting: based solely on (1) the percentage of tax exempt public utility real property in the Commonwealth which is located in each local taxing authority and (2) the percentage of the population of the Commonwealth in each local taxing authority.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. Mr. President, I shall be extremely brief. This is the second half of the amendment which I think just failed. It allocates the amount on two bases: on the basis of the tax-exempt public utility property in that community and, two, on the population of that community. The committee's proposal bases the allocation on the taxes already collected by that community. I wish to say nothing further; it has all been said. I think I am ready for a vote, unless the committee wishes to make a statement.

PRESIDENT BRODERICK. We are ready for the vote, unless the committee wants to make a statement.

DELEGATE WOODRING. Mr. President, I have no strong feelings one way or the other on this. It seems to me that in the committee proposal such distribution shall be by an equitable method, having due regard for the proportion which the tax receipts of each taxing authority bears to the total tax receipt. It seems to me that the committee proposal is more desirable because it gives the General Assembly the opportunity to consider all the factors. This proposal adds one factor, id est, population, but there might be many other factors and by expressing one perhaps you exclude the others. Therefore, I would suggest that, in my own opinion, the committee proposal is desirable.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Cosetti?

The roll was recorded as follows:

YEAS—46

Aberman	Fay	Michener	Redick

Baldus	Filson	Morton	Roberts
Baldwin	Gehrlein	Murray	Scalce
Banes	Hocker	Orbin	Shettig
Barry	Hook	Otto	Shrager
Camardella	Huggins	Pasquerilla	Silverman
Caputo	Kelly	Percey	Solomon
Casey	Kline	Popil	Sprogell
Clinger	Mangery	Powell	Stout
Conley	Mattioni	Quiles	Tate
Cosetti	McGlynn	Rappaport	Thornburgh
Dumbauld	Michael		

NAYS—97

Allison	Devlin	Krill	Sahli
Amsterdam	Donaldson	Laputka	Scarlett
Aurentz	Erwin	Leach	Scott
Bagenstose	Fagan	Lee, K.	Sebastian
Baldrige	Fawcett	Lee, L.	Shapiro
Barron	Feather	Leinbach	Sharp
Benedict	Fleming	Leonard	Shively
Benfield	Fohl	Levin	Showmaker
Bloom	Forster	Markley	Strickler
Braham	Fortney	McGeary	Stroup
Brennan	Gerber	Meyer	Swope
Broderick	Goldman	Miller, D.	Thomson
Brown	Goldstein	Miller, R.	Tomascik
Buck	Gouger	Moorhead	Tully
Bunting	Griffith	More	Van Sant
Burkholder	Hannum	Nelson	Waldron
Cain	Harding	Orban	Warman
Caron	Henderson	Pelletier	Welsh
Clark	Heyburn	Pott	Westerberg
Corey	Jirolanio	Prendergast	Whittum
Croop	Johnson	Rea	Wilcox
Cunningham	Kauffman	Reynolds	Wilmarth
Curran	Keller, J.	Richter	Woodring
Dailey	Keller, M.	Rovner	Woodside
Desmond			

NOT VOTING—20

Bashoff	Gabreski	Hostetler	Musselman
Butera	Gray	Irvis	O'Donnell
Cortese	Hatter	King	Pechan
Donolow	Himes	Lane	Ruth
Fineman	Horne	Manderino	Scranton

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

CAMARDELLA AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, I read in place and present the following amendment:

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE CAMARDELLA offered the following amendments which were read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, line 24, by inserting after "taxation.": That real property of public utilities which is not used or useful in furnishing their public utility services shall remain subject to local taxation.

Amend Sec. 2 (Sec. 1C), page 4, lines 25 to 27, by striking out all of said lines

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, this amendment denotes no difference and means nothing different than that which Delegate Hocker and Delegate Cosetti said, but by the mood of this Convention and the delegates, I call for an immediate vote.

PRESIDENT BRODERICK. The Chair recognizes Delegate Burkholder.

DELEGATE BURKHOLDER. Mr. President, I understood that yesterday you ruled that the provisions in the last paragraph on page 4 were there by reason of the adoption of an amendment and that, therefore, any change in those lines would have to be made on a motion to reconsider.

PRESIDENT BRODERICK. You are absolutely right. Let us check this.

Delegate Burkholder, the parliamentarian rules that you are correct. This is the same language that we put in by virtue of an amendment and I want to rule as to the Camardella amendment which has been distributed. This would have to be in the form of a motion to reconsider the vote by which that language was adopted in the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. Mr. President, as I understand it, the original changes to this were committee recommendations to the wording. If my recollection is correct, yesterday an amendment was brought in by Delegate Leonard on the audit control, which was a subsequent amendment to wording amendments recommended by the committee. It is also my understanding that that amendment was accepted and was tabled. I would say that perhaps this would fall in the same category. I may be wrong, but I would like the parliamentarian to reconsider his judgment.

PRESIDENT BRODERICK. In connection with this language here, it was offered by the committee, but it was offered as an amendment and this Convention adopted this particular language here.

DELEGATE POWELL. My point is that the committee recommendations were simply wording changes, if my recollection is correct, and that subsequently we accepted the same type of amendment yesterday after wording changes to the audit proposal.

PRESIDENT BRODERICK. The parliamentarian said that that is not his understanding of it, and as far as this is concerned—and I would like to stick to this Camardella amendment here—this will have to be on the basis of a motion to reconsider because this language was adopted. This is the same language that was offered yesterday by Delegate Shapiro.

DELEGATE POWELL. Does that mean that when we take off the table the amendment to the audit proposal that we will have to have a reconsideration on that also?

PRESIDENT BRODERICK. When we come to that we will rule on it. We want to stick to this one right now, if we may, Delegate Powell.

DELEGATE POWELL. I bow to the parliamentarian.

MOTION TO RECONSIDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, I move then to have this amendment reconsidered and put back into its original language as it was, and I call for a vote, if necessary.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I do not want to speak on Delegate Camardella's proposal one way or the other, but I think as a matter of clarification, the committee came out with a proposal; several days later it intended to correct its proposal. The group here voted unanimously to accept it as a correction to the committee proposal, and it was not unanimously voted upon as an amendment. In all consideration, I think it should be ruled in that fashion, because it would appear to me then that every committee could come here with that understanding and insert corrections in their committee proposals and reconsider them as amendments and they would pass unanimously. I believe we voted unanimously to insert and make these changes as a part of a committee change, not as an amendment to the original proposal.

PRESIDENT BRODERICK. Delegate Pasquerilla, it is the recollection of the parliamentarian and the ruling of the parliamentarian the committee submitted amendments. The committee referred to them as correctional amendments and this body adopted them as amendments to the committee proposal. We will now recognize the motion of Delegate Camardella to reconsider the vote by which this amendment was adopted, in particular, the language which is set forth in this amendment.

Delegate Camardella, do you have a second to your motion?

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I would like to raise a point of order, if I may. I would like to reflect and support the point made by Chairman Pasquerilla. I was one of those voting in favor of the correctional amendment brought out to us by the committee. I did so, I must confess, without really considering the merits of it, but as a matter of courtesy to the committee. It had done its homework and felt that there were some technical changes that had to be made. I would, therefore, unless the Chair is prepared to change its ruling, believe that the Convention should have an opportunity to vote on this as to whether the recollection of the parliamentarian is correct.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, in an effort to avoid parliamentary entanglements, might I call on Delegate Gerber to explain the reason why lines 25 to 27 have been inserted? I think that the Convention might be satisfied with the reason why this was put in and it might obviate further argument and entanglement.

PRESIDENT BRODERICK. I have no objection if they want an explanation. I just want to know that right now we have a motion on the floor. It is the motion of Delegate Camardella, which has been seconded by Delegate Shoemaker, and you may now speak, Delegate Gerber.

DELEGATE CAMARDELLA. Mr. President, a point of order. We have a motion on the floor, and it is my opinion that we act on that motion now.

DELEGATE GERBER. Mr. President, I yield.

PRESIDENT BRODERICK. Would you restate? I could not hear. They were both talking, Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, there is a motion on the floor that has been duly seconded. I call for a vote at this time without any explanation from anyone. I think I am in order. I insist on it.

PRESIDENT BRODERICK. You have the motion; it is on the floor. It has been made and seconded and that motion is debatable. Now anybody that wants to be heard can be heard.

Does any one want to be heard on the motion to reconsider?

The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, I am in deep sympathy with Delegate Camardella's predicament. I think the Chair has made an unfortunate ruling. I think the ruling may be somewhat of a proscript to the committees in the future from making house-cleaning amendments to their proposals. I am not in favor of the substance of Delegate Camardella's amendment, but I do think that he should have a chance to introduce the same and should not be prohibited because the Convention a few days ago was in sympathy with the committee, and, therefore, I would vote in favor of the motion to reconsider.

PRESIDENT BRODERICK. I just want Delegate Curran to know that this is the procedure: a motion to reconsider is in essence adopting or not adopting the amendment.

Now does Delegate Bagenstose wish to be heard?

DELEGATE BAGENSTOSE. Mr. President, I would just like to hear Delegate Gerber speak. He yielded and I think what he has to say might be important to all of us.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, I rise to speak on behalf of Delegate Camardella's position here, which is this: When we originally came before the Convention, we came here with certain correctional amendments which we wanted to discuss in substance subsequently thereto. Therefore, I think it is only fair to Delegate Camardella or to anyone else, for that matter, who has substantive amendments to present to direct themselves to the corrections that we as a committee made. I think we would benefit the Convention and expedite the situation if we were able to proceed to the substance of the issue.

PRESIDENT BRODERICK. Does anyone else wish to be heard? The question is on the motion to reconsider the vote by which this Convention adopted the amendment as set forth here in the language of the amendment offered by Delegate Camardella.

On the question,

Will the Convention agree to the motion to reconsider?

The roll was recorded as follows:

YEAS—108

Aberman	Donaldson	Kline	Redick
Amsterdam	Erwin	Leinbach	Richter
Baldrige	Fagan	Levin	Roberts
Baldus	Fay	Manderino	Rovner
Baldwin	Feather	Mangery	Sahli
Banes	Filson	Markley	Scales

Barron	Fineman	Mattioni	Scarlett
Barry	Fleming	McGeary	Scott
Brennan	Fohl	McGlynn	Shapiro
Brown	Forster	Meyer	Sharp
Buck	Fortney	Michael	Shettig
Bunting	Gehrlein	Michener	Shoemaker
Burkholder	Gerber	Moorhead	Shrager
Cain	Goldman	More	Silverman
Camardella	Gouger	Murray	Solomon
Caputo	Hannum	O'Donnell	Sprogell
Caron	Harding	Orbin	Stout
Casey	Himes	Otto	Swope
Conley	Hocker	Pasquerilla	Tate
Corey	Hook	Pelletier	Tomascik
Cortese	Huggins	Percey	Tully
Cosetti	Irvis	Popil	Waldron
Cunningham	Jirolanio	Powell	Welsh
Curran	Johnson	Prendergast	Whittum
Dailey	Keller, J.	Quiles	Wilcox
Desmond	Keller, M.	Rappaport	Wilmarth
Devlin	Kelly	Rea	Woodring

NAYS—36

Allison	Croop	Lee, K.	Sebastian
Aurentz	Dumbauld	Lee, L.	Shively
Bagenstose	Fawcett	Miller, D.	Strickler
Benedict	Goldstein	Miller, R.	Stroup
Benfield	Griffith	Morton	Thomson
Bloom	Heyburn	Nelson	Thornburgh
Braham	Krill	Orban	Van Sant
Broderick	Laputka	Pott	Warman
Clark	Leach	Reynolds	Westerberg

NOT VOTING—19

Bashoff	Gray	Kauffman	Musselman
Butera	Hatter	King	Ruth
Clinger	Henderson	Lane	Scranton
Donolow	Horne	Leonard	Woodside
Gabreski	Hostetler	Pechan	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. The motion to reconsider is carried.

The question is on the Camardella amendment. Are we ready for the question, or does someone wish to be heard?

The Chair recognizes Delegate Gerber.

DELEGATE GERBER. On behalf of the committee, I would like to point out a few basic facts and the reason why we presented the correctional amendment.

The words as they appear on lines 21 through 24, which are the very words of the Camardella amendment, would have precluded the cities of Philadelphia and Pittsburgh from being able to continue to tax certain real estate owned and operated by public utilities. This was brought to our attention; we studied the language and the law, and as a result thereof, we amended to come out with the language that one sees between lines 25 and 27.

This language, therefore, includes not only the language of lines 21 through 24, but also continues the status quo in the cities of Philadelphia and Pittsburgh where there are certain special tax provisions that are permitted by the cities to tax certain properties owned and operated by public utilities.

What we are attempting to do in lines 25 and 27 is to maintain, consistent with the present tax structure, and not delete anything. If we accept the Camardella amendment, we shall be deleting certain properties from the tax rolls of Philadelphia and Pittsburgh. This is not the intent of the subcommittee and of the standing committee.

Therefore, on behalf of the subcommittee and the standing committee, I urge the defeat substantively of the Camardella amendment.

PRESIDENT BRODERICK. Does anyone else wish to be heard before we vote?

DELEGATE CAMARDELLA. Enough has been said on the subject, Mr. President.

PRESIDENT BRODERICK. The question is,

Will the Convention adopt the amendment offered by Delegate Camardella?

The roll was recorded as follows:

YEAS—18

Barry	Fay	Orbin	Shapiro
Buck	Gouger	Rappaport	Shoemaker
Burkholder	Hocker	Scarlett	Solomon
Bunting	Huggins	Scott	Warman
Camardella	Mangery		

NAYS—120

Aberman	Devlin	Leach	Rea
Allison	Donaldson	Lee, K.	Redick
Amsterdam	Dumbauld	Lee, L.	Reynolds
Aurentz	Erwin	Leinbach	Richter
Bagenstose	Fagan	Leonard	Roberts
Baldrige	Fawcett	Levin	Sahli
Baldwin	Feather	Markley	Scales
Banes	Filson	Mattioni	Sebastian
Benedict	Fineman	McGeary	Sharp
Benfield	Fohl	McGlynn	Shettig
Bloom	Forster	Michael	Shively
Braham	Fortney	Michener	Shrager
Brennan	Gerber	Miller, D.	Silverman
Broderick	Goldman	Miller, R.	Sprogell
Brown	Goldstein	Moorhead	Stout
Butera	Griffith	More	Strickler
Cain	Hannum	Morton	Stroup
Caputo	Harding	Murray	Swope
Caron	Heyburn	Nelson	Thornburgh
Casey	Himes	Orban	Tomascik
Clark	Hook	O'Donnell	Tully
Conley	Irvis	Otto	Van Sant
Corey	Jirolanio	Pasquerilla	Waldron
Cortese	Johnson	Pelletier	Welsh
Cosetti	Keller, M.	Percey	Westerberg
Croop	Kelly	Popil	Whittum
Cunningham	King	Pott	Wilcox
Curran	Kline	Powell	Wilmarth
Dailey	Krill	Prendergast	Woodring
Desmond	Laputka	Quiles	Woodside

NOT VOTING—25

Baldus	Gehrlein	Kauffman	Pechan
Barron	Gray	Keller, J.	Rovner
Bashoff	Hatter	Lane	Ruth
Clinger	Henderson	Manderino	Scranton
Donolow	Horne	Meyer	Tate
Fleming	Hostetler	Musselman	Thomson
Gabreski			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

LEINBACH AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. We shall now take up the Leinbach amendment. I am asking the clerk to get a copy of the Leinbach amendment and I am asking the pages please to see that the Leinbach amendment is distributed to everyone.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE LEINBACH offered an amendment which was read by the clerk as follows:

Amend Sec. 2 (Sec. 1C), page 4, line 10, by striking out "Gross receipts OR ANY OTHER SPECIAL taxes" and inserting: The gross receipts tax

Amend Sec. 2 (Sec. 1C), page 4, line 18, by striking out "in the preceding year." and inserting a period

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Leinbach in connection with his amendment.

DELEGATE LEINBACH. Mr. President, I think the amendment speaks for itself. I call your attention mainly to the second portion "in the preceding year." Figures for use in the current year cannot be gotten in time from the preceding year. I think we should make that correction.

PRESIDENT BRODERICK. Does the chairman of the committee wish to make a statement? Are we ready for the question? The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. I would request that we take this amendment in two pieces. I think they are severable and I think it would be a fairer reflection of our consideration if we did so. The first part is a rather dramatic change; the second part, I think, is not so dramatic and perhaps would give more latitude. I think they should be considered separately. I would, therefore, request the Chair to divide these two pieces.

PRESIDENT BRODERICK. It is going to be up to the proposer of the amendment, Delegate Leinbach, whether he wishes the amendment to be considered as two amendments or as one amendment, in view of the suggestion.

DELEGATE LEINBACH. Mr. President, it is all right with me to consider it as two.

PRESIDENT BRODERICK. We shall, therefore, consider the Leinbach amendment as having been broken down into two amendments, the first part of which shall end with "the gross receipts tax," and the second amendment will start with Section 2 on page 4.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, the first amendment would strike out the words "gross receipts or any other special taxes."

The committee has purposely inserted those words and, therefore, we must be against this portion of the amendment.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster. For what purpose does the gentleman rise?

DELEGATE FORSTER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE FORSTER. Is the Chair ruling that the motion to reconsider which passed with respect to Delegate Camardella's amendment also applies here, because this was similarly amended in the housekeeping amendments proposed by the committee?

PRESIDENT BRODERICK. The parliamentarian has ruled that there are other words that are included here, and these make a different type of amendment and present a different question.

The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, I would like to ask Chairman Woodring what he means or what the committee meant by the words "or any other special taxes?"

DELEGATE WOODRING. Mr. President, we endeavored to state our position on this last Friday morning during the interrogation and again this morning. So long as the legislature continues to impose a gross receipts tax, we would not need any other words, but we cannot contemplate or we cannot envision in this Convention today what is going to happen in the future.

Therefore, we added "or any other special tax" as a catchall in case the gross receipts tax would come to be known by some other name or might be repealed or some other tax substituted, and so forth. We thought it was desirable to put something there to protect the municipalities against some legislative change which we are not now able to contemplate.

DELEGATE GOLDMAN. You do not anticipate that, by court interpretation, meaning corporate net income taxes, corporate franchise taxes?

DELEGATE WOODRING. No, it is the intent of the committee that those are regular taxes and no special taxes.

DELEGATE GOLDMAN. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I would like to ask the judge a question. I am not an attorney and I have a little difficulty here.

If you take out "any other" or "any other special tax," Judge Woodring, and the legislature, in its wisdom, would cease to call this a gross receipts tax and would call it by some other name, then, in your opinion, would that give the local political subdivision the right to tax?

DELEGATE WOODRING. Yes, because the first sentence of 1C makes the real estate taxable: "In lieu of." The gross receipts tax or any other special tax may be distributed in lieu of the collection of those local taxes.

DELEGATE HOCKER. If they erased the name "gross receipts," if this amendment goes in, then it falls back to the political subdivision, in your opinion? It gives them the right?

DELEGATE WOODRING. If we strike out "or any other special," yes, and then it reads only "gross receipts," and if the legislature would abolish the gross receipts, then the real estate of utilities would become immediately taxable.

DELEGATE HOCKER. Suppose they do not strike out "gross receipts" and use some other name, then it would also become applicable, right?

DELEGATE WOODRING. It would become immediately taxable.

DELEGATE HOCKER. Thank you.

PRESIDENT BRODERICK. The question recurs,

Will the Convention agree to the first part of the Leinbach amendment which ends with the term "The gross receipts tax?"

The roll was recorded as follows:

YEAS—4

Cunningham	Barron	Bunting	Leinbach

NAYS—129

Allison	Erwin	Leonard	Richter
Amsterdam	Fawcett	Levin	Roberts
Aurentz	Feather	Mangery	Sahli
Bagenstose	Filson	Markley	Scales
Baldrige	Fineman	Mattioni	Scarlett
Baldwin	Fleming	McGeary	Scott
Banes	Fohl	McGlynn	Sebastian
Benedict	Forster	Michael	Shapiro
Benfield	Fortney	Michener	Sharp
Bloom	Gehrlein	Miller, D.	Shettig
Braham	Gerber	Miller, R.	Shively
Brennan	Goldman	Moorhead	Shoemaker
Broderick	Goldstein	More	Shrager
Brown	Griffith	Morton	Silverman
Buck	Hannum	Murray	Solomon
Burkholder	Henderson	Nelson	Sprogell
Butera	Harding	O'Donnell	Stout
Cain	Heyburn	Orban	Strickler
Camardella	Himes	Orbin	Stroup
Caputo	Hook	Otto	Swope
Caron	Huggins	Pasquerilla	Tomascik
Casey	Irvis	Pelletier	Tully
Clark	Jirolanio	Percey	Van Sant
Conley	Johnson	Popil	Waldron
Corey	Kauffman	Pott	Warman
Cortese	Keller, J.	Powell	Welsh
Cosetti	Kelly	Prendergast	Westerberg
Curran	Krill	Quiles	Whittum
Dalley	Laputka	Rappaport	Wilcox
Desmond	Leach	Rea	Wilmarth
Devlin	Lee, K.	Redick	Woodring
Donaldson	Lee, L.	Reynolds	Woodside
Dumbauld			

NOT VOTING—30

Aberman	Fay	Keller, M.	Pechan
Baldus	Gabreski	King	Rovner
Barry	Gouger	Kline	Ruth
Bashoff	Gray	Lane	Scranton
Clinger	Hatter	Manderino	Tate
Croop	Hocker	Meyer	Thomson
Donolow	Horne	Musselman	Thornburgh
Fagan	Hostetler		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PART TWO OF LEINBACH AMENDMENT

PRESIDENT BRODERICK. I am going to ask the clerk to read the second part of the Leinbach amendment.

The CLERK. Amend Section 2 (Sec 1C), page 4, line 18, by striking out "in the preceding year" and inserting a period.

On the question,

Will the Convention agree to the second part of the Leinbach amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. Speaker, on behalf of myself, I have no objection to this. I think it is legislative, and, therefore, the legislature should not be bound.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. This is part of what was in my amendment that I presented and then withdrew yesterday. The point is, as the proposal of the committee now stands, you are calling upon the legislature to distribute a fund, the composition of which would require information and computations from all of the various local taxing authorities throughout the Commonwealth to compute the amount of tax or the amount that would be assessed as taxes and would, therefore, be distributed.

That computation and that information, I submit, may not be available that quickly. This was my reason for including the deletion of this phase in my proposed amendment.

I would like to suggest that you give the legislature a little more leeway by adopting this amendment. I, therefore, propose that we adopt it.

On the question recurring,

Will the Convention agree to the second part of the Leinbach amendment?

The roll was recorded as follows:

YEAS—121

Aberman	Dalley	Laputka	Roberts
Allison	Desmond	Leach	Sahli
Amsterdam	Devlin	Lee, K.	Scales
Bagenstose	Donaldson	Lee, L.	Scarlett
Baldrige	Dumbauld	Leinbach	Scott
Baldwin	Erwin	Leonard	Sebastian
Banes	Fawcett	Levin	Shapiro
Barron	Feather	Manderino	Sharp
Barry	Filson	Mangery	Shettig
Benfield	Fineman	Mattioni	Shively
Bloom	Fleming	McGeary	Shoemaker
Braham	Forster	McGlynn	Shrager
Brennan	Fortney	Michael	Silverman
Brown	Gehrlein	Michener	Solomon
Buck	Gerber	Moorhead	Sprogell
Bunting	Goldman	Murray	Stout
Burkholder	Goldstein	O'Donnell	Strickler
Butera	Gouger	Orban	Stroup
Cain	Hannum	Otto	Swope
Camardella	Harding	Pelletier	Thomson
Caputo	Heyburn	Percey	Tomascik
Caron	Himes	Popil	Tully
Casey	Hocker	Pott	Van Sant
Clark	Hook	Powell	Warman
Clinger	Huggins	Prendergast	Welsh
Conley	Irvis	Quiles	Westerberg
Corey	Jirolanio	Rea	Whittum
Cortese	Kauffman	Redick	Wilcox
Cosetti	Kelly	Reynolds	Woodring
Croop	Krill	Richter	Woodside
Cunningham			

NAYS—17

Aurentz	Henderson	Miller, D.	Orbin
Benedict	Johnson	Miller, R.	Rappaport
Broderick	Keller, J.	Morton	Waldron
Curran	Markley	Nelson	Wilmarth
Fohl			

NOT VOTING—25

Baldus	Griffith	Kline	Pechan
Bashoff	Hatter	Lane	Rovner
Donolow	Horne	Meyer	Ruth
Fagan	Hostetler	More	Scranton
Fay	Keller, M.	Musselman	Tate
Gabreski	King	Pasquerilla	Thornburgh
Gray			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

O'DONNELL AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. We will now take up the next amendment which is the O'Donnell amendment and ask the clerk to read the amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE O'DONNELL offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, lines 10 to 27 by strik-

ng out "Gross receipts OR ANY OTHER SPECIAL taxes" line 10 and all of lines 11 to 27

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I have already spoken my viewpoint on this and I would at this me yield to any other delegate who may wish to address himself to it with the privilege, I would hope, of mming up.

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, very briefly, I oted in favor of the Hocker amendment because it had ertain virtues in terms of assuring an equitable allocaion of the fund which would have been realized had that mendment passed. At the same time, I think that amendent suffered from an infirmity that perhaps raised a uestion in the minds of many of us with regard to the omplex language which it used. I would submit that he present proposal of the committee is subject to the me infirmity; that is to say, I think there is a question the minds of many of us as to precisely how the money ould be raised and how it would be distributed.

Philosophically it seems to me that this is uniquely a unction which perhaps is better left to the General Assembly if the General Assembly is to participate in the rocess at all. The only other alternative which I see, nd which is presented very simply by Mr. O'Donnell's mendment, is to make utility property subject to tax it the local level. I must admit that I cannot appreciate he logic which says that a windfall will result to local ommunities if the tax is placed at the local level. As as been pointed out here earlier this morning, the same rgument can be used with regard to other types of roperty owned by large corporations in this Commonealth other than utilities. It would seem to me that what has not been mentioned is the benefit which would ccrue locally in many of our counties if public utility roperty were taxable at the local level. I think the each Bottom example and the others that have been sed are perhaps not typical in the sense that they overtate just one part of the problem.

Philosophically the thing that concerns me most about committee Proposal No. 5 in its present form is that we pent many hours yesterday discussing the feasibility and he advisability of cutting down and limiting and circumscribing the existing exemptions enjoyed by churches nd other forms of public charity.

Conversely, Section 1(C) in its present form seems o me to take the other approach and to take a very eak approach, if I might say this, where the public tilities are concerned. As a basic matter of philosophy, troubles me that the committee has said, on the one and, we must cut back now or limit the exemptions n charitable institutions and, on the other hand, we ust open up, so to speak, the latitude given to public tilities as far as the imposition of taxes is concerned. he question is a very simple one. Are we going to make tilities subject to real estate taxes or are we not?

Section 1(C) in Proposal No. 5 seems to have given an affirmative answer to that question in the first sentence and then seems to give a negative answer to that question in everything that follows. The O'Donnell amendment presents the issue very simply in a very clear-cut fashion.

Committee Proposal No. 5, if I understand the report of the committee, came about because of the fact that the local owners of property all across the Commonwealth are now sorely burdened with the imposition of taxes. Perhaps I appreciate the fine logic of some of the preceding speakers, but I would have great difficulty in explaining to a real estate property owner who pays occupational privilege tax, who pays federal income tax, who pays all kinds of local taxes and state taxes and federal taxes and a real estate tax, that a utility should be exempt from paying a local real estate tax because it pays tax A and tax B and tax C and tax D.

This, to my way of thinking, does not make good sense. It should not be the fundamental tax policy of this Commonwealth. I think it is right morally and equitably and every other way that a utility should pay real estate tax at the local level. I am not impressed with the argument that the utilities will be discriminated against or will be treated unfairly or will be penalized. This is not my intention. I must say when I was in the Senate, the utilities were very well able to take care of themselves. This amendment is designed to protect the property owners of this Commonwealth who are now carrying a disproportionate load of the tax burden and who, even if a rate increase were imposed, would not be burdened to the extent that they are burdened right now.

I intend to vote in favor of this amendment.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I would like to ask Delegate O'Donnell one question if he would consent.

PRESIDENT BRODERICK. The delegate indicates he shall.

DELEGATE RAPPAPORT. Delegate O'Donnell, I realize that you have a tremendous problem in Chester County with pipeline companies and transmission line companies. They condemn an interest, reduce the taxable value of real estate which they go through and then do not pay real estate taxes themselves. Does your amendment intend to apply also to these types of companies and to force them to pay real estate taxes on easements or the rights-of-way or whatever they have?

DELEGATE O'DONNELL. Of course, Delegate Rappaport as a very accomplished attorney, you know as well as I that the intent of necessity will stand or fall upon the language. If the courts of the future were going to address themselves to what I said here, the answer is, yes, it does intend to do that, and I hope it will work.

DELEGATE RAPPAPORT. Thank you, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I am not equipped and therefore shall not try to discuss the philosophy.

However, I would like to discuss the business aspects of what we are talking about this morning. I wonder why it is so difficult to understand that a utility is quite

different from other types of enterprises, and the difference is very simple. The difference is that although they are not guaranteed any profits, such as have been indicated by Delegate O'Donnell—quite to the contrary—during the course of a year we see many of them on occasion that fail to meet their needs and therefore have had to go into bankruptcy. But that is not the point. The point is, the utilities may because of the fact that they are the chosen instrument in the particular area, pass on to the users of the particular service those costs which they are required to pay.

As I indicated earlier in my memorandum from the Philadelphia Electric Company, the very fact that they have this installation at Peach Bottom would result in something like an $850 per year tax payment for each citizen in the community instead of $72. Now this is obviously unfair, but that is exactly what would happen if the amendment which we are now considering were to be adopted. It seems to me that it is quite clear in the case of the utility that the difference is that if the U. S. Steel Company were in there and there were that type of a windfall, the people of Philadelphia, the users of the property of the Philadelphia Electric Company, would not be required to make up that windfall on behalf of this little community. In the case of the Philadelphia Electric Company, they will be required, the city of Philadelphia and the citizens of the city of Philadelphia will be required, by paying additional rates to make up for that windfall that is being given to that small community, and it does not happen except in the case of utilities.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I think it vitally important to clearly and accurately define what the issue is here. I find myself in complete disagreement, much to my dissatisfaction, with Delegate Casey, who declared the issue as he just did a moment ago. The issue is not whether utilities are going to be taxed. I think the figures have adequately demonstrated that utilities are taxed and that overall they pay their fair share of taxes. The only question is, what governmental body is going to levy those taxes and how are they going to be distributed? In my opinion, the serious issue, the vital issue, is how is that going to be done most equitably for the greatest number of people in Pennsylvania. Now I am not in favor of discriminating for or against utilities. If the figures are accurate, they are taxed now. They are paying their fair share of the total tax burden of this Commonwealth. Again, the only question with which we as delegates here are faced, as I see it, is whether or not the local taxing authorities are going to levy this tax, or whether or not the State is going to levy it and distribute it in the most equitable way possible for the greatest number of citizens in the Commonwealth of Pennsylvania. I, therefore, feel that this amendment ought to be defeated and that the committee proposal is the most equitable, fair, just solution that I have seen to this problem and will redound to the greatest benefit of the biggest number of Pennsylvanians.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. Mr. President, I have to concur with Delegate Casey and support the O'Donnell amendment.

What he has said is absolutely hitting the target in the bull's eye, I think. Dr. Kurtzman, in his blue pamphlet that we have all been through in the last three months, says precisely the same thing in these words: If you want to keep the exemption, put it in the Constitution; if you want to do away with the exemptions, put that in the Constitution because it is not going to be done any other way.

I would also like to refer to the Constitution of 1873 about which I read the testimony on the exemption article. In there, the assumption was by all the delegates that any previous exemptions would no longer exist. That amendment was made to say that but failed because of the question of redundancy. The assumption was that no exemptions would continue after that Constitution passed.

I rise in support of this and hope that we vote for it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, I rise in opposition to the amendment.

Delegate Kauffman's comments were very much the same as I would have made. I would like to add just one further statement to it.

We are now faced with the problem of an inequity. We recognize that inequity and we are attempting to solve that inequity. However, if we make utilities subject to every single tax to which everyone else is subject and a utility gross receipts tax that no one else pays, then we reverse the problem. Where we now have a problem of an inequity with the utilities not absorbing perhaps their fair share of local taxation, we will then have them bear their full share of local taxation and impose an additional tax in this gross receipts tax that no one else pays. That is just as much of an inequity.

I believe the committee proposal clearly settles that inequity and to approve this amendment would put us right back on the same problem but on the other side of the fence.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, fellow delegates, I do not claim the eloquence of the former speakers, but I would like to remind you of the man whose birthday we celebrated yesterday. He was involved in litigation many, many years ago as to whether or not a bridge should be built across the river, and the people who ran the boats up and down said, this is terrible because it will result in our not being able to run our boats. The answer of the people who wanted the railroad bridge, as I recall it, was that it was more important to go across. So the question was whether or not it is more important to go up and down the river or go across the river.

This is what we are talking about here. We are talking about whether or not to tax. This is what Delegate Casey has said. Really, we are not talking about whether the utility is going to pay an additional tax; we are talking about whether or not the local real estate owners are going to continue to pay a tax, the real estate tax, which will pick up a portion of the tax not being borne by the utilities, or whether all of the users of this particular service are going to pick up and help to pay their portion of local government expense.

We have heard a great deal about the Peach Bottom plant and its fantastic windfall of $850 per capita, I believe was the figure. But this argument does not impress me, because it carries with it the impression that local government and the local governing bodies are totally irresponsible. I do not think this has been borne out by history; I do not think it will be borne out in the future. Obviously, if a township or a borough or a city would be fortunate enough to have such a massive installation and it were taxable, the result would be that they would reduce all of the real estate taxes. The utility, the industry, would share in the benefit of that reduced tax in the same way as if you have a township and General Motors goes in and builds a huge installation. The tax base has been broadened widely and the taxes are reduced.

I say this is a logical and practical amendment and I will support it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caputo.

DELEGATE CAPUTO. Mr. President and fellow delegates, I accept and adopt the argument made by Delegate Keller and Delegate Casey, but I do want to call the attention of the delegates here to something which has been touched upon but apparently forgotten.

We are not dealing here with ordinary corporations or municipal entities; we are dealing here with utilities which have been given privileges by the Commonwealth of Pennsylvania. They have been monopolistic in their nature; they have the right of eminent domain and, therefore, they should pay their share of the taxes for local distribution.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I think the subject has been debated rather fully on both sides, not only on this amendment, but all morning long. I will only say that this amendment of Delegate O'Donnell does violence to the intent of the committee. Therefore, I strongly urge the defeat of the amendment.

I would like to call on, at this time, Subchairman Pott to make a further statement.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pott.

DELEGATE POTT. Mr. President, I would like to yield to the gentleman here.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fay.

DELEGATE FAY. I would like to read this report of the Department of Revenue of October 13, 1966.

It says, "Corporate income tax, $39 million; capital stock, $17 million; franchise, $4 million, and utility gross receipts, $28 million; and total taxes paid into the Commonwealth in 1966 were $90 million." I do not think that is a fair share when you take the grand revenue of all the utilities which runs well over $1 billion in this thing. I must disagree that they are paying a fair share of their taxes in this Commonwealth.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pott.

DELEGATE POTT. Mr. President and fellow delegates, I think we are belaboring the issue. I think there are too many clouds in the sky in this and that we have not addressed ourselves directly to the problem.

When you tax public utilities or any other agency in the local communities, you have to tax them at a uniform rate. Therefore, if there is a large public utility installation in township X and not in township Y, and township X taxes at the local level, the people in township Y and everybody else are going to have to pay for their rebate on realty in taxes for which they will have a windfall; and for all consumers throughout the length and breadth of whatever public utility it is, that is, the people who are being served, the rates are going to go up. This was not, I repeat, was not the intention of our committee to provide an unequal distribution of taxes.

I would like to remind Senator Casey that lines 8 through 10 of the committee proposal do impose a real estate tax by local taxing authorities. I think it is most important that we bear in mind and keep in mind what Delegate Amsterdam has referred to, and I think we should also keep in mind that the public utilities do serve the people and rates are going to be determined by the people's representatives through the Governor's appointments to the Public Utilities Commission.

We in our committee faced this issue squarely. We could have ducked it; we could have ducked the whole tax-exemption provision. There was no urgent pleading on the part of the public, on the part of the government, on the part of local communities or anything else at the time of the call of the Convention that we take up this matter of exemptions. We were told, principally through our news media and everything else, that the important thing was state debt. But our committee faced this problem and we have tried to tighten up the exemptions. We have receognized our obligation, we feel, to the local communities where public utilities do exist by providing in this section an opportunity for them to get some money back on a fair and equitable basis, fair and equitable to all the consumers and all the taxpayers of Pennsylvania. This is all we are trying to do. We think we have an excellent proposal; we think we have satisfied everybody; and we respectfully urge your keen consideration of this, bearing in mind what is best for all the taxpayers of Pennsylvania, including the consumers of public utility functions.

Thank you very much.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, in speaking about public utilities today, we seem to be laboring under one false assumption which I would like to expose at this time. It may be presumed that everyone in this Commonwealth has the opportunity to avail himself of electric service. I suggest that in my own county this is false. If you are close enough and sufficiently convenient and if the line will make a profit for the utility, service will be provided. However, if those three conditions are unfulfilled, you will not have such service.

In regard to telephones, the situation is precisely the same; not everyone in my county—and I am sure that this is true in every rural county in Pennsylvania—can avail himself of telephone service even if he wants it.

Natural gas and illuminating gas, as distinguished from natural gas, are not available in my county beyond the

immediate confines of Lewistown, which represents less than one-third of the population in the county.

The same is true with municipal water. If you happen to be close enough to the water line and if it is economically feasible, the utility will serve you with municipal water.

The railroads, of course, we know full well, do not care to carry passengers any more, and the upshot is that unless you are a cow or a pig, you are not welcome to ride on the new Penn-Central Railroad. The situation is very clear that there is a marked difference between the word "consumer" and "taxpayer." He is not, in every instance, the same person.

Finally, I am most concerned about the second thrust, and that is one which I am sure has been overlooked. This legislation in the guise of helping local government —and local government in my area greatly needs help— will only substitute the removal of $17 million in revenue, bringing it back to my local government through the hands of the tax collector with his two, five or 10 per cent commission or whatever the expense may turn out to be, and it will, instead, require the raising of $20 million or perhaps $22 million to substitute moneys already being allocated for statewide purposes from a statewide-collected tax.

I urge you that the utilities are a breed of cats the difference of which is that for their monopoly they are permitted to serve a certain selected class of consumer. They do not, have not, and probably never will serve everyone. For this reason, let them share that fair share of local burden; let the state tax pattern be not upset by the proposed legislation.

I do not often agree with Delegate O'Donnell, but in this instance I am most pleased to agree, and I urge your concurrence as well.

Thank you, Mr. President.

PRESIDENT BRODERICK. Thank you, Delegate Barron.

Are we ready for the question?

The question recurs,

Will the Convention agree to the amendment offered by Delegate O'Donnell?

The roll was recorded as follows:

YEAS—53

Aberman	Fineman	Mangery	Roberts
Bagenstose	Gehrlein	Mattioni	Scales
Baldus	Gerber	McGlynn	Scott
Baldwin	Himes	Morton	Sharp
Barron	Hocker	Murray	Shrager
Barry	Hook	O'Donnell	Solomon
Benfield	Huggins	Orbin	Sprogell
Camardella	Irvis	Percey	Stout
Caputo	Keller, J.	Popil	Swope
Casey	Kelly	Powell	Tate
Cosetti	King	Quiles	Thomson
Fay	Kline	Rappaport	Thornburgh
Feather	Manderino	Redick	Welsh
Filson			

NAYS—90

Allison	Cunningham	Kauffman	Rea
Amsterdam	Curran	Keller, M.	Reynolds
Aurentz	Dailey	Krill	Sahli
Baldrige	Desmond	Laputka	Scarlett
Banes	Devlin	Leach	Sebastian
Benedict	Donaldson	Lee, L.	Shapiro
Bloom	Erwin	Leinbach	Shively
Braham	Fawcett	Leonard	Shoemaker
Brennan	Fleming	Levin	Silverman
Broderick	Fohl	McGeary	Strickler
Brown	Forster	Meyer	Stroup
Buck	Fortney	Michael	Tomasetik
Bunting	Goldman	Miller, D.	Tully
Burkholder	Goldstein	Miller, R.	Van Sant
Butera	Gouger	Moorhead	Waldron
Cain	Griffith	More	Warman
Caron	Hannum	Nelson	Westerberg
Clark	Harding	Orban	Whittum
Clinger	Hatter	Otto	Wilcox
Conley	Henderson	Pelletier	Wilmarth
Corey	Heyburn	Pott	Woodring
Cortese	Jirolanio	Prendergast	Woodside
Croop	Johnson		

NOT VOTING—20

Bashoff	Gray	Pasquerilla	Richter
Donolow	Horne	Pechan	Rovner
Dumbauld	Hostetler	Markley	Ruth
Fagan	Lane	Michener	Scranton
Gabreski	Lee, K.	Musselman	Shettig

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

HOCKER AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. I understand that Delegate Hocker has another amendment to offer at this time.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE HOCKER offered the following amendment which was read by the clerk:

Amend Title, page 1, line 2, by inserting a period after "taxation" where it appears the first time

Amend Title, page 1, second and third lines of title, by striking out "and providing for the taxation of real property of public utilities."

Amend Sec. 2, page 4, lines 6 to 27, by striking out all of said lines

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I consider this a correctional amendment.

Mr. President, I think there are some people in this body who do not like what is in the proposal; they did not like anything else that was offered. All this amendment will do is wipe it out entirely and put it back where it was before, in the hands of the legislature, and then let the political subdivisions warm them up a little next session. Maybe they will go for a tax.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I think no comment is necessary. The committee is unalterably opposed to the amendment.

DELEGATE HOCKER. Not all of the committee. We never were with you, Judge. You are not going to get us now.

PRESIDENT BRODERICK. Is there anyone else who wishes to be heard, either pro or con, before we vote?

The Chair now recognizes Delegate Hocker. Do you wish to be heard?

DELEGATE HOCKER. Mr. President, the only reason I presented this, I still quarrel with the idea of taking

$17 million out of the General Fund. I do not think they can afford it; we are short of money in the Commonwealth of Pennsylvania now. They are going to have to have additional taxes. I quarrel with this type of an operation and that is the reason for my amendment.

PRESIDENT BRODERICK. Are we ready for the question?

The question recurs,
Will the Convention agree to the amendment offered by Delegate Hocker?

The roll was recorded as follows:

YEAS—29

Aberman	Filson	McGlynn	Redick
Baldus	Fineman	Michael	Shrager
Barron	Hocker	Morton	Silverman
Barry	Hook	Orbin	Solomon
Camardella	Irvis	Popil	Sprogell
Caputo	Kline	Quiles	Stout
Conley	Mangery	Rappaport	Stroup
Cosetti			

NAYS—110

Allison	Dailey	Kelly	Richter
Amsterdam	Desmond	Krill	Roberts
Aurentz	Devlin	Laputka	Sahli
Bagenstose	Donaldson	Leach	Scales
Baldrige	Erwin	Lee, L.	Scarlett
Baldwin	Fawcett	Leinbach	Scott
Banes	Fay	Leonard	Sebastian
Benedict	Feather	Levin	Shapiro
Benfield	Fleming	Manderino	Sharp
Bloom	Fohl	Markley	Shively
Braham	Forster	Mattioni	Shoemaker
Brennan	Fortney	McGeary	Strickler
Broderick	Gehrlein	Meyer	Swope
Brown	Gerber	Miller, D.	Tate
Buck	Goldman	Miller, R.	Thomson
Bunting	Goldstein	Moorhead	Thornburgh
Burkholder	Gouger	Murray	Tomascik
Butera	Griffith	Nelson	Tully
Cain	Hannum	Orban	Van Sant
Caron	Harding	Otto	Waldron
Casey	Hatter	Pasquerilla	Warman
Clark	Henderson	Percey	Welsh
Clinger	Heyburn	Pott	Westerberg
Corey	Himes	Powell	Whittum
Cortese	Jirolanio	Prendergast	Wilcox
Croop	Johnson	Rea	Wilmarth
Cunningham	Kauffman	Reynolds	Woodring
Curran	Keller, J.		

NOT VOTING—24

Bashoff	Horne	Lee, K.	Pelletier
Donolow	Hostetler	Michener	Rovner
Dumbauld	Huggins	More	Ruth
Fagan	Keller, M.	Musselman	Scranton
Gabreski	King	O'Donnell	Shettig
Gray	Lane	Pechan	Woodside

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHAPIRO AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. The next amendment is being offered by Delegate Shapiro.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, line 11, by inserting after "imposed": in lieu of gross receipts taxes
Amend Sec 2 (Sec. 1C), page 4, line 15, by striking out "an amount" and inserting: such gross receipts or other special tax revenues

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, the primary purpose of this amendment is to make sure that the Commonwealth is not forced to distribute to local communities any more than it received from utilities in the form of gross receipts taxes or other special taxes levied in lieu of gross receipt taxes.

A secondary purpose of the amendment is to verbally put into the proposal what the committee chairmen have stated is inherent in it, and that is, that the reference to other special taxes is intended solely to encompass other special taxes which may be levied at some point by the legislature in lieu of gross receipts taxes. I have submitted a copy of this to the co-chairmen of the committee and I would trust that they may concur in this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Speaking as a co-chairman and personally, I have no objection to this amendment.

PRESIDENT BRODERICK. Now are we ready for the question?

The Chair wishes to recognize Delegate Powell.

DELEGATE POWELL. It would seem to me, Mr. President, that what this amendment is doing is giving the public utilities an exemption. In the event that there is no gross receipts tax collected or it is done away with, the public utilities are given an exemption in this case. Is that true, Judge Woodring?

DELEGATE WOODRING. I would yield to the sponsor of the amendment.

DELEGATE SHAPIRO. I would submit that, at the present time, if no gross receipts taxes are collected, as the proposal now stands there would be nothing to distribute to the communities. The sole intent so far as the change in language that I have offered is, if the collection is $37 million, that we not distribute to the local communities any more than $37 million even if the amount that would be taxable as local real estate taxes might exceed that figure. I simply do not want to have the State in the position of distributing any more than it actually receives from this source.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell again.

DELEGATE POWELL. In other words, Delegate Shapiro, if the gross receipts tax is $17 million and the amount that should equitably be distributed is $40 million, they would only distribute $17 million. Is that correct?

DELEGATE SHAPIRO. I would assume that is correct. But I want to point out that it is not my amendment solely that does what he originally stated to be his objection. My amendment does not grant an exemption to utilities. If there is an exemption granted to utilities, it would be done by the legislature. All my amendment does is to make sure the legislature does not have the right to distribute more than it gets from utilities.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. I would have to oppose this amendment due to the fact that I think there is a possibility of this amendment resulting in an exemption totally to the public utilities.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. I have no objection. I have already said that, in my opinion, it is all right, sir.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Shapiro?

The roll was recorded as follows:

YEAS—52

Aberman	Cunningham	Lapufka	Sharp
Banes	Curran	Lee, L.	Shettig
Barry	Fawcett	Leinbach	Shively
Benfield	Feather	Leonard	Sprogell
Bloom	Filson	Markley	Stout
Braham	Fineman	McGeary	Stroup
Bunting	Forster	Michael	Swope
Burkholder	Fortney	Miller, R.	Thornburgh
Butera	Gerber	Moorhead	Tomascik
Caputo	Goldman	Otto	Tully
Clinger	Johnson	Prendergast	Van Sant
Corey	Kauffman	Rea	Warman
Croop	Kelly	Shapiro	Woodring

NAYS—83

Amsterdam	Donaldson	Levin	Richter
Aurentz	Erwin	Manderino	Roberts
Bagenstose	Fay	Mangery	Sahli
Baldrige	Fleming	Mattioni	Scales
Baldus	Fohl	McGlynn	Scarlett
Baldwin	Gehrlein	Meyer	Scott
Barron	Goldstein	Miller, D.	Sebastian
Benedict	Griffith	Morton	Shoemaker
Brennan	Hannum	Murray	Shrager
Broderick	Harding	Nelson	Silverman
Brown	Hatter	Orban	Solomon
Buck	Henderson	Orbin	Strickler
Camardella	Heyburn	Pasquerilla	Tate
Caron	Himes	Pelletier	Thomson
Clark	Hocker	Popil	Waldron
Conley	Hook	Pott	Welsh
Cortese	Jirolanio	Powell	Westerberg
Cosetti	Keller, J.	Quiles	Whittum
Dailey	King	Rappaport	Wilcox
Desmond	Kline	Redick	Wilmarth
Devlin	Krill	Reynolds	

NOT VOTING—28

Allison	Gabreski	Keller, M.	O'Donnell
Bashoff	Gouger	Lane	Pechan
Cain	Gray	Leach	Percey
Casey	Horne	Lee, K.	Rovner
Donolow	Hostetler	Michener	Ruth
Dumbauld	Huggins	More	Scranton
Fagan	Irvis	Musselman	Woodside

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHAPIRO AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. I understand we have another amendment being offered by Delegate Shapiro.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, line 13; by removing the period after "services" and inserting: and not specifically subjected to local taxation by statute.

Amend Sec. 2 (Sec. 1C), page 4, lines 25 to 27, by striking out all of said lines and inserting after "authorities." in line 21: That real property of public utilities which is not used or useful in furnishing their public utility services shall remain subject to local taxation.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, this amendment addresses itself to a supposed correctional change made by the committee in its proposal. The committee changed the last sentence of its proposal with the intention, I believe, of making sure that certain real estate owned by local transportation companies and by railroads in Philadelphia and in Pittsburgh, which is presently subjected to tax by statute, specifically subjected to tax by statute, would not be exempted from tax by this amendment.

However, I submit that the change made by the committee's change in language might also cover a situation such as this. If the telephone company, for example, has a property which is presently subject to tax because it is being used as an office building or in some manner other than the manner defined by "used or useful in the furnishing of services" and, if, at a later date, after the passage of this amendment, the use of that building were changed so that, instead of being an office building, it were used for something that would fall within the existing exemptions, such as, a telephone exchange, for example, the language which the committee proposes might very well, unintentionally but nevertheless tax that real estate after it has been converted to its use.

I have, therefore, suggested that the committee restore or that we restore the original committee language and cover the problem of real estate tax, specifically tax by statute, by using the appropriate language in the earlier portion of the committee's proposal where it defines what the gross receipts tax is in lieu of, so that it reads, "will be in lieu of local taxes on that real property which is used or useful in furnishing their public utility services" and not specifically subjected to local taxation by statute.

PRESIDENT BRODERICK. Delegate Shapiro, in connection with your amendment, the last portion of it is the same language which we had with Delegate Camardella, which we said had been originally put in by an amendment. As far as the last portion of your amendment is concerned, it will require a motion to reconsider, and we have already reconsidered it once.

Would you like to make another motion to reconsider?

DELEGATE SHAPIRO. No, I would not make a motion to reconsider it, but I would point out that your ruling is inconsistent with the ruling you made on another amendment which was offered a short time ago and after Delegate Camardella's amendment.

I would also like to point out, Mr. President, that what you are inviting, if this kind of ruling continues, would be the refusal of this body to act on committee amendments which are handed to us at the end of a long and tedious day, or you might be inviting motions to reconsider amendments which are adopted in that fashion.

PRESIDENT BRODERICK. Delegate Shapiro, the Chair wishes to say that when amendments are handed in by

the committee or anyone else, whether it is at the beginning of a day or at the end of a day, they are still amendments, and if they are adopted by the body, they should be considered by the body, of course, very carefully.

The parliamentarian has ruled and, I think, consistently, in connection, at least, with the Carmardella ruling that the last part of your amendment would have to be on a motion to reconsider. Do you want to consider the first part of it?

DELEGATE SHAPIRO. No, it would not be worth considering if you separate them. My proposal to change the last sentence would have to be accompanied by the rest of the amendment, and that is why I think it is not a reconsideration.

Earlier today you had a proposed amendment to the very beginning of this section in which language was restored to virtually what it had been initially. If you still rule that this is a reconsideration, I will withdraw it.

PRESIDENT BRODERICK. Delegate Shapiro, we are asking the parliamentarian and counsel to determine whether the first of yours is so connected with the last part that it could be considered as an amendment.

The parliamentarian is still of the opinion that the latter part of your amendment would require a motion to reconsider. In view of that, do you want the delegates to vote on the first part as an amendment?

DELEGATE SHAPIRO. Mr. President, before I answer that question, may I ask just what has really happened with respect to the motion to reconsider? What was the nature of the motion to reconsider that was made by Delegate Camardella? What was the effect of that motion? Was it not to remove from the proposal the language which was originally presented and amended by the suggestion of the committee?

PRESIDENT BRODERICK. No. We had a motion to reconsider, which was voted, and then the language was turned down.

DELEGATE SHAPIRO. Just on the motion to reconsider, what did we reconsider?

PRESIDENT BRODERICK. We reconsidered the vote by which this language was originally adopted as to whether or not the delegates wished to then reconsider, and they did and they turned down the amendment which was offered by Delegate Camardella, which is the same language that is being offered here.

DELEGATE SHAPIRO. It is true that they turned down the language which was offered by Delegate Camardella, but it seems to me that the motion to reconsider did, in effect, reinstate the language that I am proposing at this point.

PRESIDENT BRODERICK. We did not reinstate the language at all. The motion to reconsider was merely to open the door as to whether or not the delegates wished to reconsider that language, and they voted on it. They turned it down.

DELEGATE SHAPIRO. When they voted to reconsider the language, did they not, in effect, restore the original language presented by the committee?

SHAPIRO AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. No. No, that was not in the motion.

In the interest of saving time, do you wish to make a motion to reconsider?

DELEGATE SHAPIRO. I withdraw the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I would ask that you reconsider what you just said with your parliamentarian. As I understand it, that motion to reconsider was on everything that was put in by the committee, and we have never acted on that again. That is still held some place in limbo until something is done on it. That is the only point I want to make without getting into a quarrel about whether I support Delegate Shapiro or not.

PRESIDENT BRODERICK. My parliamentarian tells me, Delegate Kline, that the motion to reconsider, since we had an affirmative vote on it, simply opened it up to accept or reject the language that was being offered by Delegate Camardella. We, therefore, voted to reject it, which closed that issue at least for that time.

The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I submit your parliamentarian is wrong, or you misunderstood him. When you reconsider a vote by which an amendment was passed and agree to reconsider it, then you neither have an amendment passed nor one that has failed; the whole matter is up for reconsideration and has to be resubmitted again for consideration by the body. That is the point I make, and I think it is an important one.

PRESIDENT BRODERICK. According to our parliamentarian, he says that, because we received a negative vote on the Camardella amendment, in effect, we agreed to leave the language as it was in the original amended proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, it is my impression that the motion to reconsider was unfortunate in that it should have been more logically an appeal from the Chair's ruling. Once it was a motion to reconsider, we were, therefore, without any language from lines 22 to 27. It was my impression that the committee would then introduce their language in lines 25 to 27.

PRESIDENT BRODERICK. This is not in accordance with the parliamentarian's ruling. Of course, I have explained the ruling of the Parliamentarian, and this language, as far as we are concerned, is still in the amended proposal.

The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, may I have the privilege of interrogating Delegate Gerber?

PRESIDENT BRODERICK. Delegate Gerber, would you stand for interrogation?

DELEGATE GERBER. Mr. President, yes, I will.

DELEGATE JIROLANIO. Delegate Gerber, referring to your Committee Proposal No. 5, printer's No. 14, on page 4, line 25 to line 27, I am somewhat in a state of confusion and I wonder whether or not you have had the opportunity to re-read those last three lines and whether an amendment should be placed in that particular paragraph, especially after the words "All real property of public utilities." As you read that paragraph it seems to me that you are allowing the local taxation on the property

which they now own. What happens to the property which will be erected in the future?

DELEGATE GERBER. Mr. Jirolanio, the purpose of the committee's verbiage in lines 25 to 27 was to assure that the property of public utilities presently subject to local taxation at the time of the adoption of this provision should remain subject to local taxation. I see the question that you raised and it seems to me possibly that if we inserted between the words "utilities" and "subject" the two words, which are—"All real property of public utilities which is subject to local taxation at the time," the point being the subject matter—you are talking about the subject matter continuing, not just the specific parcel. Am I correct?

DELEGATE JIROLANIO. Yes, sir. Would you be willing to amend this particular paragraph?

DELEGATE GERBER. We would be willing to amend it consistent with the spirit that the nature of the property presently taxed on the local level, the current property presently taxed on the local level, would so continue to be taxed. If we could insert language which would assure a clear understanding that this is the import of the committee, I would be willing to amend same.

DELEGATE JIROLANIO. That satifies me, Mr. President.

DELEGATE GERBER. One question, does the delegate from Northampton County have any specific language which he feels, in his experience, which I know is greater than mine, would be much clearer than any language that I might think of?

DELEGATE JIROLANIO. I bow to the intelligence of Mr. Gerber and especially to the chairman of that committee who was a judge over me for 20 years, and I certainly do not have any better language than the judge and you both have.

DELEGATE GERBER. Thank you very much, Mr. President and Delegate Jirolanio.

PRESIDENT BRODERICK. At this time we have completed the amendment process in connection with Proposal No. 5, printer's No. 14. Under our rules this proposal will lie over for printing and appear on tomorrow's calendar under second consideration.

The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I hesitate at this hour to interrupt the procedure of the Chair, but I am obliged morally and every other way to ask leave to make a motion to reconsider a matter that was adopted yesterday. Therefore, if we are about ready to take our noon recess, I would suggest that this matter be held over until after recess before you allocate this to the calendar for tomorrow.

PRESIDENT BRODERICK. If this is the only matter, the Chair would like to suggest that we clear up everything in connection with Proposal No. 5 before recess so that immediately after lunch we can start on Proposal No. 4.

MOTION TO RECONSIDER WESTERBERG AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, if you please and if the Convention pleases, returning to the Westerberg amendment of yesterday, which was adopted, it is on page 3, line 30, at the bottom of the page, subsection (c), and it would strike out the words "laws set up standards and qualifications by which local taxing authorities may", and insert in lieu thereof the word "law".

This amendment was adopted. It was adopted on my statement and I felt this was correctional. I thought what we were doing was eliminating a lot of verbiage that the legislature should set up standards and classifications, et cetera, et cetera, and substituting therefor the word "law". With that I was in favor. A copy of the amendment was not on my desk when I made that statement. When the copy came and we had suddenly voted on it and I had voted in the affirmative, Mr. President, I find that it also deleted "local taxing authorities may", and this destroys the very context of the provision. The thought of the committee and the recommendation of the committee proposal was that, on authorization by the General Assembly, local taxing authorities may or may not; it would be discretionary with the local taxing authorities. This amendment would remove the permissive quality to the local taxing authorities. It would make it mandatory, if adopted, by the General Assembly. This was not intended. It was passed in error; I voted for it in error. I would move, Mr. President, that we reconsider the vote by which this was adopted.

PRESIDENT BRODERICK. I understand that you are making a motion to reconsider the vote by which the Westerberg amendment was adopted yesterday. Is there a second to your motion?

DELEGATE POTT. I second it.

PRESIDENT BRODERICK. It is seconded by Delegate Pott.

We now recognize Delegate Westerberg who probably wishes to be heard in connection with the motion that is on the floor.

DELEGATE WESTERBERG. Mr. President, I never thought I would be in a position of fooling a judge, and I just did not think I had that much ability. However, I do not believe that 120 people in here were fooled by this amendment, and I want to assure you that I was not trying to put anything over on the local taxing authorities.

In checking with the associations of the boroughs, the first class townships, second class townships and the League of Third Class Cities, I found that they were not opposed to this amendment because they felt that this would, in the end, bring more tax moneys into their localities with a lot less trouble.

I believe that this was debated to a certain extent under the Barry amendment, and when I say that the local government groups are not in disfavor of this amendment, they are not because they realize that any program that will in any way generate new home building will help them in the end in their tax structure.

I do ask that this vote for reconsideration be voted "no," because I believe this is a good amendment, a fair amendment, and is not hurting any of the local governing authorities.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. Mr. President, I rise in favor of reconsideration of this subject.

If I recall, yesterday this thing passed in about 37 seconds, and I voted "no" on it, and I think there was a lot of other persons who went along with me.

It is my feeling that the local government officers whom Delegate Westerberg is talking about are not cognizant of what this does to them. If they are cognizant, it is my opinion that perhaps we need some other local government officers in these associations.

I just want to see it opened up for discussion so we could clearly define what this means and what effect it is going to have on the local government unit.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Van Sant. For what purpose does the gentleman rise?

DELEGATE VAN SANT. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE VAN SANT. Repeatedly I hear the Chair say, well, we will take this up at the last minute and in five minutes more we will be out of here because we want to save time.

I ask the Chair, how much time did we save by rushing through this amendment yesterday?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, may I come to the rescue of the Chair and assume full responsibility for this?

As I said in my opening remarks, I listened to the reading clerk as the Westerberg amendment was read, and I grasped the early portions of it as a correctional amendment. I promptly jumped to the mike and said that I had no objection to it; I thought it was a good idea; I thought we were cleaning up the verbiage. I did not know that we were removing the prerogative of the local municipal authorities to pass upon or reject the exemption which is contemplated by this section. Therefore, I think it ought to be reconsidered.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. I am now asking the chair if the motion that has now been made is to a reconsideration, is that so?

PRESIDENT BRODERICK. The question is whether we should reconsider the vote by which the Westerberg amendment was adopted.

DELEGATE JIROLANIO. May I ask a further question?

PRESIDENT BRODERICK. Yes.

DELEGATE JIROLANIO. If a vote is in the affirmative, that would only go toward the vote upon that which was passed, is that so?

PRESIDENT BRODERICK. If the vote is in the affirmative, we will then reconsider it; if it is in the negative, we will not reconsider.

DELEGATE JIROLANIO. Reconsider what?

PRESIDENT BRODERICK. The amendment. We will then reconsider the amendment.

DELEGATE JIROLANIO. In other words, you have to have two votes, one to reconsider, and that is exactly what I am talking about.

PRESIDENT BRODERICK. That is right, two votes.

DELEGATE JIROLANIO. I agree with the Chair.

PRESIDENT BRODERICK. That is the position of the Chair.

The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, my mind is not very orderly at this point because that was not the position of the Chair three minutes ago.

If this motion passes, that amendment is neither adopted nor does it fail; it is just up for reconsideration.

PRESIDENT BRODERICK. We agree with you.

DELEGATE KLINE. That is correct in this case, but to my prior question, that was not your ruling.

PRESIDENT BRODERICK. I thought it was my ruling, Delegate Kline.

DELEGATE KLINE. It was not your ruling, Mr. President.

PRESIDENT BRODERICK. If I may restate it in the other case, we voted to reconsider, and that was on the basis of Delegate Camardella's amendment. We then voted on the Camardella amendment and it was voted down. We are going to do the same thing right now, I assume, in connection with Delegate Westerberg's amendment.

DELEGATE KLINE. Mr. President, I agree with what you said up to a point. First of all, you ruled the amendment that Delegate Camardella put in was not an appriate amendment, that the only way he could approach this subject would be to vote to reconsider the vote by which the earlier amendment had been passed.

PRESIDENT BRODERICK. That was the ruling of the parliamentarian.

DELEGATE KLINE. He agreed to that, and his motion was to reconsider. The Convention agreed to reconsider, and I submit to you that at that point none of those amendments had either passed or fallen. Then we proceeded to consider his amendment alone, but we never ever reconsidered the original amendment presented that was supposed to be cleaning up technical language. That is the point I made, and I think it is important because we are apparently going to use this parliamentary device in other areas. We ought to get it settled now.

PRESIDENT BRODERICK. The parliamentarian says he sticks to his ruling.

DELEGATE KLINE. If that is the ruling of the Chair, I appeal it.

PRESIDENT BRODERICK. Delegate Kline, in connection with the Camardella amendment, I was just advised that perhaps you did not realize, or perhaps you do, that the Camardella language was the original language.

DELEGATE KLINE. Then I submit to you, Mr. President, that still stands because you have never reconsidered the amending language.

PRESIDENT BRODERICK. I just want to point out that we then voted on the Camardella amendment which was the original language.

DELEGATE KLINE. Which was defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. May I try to contribute something to this problem, Mr. President?

PRESIDENT BRODERICK. Yes, indeed.

DELEGATE STROUP. The motion to reconsider opened up the vote by which that particular amendment had been adopted, and then we opened that up. Identical language was then proposed for reconsideration in the amendment which becomes the same as if you had voted upon that vote which was held before and reconsidered. In other words, you had an unusual situation. It is very seldom than an amendment is offered to a vote to reconsider which is identical with the problem which you had before, and that is what is confusing our entire Convention.

Thank you, Mr. President.

PRESIDENT BRODERICK. Thank you, Delegate Stroup.

The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. I share the viewpoint of Delegate Kline. I think the ruling of the Chair is so blatantly wrong that I do not know how the conclusion was arrived at and I would ask this question: What was the status of the amendment after the vote for reconsideration was passed?

PRESIDENT BRODERICK. The status of the Camardella amendment?

DELEGATE FINEMAN. No, the status of the amendment which we reconsidered. What was the status of that amendment when we voted to reconsider it?

PRESIDENT BRODERICK. The status was we were then going to reconsider whether to submit the original language which was being offered.

DELEGATE FINEMAN. No, no, no. That is a secondary step. There is a first step, reconsideration. What was the status of the amendment that we voted to reconsider after we voted in the affirmative?

PRESIDENT BRODERICK. Delegate Fineman, the ruling of the parliamentarian, with which the Chair agrees, was that when we voted in the affirmative to reconsider, we were reconsidering the language that Delegate Camardella wished to offer, which I want to point out was the original language which was in the proposal. We then voted as to whether or not we were going to put that back or leave it as it was.

DELEGATE FINEMAN. Let us assume that Delegate Camardella is out of this completely and someone made a motion to reconsider a vote by which an amendment passed. Now that vote passes. What is the status of the subject matter that we have voted to reconsider after we have voted?

PRESIDENT BRODERICK. It is then up for a vote as to what is to be offered at that time.

DELEGATE FINEMAN. You mean that it moves back to the status it had before we last voted on it? In other words, if you vote to pass a bill from first to second reading and then after you have done that you move to reconsider the vote by which it passed first reading, it no longer is on second reading. You have to move it back to first reading and take a new vote as to whether to move it to second reading. The effect is the same with this amendment. Once we have voted to reconsider, it is the same as if we had never voted initially on the amendment.

PRESIDENT BRODERICK. I would agree with you on that statement that we never voted initially on the amendment. Therefore, the next action of this delegation was to vote on the Camardella amendment, which would have restored the language, and the delegates voted to vote down that language to keep the proposal amended as it was.

DELEGATE FINEMAN. When we voted on Delegate Camardella's proposal, that was an entirely separate subject matter. We voted that down. You are now back, however, at the point in voting where you were before you passed the amendments originally, and we have to vote again on those amendments.

PRESIDENT BRODERICK. That is not the ruling of the Chair.

The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I would like to just clear up something, if I may, for my own mind. If I understand Delegate Fineman correctly, he is saying that a motion to reconsider, if it passes, has the effect of an erasure and that we start with a blank tablet. Is that correct?

DELEGATE FINEMAN. That is absolutely correct.

DELEGATE SILVERMAN. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, may I respectfully remind the Chair that there is a motion and a second before the Convention.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, could the floor overrule the parliamentarian on this? Senator Kline is absolutely right on this thing. I think it is the feeling of most of the delegates.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sharp.

DELEGATE SHARP. Mr. President, it seems to me that this Convention can either debate itself into history or talk itself into oblivion. I feel that at the present time we are in grave danger of the latter. As Judge Woodring has said, there is a motion which has been seconded. I would, therefore, move the question so that we can proceed with order and dispatch.

DELEGATE FINEMAN. Is there not an appeal pending on the floor?

PRESIDENT BRODERICK. We had the motion on the floor before the appeal was taken. We will have to have a ruling of the parliamentarian on that.

I am advised by the parliamentarian that Delegate Woodring's motion takes precedence and that is what we are debating at the present time. Your motion is that we reconsider the vote by which the Westerberg amendment was adopted. That was seconded by Delegate Pott.

Does anyone wish to be heard on that?

The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, would you, for the Convention, tell us precisely what the status of the proposal would be if this motion passes?

PRESIDENT BRODERICK. If this motion to reconsider

passes, then we are in a position to reconsider the Westerberg amendment. In other words, we will vote again on whether we want to accept it or reject it.

DELEGATE KLINE. Supposing we do neither, then does the language of the original proposal prevail at that moment until we do something with it? This is the question I want to be made clear.

PRESIDENT BRODERICK. I am advised by the parliamentarian that we should take two votes, and the second vote is that you either vote it down or vote it up again on the Westerberg amendment. Are we ready for the question?

MOTION TO RECONSIDER WTHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRNG. Mr. President, the chairman is not ready for the question and I would like to withdraw the motion, and Delegate Pott withdraws his second for reconsideration. We will strike it.

PRESIDENT BRODERICK. Then do we have a motion to appeal or do we recess for lunch?

DELEGATE FINEMAN. Is there not an appeal pending?

DELEGATE KLINE. If I may have the privilege, Mr. President, of coming back after lunch with the right to appeal again, I shall withdraw the appeal at this time.

PRESIDENT BRODERICK. Apparently there has been no ruling if the motion at this time is withdrawn, but if we have it again, of course, you have the right to appeal.

I understand there is another amendment. Is that right? Whose amendment is this?

Delegate Barron and Delegate Aberman have an amendment which I understand will be the last amendment. Is that correct?

DELEGATE GERBER. No, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Are you suggesting that the motion to reconsider can be brought up again after lunch or has it been abandoned?

PRESIDENT BRODERICK. Oh, it can be brought up after lunch, certainly.

DELEGATE CURRAN. It can be brought up by anyone?

PRESIDENT BRODERICK. Certainly.

The Chair recognizes Delegate Gerber.

DELEGATE GERBER. There is one other correctional amendment which Delegate Jirolanio brought to my attention with which the committee is in agreement, in addition to the amendment of which you spoke, which Delegate Aberman and Delegate Barron intend to introduce, which has to do with the language in lines 25, 26 and 27 which we have agreed correctionally to amend, sir.

That amendment I have here, and it should be ready for distribution because it has been signed.

PRESIDENT BRODERICK. Yes. I understand, however, we have another amendment here, which is the amendment offered by Delegate Aberman. Would you read the amendment, please?

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE ABERMAN offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, lines 10 to 21, by striking out "gross receipts or any other special taxes" in line 10; all of lines 11 to 21, and inserting: "And the state shall levy an excess profits tax on privately owned public utility companies on all earnings determined by the Public Utility Commission to be in excess of legal return on investments, and such tax shall be returned to local subdivisions in lieu of local property taxes."

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman in connection with his amendment.

DELEGATE ABERMAN. We have not received the amendment yet, Mr. President.

PRESIDENT BRODERICK. The amendment is being distributed now.

MOTION TO RECESS

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I move that we recess for lunch and take this up when we come back. A bunch of skinny, starved delegates is not going to do you any good later on in the day. Let's come back at two o'clock.

PRESIDENT BRODERICK. It has been moved and seconded that we recess for lunch until two o'clock.

What is the will of the delegates?

On the question,
Will the Convention agree to the motion?
It was agreed to.

RECESS

PRESIDENT BRODERICK. The Chair now declares a recess until two o'clock.

AFTER RECESS

The time of recess having expired, the Convention was called to order.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

SHAPIRO AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. We are still accepting amendments to Proposal No. 5, printer's No. 14, and first we are going to call on Mr. Shapiro for his amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, line 13, by removing the period after "services" and inserting: and not specifically subjected to local taxation by statute.

Amend Sec. 2 (Sec. 1C), page 4, lines 25 to 27, by striking out all of said lines and inserting after "authorities." in line 21: That real property of public utilities which is not used or useful in furnishing their public utility services shall remain subject to local taxation.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. It is my understanding, or it became my understanding during the noon hour, that the ruling of the Chair on this amendment was based on an erroneous impression that it really was two separate amendments?

PRESIDENT BRODERICK. That is correct.

DELEGATE SHAPIRO. This is not two separate amendments. I would not offer to amend by inserting the language "and not specifically subjected to local taxation by statute" without also requesting that the original last sentence of the committee proposal be restored in place of the last sentence which now appears, for the simple reason that inserting the new language would have no effect if the last sentence remained. The two are interdependent. I understand that the Chair is prepared to rule differently with that understanding?

PRESIDENT BRODERICK. That is correct. Since your first part and second part are connected and dependent with each other and since the last part is an integral part of your first, the parliamentarian and counsel have both indicated that it can be offered at this time as an amendment.

DELEGATE SHAPIRO. At the risk of boring the delegates, I want to repeat what I said earlier with respect to this amendment. What has happened is that the committee came forward with an amendment to its own proposal to take care of a specific situation in the city of Philadelphia and in the city of Pittsburgh where, by statute, there are certain properties of railroads and of local transportation companies which are by statute subject to tax at the present time. The committee's change was intended to make sure that those properties would remain subject to tax.

As I stated earlier, unfortunately the language which they adopted would be susceptible of a different interpretation. It would be susceptible of the interpretation that property which is presently subject to tax, not by reason of specific statute but by reason of its present use, would remain subject to tax even though that use would change to a use which is presently not subject to tax.

I, therefore, offer this amendment in order to overcome that difficulty.

PRESIDENT BRODERICK. Does Delegate Gerber wish to make a statement in connection with this amendment being offered?

DELEGATE GERBER. Mr. President, I would like to interrogate Delegate Shapiro briefly if I might, sir.

PRESIDENT BRODERICK. Would you stand for interrogation?

DELEGATE SHAPIRO. I certainly will.

DELEGATE GERBER. Mr. Shapiro, I fail to understand why the language on the last three lines 25, 26 and 27 creates any problem and where your language meets the need that we attempted to meet by inserting those lines. Would you please explain it?

DELEGATE SHAPIRO. My illustration, perhaps, will explain it. If the Bell Telephone Company presently has property in Norristown which is being used as an office building, that property is being taxed and is subject to tax because of the present use of the property and would continue so under either proposal—under either the original proposal or my amendment. However, if the Bell Telephone some years from now were to discontinue the use of that building as an office building and instead change its use to something like an exchange, for example, install automatic signaling equipment or some other equipment which was used solely for the purpose of transmitting messages, which is the service offered by that utility, under the language that the committee proposes that might very well remain subject to tax although under existing law it would not be subject to tax. I do not think it was the intention of the committee to freeze a particular property as being always taxable because of its present use. My amendment proposes to permit an exemption if the use is changed to what is now an exempt use.

DELEGATE GERBER. Mr. President, Delegate Shapiro, fellow delegates, it was not the intent of the committee to freeze any parcel of ground as a taxable or as a nontaxable parcel of real estate.

Mr. President, I consulted with Delegate Woodring, Delegate Leonard and Delegate Pott, and we have no objection to the correctional change introduced by Delegate Shapiro, in view of the fact that it expresses the spirit of the committee.

We have a question here, I believe, by Delegate Popil.

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil.

DELEGATE POPIL. Yes, I would like to use the same example. Let us take that Bell Telephone Company, which presently is exempt under the existing laws. They are exempt, but two, three or four years from now they will take that same building and turn it into an office building. Under the present rules, this building can now be taxed. Will it under the new language?

DELEGATE SHAPIRO. I would say it would be taxed either under the language submitted by the committee or the language which I have submitted.

DELEGATE POPIL. All right, thank you.

DELEGATE GERBER. Mr. President, with Delegate Popil's permission, if this does not meet his objection as a member of the committee, then we would accept it as a correctional amendment. I would like to know what he thinks, in view of his experience.

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil.

DELEGATE POPIL. I have no objection to it if the intent is that utilities which will not be used in the future for utility purpose, whether they will be subject to local tax, to local real estate tax.

A Bell Telephone Company building which is presently used as a utility building and performs the services of a utility, however, two, three, five years hence, they discontinue that service and rent that building but it is still owned by the utility, will it be subject to a local real estate tax?

DELEGATE GERBER. It certainly ought to be, Delegate Popil. I would hope that our language in no way limits taxation if the use is changed. I think the thrust is at the use rather than the ownership. I think this is the same expression Delegate Shapiro wanted, the thrust at the use rather than the ownership?

DELEGATE POPIL. If this is the intent, I have no objection.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, may I interrogate Mr. Shapiro?

PRESIDENT BRODERICK. Yes, he will stand for interrogation. Proceed to the question.

DELEGATE HOOK. Delegate Shapiro, what is your intent on line 1r by substituting the language "gross receipts tax revenues"?

DELEGATE SHAPIRO. I do not think you are looking at the amendment that we are working with.

DELEGATE HOOK. I am sorry.

DELEGATE SHAPIRO. You are referring to an amendment which the body has already voted on, unfortunately.

PRESIDENT BRODERICK. Are we ready for the question?

On the question,
Will the Convention agree to the amendment offered by Delegate Shapiro?

The roll was recorded as follows:

YEAS—128

Aberman	Dumbauld	Krill	Redick
Allison	Erwin	Laputka	Reynolds
Amsterdam	Fawcett	Lee, L.	Richter
Aurentz	Fay	Leach	Roberts
Baldus	Feather	Leinbach	Ruth
Baldwin	Filson	Leonard	Sahli
Banes	Fineman	Levin	Scales
Barron	Fohl	Manderino	Scarlett
Barry	Forster	Mangery	Scott
Benedict	Fortney	Mattioni	Sebastian
Bloom	Gabreski	McGeary	Shapiro
Braham	Gehrlein	McGlynn	Shettig
Brennan	Gerber	Meyer	Shively
Broderick	Goldman	Michael	Shoemaker
Brown	Goldstein	Michener	Shrager
Buck	Gouger	Miller, D.	Silverman
Bunting	Griffith	Miller, R.	Solomon
Burkholder	Hannum	Moorhead	Sprogell
Butera	Harding	Morton	Stout
Cain	Hatter	Nelson	Strickler
Camardella	Henderson	O'Donnell	Swope
Casey	Heyburn	Orban	Tate
Clark	Hocker	Otto	Thornburgh
Clinger	Hook	Pasquerilla	Tully
Corey	Irvis	Pelletier	Van Sant
Cortese	Jtrolanio	Percey	Warman
Croop	Johnson	Popil	Welsh
Cunningham	Kauffman	Pott	Westerberg
Curran	Keller, J.	Powell	Wilcox
Dailey	Keller, M.	Quiles	Wilmarth
Desmond	Kelly	Rappaport	Woodring
Devlin	King	Rea	Woodside

NAYS—4

Benfield	Caputo	Conley	Cosetti

NOT VOTING—31

Bagenstose	Gray	Markley	Scranton
Baldrige	Himes	More	Sharp
Bashoff	Horne	Murray	Stroup
Caron	Hostetler	Musselman	Thomson
Donaldson	Huggins	Orbin	Tomascik
Donolow	Kline	Peehan	Waldron
Fagan	Lane	Prendergast	Whittum
Fleming	Lee, K.	Rovner	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

ABERMAN AMENDMENT TO PROPOSAL No. 5

PRESIDENT BRODERICK. I understand that we have an amendment being offered by Delegate Aberman.

The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, so that there will be no undue confusion, the amendment which is presently on the desks of the delegates is to be destroyed. It is to be replaced by the correct amendment which is now being distributed.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE ABERMAN offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 1C), page 4, lines 8 to 27, by striking out all of said lines and inserting: Section 1C. Public Utilities—The real property of public utilities shall be subject to taxes. The General Assembly may impose such taxes, and nothing contained in this Article shall limit the method by which the General Assembly may enact any such tax.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. You have heard the amendment read, and now we recognize Delegate Aberman.

DELEGATE ABERMAN. Mr. President and fellow delegates, I sat this morning through an entire discussion and found out at luncheon-time that we have never voted on the issue of whether or not we should end the exemption granted to public utilities. I found this out by asking someone whether or not the net result of the O'Donnell amendment, which we considered at great length this morning, really meant what we thought it meant.

I read you the language which I have presently submitted, along with a number of other people, in order to reach the issue, that our intention throughout this entire discussion has been to limit the exemption which was fallaciously, in my opinion created by a court decision. It must be remembered, if you think very long and hard about this, there is nothing in the Constitution of 1874 that says the real estate of public utilities should be exempt. It came from a court decision which says that somewhere prior to 1874 there was an exemption.

Starting from that premise, I then asked: "Did the O'Donnell amendment in fact say that this exemption should be ended?" The response of one member and the chairman of the taxation committee was, "No, lines 8 through 10 were never intended to end the exemption." I was completely puzzled by that and I thought to myself, well, if that is the case, let us now discuss the problem. The problem is very simply this: There are two major arguments raised by the O'Donnell amendment. One is, who gets the benefit of the "windfall"? The answer to that question is, no one has to and no one should. The only question you first determine is whether or not the exemption should be ended.

Then if you say that the exemption shall be ended, the method of distribution becomes a function of the General Assembly. I cannot see where in Proposal No. 5, Section 1C, we must legislate a method of distribution. I have been unable to find a question that has been satisfactorily answered as to why such a method of distribution must be inserted if we simply end the exemption; the General Assembly can then come to grips with the problem. If they do not determine to tax the real estate of the public utilities, let them not tax it.

But let there not be any doctrine extant in our Constitution or outside of our Constitution which now says the real property of public utilities cannot be reached.

It is the purpose of this amendment finally to come to grips with what I thought we were talking about all morning, and I now find out we have never been talking about it; we have been talking about a "windfall" and a method of distribution.

We must examine the question of whether or not we are going to limit an exemption. This is the purpose of this amendment. I have been joined by a number of other delegates in this consideration, because we feel we have not dealt with it.

Therefore, I ask your consideration.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, as the presiding officer sometimes says, "The question recurs." This is another ripper; we have dealt with three or four of them this morning and each time the Convention has voted them down and defeated them.

This is another effort to rip out Section 1C which the committee has recommended and which the Convention has voted to adopt. I suggest that we defeat this one as well as the others.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, may I interrogate the sponsor of the amendment?

PRESIDENT BRODERICK. He will stand for interrogation. Proceed.

DELEGATE STRICKLER. I would like to ask you, if the legislature fails to act, can the property of public utilities be taxed by local municipalities in the meantime?

DELEGATE ABERMAN. It is the opinion of the sponsors, Delegate Strickler, that we are not dealing in a vacuum and we must consider the local government article, which is Proposal No. 6, which is going to come before us. The thrust of that local government article is to, in certain events, move the residual powers from the General Assembly down to a local government unit. It is entirely possible that if the residual power were to be transferred to a borough or a first or second class township, they could act.

We are saying that the General Assembly may impose such tax and could, if it desires, reserve that tax unto themselves. There is nothing here which creates a "windfall", which was the argument directed against the O'Donnell amendment. It simply says that the exemptions which exist in a vacuum as far as the sponsors of this proposal are concerned do not and are no longer, from the effective date of this Constitution, in existence; the exemptions no longer exist.

DELEGATE STRICKLER. We do not know what is going to happen to Proposal No. 6. In case it is not adopted at all, then what happens?

DELEGATE ABERMAN. If Proposal No. 6 is never adopted and this language is adopted, the exemption ends as of the effective date of this article and the General Assembly may deal with the public utilities as it deems fit.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, as Judge Woodring indicated, this is simply another effort to do what we have been working on all morning. I do want to point out, however, this disregards all the history of the last 90 years. As a matter of recent history, I sat as a member of the Governor's Tax Committee recently and recommended to the Governor that the gross receipts tax be increased from the 14 mills that was then in existence to the two per cent which is now in existence. The reason for it was that we felt the utilities of the State ought to be bearing a fair share, their fair share, of the total cost of operating in the State, and it was for that reason that that amendment was subsequently approved, I am sure, by the General Assembly.

What we are doing is, after we have acted in accordance with the regulations that were then in effect; we are now saying that having done that, we are going to add this new tax on top of all the rest. I think it will be tremendously unfair to the people who are paying the utility bills of the State of Pennsylvania.

DELEGATE ABERMAN. Mr. President, in response may I say that the delegate's remarks, in all due deference, are what I classically call "the old red herring." There is nothing in the first sentence that says anything at all about the poor people of the Commonwealth of Pennsylvania. It simply says that we now say the exemption is over. If the General Assembly wants to rearrange the taxing structure of the public utilities in this Commonwealth, let them do it, but let us come to grips with the problem without the smoke-screen. We are not discussing a distribution scheme; we are not acting as a legislature; we are simply raising the question, is there an exemption or is there not? No one as yet has spoken to the question, shall there not be an exemption.

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth.

DELEGATE RUTH. Mr. President, I wish to interrogate the sponsor.

PRESIDENT BRODERICK. Yes, he will stand for interrogation.

DELEGATE RUTH. So that you will understand the question more clearly, I wish to indicate that I am probably for the amendment; however—

DELEGATE ABERMAN. You do not have to apologize for interrogating me.

DELEGATE RUTH. However, I wonder whether or not, by use of the words as you have them in line two of your amendment, "the General Assembly may impose such taxes", that you thereby, by exclusion, imply that no other local government could impose taxes if the General Assembly does not take the prerogative.

DELEGATE ABERMAN. The state of the law, as I understand it, having checked it with the eminent authority on second class townships, is that the second class township could not in fact impose such a tax at the present time. Here by writing the words "the General Assembly may impose", it is our opinion that these words represent only the status quo and that we have done nothing except to say the exemption is ended, the General Assembly may act. They may provide amendments to the borough and the township codes in order to extract these taxes and, as far as we can see, we have done nothing more than end the exemption.

Thank you.

DELEGATE RUTH. Mr. President, I would like to make a short statement, if I may, please.

PRESIDENT BRODERICK. Yes, indeed, proceed.

DELEGATE RUTH. Thank you. I would favor this amendment and I would like to point out that it is my understanding of the proposal as it is written that approximately using the present figures, there would be $17 million taken from the gross receipts fund or revenue and allocated or distributed among the local municipalities.

We do not know, nor is there any provision, how the state government is going to fill the gap of the $17 million that it automatically loses. I submit that to guess that the state government would increase the gross revenue or add additional taxes to the utilities is pure guess work. Probably there is a likelihood it would be passed on to our normal consumers in other types of sales taxes or cigarette taxes.

I feel that I must stand in support of this and be certain that we eliminate the so-called exemption the public utilities have lived under.

PRESIDENT BRODERICK. Are we ready for the question on this?

The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, I would like to speak not as chairman of the committee, but on behalf of the amendment that I signed, supported by Delegate Aberman, because it seems to me that this finally gets at the thrust of what we are attempting to do here. It is not a tipper bill in any way. It eliminates the Supreme Court exemption and then places the responsibility of determining taxation of public utilities where it belongs, in the General Assembly. This is constitutional language; this is the language of the Constitution which permits the General Assembly to function in its role and determine what is best for the Commonwealth as it sees fit from time to time. It does not freeze in the Constitution any provision limiting the General Assembly in any way. All it does is get at an exemption that the Supreme Court imposed after the Constitutional Convention of 1873.

It seems to me that from here on, the General Assembly, as years go by, is in the best position, much better than we here in February of 1968, to analyze the needs of the Commonwealth as they arise. It seems that this is the type of language and this is the type of proposal and this is the type of thought that is best found in a Constitution, rather than legislative language which we have drifted into too often.

I, therefore, urge the passage of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, may I interrogate Delegate Aberman?

PRESIDENT BRODERICK. Yes, you may proceed.

DELEGATE O'DONNELL. Delegate Aberman, am I given to understand that in your opinion there is a conflict as it were between the recommendations of the Local Government Committee and the recommendations of the Taxation and State Finance Committee on this subject?

DELEGATE ABERMAN. No, that is not correct in the sense when you say a "conflict." As General Strickler just pointed out to me, we do not have Proposal No. 6 in front of us and it has not been voted on. Whether in fact it would be a question at some later date, I do not think is relevant and germane to the question that we are now discussing.

DELEGATE O'DONNELL. Thank you.

PRESIDENT BRODERICK. Does anyone else wish to be recognized?

The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. I would just like to make one comment. I think that Delegate Aberman has said we are getting to the core of the problem. I do not believe that at all. I think that what we are doing here is playing games. I do not know what is special or anything unusual about a real estate tax versus any other kind of a tax. It is just a question of what the base is. The base of a real estate tax has to be a valuation of hard real estate. The base of a gross receipts tax has to be more easily measured in terms of the total dollars collected.

I think that right now the General Assembly can enact all the taxes it wants against the public utilities. I do not know what we are doing here by saying they may impose such taxes. They have the right to impose such taxes, and what this is doing is going back and trying to put an extra tax on public utilities and trying to penalize them rather than to attack the problem as we felt we have attacked it, which is to allow the General Assembly to tax utilities as much as it wants, but let us give the local government some share of that so that they may help to take care of their own budgets.

I, therefore, recommend that we vote "no" against this amendment.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Aberman?

The roll was recorded as follows:

YEAS—51

Aberman	Hocker	Miller, D.	Ruth
Allison	Hook	Morton	Scale
Banes	Huggins	Murray	Shettig
Barron	Irvis	O'Donnell	Shrager
Barry	Jirolanio	Orbin	Silverman
Caputo	Keller, J.	Pasquerilla	Solomon
Casey	Kelly	Percey	Stout
Conley	Kline	Popil	Stroup
Fay	Manderino	Prendergast	Swope
Feather	Mangery	Quiles	Tate
Filson	Mattioni	Rappaport	Thornburgh
Fineman	McGlynn	Redick	Welsh
Gehrlein	Michael	Roberts	

NAYS—86

Amsterdam	Cunningham	Himes	Reynolds
Aurentz	Curran	Johnson	Sahli
Baldrige	Dailey	Kauffman	Scarlett
Baldus	Desmond	Keller, M.	Scott
Baldwin	Devlin	King	Sebastian
Benedict	Dumbauld	Krill	Shapiro
Benfield	Erwin	Laputka	Sharp
Bloom	Fawcett	Leach	Shively
Braham	Fleming	Lee, L.	Shoemaker
Brennan	Fohl	Leinbach	Sprogell
Broderick	Forster	Leonard	Strickler
Brown	Fortney	Levin	Tully
Buck	Gabreski	McGeary	Van Sant
Bunting	Goldman	Meyer	Waldron
Burkholder	Goldstein	Moorhead	Warman
Butera	Gouger	More	Westerberg
Cain	Griffith	Nelson	Whitlum
Clark	Hannum	Orban	Wilcox
Corey	Harding	Otto	Wilmarth
Cortese	Hatter	Pott	Woodring
Cosetti	Henderson	Powell	Woodside
Croop	Heyburn		

NOT VOTING—26

Bagenstose	Fagan	Markley	Rea
Bashoff	Gerber	Michener	Richter
Camardella	Gray	Miller, R.	Rovner
Caron	Horne	Musselman	Scranton
Clinger	Hostetler	Pechan	Thomson
Donaldson	Lane	Pelletier	Tomascik
Donolow	Lee, K.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PROPOSAL No. 5, PRINTER'S No. 14

PRESIDENT BRODERICK. We have now concluded the amendments that have been offered to Proposal No. 5, Printer's No. 14, and under the rules this proposal will lie over for printing and will appear on tomorrow's calendar, as amended, under second consideration.

COMMITTEE PROPOSAL No. 4 ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 4, Printer's No. 12,** entitled:

Amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

On the question,

Will the Convention agree to the proposal on second consideration?

LEONARD AMENDMENT TO PROPOSAL No. 4

PRESIDENT BRODERICK. And now we are going to take up Proposal No. 4. When we were amending this proposal yesterday, an amendment offered by Delegate Leonard was placed on the table. Does the gentleman wish to recall that amendment from the table?

AMENDMENT TAKEN FROM TABLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. I move that the amendment be taken from the table.

On the question,

Will the Convention agree to the motion?

It was agreed to.

PRESIDENT BRODERICK. The amendment has now been recalled from the table. I assume everyone has a copy of it.

I might add that this amendment was reproduced, showing the language as it would appear in the proposal, and I think you have received copies of the committee proposal with this language written into it, as it would appear if the amendment were adopted.

Does everyone have a sufficient understanding of the amendment which is being offered? It is a long amendment and it was read yesterday, I understand, and I am, therefore, going to ask the clerk to desist from reading it because it would only belabor the performance.

You may proceed now, Delegate Leonard. I understand we have all the copies distributed.

DELEGATE LEONARD. Thank you, Mr. President. I believe fellow delegates, when this amendment was introduced yesterday, I stated—and I was joined by Delegates Woodring, Wilcox, Pott, and several others who are on our committee—what the purpose of this was, what it intended to do, but I will go over it briefly right now just so we can get back into this problem.

Number one, it intended to eliminate some of the technical problems that had arisen with respect to the original proposal.

Number two, it was intended to eliminate what some may have called legislation, in that we took those words out as to that which could be done by the legislature and just allowed them to work on their own, with the complete confidence that they will proceed with the implementation in due order.

Number three, it was intended to eliminate something that was giving us a little bit of trouble, and it had some undertones that we did not like which may have led us into an area in which we did not want to be.

The audit provision is now going to make all the government's fiscal affairs subject to audit. We added the word "fiscal" because legal counsel gave the opinion that we could not use such a broad term as "the affairs of the Commonwealth" in that all the affairs of the Commonwealth were not the subject of Article VIII, which we have under consideration in this Convention. We quickly agreed to put in the term "fiscal affairs." What the audit provision now does is make everything subject to audit and it does call for audits of a high quality.

The proposal, as it now stands, does require a balanced operating budget.

It requires a five-year financial plan to be submitted by the Governor, so that the General Assembly and the public may have an idea what the long-length planning is.

It makes a clarification that all expenditures from the proceeds of state debt be made only by way of appropriations.

Mr. President, that is all the comments that I have now.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Thank you, Mr. President. I would like to ask Delegate Leonard a question if I may, if he will permit himself to be interrogated.

PRESIDENT BRODERICK. The gentleman has indicated his willingness. You may proceed.

DELEGATE FINEMAN. On page 3 of the so-called clean copy, on lines 27, 28 and 29, the following language appears: "Legislation authorizing borrowing by any authority or agency shall be considered an appropriation." Do I take it that that is an attempt to classify borrowing as an appropriation for all purposes?

DELEGATE LEONARD. Delegate Fineman, this is an attempt to forbid the use of an authority to evade the intent of the Constituion under Article IV which sets forth that appropriations, or the spending of the Commonwealth's money, be subject to the item veto of the Governor.

DELEGATE FINEMAN. So that the purpose of this new language would be to give the Governor the right to item veto any item in a General State Authority appropriation bill?

DELEGATE LEONARD. Yes, but I will add this: We thought we had it in the original proposal, but we understood that this loophole did exist and we are merely trying to fill a loophole that we did not originally think existed.

POINT OF ORDER

DELEGATE FINEMAN. Mr. President, with the record on this point now being clear, namely, that this proposal would have as one of its principal purposes to give to the Governor the right to item veto individual items that might appear in a General State Authority appropriation bill, I now rise to a point of order.

My point of order is this: Under the law as it presently stands, Article IV, Section 16, the Governor has only the right to item veto in a general appropriation bill. He does not have the right under the law at the present time to item veto a General State Authority bill. Such a right would have to be embraced in Article IV, Section 16, with which this Convention is not empowered to deal.

I, therefore, say that the insertion of this language is beyond the scope of the authorization of this Convention and I would ask for a ruling on that point of order.

DELEGATE LEONARD. I would like to make a comment on that. We certainly have looked at Article IV, Section 16, and it does not say anything about a general appropriation bill. I quote the Article: "Partial disapproval of appropriation bills. The Governor shall have power to disapprove of any item or items of any bill, making appropriations of money."

The only reason we allowed the General State Authority to be in existence was under the assumption that all appropriations would be taken from the capital budget. The General State Authority was never thought of in our committee as a device to evade this Section 16 of Article IV.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I would bring to the attention of the Chair that legislation which authorizes borrowing by agencies or institutions is not appropriation legislation presently. Therefore, it does not fit into the present proscription or present allowance in Article IV, Section 16, which would give the Governor the right to line veto any item in the General State Authority.

This is brand new authorization and, therefore, since it is properly embraced within Article IV, Section 16, it is not within the scope of the authorization of this Convention.

PRESIDENT BRODERICK. We will be at ease while the Chair consults with counsel on your request for a ruling. We will try to get one.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, I have just received the formal printed ruling, Counsel Opinion No. 29, which deals with the question which Delegate Fineman had raised. Since we only received it at this time, I have not had an opportunity to study its implications.

I would like to respectfully request that in our consideration today we do not consider the amended language of "legislation authorizing borrowing by any authority or agency shall be considered an appropriation." We will be glad to treat that as a separate amendment tomorrow.

PRESIDENT BRODERICK. In other words, so that the delegates will understand, he is withdrawing that part of the amendment which is on page 2 of his amendment which commences about the third paragraph down. It says, "Amend Section 2, Section 27, page 3, line 27 by inserting after 'appropriations' the words 'legislation authorizing borrowing by any authority or agency shall be considered an appropriation.'"

That is being withdrawn at the present time from the amendment which is being offered now by Delegate Leonard.

DELEGATE LEONARD. Yes, sir. I have no further comment on the amendment, unless someone else does.

FINEMAN AMENDMENT No. 1 TO LEONARD AMENDMENT TO PROPOSAL No. 4

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, at this time I want to offer the first of several amendments to the amendments that had been offered by the committee on this Proposal No. 4.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE FINEMAN offered the following amendment which was read by the clerk:

Amend page 1 of the amendments by striking out lines 4 to 6 and inserting in lieu thereof: The financial affairs of any body funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audit.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I have agreed, after a conversation with Delegate Leonard, to make a change in this amendment, striking out at the very end of this proposed amendment the language, "as prescribed by law."

Delegate Leonard has indicated to me that he has no objection to this amendment which I desire to offer to the committee's proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. I would like to interrogate Delegate Fineman with a couple of questions.

PRESIDENT BRODERICK. He will stand for interrogation, I am sure.

DELEGATE LEONARD. Delegate Fineman, is it your intention with this amendment to the amendment that the words say that all of these financial affairs may be audited?

DELEGATE FINEMAN. Yes, that is my intention.

DELEGATE LEONARD. Is it also your intention that neither the legislature nor the executive can step in and at any time say that some of these affairs may not be audited?

DELEGATE FINEMAN. It is my intention by this language to create the authorization on the part of the Commonwealth to examine and audit any department, board, agency, commission or body that receives the benefit of state moneys.

The purpose of this amendment is twofold: Number one, I think the language is much more comprehensive than the language you had employed and, I would respectfully submit, it is susceptible to more clarity. Secondly, we eliminate the mandatory provisions of the audit being conducted and substitute in lieu thereof the authorization for the audits rather than to make it mandatory that every institution, every school district, every hospital, every university, every college, every orphans' home and all the myriad of institutions which receive state money be required to be audited.

DELEGATE LEONARD. In other words, you are not saying that the legislature may step in and say that something should not be audited?

DELEGATE FINEMAN. No, I am not saying that. The legislature is free to pass such legislation as in its wisdom it decides to pass.

DELEGATE LEONARD. To implement rather than to restrict it?

DELEGATE FINEMAN. To implement.

PRESIDENT BRODERICK. Were you finished?

DELEGATE LEONARD. May I ask just one other question? Would it be your intention with these words that funds such as the legislative contingency fund be subject to audit?

DELEGATE FINEMAN. I said any state body could be subjected to audit and any institution, any office, any commission, any agency, any instrumentality of the Commonwealth which receives state funds could be audited.

DELEGATE LEONARD. Would it be possible under any circumstances for the legislature to prevent the Auditor General, if he be the auditing agency, from auditing the contingency funds of the legislature?

DELEGATE FINEMAN. An off-the-cuff opinion only and I am not quite sure that I am totally correct—I would not suspect that there could be a proscription against it.

DELEGATE LEONARD. I think with that, there is only one other comment I have, Mr. President. I do not have a copy of the amendment in front of me. It says "Amend page 1 of the amendments by striking out lines 4 to 6." I want to be sure that we are only striking out said words.

PRESIDENT BRODERICK. I understand it is lines 4 to 6 of your amendment. We shall check that.

DELEGATE LEONARD. I am satisfied and would be in favor of this amendment to the amendment, Mr. President.

ALLEGHENY COUNTY JUDGE WELCOMED

PRESIDENT BRODERICK. I understand that we have in the back of the room today Judge William Cercone and his wife Millie, from Allegheny County. I ask that they stand so that we can recognize them and give them our cordial greetings.

We are very happy to have you with us.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. May I ask both Delegate Leonard and Delegate Fineman a question?

PRESIDENT BRODERICK. I think they will both stand for interrogation. Proceed.

DELEGATE PELLETIER. Does this language preclude an audit which would not be done by an audit of a state agency, that is, for example, presently if an institution receives Federal funds it may arrange with the Federal Government to have its own audit done and the Federal Government accepts it? For example, if the State was making a grant to a hospital and the hospital had its own audit, would this language then preclude the State from accepting the hospital's audit as satisfying this matter of the Constitution?

DELEGATE FINEMAN. It is my interpretation that the State, no matter what the contingency, can make an audit of any institution which receives state funds. Whether it will choose in its wisdom to do it because it is subjected to audit by a municipality or the Federal Government is something to be left to the discretion of the legislature.

DELEGATE LEONARD. I would agree that this language is not intended for the State necessarily because in some instances the city may have its own auditors, or hospitals certainly have their auditors, but it would be my thought that in this situation such audit reports would be delivered to the legislature and to the executive branches of the government for their review. In other words, they can rely on some other auditors.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I would like to direct interrogations to both Delegate Fineman and Delegate Leonard. Delegate Fineman partially answered the question that I was to propound, in his answer to Delegate Pelletier—whether the State can or may audit, under these provisions that are proposed to be written into this Constitution, private agencies receiving appropriations from the state government?

DELEGATE FINEMAN. I would think the answer would be yes.

DELEGATE SWOPE. Under what provision?

DELEGATE FINEMAN. "The financial affairs of any body funded or financially aided by the Commonwealth" would cover that.

DELEGATE SWOPE. I am satisfied with that. You, of course, know that under the Fiscal Code today the Auditor General has not only the right but a duty to audit all of those agencies, private agencies, receiving financial support from the state government and make periodic reports. It does not say annually or any other particular time, but it does lay upon him the duty to make these audits.

Now I also want to ask both of the delegates on their feet why the Auditor General seems to have disappeared completely from this Committee Proposal No. 4.

DELEGATE FINEMAN. That particular inquiry is not encompassed within the amendment that we have before us at the moment. That has to do with Sections (b) and (c) which are the subject of other amendments.

DELEGATE SWOPE. Then it is not the intention to cut out the Auditor General, I would say?

DELEGATE FINEMAN. It certainly is not my intention to do that, no.

DELEGATE LEONARD. That is clear.

DELEGATE SWOPE. I would further ask whether this language of the Leonard amendment, or the committee amendment, which cites "by accepted auditing standards" has any specific meaning? In fact, I would like to know what the meaning is, Delegate Leonard.

DELEGATE LEONARD. Yes. Generally "accepted au-

iting standards" represents the quality standard by which udits are to be made. These standards are well recogized, well documented and well accepted, and these tandards may change as the times go on and the purpose f that being in here is to say that the audits that should e made should be made in accordance with the quality of uditing that is recognized as being worthwhile and meaningful.

DELEGATE SWOPE. Generally accepted auditing tandards described by whom and accepted by whom?

DELEGATE LEONARD. Generally accepted auditing tandards as accepted by the entire financial community nd as prescribed by the American Institute of Certified ublic Accountants.

DELEGATE SWOPE. That is all. Thank you.

PRESIDENT BRODERICK. I wish to remind the body that we are now considering only the first amendment, which was offered by Delegate Fineman to Delegate Leonard's amendment, so I would appreciate it if you would confine your remarks to that first amendment.

The Chair recognizes Delegate Fohl.

DELEGATE FOHL. I would like to interrogate Delegate Fineman.

In response to an interrogation by Delegate Leonard, you said that in your off-the-cuff opinion the General Assembly could not, based on your amendment, prohibit anything from being audited. I wonder if the same would apply to the executive branch, and I am referring specifically to the Attorney General. May he, under your amendment, rule that something is not subject to audit?

DELEGATE FINEMAN. Now I am unable to state unequivocally what the Attorney General is capable of doing or not doing.

I have seen some rather odd legal opinions emanate from that distinguished office, much to my chagrin and surprise, so I do not think I could be a source of accurate information in reply to your inquiry.

DELEGATE FOHL. May I ask whether your intent, however, would be to prohibit such an opinion.

DELEGATE FINEMAN. Our intent would be to have everything subject to audit without proscription against it by anyone.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rea.

DELEGATE REA. Delegate Fineman, directing your attention to the last five words of your amendment, "shall be subject to audit." Are those words intended to be the same as the words "shall be audited"?

DELEGATE FINEMAN. No, as a matter of fact, there is a very vast difference.

DELEGATE REA. I know.

DELEGATE FINEMAN. And this was the reason. Because there is such a difference, this is what is giving rise to this particular amendment.

The words "shall be audited" connotes a mandatory direction to the government, in fact, to make the audit. I say this is an insurmountable task for the Commonwealth to comply with, because there are thousands and thousands of institutions and bodies which receive money from the Commonwealth.

On the other hand, I think the authorization to make the audit should be in the law so that in the event they decide to audit a body, there should be no question about their having the right to do that.

DELEGATE REA. Then do I understand that the legislature will be the one which will pick and choose what subject matters will be audited at any one time?

DELEGATE FINEMAN. Well, the Auditor General right now is vested with the right, and, as Delegate Swope said, the authority and the obligation to audit all institutions which receive money.

On occasion, we have been confronted with the question as to whether or not we, in fact, have that right, and the problem has remained unresolved. This will, in my opinion, cause to disappear any fuzzy thinking on the question as to whether or not we, in fact, have that right.

DELEGATE REA. Who ultimately has the right to say what will and what will not be audited in any year or any two years? Who is the ultimate decider?

DELEGATE FINEMAN. The legislature could do that by legislative enactment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Forster.

DELEGATE FORSTER. Mr. Fineman, is it correct to say that the principal difference between Mr. Leonard's language and your language is the last phrase making it an optional audit but not demanding it regularly?

DELEGATE FINEMAN. That is correct, sir.

DELEGATE FORSTER. Then is it to be more exclusive or inclusive than the language he had with respect to the body subject to this audit?

DELEGATE FINEMAN. I think the language in our amendment is more inclusive.

DELEGATE FORSTER. More inclusive?

DELEGATE FINEMAN. Yes, taken from the Administrative Code.

DELEGATE FORSTER. Will you define the differences between "fiscal" and "financial"?

DELEGATE FINEMAN. The original language dealing with the words "financial affairs of the Commonwealth" raises this shortcoming. No, no, I am sorry.

The original language "the affairs of the Commonwealth" raised the shortcoming that it might imply a review of an office or an agency or department which, in fact, did not entail the expenditure or receipt of moneys.

I think there is little difference in the words "financial affairs" or "fiscal affairs." I think they are interchangeable.

DELEGATE FORSTER. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, I would like to make one comment that Delegate Fineman made before where I clearly disagree.

When this says that it shall be audited, this proposal, or even subject to audit, someone said "shall" did not mean it necessarily had to be audited by the Commonwealth. There are many, many agencies which have their own auditors now, and it would not mean that the Commonwealth would have to do it again. So this insurmountable task that he talked about is not one that is a real task.

DELEGATE FINEMAN. That response does not cause me to deviate from my original position. When I say

"by the Commonwealth," I mean either through Commonwealth employes or those engaged by the Commonwealth.

DELEGATE LEONARD. No, I would not even agree with that. It would seem to me that it would mean that the Commonwealth could accept audits by anyone whom they felt they could accept. It does not mean they would have to be engaged by the Commonwealth. Just the fact that they shall be audited does not mean that the cost of that audit shall be borne by the Commonwealth. That was never the intention, because as I said before, most universities and hospitals and agencies are audited now, but all of them are not. Any tax dollars which are spent —I think the way taxes are, how high they are, and they are going to go higher, none of us have that much control over it—the taxpayer at least has a right to know that if the State is putting money someplace, that money is being spent the way the legislature intended it to be spent. But they can certainly rely on any auditors they want. They can rely on the auditors of the city of Pittsburgh or the auditors of the city of Philadelphia, the auditors of any institution. If they have internal auditors, they may rely on them if they care to. But that would be the decision of the legislature as to whose audits they would rely on. It would not be a cost of government to have this audit.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. I would like to interrogate Delegate Fineman.

PRESIDENT BRODERICK. Proceed.

DELEGATE SILVERMAN. I want to get back to a question that was asked by Delegate Rea and clear up whether, in order to have it audited under your amendment, the General Assembly would have to authorize such audit.

DELEGATE FINEMAN. I would think not. I think the General Assembly could authorize the manner of the audit, the regularity of the audit, the subject matter of the audit, but in the absence of such legislation, I do not think that there would be any denial on the part of the Auditor General's office to conduct an audit.

DELEGATE SILVERMAN. Would the General Assembly be able to say that the Auditor General or some other auditing body should not audit a particular organization or affair that is funded by the Commonwealth?

DELEGATE FINEMAN. I think that question was already put and my answer was "no." That was the off-the-cuff reply that I was venturing in response to Mr. Leonard.

DELEGATE SILVERMAN. Thank you.

PRESIDENT BRODERICK. Are we ready for the question? I see Delegate Otto.

DELEGATE OTTO. Mr. President, I would like to direct a question to Delegate Fineman.

PRESIDENT BRODERICK. You may proceed.

DELEGATE OTTO. At present are the legislative contingency funds being audited?

DELEGATE FINEMAN. They are not being audited pursuant to an opinion from the Attorney General's office.

DELEGATE OTTO. Would they be audited under your proposal and how and when?

DELEGATE FINEMAN. The how and when I cannot answer. They would be subject to audit and I have already responded to that question.

DELEGATE OTTO. Would you say that legislation introduced in the General Assembly would have your sponsorship for them to do that?

DELEGATE FINEMAN. Well, Mr. Otto, I do not believe such an inquiry is pertinent to this interrogation at this time and I will not answer that.

DELEGATE OTTO. Thank you.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Fineman?

The roll call was recorded as follows:

YEAS—103

Aberman	Donaldson	Keller, J.	Reynolds
Allison	Dumbauld	Keller, M.	Sahli
Aurentz	Erwin	Kelly	Scranton
Baldrige	Fawcett	Kline	Sebastian
Baldus	Fay	Laputka	Shapiro
Baldwin	Feather	Leach	Sharp
Banes	Filson	Leinbach	Shettig
Barron	Fineman	Leonard	Shively
Barry	Fleming	Levin	Shrager
Bashoff	Gabreski	Manderino	Silverman
Benedict	Gehrlein	Markley	Solomon
Benfield	Gerber	Mattioni	Sprogell
Braham	Goldman	McGeary	Stout
Brennan	Goldstein	McGlynn	Stroup
Butera	Gouger	Meyer	Swope
Cain	Hannum	Miller, D.	Tate
Camardella	Harding	More	Tomascik
Caputo	Henderson	O'Donnell	Tully
Cortese	Heyburn	Orbin	Van Sant
Cosetti	Himes	Otto	Waldron
Croop	Hocker	Percey	Welsh
Cunningham	Huggins	Popil	Westerberg
Curran	Irvis	Pott	Wilcox
Dailey	Jirolanio	Prendergast	Woodring
Desmond	Johnson	Quiles	Woodside
Devlin	Kauffman	Rappaport	

NAYS—33

Bloom	Fortney	Morton	Scarlett
Broderick	Griffith	Murray	Scott
Brown	Hatter	Nelson	Shoemaker
Bunting	Krill	Orban	Strickler
Clark	Michael	Pelletier	Thomson
Clinger	Michener	Powell	Thornburgh
Corey	Miller, R.	Rea	Whittum
Fohl	Moorhead	Roberts	Wilmarth
Forster			

NOT VOTING—27

Amsterdam	Donolow	Lane	Redick
Bagenstose	Fagan	Lee, K.	Richter
Buck	Gray	Lee, L.	Rovner
Burkholder	Hook	Mangery	Ruth
Caron	Horne	Musselman	Scales
Casey	Hostetler	Pasquerilla	Warman
Conley	King	Pechan	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

FINEMAN AMENDMENT No. 2 TO LEONARD AMENDMENT TO PROPOSAL No. 4

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE FINEMAN offered the following amendment which was read by the clerk:

Amend page 2 of the amendments by striking out lines 11 to 14 thereof

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman to make a statement in connection with his amendment.

DELEGATE FINEMAN. Thank you, Mr. President. This amendment would strike out the following language that presently appears in the committee proposal, namely, "All estimates of anticipated receipts from any source whatsoever shall be as finally certified by the Governor." First let me say that there is nothing in the law presently which deals with the question of certification of receipts by the Governor. There is no provision in the Constitution; there is no provision in the statutory law. The budget provisions of the Administrative Code do provide that the Revenue Secretary shall estimate receipts and he shall present that estimate through the Budget Secretary to the Governor. The Governor then in turn is to incorporate the estimate into his budget presented to the General Assembly. But there is no present provision for the certification of receipts, and so what you have before you is brand new law.

I want to earnestly beseech this Constitutional Convention not to allow this kind of language in the Constitution. I do so for a number of reasons, and I speak not as a theorist but as one who has lived through the difficulties that can be encountered by the insertion and the inclusion of language such as this, either in the Constitution or in statutory language.

This kind of language would provide and enable and allow a chief executive to engage in fiscal manipulation, and again I want to say that my approach to this is not a partisan approach because both Democratic and Republican Governors have been guilty of the same tactics and it is time we called a halt to this kind of practice. It is time that there is more truth in fiscal matters so that the people of this State know precisely and accurately what is going on in these legislative halls.

If a Governor wants to impose a tax program on the people of this State when there is no fiscal justification for that tax program, he has a number of things he can do by creating a hazy cloud of smoke to confuse the public by way of justifying his tax proposals. He can underestimate at the beginning of a fiscal year the amount of revenues he is going to receive from existing taxes. He can overstate the amount of money that particular programs cost and he can do a number of other things which I will not describe at this time because they are not germane to this argument.

Let us confine our comments at this moment to the first of these proposals that he can do, namely, underestimate the amount of revenues that will come in from existing taxes. As long as the legislature has the right to make inquiry into the validity of the Governor's proposals as to tax estimates, so long as the legislature has the right to refute what the Governor is saying this tax will receive in tax estimates, just so long will the legislature have the ability to protect the people of this State from the imposition of unwarranted taxes. The minute you take this tool away from the legislature—and that is what this language would do—the people no longer will have Representatives in this General Assembly to speak out in their behalf to prevent the imposition of unwarranted taxes.

The moment the Governor certifies tax receipts, according to this proposal, that is the last word on the subject matter. If the Governor says, we are going to have $1.5 billion in receipts from taxes but we know for a fact that he is going to have $1.7 billion or $200 million more, there is nothing we can do about it. He will then propose a tax program to make up that deficiency of $200 million and there is nothing we can do about it. We must then swallow what the Governor has given us by way of tax estimates, and this, ladies and gentlemen, is not the proper function of a legislative body. A legislature is not here to merely rubber-stamp those proposals that are given to us by a chief executive. A legislature is here to review with the Governor, not for the Governor, but with the Governor, his proposals as to tax receipts and expenditures so that we can make with him a determination as to the need of additional taxes, all of which will be to the benefit of the people of this State. I say to you that there has been so much conversation I have heard since the advent of this Convention about enhancing the stature of the legislature and making it a more responsible body, that these kinds of reforms that will bring a new stature to the legislative body have to come not only from within the body itself but they have to come in connection with its relationship with the executive, because as long as the laws are in such a state as to leave the legislative body to be nothing other than a rubber stamp for the chief executive, then so long will we be a body unequipped to do the job we were sent here to do by the people of this State.

I say to you that if you make the Governor the person who is going to certify, and there is no time limit on this, I bring to your attention that for a fiscal year beginning June 1, he can submit to us a budget on May 1 and on June 1 certify as to revenues without the benefit of the experience for one, two, three, four or half a dozen months of the new fiscal year for us to be guided by, and once he submits that certification we are bound. If there is no question about the disbursement of moneys, if moneys have been mandated to be spent and the amounts of revenue to be taken in are fixed by the certification, then we as a legislative body have no alternative but to pass tax proposals, and I say that is not the way to make the legislative body an equal, coordinate branch of government.

Moreover, I would say this: If it could be said that this is a wise thing to let the certification to be by the Governor—and I would vehemently deny that it is wise—but if it could be so said, then I say to you this kind of language does not belong in a Constitution; it belongs in a piece of legislation. How many times have we heard people say the Constitution has to be a flexible, moving, viable document? Can anyone here in good earnestness and in good conscience say that this kind of language makes a Constitution a viable document? It may be determined one or two or three years from now that to have the certification by the Governor is improper, that there should be an economic advisory council to do this. Perhaps the State Treasurer should do it; perhaps the Auditor General should do it, but not the Governor. We may so decide and the people of the State may so decide, but if you pass this language that decision can not be imple-

mented and then we are locked in, locked in by the Governor.

PRESIDENT BRODERICK. Delegate Fineman, I just want to remind you that you have two minutes to go.

DELEGATE FINEMAN. That is two minutes to spare because I am through, Mr. President.

I just fervently hope that the delegates to this Convention, in their desire to want to improve and reform and modernize the operation of state government, do not put a set of handcuffs on the legislature. Do not vest in the chief executive all of this power at the sacrifice of corresponding right that the legislature should and probably ought to have. I would respectfully urge the adoption of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, we are lost back here. We do not have a copy of the proposal from which Delegate Fineman is speaking.

PRESIDENT BRODERICK. First of all, may I ask you if you have a copy of the Leonard amendment?

DELEGATE HOOK. Yes.

PRESIDENT BRODERICK. Then you should have a copy of Delegate Fineman's second amendment.

Were they distributed? Do we have any more to be distributed?

I just want to point out, because perhaps there has been some confusion, that Delegate Fineman's amendment is an amendment to the Leonard amendment that was offered, and if you will look at the piece of paper which says on it "Delegate Fineman, Amendment to the amendments to Committee Proposal No. 4, Printer's No. 12," it says "Amend page 2 of the amendments by striking out lines 11 to 14 thereof," and 11 to 14 are the last four lines on the Leonard amendment on page 2.

The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. The net effect of the amendment that Delegate Fineman is proposing to the amendment can best be shown on page 4 of this new, revised committee proposal which eliminates Section (c), lines 6 and 7. If you have a copy of Proposal 4, go to page 4, lines 6 and 7; that is being proposed to be eliminated.

PRESIDENT BRODERICK. May I ask, does everyone now have a copy?

The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Mr. President, may I ask what document is being referred to when reference is made to the Leonard amendments?

PRESIDENT BRODERICK. We are referring to the amendment which was offered today.

DELEGATE MANDERINO. What is the form of the document? What is the top of it? Is it "RS:AO 2/12/68 Leonard—Delegate"?

PRESIDENT BRODERICK. That is right. "Amendments to Committee Proposal No. 4, Printer's No. 12."

DELEGATE MANDERINO. All right. Then the Fineman amendment to that amendment refers to page 2, lines 11 to 14. Are those lines 11 to 14 in the document we just referred to?

PRESIDENT BRODERICK. It refers to lines 11 to 14 in this Leonard document which is Leonard's amendment, and they are the last four lines on page 2.

DELEGATE MANDERINO. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. It may be of some help, Mr. President, to turn to page 4 of Committee Proposal No. 4 and look at the last four lines of that proposal. I believe they are the same as the Leonard amendment.

DELEGATE LEONARD. No; only lines 6 and 7.

PRESIDENT BRODERICK. I understand that this is the same amendment that was handed out yesterday, the Leonard amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. I think the confusion is this: Yesterday we took some time and effort to have what we have been calling a clean copy printed and I think most of us have been looking at the clean copy, but nothing refers to that. Might I suggest that even though a reference for technical purposes be made, as it has to be, that someone add on what happens to the clean copy for to what extent it is being dirtied? I think it will be very simple to follow then, even though it is not official.

PRESIDENT BRODERICK. I will have Delegate Leonard explain what is happening, or Delegate Fineman, either one.

DELEGATE LEONARD. I will again repeat that if we can all take a look at the proposal which was delivered yesterday at 3 or 4 o'clock, a reprint of Proposal No. 4, the Fineman amendment goes to page 4, and its purpose is to eliminate lines 6 and 7, which say that "All estimates of anticipated receipts from any source whatsoever shall be as finally certified by the Governor." Now that is being proposed to be eliminated, and that is what we are now talking about.

PRESIDENT BRODERICK. Now that we are all thinking about the same thing, does anyone wish to be recognized? Delegate O'Donnell?

DELEGATE O'DONNELL. Yes, sir. Last week I interrogated the committee on this subject and the question I asked the committee was this: Does this language not transfer to the executive a substantial power which has heretofore been considered as legislative? The answer they gave me was "no."

Since then I went to the case of Commonwealth ex rel. Schnader v. Liveright, reported at 161 Atlantic at page 697, in which the Supreme Court of Pennsylvania had an opportunity—it is the only case I know in which the entire legislative fiscal process is laid down—and that case said that the determination of appropriation and the estimating of a budget is clearly a legislative function, that of necessity the legislature must work with both sides of the coin, that it must determine what appropriations to make, what revenue measures to levy, and when they make that determination they must judge for themselves what the anticipated tax increase is. As a matter of convenience, the legislature today ordinarily uses, I am informed, the services of the Secretary of Revenue, but that is merely a matter of convenience.

Constitutionally to prohibit the legislature from adopting its own budget estimates would be to deprive it of very substantial legislative powers and would transfer those powers to the executive. I must say on that basis that I must speak in support of this amendment.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilcox.

DELEGATE WILCOX. Without going over all the information that was brought out in the interrogation last week, on behalf of the committee, I urge that this amendment be defeated. As was explained then, I think the purpose here is to put an end to manipulation of estimates and figures and to require that those which come from the staff of the Governor's office be the final certification. Of course, the legislature is not bound to appropriate or use taxes of any type other than what it wishes. This merely says that when they do make an appropriation or estimate of a certain tax as to what it will bring, they must use the figures of this trained staff, which is a large staff made available by the State.

This would avoid duplication and would avoid setting up two empires where one set of experts attempts to contradict the other. As I also pointed out, this past year I think the revenues came within six-tenths of one per cent of the actual receipts, to show the accuracy of the public service in this matter.

So we urge the defeat of this amendment, and I want to repeat that the committee, I think with a single dissenting vote, approved this language.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. What I just heard was, in effect, a direction to this body here: Let us further subjugate the legislature to the executive. Let us make the executive the all-powerful figure on the Hill. Let us leave the legislature in the position where it will have to rubber-stamp what the Governor's so-called expert staff produces for us.

Let us look at how expert this staff has been over the years. In 1963 and 1964 when the Governor presented a budget, the estimated receipts were $983 million; actual receipts turned out to be $1.123 billion; or an error of only $140 million. In 1964 and 1965, they made an error of $97 million. In 1965 and 1966, they made an error of $148 million. In 1966 and 1967, only this past fiscal year, they made an error of almost $53 million, or almost four per cent of the total budget.

Is this the kind of staff on which we have to rely? Must we close our eyes and say, "Yes, you have all the expertise in the world and we have none; you give us your figures and we shall accept them"?

I would like this Convention to know something: This past year, as the minority leader, I engaged two men on my staff, whose salaries happened to be considerably higher than mine as a legislator, but who were solely and totally responsible for having saved this Commonwealth $70 million in new taxes. Yes, that is the amount that the Governor cut his budget request by, his request for new taxes, $70 million, and that is because two men on my staff, whose combined salaries did not exceed $25 thousand, worked assiduously at this problem. Just imagine what could happen if this legislature or legislative body were properly equipped and had a staff which could do the job so that we would not have to accept willy-nilly what the front office tells us to do.

I say to you that if you are interested in making the legislature a responsible legislative body of which you can be proud, then you will not buy the kind of language which is in this committee proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. I would like to interrogate the committee chairman, if I may.

I understood from earlier discussion that the intent of this proposal, the total effect, was actually to mandate a balanced budget for the Commonwealth. Is that correct?

DELEGATE LEONARD. That is one of the intents, yes.

DELEGATE MANDERINO. The proposal states that the Governor shall submit a balanced budget, is that correct?

DELEGATE LEONARD. That is correct.

DELEGATE MANDERINO. I do not see anywhere in here as to who adopts a balanced budget. Was that intended to be covered by the General Assembly appropriating?

DELEGATE LEONARD. Yes, that is correct.

DELEGATE MANDERINO. In other words, the Governor submits the balanced budget and that is intended to mandate a balanced budget. The General Assembly does not really approve the budget; it merely approves appropriations and, pursuant to said appropriations, expenditures are made under the budget. Is that correct?

DELEGATE LEONARD. That is correct.

DELEGATE MANDERINO. If the Governor were to submit a budget and he estimates $10 million of revenue and $10 million of receipts, and then he informs the General Assembly, under Section 26, that current taxation would only bring in $8 million in receipts, he has submitted a budget which says it will be balanced because I estimate $10 million of expenditures, I estimate $10 million of receipts, $8 million will be brought in by current taxation. To balance this budget, we need $2 million of additional taxes. Am I interpreting it correctly so far? If the submitted budget by the Governor states estimated expenditures of $10 million, estimated receipts of $8 million from existing taxation and $2 million from new taxation, that is the balanced budget?

DELEGATE LEONARD. That is correct.

DELEGATE MANDERINO. All right, now, there is still legislative action needed to provide that $2 million for the balanced budget. Is that correct?

DELEGATE LEONARD. That is correct.

DELEGATE MANDERINO. If this section which states that the estimates of the receipts on the $10 million side that the Governor submits saying, "There will be $10 million of receipts" is final and that is necessary to balance the budget, then is not the legal effect that the Governor can mandate to the General Assembly, you must pass $2 million of additional taxes?

DELEGATE LEONARD. No.

DELEGATE MANDERINO. What if the General Assembly then were to receive the budget and state, we do not wish to pass $2 million worth of additional taxes?

DELEGATE LEONARD. Then they have to reduce the proposed expenditures by $2 million.

DELEGATE MANDERINO. In the submitted budget by the Governor, they would then reduce the payment on the expenditure side by $2 million, to $8 million.

DELEGATE LEONARD. Based on this, they would not be able to make an appropriation if there were not sufficient money to cover that appropriation. Therefore, if the estimate was only $8 million, they would not be able to make an appropriation for greater than $8 million.

DELEGATE MANDERINO. All right, may I ask one

last question? I gathered from the discussion that the intent is in effect, to stop the estimating game by different sources and the Commonwealth not knowing exactly where it stands. Is that generally correct?

DELEGATE LEONARD. That is one of the bases, yes.

DELEGATE MANDERINO. May I ask this: Would the intent and the committee's purpose and objectives to be accomplished be thwarted in any way if—I am asking this for information—that Section (c) were to say, all estimates of anticipated receipts from any source whatsoever shall be as finally certified by the General Assembly? Does that affect the objective to be attained?

DELEGATE LEONARD. I would say clearly, yes.

DELEGATE MANDERINO. May I ask why? I am not sure I am following you.

DELEGATE LEONARD. You asked a question before as to whether the purpose of this was to have firm figures and I said that that was one of the objectives.

DELEGATE MANDERINO. Right.

DELEGATE LEONARD. And the other objective is the one that you just brought up and that is that this is a question of whose budget we have and who has the responsibility for the execution of the operation of government. This is really, I think, the point to which we are addressing ourselves today on this matter, whether or not the executive or the legislature has the responsibility for the carrying out of the programs of government.

DELEGATE MANDERINO. Let me close with this then. May I ask this without using the technical terms? Somebody has to decide for the year 1975 whether, for the general welfare and the common good of all the citizens of Pennsylvania in the year 1975, there should be $2 billion spent for the general welfare or $1 billion spent for the general welfare. Is it the intent that that decision for 1975 or any other year as to who has the legislative prerogative, using legislative in quotations, who has the legislative prerogative to decide that the Commonwealth needs $2 billion rather than $1 billion expended for all general welfare in 1975. Is it the intent that that remain in the hands of the General Assembly or in the hands of the Governor?

DELEGATE LEONARD. There is no question about it that the General Assembly has the right to reduce or increase the amount of money for any program.

DELEGATE MANDERINO. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I think the committee has obviously missed the one fundamental point involved here, and that is, who has the duty and the responsibility to raise taxes.

I would not quarrel with some of the things they have said, but I want to appeal to the delegates to keep that in mind when they consider the amendment proposed by Delegate Fineman.

He is saying, in effect, that if the General Assembly has the duty and the responsibility of imposing taxes, then it must also have the responsibility to determine revenue estimates. He may be a bit closer to it than many of us and feel more strongly about it, because he was through it last year. I do not think this is a quarrel on a partisan basis.

But you must understand, if you are to ask your Representatives and Senators who come here to vote the necessary money to fund the Commonwealth's program, you simply cannot strap them into a locked figure estimated by the Governor.

I am also a little bit disturbed by the gentleman's suggestion that the General Assembly would manipulate estimates and the Governor's office would not. They are not sacred over there. There are as many politicians in the Governor's office as there are in the General Assembly. If there were not, they would not be there.

They are subject to the same kinds of pressure that the members of the General Assembly are. I say between the two, I would not give the edge to either one, but I will give the edge to that body which is responsible for raising taxes. That is the whole basis, I think, for this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. I want to make reply to one observation that was made by Delegate Manderino when he posed the question that was answered by Chairman Leonard, an answer that I do not agree with.

You proposed this proposition: If there is $10 million in known expenditures and $8 million in receipts, according to the Governor's certification, does the legislature have to pass $2 million in taxes?

Chairman Leonard said, no, the legislature will reduce the appropriations. That is just not the way it goes. It does not work out that way.

DELEGATE MANDERINO. May I ask another question, Mr. President?

PRESIDENT BRODERICK. Certainly.

DELEGATE MANDERINO. Delegate Leonard, not being in the field, I gathered that the whole intent here was to kind of have government run the way a well-run corporation in private business operates today in this field which follows generally accepted accounting and auditing principles. Is that correct?

Well, let me put it this way. I am not leading into something that is too broad. If the president of General Motors, who is the executive, goes to his board of directors and says, here is the proposed budget for the coming year; we are going to have $10 million worth of receipts and $10 million worth of expenditures, the board of directors sits down after the president gives them that document and says, you have estimated here receipts of $10 million, Mr. President of General Motors. We have reviewed your figures, and you show here that we are going to sell a million cars next year. Our judgment is you are wrong; the board thinks we are only going to sell 800,000. Therefore, we have to cut your receipts down from $10 million to $8 million.

In a private company, does not that prerogative remain with the board of directors to make that decision in arriving at their expenditures for the coming year? The board of directors of General Motors, in effect, would say to the president, we disagree; you may be right; we may be wrong; but we are going to change these figures. We only expect to sell 800,000 cars next year, so we are cutting the receipts to $8 million. Therefore, we are going to cut expenditures down and lay off 16 vice presidents. Does not that decision remain with the board of directors in private industry rather than with the chief executive of the company?

DELEGATE LEONARD. Not necessarily. As a matter of fact, somebody—and this is the whole point of this

section in that proposal—has to drive a peg in the ground and say, this is the point from which we are working. We cannot have this thing floating all over.

In your example of a private corporation, the board of directors is not going to vote on what they expect the estimated income is going to be. They can give their opinion as to the economic conditions and so forth, but finally that decision is going to rest with the chairman of the board, the president or some one person. There has to be one person in the end who says, okay, this is the figure.

Our proposal says that it shall be finally certified by the Governor. It is not intended that the Governor should be able to come in and all of a sudden say, all right, this is the estimate, and it is foreclosed. It is not intended to mean that, but it does mean that the Governor has the last word on what the revenue estimates will be because he is one person, although he may have a substantial staff; but the legislature is 203 plus 50 and you cannot get a consensus on a number. That is not the way to do it. A number is a fact, and the only way to get to a fact is for one person to make a decision and say, this is it. You cannot take an average of what you think the tax yields will be and take a vote on it.

This is intended that the Governor be the one who finally says, this is the revenue upon which we are going to pass our appropriation bills this year.

DELEGATE MANDERINO. May I ask this and see if this is correct: The thing which concerns me is whether or not we are taking legislative power, which in the Constitution belongs to the General Assembly as distinguished from the executive power of the Governor, and transferring it in this respect. To come back to the example in private industry, if the president of this corporation, General Motors—and I used that as the original example—were to go into his board and say, I want to hire 20 new vice presidents at $100,000 a year during the coming year; I, therefore, need $2 million, but do not worry about it because my estimates indicate that the car sales will be such that we shall have $2 million more of profit to hire these vice presidents, cannot the board of directors in that situation say, Mr. President, we like your idea of hiring 20 new vice presidents; we disagree with your estimates though that we shall make $2 million more profit; therefore, do not hire the vice presidents because we disagree with your estimate.

Is not the board of directors supreme in all American industry in that example? There is a legislative decision there. He has given them his estimate and said, we shall have $2 million more profit next year; therefore, I shall spend the money for 20 new vice presidents.

In all American industry, does not every board of directors have the right to say to their chief executive, Mr. Chief Executive, we disagree; we will not have the profit next year; therefore, we will not hire the new vice presidents. Is not that universally true?

DELEGATE LEONARD. Well, they will clearly be able to say, we will not go ahead and recommend the hiring of vice presidents. And using the analogy of the General Assembly, they have the right to say, we will not go along with this new program. But the president or the chairman of the board is still the one who has said, this is the estimate, and the board may say, well we are not going to have as much profit as you think we are, and we had better be a little bit on the safe side.

DELEGATE MANDERINO. Let me reverse the example. The first one was hiring 20 new ones. What if the president walked in and said, I want to fire 20 vice presidents to save $2 million and I must fire them because the profits next year will be $2 million less, and the board of directors says, Mr. President, we disagree with you; the profits next year will not be $2 million less; you shall not fire 20 vice presidents.

Is that not the universal prerogative of every board of directors in a private company in America today, to say to the president, do not fire 20 vice presidents, because our collective judgment disagrees with yours. We will not lose $2 million worth of profits next year.

I might just say this: I agree totally with the committee's objective to put the Commonwealth on sound accounting, budgeting and auditing principles that have been worked out in a much more refined manner, I think, in private industry than they have been in government. But I wonder if here we are actually not doing what appears to me to be actual, that every board of directors has the final say, whether the president wants to hire 20 vice presidents or fire 20 vice presidents on the basis of his estimates of profit and loss, that the board of directors has the right to overrule his decision if they disagree with his estimate of profit and loss for the coming year.

DELEGATE LEONARD. First of all, I am going along with you on the analogy of government versus private industry, which, of course, has many differences. But I do not think that you have said anything, Delegate Manderino, to change my thinking on this, because the legislature still has, and hopefully they always will have, the right to change, increase or decrease, the proposed expenditures of the Governor. But some place there has to be a peg in the ground and somebody has to say, okay, this is it, and then you have to work around that.

If you let the revenue estimate slide around, we just do not know where it would go, so somebody has to have that responsibility, and we feel that it should belong to the executive and that there are sufficient controls that nothing is going to be hurt.

Now let me go along and say what I think those controls are. Number one, if there is any overestimate by the Governor, he is going to bring about a deficit, and that is going to be hit by the end of the next fiscal year and that is going to be disclosed. In other words, you cannot get away with this thing more than once. If he has underestimated, this is going to show up as a substantial surplus at the end of the first year, and our proposal goes on to say, in Section 28, that all of these surplus funds must go over into the following year for appropriation.

So the Governor can really only make this mistake once, and I do not think he is going to be trying to make it. I do not think there is any question about it, that the Governor is the one who has the responsibility to carry out a program and a sound fiscal program for his administration, and to ask to have him rely on somebody else's estimates and, if those estimates are wrong, he is not then able to carry out that which he had hoped to do in his administration.

So if the Governor has the responsibility to carry out the program, the least he can have with that is the right to make the estimate finally.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Thank you.

Mr. Leonard says, what do we have to worry about? If he underestimates, there will be a surplus that will be available next year. But what has happened in the interim? The Governor has imposed taxes. The people are paying unnecessary taxes. It is no comfort to the people who are paying these taxes to know that they are going to have a surplus.

I say to you that the inclusion of this kind of language absolutely thwarts the will of the people. If the people vote for representatives to come to this hall to vote on fiscal matters for them, and these men who are sent here with that responsibility absolutely are deprived of the right to vote intelligently by language such as this, then the will of the people has been thwarted.

To get back to the point that was made before by Mr. Manderino as to where the Governor estimates you are going to have revenues of $8 million and you have known expenditures of $10 million whether or not this will in effect constitute a mandate to raise taxes by $2 million, I tell you that is absolutely a fact. That is a mandate, and I know this from hard experience, because what happens is that you go in to the Governor—he might have already had the majority party pass a general appropriations bill and you go to the Governor—and you say this: Governor, I do not disagree with your programs; many of these programs are in fact our programs; we want every one of these programs, but you are asking more money to fund these programs than is needed. What do you do when he says, no, I will not cut back; I will not reduce, and he gets a majority party to pass that. Now you are confronted with this kind of situation: Let us assume that you have $8 million in administration expenses to run the orderly operation of the government and you have $2 million in preferred appropriations, preferred appropriations being those that go to the hospitals, universities and colleges. Now he passes the $8 million and he says to you, well, you cannot pass the other $2 million for the hospitals and universities because you do not have the money. We say to him, Governor, you do have the money; your revenues are not going to be $8 million; they are going to be $10 million; and he says, no, they are only going to be $8 million. Now we have this alternative to face as legislators: Do we knuckle down to the Governor and give him $2 million more in taxes so that these schools, these hospitals, these universities and orphans' homes can get their money or do we continue to fight the imposition of an unwarranted tax and have these schools, hospitals and universities suffer and be held captive as hostages until we get a tax program through? When that happens what takes place? The Governor will get in touch with the presidents of the universities; he will get in touch with the hospitals and the colleges and schools and he will say, reach your legislator and tell him that he is an obstructionist and he is preventing you from getting the money that you are entitled to for the orderly operation of your administration. The heat becomes great and that is how a Governor gets through a tax program over reluctant, unwilling legislators who have to vote for it because they do not want to see these hospitals go down the drain.

I say to you that this kind of language will thwart the will of the people; it is just not realistic and it does not make for good government.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, I would like to interrogate Delegate Fineman with just a couple of questions, if I may.

PRESIDENT BRODERICK. The gentleman has indicated that he will stand for interrogation. You may proceed.

DELEGATE GOLDMAN. Delegate Fineman, may I ask you basically, first of all, whether you are in accord with the concept of having a balanced budget of expenditures not exceeding receipts or revenues?

DELEGATE FINEMAN. I am most heartily in accord with that.

DELEGATE GOLDMAN. If so, then under your suggestion the legislature would establish both the estimate of income and also the appropriations made thereunder. Is that correct?

DELEGATE FINEMAN. No. My suggestion is to leave the law as it is presently. There is nothing in the law now which calls for the certification, which means that the legislature has just as much right as the Governor to say what are going to be proper revenue estimates. The mere fact that this right exists has not prevented, in the history of this Commonwealth, a budget being passed every year.

DELEGATE GOLDMAN. How would you establish what appropriation bill to pass without having some feeling or some limit of anticipated revenues?

DELEGATE FINEMAN. The same way we have established it during the history of this Commonwealth.

DELEGATE GOLDMAN. Has this Commonwealth always been on a balanced budget?

DELEGATE FINEMAN. Yes, it has. It is illegal to be on anything other than a balanced budget.

DELEGATE GOLDMAN. Do you feel that by putting in or having the legislature putting in its own estimates of revenue it might not be then thwarting or going over its authority into the executive branch, much as you are now planning that with this in the executive would be going into the legislative branch?

DELEGATE FINEMAN. No, I do not, because I think it is the province of the Governor to sit down with the legislature and together work out the budget, because, as Senator Kline says, if taxes are going to be needed, it is the legislature that has to accept the responsibility for passing the taxes, not the Governor. He does not vote on taxes; we vote on them.

DELEGATE GOLDMAN. It is also the legislature that passes on appropriations?

DELEGATE FINEMAN. That is right.

DELEGATE GOLDMAN. All right. If the Governor were to certify an anticipated amount of revenues, could not the legislature merely not pass appropriations within that framework?

DELEGATE FINEMAN. No, for the reason I just explained over a 10-minute duration, that we get bombarded by universities, colleges and the other institutions that are the beneficiaries of our state moneys asking why do we not give them their money. If the Governor says that we are only going to get $8 million and it is going to take $10 million to provide money for the operation of the government plus the nonpreferred institutions, we cannot pass the money for the nonpreferred institutions until we have an accounting for the other $2 million.

DELEGATE GOLDMAN. Could you take care of them first?

DELEGATE FINEMAN. No. You have to take care of the operation of state government first. You cannot take care of your nonpreferred first.

DELEGATE GOLDMAN. Okay.

PRESIDENT BRODERICK. The Chair recognizes Delegate Warman.

DELEGATE WARMAN. Mr. President, I feel there has been more than sufficient discussion on this matter. I, therefore, move the question on the proposal.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Fineman?

The roll call was recorded as follows:

YEAS—30

Aberman	Dumbauld	Keller, J.	Ruth
Allison	Fay	Keller, M.	Sahli
Amsterdam	Feather	Kelly	Scales
Aurentz	Filson	Kline	Shapiro
Baldrige	Fineman	Levin	Sharp
Baldus	Fleming	Manderino	Shettig
Banes	Fohl	Markley	Shoemaker
Barron	Gabreski	Mattioni	Shrager
Bashoff	Gehrlein	Michael	Silverman
Benfield	Gerber	Michener	Solomon
Buck	Gouger	Miller, D.	Sprogell
Bunting	Henderson	Moorhead	Stout
Burkholder	Heyburn	Murray	Swope
Camardella	Himes	O'Donnell	Tate
Caputo	Hocker	Orbin	Tully
Conley	Hook	Popil	Van Sant
Cosetti	Huggins	Prendergast	Waldron
Croop	Irvis	Quiles	Warman
Cunningham	Jirolanio	Rappaport	Welsh
Dailey	Kauffman	Rea	Westerberg

NAYS—57

Baldwin	Donaldson	Lee, L.	Richter
Benedict	Erwin	Leinbach	Roberts
Bloom	Fawcett	Leonard	Scarlett
Brennan	Forster	McGeary	Scott
Broderick	Fortney	Meyer	Scranton
Brown	Goldman	More	Sebastian
Butera	Goldstein	Morton	Shively
Cain	Hannum	Nelson	Strickler
Clark	Harding	Orban	Thomson
Clinger	Hatter	Otto	Whittum
Corey	Johnson	Pelletier	Wilcox
Cortese	Krill	Pott	Wilmarth
Curran	Laputka	Powell	Woodring
Desmond	Leach	Reynolds	Woodside
Devlin			

NOT VOTING—26

Bagenstose	Gray	Mangery	Percey
Barry	Griffith	McGlynn	Redick
Braham	Horne	Miller, R.	Rovner
Caron	Hostetler	Musselman	Stroup
Casey	King	Pasquerilla	Thornburgh
Donolow	Lane	Pechan	Tomascik
Fagan	Lee, K.		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

PRESIDENT BRODERICK. Now I understand Delegate Fineman has another amendment to offer.

DELEGATE FINEMAN. Mr. President, this amendment is needed in order to implement the amendment that just passed by a favorable vote. Since my amendment was two amendments suggested by the committee and there are different sections and lines involved, in order to fully implement what is before the body, this corrective amendment would be needed. It is a corrective amendment. It does not change anything other than what we have just voted upon.

AMENDMENTS WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I am advised that this is not the appropriate time to offer this correctional amendment. I have to wait until Senator Kline—

PRESIDENT BRODERICK. You are, therefore, withdrawing this correctional amendment at this time?

DELEGATE FINEMAN. I do have another amendment, Mr. President, over which there is no serious difference.

PRESIDENT BRODERICK. I understand there are no further amendments at this time to the Leonard amendment. Is that correct?

DELEGATE FINEMAN. No, there is one more. Oh, no, no, you are correct. This is a new amendment.

PRESIDENT BRODERICK. If there are no further amendments to the Leonard amendment, we will now take up the Leonard amendment, as amended by the Fineman amendments which were adopted.

Delegate Leonard, do you wish to make any additional statements in connection with your amendment?

DELEGATE LEONARD. Now that the barn door is closed, no. I would just hope that we would vote for it.

On the question,

Will the Convention agree to the Leonard amendment as amended by the Fineman amendments?

The roll call was recorded as follows:

YEAS—124

Aberman	Devlin	Krill	Redick
Amsterdam	Donaldson	Laputka	Reynolds
Aurentz	Dumbauld	Leach	Richter
Baldrige	Erwin	Lee, L.	Ruth
Baldwin	Fawcett	Leinbach	Sahli
Banes	Fay	Leonard	Scales
Barron	Feather	Levin	Scarlett
Bashoff	Filson	Manderino	Scott
Benedict	Fineman	Markley	Scranton
Benfield	Fleming	Mattioni	Sebastian
Bloom	Fohl	McGeary	Shapiro
Brennan	Fortney	Meyer	Sharp
Broderick	Gabreski	Michael	Shettig
Brown	Gehrlein	Michener	Shively
Buck	Gerber	Miller, D.	Shrager
Bunting	Goldman	Miller, R.	Silverman
Burkholder	Goldstein	Moorhead	Solomon
Butera	Gouger	More	Sprogell
Cain	Hannum	Morton	Stout
Camardella	Harding	Murray	Swope
Caputo	Hatter	Nelson	Tate
Clark	Henderson	O'Donnell	Thomson
Clinger	Heyburn	Orban	Thornburgh
Conley	Hook	Orbin	Tully
Corey	Irvis	Otto	Van Sant
Cortese	Jirolanio	Pelletier	Warman
Cosetti	Johnson	Popil	Welsh
Croop	Kauffman	Pott	Westerberg
Cunningham	Keller, J.	Powell	Whittum
Dailey	Keller, M.	Prendergast	Wilcox
Desmond	Kelly	Rappaport	Wilmarth

NAYS—9

Curran	Himes	Strickler	Woodring
Forster	Shoemaker	Waldron	Woodside
Hocker			

NOT VOTING—30

Allison	Fagan	Lane	Percey
Bagenstose	Gray	Lee, K.	Quiles
Baldus	Griffith	Mangery	Rea
Barry	Horne	McGlynn	Roberts
Braham	Hostetler	Musselman	Rovner
Caron	Huggins	Pasquerilla	Stroup
Casey	King	Pechan	Tomascik
Donolow	Kline		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, at this point I am a little confused. Is this the appropriate time to offer this correctional amendment to make sure the numbering and the sections are in order?

PRESIDENT BRODERICK. I am advised that it is.

DELEGATE FINEMAN. I offer the following amendment.

PRESIDENT BRODERICK. The clerk will read the amendment.

FINEMAN AMENDMENT TO PROPOSAL No. 4

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE FINEMAN offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 27), page 3, line 23, by striking out "(a)"

Amend Sec. 2 (Sec. 27), page 4, lines 1 and 2, by striking out both of said lines

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. I am thoroughly confused, Mr. President. I would like to ask for a 10-minute recess to get back on our bearings. I do not think half of the delegates know what they are voting for.

PRESIDENT BRODERICK. Let us see what we are doing.

This amendment being offered by Delegate Fineman is an amendment to Committee Proposal No. 4, printer's No. 12. The way I read the amendment, it amends Section 2 (Section 27), page 3, line 23, by striking out "(a)". It also says, "Amend Section 2 (Section 27), page 4, lines 1 and 2, by striking out both of said lines".

I am going to ask Delegate Fineman to explain his amendment.

The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. You must be kidding.

As I understand it, my amendment was an amendment offered to the proposal of the committee, which itself was an amendment. Since my amendment was adopted, it is, therefore, necessary to go back to the original proposal to make sure that my amendment is fitted into the original lines and section numbers of that proposal.

That is the purpose of that amendment—to make sure that the lines and section numbers gee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. May I ask if this is correct: We had an original committee proposal; then Delegate Leonard yesterday introduced committee amendments; we then had this thing printed, the clean copies to which we are referring, clean copy 4. Had the Leonard amendments been adopted without any changes, we would now have before us exactly what is on clean copy 4?

PRESIDENT BRODERICK. That is correct.

DELEGATE MANDERINO. Except that some changes were made by the Fineman amendments. Am I correct then that what we now have before us for further amendment is clean copy 4, with the following changes:

On the first page, line 15, the sentence which begins, "All fiscal affairs of the Commonwealth," et cetera, there was a substitution for that. We voted on that. In other words, that is the change that would be made on this clean copy?

PRESIDENT BRODERICK. That is correct.

DELEGATE MANDERINO. Also there is a change in this clean copy on page 3, that the committee took out line 27, beginning, "Legislation authorizing," lines 28 and 29. That is out. Is that correct?

DELEGATE LEONARD. That was out, Mr. President, as a part of our amendment today. We will talk about that tomorrow.

DELEGATE MANDERINO. Right.

PRESIDENT BRODERICK. He withheld that.

DELEGATE MANDERINO. Well, what I am getting at —I would like to see if I can follow him. If I take clean copy 4, the way I understand it, if I just make three changes in here, that is what is before us.

One is substituting that first section, "All fiscal affairs" for that new wording that was adopted, taking out those lines on page 3, lines 27, 28 and 29 and taking out lines 6 and 7 on page 4. If those three changes are made in this clean copy, is that what is now before us for further amendment? Am I correct?

PRESIDENT BRODERICK. That is substantially correct. Yes, indeed, that is, because this amendment, you see, is to the proposal, the original Proposal No. 4. His amendment is worded to that, not to the clean copy.

In other words, you have to look at Proposal No. 4 to see which lines are being changed.

DELEGATE LEONARD. That is printer's No. 12.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. May I read section 27 as I understand it to now read if we approve of this correctional amendment. As I understand it, Section 27 will then say as follows: "General Assembly's Appropriations. —(a) Appropriations made by the General Assembly shall not exceed the actual and estimated revenues available for said appropriations. (b) The General Assembly shall approve a capital budget for the ensuing fiscal year." And that is all it says.

PRESIDENT BRODERICK. You are correct as far as you have gone.

DELEGATE SCRANTON. That is all there is to Section 27.

DELEGATE LEONARD. Yes, from our viewpoint.

DELEGATE SCRANTON. Okay.

PRESIDENT BRODERICK. In other words, Delegate Scranton, you were correct as far as you went, but now if you will take Proposal No. 4, printer's No. 12, on page 4, you have to take out those first two lines under (b). We have just voted to take those out.

DELEGATE SCRANTON. Yes, but what I read is what is in. Is that correct?

PRESIDENT BRODERICK. That is correct.

DELEGATE SCRANTON. Thank you.

PRESIDENT BRODERICK. Now we still have your amendment, Delegate Fineman.

DELEGATE FINEMAN. Yes. This is a final amendment which I believe to be noncontroversial, based on my conversation with Delegate Leonard. I would first bring to the attention of the delegates that the—

PRESIDENT BRODERICK. Would the delegate yield? We are still on this correctional amendment which has not been voted on. This is the one which is in question which has the delegates confused as to the purport of it. I think maybe it is clear now.

Chairman Leonard, do you have any feeling on this?

DELEGATE LEONARD. I understood it the way, I think, Delegate Manderino stated it, and the way Delegate Scranton read it was clearly the way Section 27 reads. It is just a cleaning up, as far as I am concerned.

I know that if you take No. 4 right here, I can tell you what it is supposed to be. On the so-called clean 4 without a printer's number, page 1, line 15, and page 2, lines 1 and 2 are eliminated and the substitute words of "The financial affairs of any body" et cetera, go in there. Other than that, we have eliminated on page 3, lines 27, 28 and 29, the words in large caps starting with "Legislation" and ending with "appropriation", and have eliminated on page 4, lines 6 and 7 entirely.

That is all we have done. The rest of this is just renumbering accordingly.

DELEGATE FINEMAN. I move the question, Mr. President, I think we all understand that this is a correctional amendment needed in order to have the proper numbering in correct sequence.

PRESIDENT BRODERICK. You have all heard the corrective amendment offered by Delegate Fineman. Are you ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Fineman?

The roll call was recorded as follows:

YEAS—119

Aberman	Desmond	Johnson	Pott
Amsterdam	Devlin	Kauffman	Powell
Aurentz	Donaldson	Keller, J.	Prendergast
Baldrige	Dumbauld	Keller, M.	Rappaport
Baldwin	Erwin	Kelly	Redick
Banes	Fawcett	Krill	Reynolds
Barry	Fay	Laputka	Richter
Bashoff	Feather	Leach	Sahli
Benedict	Filson	Lee, L.	Scales
Benfield	Fineman	Lehbach	Scranton
Braham	Fleming	Leonard	Sebastian
Brennan	Fohl	Levin	Sharp
Broderick	Forster	Manderino	Shettig
Brown	Fortney	Markley	Shrager
Buck	Gabreski	Mattioni	Silverman
Burkholder	Gehrlein	McGeary	Solomon
Butera	Gerber	McGlynn	Sprogell
Cein	Goldman	Meyer	Stout
Camardella	Goldstein	Michael	Strickler
Caputo	Gouger	Michener	Swope
Clark	Griffith	Miller, D.	Tate
Clinger	Hannum	Miller, R.	Thomson
Conley	Harding	Moorhead	Tully
Corey	Hatter	More	Van Sant
Cortese	Henderson	Morton	Waldron
Cosetti	Heyburn	Murray	Warman
Croop	Himes	Nelson	Welsh
Cunningham	Hook	Orbin	Westerberg
Curran	Irvis	Otto	Woodring
Dailey	Jirolanio	Popil	

NAYS—8

Bunting	Huggins	Scarlett	Shapiro
Hocker	Pelletier	Scott	Wilmarth

NOT VOTING—36

Allison	Gray	Orban	Ruth
Bagenstose	Horne	O'Donnell	Shively
Baldus	Hostetler	Pasquerilla	Shoemaker
Barron	King	Pechan	Stroup
Bloom	Kline	Percey	Thornburgh
Caron	Lane	Quiles	Tomascik
Casey	Lee, K.	Rea	Whittum
Donolow	Mangery	Roberts	Wilcox
Fagan	Musselman	Rovner	Woodside

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Thank you, Mr. President.

This is an amendment that I do not believe to be controversial, based on my discussions with the chairman of the committee, Delegate Leonard. It concerns Section 28 dealing with surplus.

PRESIDENT BRODERICK. Let us have the clerk read the amendment.

DELEGATE FINEMAN. The first part of this amendment is to be stricken out, the words dealing with assigned. That is to come out of this proposed amendment.

FINEMAN AMENDMENT TO PROPOSAL No. 4

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE FINEMAN offered the following amendment which was read by the clerk:

Amend Sec. 2 (Sec. 28), page 4, line 4, by inserting after "appropriation": by the General Assembly

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. I understand, according to Delegate Fineman, that the first line should be stricken on this amendment that is being passed out to you and that the amendment itself begins with the words "Amend section 28, page 4, line 4, by inserting after appropriation 'by the General Assembly.'"

The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, on the basis that this amendment merely intends to make certain that appropriations only be made by the General Assembly, and it is my understanding that the General Assembly is the only body which can make appropriations to begin with, I certainly have no objection to this amendment.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Fineman?

The roll was recorded as follows:

YEAS—119

Aberman	Desmond	Kauffman	Prendergast
Amsterdam	Devlin	Keller, J.	Rappaport
Aurentz	Donaldson	Kelly	Redick
Baldrige	Dumbauld	Krill	Reynolds

Baldwin	Erwin	Laputka	Richter
Banes	Fawcett	Leach	Sahli
Barron	Fay	Lee, L.	Scales
Barry	Feather	Leinbach	Scarlett
Bashoff	Filson	Leonard	Sebastian
Benedict	Fineman	Levin	Shapiro
Benfield	Fleming	Manderino	Sharp
Braham	Fohl	Markley	Shettig
Brennan	Forster	Mattioni	Shively
Broderick	Fortney	McGeary	Shrager
Brown	Gabreski	McGlynn	Silverman
Buck	Gehrlein	Meyer	Solomon
Bunting	Gerber	Michael	Sprogell
Burkholder	Goldman	Miller, D.	Stout
Butera	Goldstein	Miller, R.	Strickler
Cain	Gouger	More	Swope
Camardella	Hannum	Morton	Tate
Caputo	Harding	Murray	Tomascik
Conley	Hatter	Nelson	Tully
Corey	Henderson	O'Donnell	Van Sant
Cortese	Himes	Orban	Waldron
Cosetti	Hocker	Orbin	Warman
Croop	Hook	Otto	Welsh
Cunningham	Irvis	Popil	Whittum
Curran	Jirolanio	Pott	Wilmarth
Dailey	Johnson	Powell	

NAYS—11

Clinger	Pelletier	Scranton	Woodring
Huggins	Roberts	Shoemaker	Woodside
Moorhead	Scott	Thomson	

NOT VOTING—33

Allison	Gray	Lane	Quiles
Bagenstose	Griffith	Lee, K.	Rea
Baldus	Heyburn	Mangery	Rovner
Bloom	Horne	Michener	Ruth
Caron	Hostetler	Musselman	Stroup
Casey	Keller, M.	Pasquerilla	Thornburgh
Clark	King	Pechan	Westerberg
Donolow	Kline	Percey	Wilcox
Fagan			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

FOHL AMENDMENT TO PROPOSAL No. 4

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. Mr. President, I read in place and present the following amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE FOHL offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 14), page 2, by inserting between lines 1 and 2: The same Commonwealth officer or department shall not have responsibility for both the pre-audit and post-audit functions.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. Mr. President, when Committee Proposal No. 4, printer's No. 4, was discussed earlier in the week there was some question brought up, primarily by Delegate Amsterdam, of the assignments of the responsibilities for the preaudit and postaudit functions which were incorporated in Section 1 (a), Sections 1 (b) and 1 (c). They went to, as you know, much detail; they assigned who would do the audit; and this amendment is intended to reinstate the intent of that language with the greatest flexibility to which we could come. I think it is within the intent of the committee's original proposal, without the confining or handcuffing that was referred to in the previous discussion.

PRESIDENT BRODERICK. Does the committee chairman have any comment on this amendment?

DELEGATE WILCOX. Mr. President, I would have to agree with Delegate Fohl that this amendment is in accord with the concept adopted by the full Taxation and State Finance Committee, to separate the post and preaudit functions so that the same party does not make both, as Delegate Amsterdam said, to prevent the man from getting his own papers.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I think we talked about this at length yesterday and I thought we had disposed of it.

Under current legislation, the Auditor General issues warrants upon the Treasurer for the payment of Commonwealth obligations. Also, under present law, he is responsible for auditing all the transactions of the state government once they have been caused.

This amendment cannot possibly go into effect unless a new office were created in the Commonwealth structure. The Treasurer also makes a preaudit in conjunction with the Auditor General in order to satisfy himself that he should draw a check on the warrant that has been issued to him by the Auditor General.

I would like to repeat what I said before, that this system has worked exceedingly well for the last 40-some years, in which I have watched it operate, and that no troubles have existed or have come up. We have a former Auditor General and State Treasurer among our membership here in this Constitutional Convention. While I would not like to read his mind, it appears to me that he would probably agree that this system has worked exceedingly well, and it would appear to me that there would be no reason for changing the system.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Thank you, Mr. President.

Mr. President, we are whipping the same dead horse again that we disposed of the other day. I think we have had a feeling from the entire Convention that the Auditor General's department should have the entire watchdog facility and to split these things would be a ripper-type bill which would strip the watchdog powers of the Auditor General's office. I think we are bringing up the same thing that the Convention got rid of the other day.

I strongly urge the delegates to vote "no" on this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, it seems to me that this proposed amendment is not necessary.

The reason we raised it the other day was because the committee's proposal indicated that the Treasurer would have the preaudit function. Because of that fact, we felt that it had to be someone other than the Treasurer. It need not be someone other than the postauditor.

Personally, if I were doing it I would prefer to see a

person other than the one doing the postaudit do the preaudit. However, it can come out of the same department.

It seems to me the fault we found the other day was that the Treasurer was doing the preaudit. That is no longer required. Therefore, it seems to me this amendment really is not necessary at this time.

As Delegate Swope said, the administrative machinery in the Commonwealth today takes care of this adequately.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, the objections to this amendment leave me somewhat bewildered.

It has always been my attitude that in proper accounting you have someone check someone else, and there is no question about it.

I am not an accountant and I quite often do rely on accountants for the answers to these types of questions. I wonder if Delegate Leonard might be able to give me an answer to this.

DELEGATE LEONARD. Delegate Goldman, I spoke, I believe, rather clearly the other day as to my thinking and philosophy on this matter. I have to disagree with Delegate Amsterdam that the machinery now takes care of this division. The machinery does not. As it is set up now, the laws of the Commonwealth have put both the pre and the post in the same office.

It is my thinking, very definitely, that the Auditor General will be a far more effective officer of this Commonwealth, will be able to do a far better job in making constructive comments about the operation of state government, if he is not the one who has to sign the warrant to say this expenditure is okay.

So I think that, first, we did not dispose of this matter the other day, which Delegate Murray said that we had under interrogation. It came up in committee several times, and every time it came up by itself, it came through with a majority vote of the committee; I believe, of over 20 on the committee. But it is my opinion that it is an important division of responsibility which is basic and good control in auditing.

It is also my judgment that this would make the Auditor General a superior officer to what he is now permitted to be with the system under which he operates.

I would clearly favor this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. I have to agree with this and that is why I was somewhat taken aback by Delegate Swope's comment. Just because something has been going on for 40 years does not mean that we have had something going on right. We do not know whether the audit procedure or whether the functions of government have been proper, because I believe we might have been having improper auditing procedures.

My feeling was in favor of Delegate Fohl's amendment and Delegate Leonard sort of affirms it. I do believe the amendment is proper.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I would like to make several further observations.

I would agree with my colleague, Delegate Leonard, that the post and preaudit functions in commercial and industrial accounting, where an outside firm is involved, certainly does not belong in the same firm. But I would like to state at that point that the accounting firm that is hired by the commercial or industrial enterprise has that enterprise as its client. The Auditor General does not have a client; the Auditor General is an independent officer. The Governor and the administrative side of the government is no more a client of the Auditor General than I am. He is a completely independent officer. I submit that in that capacity he is perfectly capable of making both a preaudit and a postaudit.

I want to repeat what I said before, that as long as the Auditor General is required by law to issue a warrant on his own name, on his own responsibility, to the treasurer, directing that officer to issue checks, he must have the preaudit function and you cannot take it away from him.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I am just a little bit in need of knowledge at the moment. I wonder whether Delegate Leonard would tell us how, under the proposal of the committee, we can have a postaudit and a preaudit separated. I thought we could only have them separated by having different individuals in the Auditor General's office handle it.

If these things can be handled in some other way, by having a comptroller general such as I suggested, that would be fine, but I do not find any provision nor possibility for that under the committee's proposal. I am just wondering how he thinks it ought to be handled?

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. As I understand the amendment, and the way it was discussed in committee, without getting involved as to who would be the officer, the basic principle which is involved here is that the same person should not say okay to a transaction and then come along later and have to review what he did.

What you are asking, Delegate Amsterdam, is a purely legislative matter, and it would be up to them to designate who would be the one to sign the warrant. I think, really, the whole preaudit function about which we are talking here is the signing of the warrant. Anything else with respect to review of transactions of the Auditor General or the officer who is doing the postaudit is fine. He will certainly continue to review transactions.

The only point we have here is who is to sign the warrant. As I understand it, the amendment is saying that the same officer who does the postauditing should not be the officer who will sign the warrant for payment. The legislature would have the prerogative to decide who shall do it.

DELEGATE AMSTERDAM. Does that mean that the legislature could empower the treasurer who actually makes the funds available to do the preaudit?

DELEGATE LEONARD. I would say that the legislature could empower the treasurer; they could empower themselves, as they can today. You know, this is nothing new. They can empower the treasurer today to do it, because it is only by law that the Auditor General does it. The Constitution now says that the warrant shall be signed before the expenditure of money.

So it is not taking away anything from the legislature which it does not have today, except that it is to divide this function.

DELEGATE AMSTERDAM. My understanding is that we are trying to better what is happening today under this amendment, and I am all for that, providing we are actually bettering it. My question to you, Delegate Leonard, is, are we bettering it if we permit the preaudit function to be in the hands of the treasurer, even if the legislature so designates?

DELEGATE LEONARD. My point is that the legislature has the right to so designate that today. We are not doing anything as to who has the right to do what, except to say that these two functions should not be by the same officer.

That is all that is being done.

DELEGATE AMSTERDAM. I am sorry. I thought you said today that the Auditor General has the preaudit function.

DELEGATE LEONARD. He does by the—

DELEGATE AMSTERDAM. Then we are changing what we are doing today.

DELEGATE LEONARD. No. Well, it is by the instance of statutory law, the Fiscal Code, that the Auditor General has that responsibility. That is correct.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I disagree with what Delegate Leonard is saying. The gentleman is saying we are not doing anything to the legislature, but they cannot do this. This does not make sense to me. You say that you are not changing what they are doing today with this amendment, but you are saying that they cannot do what they are doing today with this amendment.

DELEGATE LEONARD. The only thing that we are saying concerns what Delegate Amsterdam was saying, that this will permit the legislature to give the Treasurer the right to sign the warrants, and my answer was that the legislature today has the right to give the Treasurer the responsibility to sign the warrants.

Clearly, the only intent of this amendment, as I see it, is to merely get to a basic and good business practice which has been recommended by Senator Heyburn's committee back in 1947 or 1949. It was recommended by the Chesterman Committee back in 1953 and it has been recommended many times and it is done in most States throughout this country, to divide this responsibility.

DELEGATE HOCKER. Mr. President, I will just say to Delegate Leonard that it may not be his amendment but it has been his idea ever since I knew him, and that is ever since the Convention started.

DELEGATE LEONARD. I have no argument with that, sir.

DELEGATE HOCKER. That is correct. It is just a case of getting somebody else to whip the mule. I would ask the people here not to tie the hands of the legislature.

I agree with Delegate Swope. We are doing all right; we have no problem; and I would ask the people to vote against this amendment.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. Mr. President, a question of personal privilege for the information of Delegate Hocker. I need no one to suggest amendments to me. I was the original sponsor of the individual delegate proposal regarding auditing and I am very happy that Delegate Leonard agrees with me. He did not dictate the amendment.

DELEGATE HOCKER. I apologize to the gentleman, sir. I am sorry he hit the mule in the front end.

PRESIDENT BRODERICK. The Chair recognizes Delegate Whittum.

DELEGATE WHITTUM. Mr. President, I would urge the delegates to vote for this amendment. I fail to see or recognize any valid reason for the opposition. It seems to me that their conviction is more apparent than their reason. This is only, as has been pointed out by Delegate Fohl, good business, good management. This will strengthen the audit and the fiscal affairs of the Commonwealth.

I urge you to adopt it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Fohl?

The roll was recorded as follows:

YEAS—88

Amsterdam	Croop	Keller, M.	Richter
Aurentz	Cunningham	Kelly	Roberts
Baldrige	Curran	Krill	Scarlett
Baldwin	Desmond	Laputka	Scott
Barron	Devlin	Leach	Scranton
Benedict	Erwin	Lee, L.	Sebastian
Benfield	Fohl	Leinbach	Sharp
Bloom	Forster	Leonard	Shettig
Braham	Fortney	Levin	Shively
Brennan	Gabreski	McGeary	Sprogell
Broderick	Gehrlein	Meyer	Stout
Brown	Goldman	Miller, D.	Strickler
Buck	Goldstein	Miller, R.	Thornburgh
Bunting	Gouger	Moorhead	Tomasclk
Burkholder	Griffith	More	Tully
Butera	Hannum	Morton	Van Sant
Cain	Hatter	Orban	Waldron
Clark	Heyburn	Otto	Warman
Conley	Himes	Pott	Welsh
Corey	Johnson	Powell	Whittum
Cortese	Kauffman	Rea	Wilcox
Cosetti	Keller, J.	Reynolds	Woodring

NAYS—47

Aberman	Fineman	Markley	Sahli
Banes	Fleming	Mattioni	Scales
Barry	Gerber	McGlynn	Shapiro
Bashoff	Harding	Michener	Shoemaker
Camardella	Henderson	Murray	Shrager
Caputo	Hocker	Nelson	Solomon
Dailey	Hook	O'Donnell	Swope
Donaldson	Huggins	Orbin	Tate
Dumbauld	Irvis	Popil	Westerberg
Fay	Jirolanio	Prendergast	Wilmarth
Feather	Manderino	Rappaport	Woodside
Filson	Mangery	Redick	

NOT VOTING—28

Allison	Fagan	Lane	Percey
Bagenstose	Fawcett	Lee, K.	Quiles
Baldus	Gray	Michael	Rovner
Caron	Horne	Musselman	Ruth
Casey	Hostetler	Pasquerilla	Silverman
Clinger	King	Pechan	Stroup
Donolow	Kline	Pelletier	Thomson

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

GOLDMAN AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, Section 27, to

which my amendment originally referred, has been cut up so much that it does not make any sense. I, therefore, withdraw my amendment.

COMMITTEE PROPOSAL No. 4, PRINTER'S No. 12

PRESIDENT BRODERICK. The Chair understands that there are no further amendments to this proposal. Therefore, under the rules, Proposal No. 4, Printer's No. 12, will appear on tomorrow's calendar on second consideration.

RECESS REQUESTED

PRESIDENT BRODERICK. I suggest, before we take up Proposal No. 6, that we recess for about 15 minutes until we get ourselves ready to go.

COMMITTEE MEETINGS

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. For fear that one or two of the delegates might not find their way back following the recess, may I announce that the Judiciary Committee will have a meeting at 8 a.m. tomorrow morning in the House Minority Caucus Room on the third floor of the Capitol.

PRESIDENT BRODERICK. I certainly hope that you will all be back, because we are going to start voting on Proposal No. 6.

The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON. Mr. President, just another announcement, please. The Committee on Style and Drafting will meet this evening at 8:15 in Room 615 of the Main Capitol. Those of you who have been envying us for our lack of things to do need no longer envy us from now on, Mr. President.

DELEGATES' PRESENCE NOTED

PRESIDENT BRODERICK. The Chair recognizes Delegate Tomascik.

DELEGATE TOMASCIK. Mr. President, this morning I entered the Convention hall after the electronic roll call. Would you please have the record marked to show my presence?

PRESIDENT BRODERICK. I understand, through our efficient clerk, that all those who came in late have been marked as being present, but you may wish to check.

The Chair now recognizes Delegate Benedict.

DELEGATE BENEDICT. I also arrived after the roll call. May I be recorded as being present?

PRESIDENT BRODERICK. We shall have your presence recorded, Delegate Benedict.

RECESS

PRESIDENT BRODERICK. Without objection, the Chair now declares a recess for 15 minutes. The Chair hears no objection.

AFTER RECESS

The time of recess having expired, the Convention was called to order.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 6, Printer's No. 6,** entitled:

Amending the Constitution of Pennsylvania providing for local government in Pennsylvania.

On the question,

Will the Convention agree to the proposal on second consideration?

PRESIDENT BRODERICK. We are ready to proceed with Proposal No. 6, printer's No. 6. I just want to repeat a few of the ground rules.

First of all, amendments. We are going to request that anybody who has an amendment to bring it forward just as soon as he has the amendment and submit it to our committee. The committee is in charge of Vice President Casey and Vice President Orban and the attorney for the Local Government Committee, together with our Solicitor and Assistant Parliamentarian Tom Balaban. They will endeavor to organize the amendments so that we will be able to eliminate amendments that are mere duplications and also that we will be able to take the amendments seriatim, or in order, as they come in the proposal.

We are going to vary our procedure just slightly in connection with printer's No. 6 in order to expedite the consideration of the local government proposal. We are going to consider it in three parts and these three parts have been agreed to by the chairmen of the Local Government Committee, Delegate Manderino and Delegate Pasquerilla. Those three parts are going to be: Part 1 is going to cover Sections 1, 2, 3 and 4 of the proposal; part 2 will cover Sections 5, 6, 7 and 8 of the proposal; part 3 will cover Sections 9, 10, 11, 12, 13 and 14 of the proposal. These are the three parts which are within Section 1 of the proposal. Then, of course, following the discussion of those three parts, we can review and discuss Sections 2 and 3 of the proposal, which are on pages 5 and 6 of the proposal.

When we take up the first part of Proposal No. 6, which will be Sections 1, 2, 3 and 4, the committee co-chairmen will designate someone to explain those sections and also they will stand to answer questions in connection with those sections. In order to expedite it, we have set a tentative time limitation of one hour on that question-and-answer and explanation period. If the delegates think more time is necessary, we can vote more time. This is in the effort to expedite our amendment process and to get on.

We have had a number of requests from delegates, and I will not mention their names, as to whether we are going to sit tomorrow, Valentine's Day. The answer is, yes.

Frankly I want to state our objectives again. Our objectives are to get over the second consideration of the Local Government Proposal and second consideration of the Judiciary Proposal this week. I hope we will be able to do it without remaining here on Saturday, but if we do not get to it, it seems to me the only way we can accomplish it is to be here on Saturday. I feel just as you do, that we should get going and try to complete second consideration this week, before Friday evening.

With that, who is going to go first on the first part of the Local Government Proposal covering Sections 1, 2, 3 and 4?

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. If it is in order, Mr. President, can I move the previous question to save time?

PRESIDENT BRODERICK. The Chair has reached the point where it will accept that motion.

DELEGATE PASQUERILLA. I would like to restate —and if you will please take out Committee Proposal No. 6, we will discuss under Unit No. 1, Section 1, Local Government; Section 2, Home Rule; Section 3, Optional Plans; Section 4, County Government.

I would ask the co-chairmen of Structure and Organization Subcommittee, the co-chairmen of the Home Rule Subcommittee and the co-chairmen of the County Government Subcommittee to come and sit down front in the hot seats.

We will attempt to answer your questions within about an hour, after which time we would like to proceed with amendments and complete Unit 1, Sections 1, 2, 3 and 4.

Our opening statement to the delegates of this Convention concerning the committee's report on local government is simply this: The committee, in our opinion, has provided a very broad and vast article looking far into the future, whereby local government through structure can help solve the problems of the future.

Some of the items contained in this local government article may not be used for many years, but we ask that you have faith in the future, that you have faith in the legislature, and that we proceed to do the things that we think are right for the many, many years for which this Constitution is going to be written.

To explain Unit No. 1, Sections 1, 2, 3 and 4, if the Chair will recognize Co-Chairman Manderino, he will explain the first four sections of Unit No. 1.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Thank you, Mr. President.

We will give a brief explanation of these first four sections, and then when the questioning begins, we will refer them to our subcommittee co-chairmen as we go along.

Section 1 consists of three lines, two sentences. The first sentence appears simple and innocuous, but it really establishes the General Assembly's power over local government that it "shall provide by general law for local government within the Commonwealth." It is not just an opening statement. It, in effect, is stating that the General Assembly provide generally—that is the way we are starting—for local government. I just might add there, as an example, we have had questions, for instance, why did you not provide in here for the incorporation and dissolution of municipalities? There are a lot of things which are not specifically spelled out that are not in the Constitution now, but that first sentence establishes the authority of the General Assembly to provide general law for municipalities in the Commonwealth.

Section 2, I think is self-explanatory. The committee is asking for uniform procedural laws. Procedural, we know, is a term that has been used in government, in the courts. We know it is not an absolutely defined word that will always avoid litigation, but it is the best word we could find. The intent was, why should we have different ways of adopting ordinances throughout this Commonwealth in various municipalities? Why should we have different ways of advertising things? Why should we have different kinds of appeal in zoning matters, for instance? Strictly procedural matters.

We have been asked whether that includes structure. No, structure is government structure which is referred to later.

Section 2 is the Home Rule section which grants to all municipalities home rule. It is the vehicle by which municipalities get residual powers. We have had questions and controversy about two areas here. One is the granting of home rule to counties and initially even the granting of home rule to small units which have 60 people or 1,000 people. So at each end of the barometer, we have had questions and some controversy.

We would simply like to state, to reiterate what Delegate Pasquerilla said, this was devised not for 1969; it was devised for many, many years to come.

Counties are given the right to adopt home rule charters. The General Assembly has the final, ultimate right to determine what powers would be exercised by a municipality or a county. Any conflict that would devolve, the General Assembly has full power to resolve this. Likewise, we are not afraid of small units and home-rule charters.

First of all, the experience elswhere will be that probably they will not even apply many of them, or they will adopt some model which may be devised. But we are not concerned simply because the General Assembly has the final power to deny.

The last comment on that question is that the last sentence—we had some question about the interpretation as to whether the General Assembly can only deny for four years or forever—and the answer is clearly forever. The General Assembly always constantly has the power, even after a municipality has adopted a home-rule charter, to deny a power to that municipality that is contained in its home-rule charter. The General Assembly remains supreme.

Section 3, in addition to home-rule charters, the General Assembly forms, under mandate, optional forms of government for all municipalities, counties, cities, boroughs, townships, incorporated towns. The General Assembly would then make these available, and municipalities can select, if they prefer, an optional form. Th article also has in it the initiative and referendum pr cess by which, if optional forms are available and tl governing body does not move to put it on the ballo others can. Later in the article, there are definitions c initiative and referendum.

Section 4 is on County Government. The intent of Section 4 is to preserve a modified type of county government, leaving it open to local option, local referendum, to determine if they wish to change the form that is in there. The form that is in Section 4 is essentially the same form that exists in counties today, with the removal of county surveyors and the removal of coroner.

If these first four sections are adopted, what happens the day they are adopted? Nothing happens. All codes remain in effect that are now in effect in the Commonwealth upon adoption of these four sections.

Therefore, even in county government, for example, the adoption of Section 4 on county government does not

change county government by the adoption of this. It opens the door for it to be changed by local option or by the General Assembly in the case of county surveyors and coroners. The codes presently in effect would take care of existing government; there would be no hiatus, in other words.

After four years, the General Assembly would have adopted the new laws relating to home-rule charters and optional forms of government, so that, when the codes are not in effect, there would be substitute legislation. With our faith in the General Assembly to do this, therefore, no hiatus would occur, during that four-year period which is provided for in Section 1 here under Home Rule Charters, and no hiatus would exist under Section 4, because no change would take place until the people voted or the General Assembly acted.

Those are the highlights of Sections 1, 2, 3, and 4. I have not covered all details, but we can leave them for further questioning.

Thank you.

DELEGATE PASQUERILLA. Mr. President, we are now ready for interrogation on Sections 1, 2, 3 and 4.

PRESIDENT BRODERICK. Are there any questions?

The Chair now recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, I wish to ask some member of the committee to define the word "municipalities" as it appears throughout these four sections.

DELEGATE PASQUERILLA. The word "municipalities" as defined throughout the four sections is on page 6. For the purpose of cutting down surplus language in the article and instead of always completely repeating cities, boroughs, incorporated towns or townships, we defined, municipalities shall mean for this article only a county, city, borough, incorporated town, or township.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rea.

DELEGATE REA. I direct my question to line 8 on page 1, to the sentence which says, "Such general law shall be uniform as to all classes of local government regarding procedural matters."

I would like to pose an instance on "procedural matters." If the General Assembly should, or if a municipality should, adopt a wage tax as we know it, must all wage taxes be uniform as to amount, subject matter, rate, and so forth, because that, to me, is a procedural thing, the rate, the subject upon which it is levied? Is that your intent?

DELEGATE PASQUERILLA. Mr. Banes is the co-chairman of Structure and Organization and that is his language. Mr. Banes, will you answer the question?

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. It is not the intention of this particular section to operate in the area to which Delegate Rea raises the question at this time. The subject of taxation, the particular subject referred to, wage tax, is governed by a statute, formerly 481, the so-called "Tax Anything Law," now 511. This section and this particular word are not applicable to the matter of taxes.

DELEGATE REA. It is applicable to, for instance, zoning ordinances?

DELEGATE BANES. It is the intention of this particular section as it refers to procedural matters, that the various powers of local government, the administration of the daily affairs of government, be under one administrative code for each particular area in which the legislature deems it necessary to enact such legislation.

As was pointed out, for example, in the matter of enacting ordinance, every class of municipality today does this in a different way, because each particular class of municipality has its own code. So, based upon whatever the experiences were in that particular class of government and whoever may have been involved in writing the particular code for that class of government wrote it in a manner which they deemed best for their particular class of government.

I might point out, for example, that in the simple matter of an ordinance laying out roads, some of the statutes require that the matter of the ordinance be first introduced as a bill. It may require that it be advertised at the time it is introduced. It must lay on the table possibly for 30 days before acted upon. Whereas, in another class of government it can be immediately introduced, given first reading—in fact it can be given three readings on the first night—and be finally adopted and advertised.

For example, in boroughs, an ordinance, when finally passed, must be advertised within 30 days. In a first class township, it can be finally adopted and it does not become effective until 10 days after it is advertised.

DELEGATE REA. May I ask this one additional question? We know that there are various forms of government, and I do not think it is your intention to abolish, for instance, boroughs and townships and make every municipality a borough?

DELEGATE BANES. No.

DELEGATE REA. Procedurally, in a borough the mayor signs ordinances. There is no mayor in a township. So, therefore, you are going to have differences immediately, are you not?

DELEGATE BANES. I do not anticipate that there will be any problem in this area. It is not the intention of this particular section that any of the present forms of local government be abolished.

DELEGATE MANDERINO. May I say I had that question. That is a problem of legislative drafting of a bill. For instance, one municipality may have a mayor and another one a chairman of the board of supervisors; therefore, you would not draft uniform procedural law by saying "the mayor." Someone simply has to study and maybe word it to cover everybody, and it would simply say: The chief executive officer shall have 20 days to sign an ordinance. So the chief executive officer of a municipality might apply to a mayor in one community; it might apply to a chairman in another community. That is a problem of how you word legislation. That is exactly the purpose of this, to make the General Assembly start addressing itself, when it considers legislation procedurally, to the entire Commonwealth and to word legislation that way, which we think can be done.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. In Section 3, Optional Plans, it says here that there are three ways of getting this optional plan on the ballot. Am I correct in saying it is always on the ballot?

DELEGATE PASQUERILLA. That is correct.

DELEGATE POWELL. Initiative, Governing Body and the General Assembly. When you get this on the ballot, the optional form is a yes/no vote on one form, or can you put four forms on the ballot and have them vote the one they like best?

DELEGATE PASQUERILLA. I think you have to refer to the second sentence where it says, "The General Assembly shall provide by law optional form of government," and in that law they will determine the methods and the procedures by which the options are to be voted upon. It is the same thing as your present charter commissions established for cities.

DELEGATE POWELL. In other words, the present form of government does not necessarily have to be one of the options?

DELEGATE PASQUERILLA. It does not say that, but the present form of government can be one of the options.

DELEGATE POWELL. By initiative I would expect that the legislature sets up a form of government and the initiative is taken by people circulating petitions. Is that correct?

DELEGATE PASQUERILLA. That is correct.

DELEGATE POWELL. On this petition, you are telling me that you can have an optional form of government—one or four?

DELEGATE PASQUERILLA. What you do is, the General Assembly has to establish the laws under which this initiative can take place under the various types of optional forms of government. It is difficult for us to put things in the Constitution to say how all of these things are to be done or what is the optional form of government. We have left it wide open for the General Assembly to do its work and tell us what kind of optional plans we should have.

DELEGATE POWELL. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. I would like to confirm my reading of a portion of Section 2 on home rule, the sentence beginning on line 16 dealing with the denial of the right to exercise a power or perform a function by the General Assembly. Is my understanding correct that the denial could be as to particular types or classes of municipalities, for instance, to boroughs or to cities or, indeed, to particular classes of types of municipalities?

DELEGATE PASQUERILLA. The answer to that is, yes.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Delegate Banes, one comment I wanted to make in regard to your reply to Delegate Rea: We did have some quite considerable discussion about the second sentence of Section 1 as to whether or not it violated the uniformity clause in the call of this Constitutional Convention. I believe I am correct on that, am I not?

DELEGATE PASQUERILLA. That is correct.

DELEGATE GOLDMAN. May I make two other comments? Of course, I have had the advantage of being at all of the meetings on Local Government. For the benefit of the other delegates, may I bring up just two questions, for your confirmation or for your comment? Under the home-rule charter, am I not correct, that if the legislature fails to act, the home-rule charters become self-executing and any municipality can automatically adopt its own charter as it sees fit?

DELEGATE PASQUERILLA. If the General Assembly does not pass the enabling legislation within four years, it becomes self-executing. That is correct.

DELEGATE GOLDMAN. And as home rule now stands, it is granted for all forms of local government as we have used the term "municipalities" including counties?

DELEGATE PASQUERILLA. That is correct.

DELEGATE GOLDMAN. And that under that proposal, it would be conceivable for various municipalities, if the legislature has not acted, to establish each municipality in its own charter to establish its own tax laws, its own right of taxation on citizens, regardless of where they live, and we could have a multiplicity of taxes in a particular county with each of its local subdivisions having home-rule charters.

DELEGATE PASQUERILLA. In theory, Mr. Goldman, you are correct, but once again we must have faith that the General Assembly is going to do this work within four years. The committee came out with the recommendation of two years. After discussing the matter with several members of the legislature, they felt they could do this job in four years and that is the purpose of the four years. To eliminate the conflicts, it seems only proper that the General Assembly must act, and I think it will.

DELEGATE GOLDMAN. Within the Section on County Government, as one of the options we did establish the retention of the various row offices with the exception of the county surveyor, and we eliminated the coroner.

DELEGATE PASQUERILLA. That is correct.

DELEGATE GOLDMAN. And under this optional form of county government, the county could, in its charter, abolish these row offices which we have established in the Constitution to be left available.

DELEGATE PASQUERILLA. Once again, it can establish its home-rule charter and you must refer to the home-rule provision as long as it is not denied by the Constitution or by the General Assembly.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I would like to ask Delegate Pasquerilla a question, please.

Under Section 4 on County Government, we have now eliminated the office of coroner. As of today, the coroner is a constitutional officer. If this proposal is passed, as enumerated in Section 4, how would the office of coroner be administered?

DELEGATE PASQUERILLA. Mr. President, would you recognize the Co-Chairman of the Committee on County Government, Mr. Tate, to answer the question?

PRESIDENT BRODERICK. Yes, indeed. Chairman Tate.

DELEGATE TATE. The office of coroner is not abolished. It is eliminated from the Constitution, but it will remain a legislative office. Until the legislature makes some change, the office of coroner will continue as a county office for those counties which continue to structure their governments under Section 4 of this proposal.

DELEGATE JIROLANIO. Is it not so that whatever

powers the coroner has today, he has by reason of the fact that it is a constitutional office?

DELEGATE TATE. No, the Constitution now provides that there shall be a coroner along with the other row officers, but all of these officers are the subject of the county code which is now in existence and will continue in existence until changed by the legislature and insofar, of course, as common law applies to the conduct of these officers also. Therefore, until the legislature acts to abolish the office of coroner or to substitute it by some other office, such as, the medical examiner or some other form of officer, this office will continue without change.

DELEGATE JIROLANIO. Would you not be repealing the section that applies to coroner on page 6 of Section 2? I do not know which particular one, but I believe that one of the numbers that you have enumerated would actually repeal the coroner's office and, if that would be so, then, of course, there would not be any jurisdiction whatsoever to give any power to one who is not an officer?

DELEGATE MANDERINO. If I understand the problem, we specifically checked the existing county code, and the county code starts off by saying, "County officers shall be" and one of them is the coroner, and then it gives the duties and rights of the coroner. The legal effect is, as Delegate Tate said, you take it out of the Constitution, but the county code still exists which says "There shall be a coroner," as with all other offices. If this is adopted, let us say on April 23, what happens April 24? Nothing, because the county code remains in effect which was passed by the General Assembly, repeating what is in the Constitution. In other words, the Constitution says there shall be a coroner; there was legislation repeated in the county code which stated there shall be a coroner. That will still remain in effect. The coroner would exist with all his rights and duties that are not spelled out in the Constitution, but are spelled out in the code, until the General Assembly would change or repeal that.

DELEGATE JIROLANIO. The thing that bothers me is, how can the county code be in existence if you are going to take away the power by which the county code was able to enumerate that particular office. I am not saying that I am for or against the coroners. I am just trying to clear up this problem in my own mind because I find nothing in the schedule whatsoever that has to do with coroners.

DELEGATE PASQUERILLA. Mr. President, I think the delegates are entitled to an explanation of the coroner versus the medical-examiner system before we answer Mr. Jirolanio's question.

The larger counties in the Commonwealth made a strong plea for a medical-examiner system. We have several problems where some of the smaller counties cannot establish a medical-examiner system, so the Local Government Committee decided to eliminate as a constitutional office that of coroner. However, I would like to refer the delegates to Section 4, page 2, which says on line 11, "and such others as may from time to time be established by law," which means that the General Assembly can reinstate the coroner, the General Assembly can establish a medical-examiner system and, of course, at the same time, the medical-examiner system can come into being through home-rule charters or optional plans of government.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sprogell.

DELEGATE SPROGELL. I would like to ask why we are going to keep these officers which are listed here under Section 4 when they seem to have so little to do? When I was campaigning as delegate to this Convention, even the persons who were campaigning with me for these offices would say publicly: "There is no reason for these offices; we do not know enough about them; they are not really functional; they have nothing really to offer the people." Why do we protect these offices?

DELEGATE PASQUERILLA. I can answer it, Mr. President, but would you recognize Delegate Tate?

PRESIDENT BRODERICK. Yes. The Chair recognizes Delegate Tate.

DELEGATE TATE. Delegate Sprogell, we recognized in the County Government Subcommittee of the Local Government Committee that there were many people throughout the Commonwealth who felt that some changes should be made and some substantial changes in the county row offices. We also learned in our deliberations that there were many people throughout the Commonwealth who had grown to adhere to and even love the traditions that grew around these offices, and, therefore, consistent with the general philosophy of the local government article, we wished to open doors without closing any doors.

Therefore, it was our hope that by making it as attractive as we felt was possible, the plan for optional forms of government and home rule, the counties would, in their own wisdom and in the course of time, move into new and more efficient and better forms of government as individually they might see fit.

For those who felt wedded to tradition, we would, perhaps, modify a little bit, as we have done, but keep the basic essentials of the existing form of government for such counties.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sharp.

DELEGATE SHARP. Delegate Pasquerilla, I call your attention to line 16 on page 1 of the proposal and lines 1 and 2 of the second page. As I read that sentence there, I gather that the import of the sentence is that the so-called repeal of Dillon's Rule would apply to those communities adopting a home-rule charter. Am I correct in that assumption?

DELEGATE PASQUERILLA. You are correct.

DELEGATE SHARP. Perhaps I have not seen it anywhere; perhaps it has appeared, but I do not see it anywhere else here, but for those communities which have not adopted a home-rule charter, I did not see anything in here regarding the repeal of Dillon's Rule as to those communities. Did I miss that?

DELEGATE PASQUERILLA. Delegate Rappaport would like to answer the question, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Delegate Sharp is quite correct. We ran into this problem when we started going into the matter of residual powers for all communities in the Commonwealth. We have in existence today a First

Class Township Code, a Second Class Township Code, a Borough Code and a County Code. All of these codes are drafted either in terms of "shall", imposing certain duties on the units of government or "may", giving the permission to do certain things. It is true that every one of these codes does contain a grant of residual power, the most extensive being that in the Second Class Township Code. I might state that the second class townships apparently have had very good legislative representation over the years. However, because of the timidity of either bond counsel or the local solicitors, or of the local governing bodies, very little use was made of this power by any of them. They all looked for this specific power to the legislature.

Were we to grant residual powers by this Constitution, we felt that we would have a tremendous hiatus, a turnaround problem, because legislation would then have to be drafted in terms of "thou shalt not", and none of that is in existence at the present time.

It was for these two reasons; that is, that the smaller communities might not be able to handle it and that therefore a community which had enough initiative to get up and get a home-rule charter is the one that could probably handle these powers. For these two reasons the committee agreed to grant residual powers only with the adoption of a home-rule charter. This makes them think about exactly what they want to do.

DELEGATE SHARP. Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shettig.

DELEGATE SHETTIG. Mr. Pasquerilla, I direct your attention to Section 4, line 18, and the word that particularly bothers me is the word "fees." Does that include poundage, such as is charged by the prothonotary and the sheriff?

DELEGATE PASQUERILLA. The answer is, yes.

DELEGATE SHETTIG. You are satisfied that the word "fees" is broad enough to cover the poundage?

DELEGATE PASQUERILLA. If you are looking for a nonlegal opinion, the answer is yes. We have these attorneys who have also said the answer is yes.

DELEGATE SHETTIG. All right. Just so we have it on the record.

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka.

DELEGATE LAPUTKA. Mr. Manderino, I notice on line 21, you took out the minority auditor and left in the minority commissioner as one to be elected. Is that correct?

DELEGATE PASQUERILLA. The answer is yes.

DELEGATE LAPUTKA. Could you tell me what was the committee's thought upon that and what was the reason that caused the result of taking the auditor out and not taking the commissioner out?

DELEGATE PASQUERILLA. Mr. President, Delegate Tate will answer that question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. The County Government Subcommittee first made two changes in the office of auditor. It took it out of the section that you have just noted and also gave an option to counties that counties might have auditors or controllers, I believe. That was changed in the local government main committee. I am sorry, I take that back.

We took auditors out altogether in the first recommendation of the County Government Subcommittee. It was put back in the first paragraph of Section 4, because it was the thought of the Local Government Committee that that option still ought to prevail for counties as to whether they were going to have auditors or controllers. However, we did not want to, in short, continue to enshrine in the Constitution the election of a minority auditor, though that procedure for election might be continued by the General Assembly if it so desires, because it was the general feeling of the Local Government Committee that, frankly, it just had not served a useful purpose in county government.

DELEGATE LAPUTKA. They felt then that the minority commissioner did serve a useful purpose? Is that why they left it in?

DELEGATE TATE. There was considerable debate on that question. There were many delegates' proposals submitted, as you may be aware, on that question. We considered this at great length both on the subcommittee and the standing committee level, and it was decided not to change that as far as county commissioners were concerned, especially in view of the fact that optional forms of government and home-rule would be available for counties.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. Pasquerilla, if you will give the delegates like me who did not participate in these discussions some guidance, what was the general voting pattern of your committee in sending, one, the four sections to the floor of your general committee; and then, two, sending the total package to the floor of this general Convention?

DELEGATE PASQUERILLA. The final vote on the entire article, Secretary Michener, was 42 to 2. The article on Home Rule was 31 yes, 6 no; the article on Section 1, Local Government, was unanimous.

DELEGATE MICHENER. What figure? Do you happen to know?

DELEGATE PASQUERILLA. Thirty-nine yes. The article on County Government, yes 34, one no, one not voting. I would like to call to your attention, however, Secretary Michener, that we had one close vote on the entire article on Local Government pertaining to self-executing home rule for counties, the only close vote on the entire article.

DELEGATE MICHENER. And the vote on the total package again? I did not get it.

DELEGATE PASQUERILLA. The vote on the total package was 42 to 2.

DELEGATE MICHENER. Thank you, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. Back to residual powers for a second, just a quick question. Residual powers are granted through a home-rule charter through legislative action and then through home-rule charter action? Is that correct? When somebody adopts a home-rule charter, in that charter it has to say what they can do.

DELEGATE PASQUERILLA. This is correct. If you

have more questions on home rule, I would like to ask the President to recognize Mr. Morton, Co-Chairman of the Home Rule Subcommittee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE POWELL. Delegate Morton, could you clarify this? If somebody adopts a home-rule charter, the listed allowable things the local municipality can do, the local municipality is restricted to those things. Is that correct?

DELEGATE MORTON. That would be correct.

DELEGATE POWELL. How would they change a home-rule charter?

DELEGATE MORTON. They can change their home-rule charter by amendment by a vote of the people at any time. Let me give you a little summary of what this is. The legislature has a period of four years within which to adopt enabling legislation. Assuming that they adopt it, the legislature can set forth what powers are denied to you if you adopt the charter. In addition to that, in your own charter, you could put forth restrictions on what powers you may have and, if there are any in your charter, the only way you could change that would be by amendment. Besides that there could be subsequent limitations by the General Assembly at any time removing any powers that may be enacted by anyone who has a home-rule charter.

DELEGATE POWELL. Quickly now, you put restrictions on what you can do or cannot do in the home-rule charter?

DELEGATE MORTON. You can do that in your charter if you so desire.

DELEGATE POWELL. Which do you do? Do you put in restrictions that you can do or do you put restrictions in on what you cannot do?

DELEGATE MORTON. You can do it both ways—set forth exactly what you can do and the procedure by which you can do it or put forth a negative prohibition on something that you cannot do.

DELEGATE POWELL. My understanding is that Dillon's Rule right now aims at the legislature which says the local municipality can do a certain list of things, and anything else they cannot do, is that correct—that it is allowable?

DELEGATE MORTON. That really is not quite correct because the legislature has set forth voluminous things of what you can do, but in almost all of the codes, they contain a broad overall provision that reads, in essence, that you can do anything that is good for your community.

DELEGATE POWELL. I thank you.

DELEGATE MORTON. I have those for you if you want the exact language, but they have granted an overall broad grant to each municipality.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I also have a quick question and I hope I will get a slow answer. I want to direct the chairman's attention to Section 3 at line 6 to the use of the word "shall." That is what I am questioning. Did the committee intend to mandate an election on optional form of government or were they intending to leave this to each community?

DELEGATE PASQUERILLA. Mr. Manderino will answer it.

DELEGATE MANDERINO. I think, sir, subject to being corrected here, I do not think that was the intent. I can see how you are reading that. The intent was to mandate that the General Assembly must say: Here are three forms of government that this local community can pick from. Then we wanted three groups to be able to force a choice: the General Assembly, the governing body of the municipality, or the voters. I take it your question is: What if the voters by initiative and referendum did not want to force anything; what if the governing body did not want to force anything; and what if the General Assembly did not want to force anything? Can they just ignore the optional forms? I think the answer to that is, yes, they can. I can see how you are reading that the word "shall" could be interpreted to imply that somebody must force a choice. We did not intend that, and as I am now looking at it for the first time, I think we will have some discussion on that to see if that could be misinterpreted. It was not intended to force a choice, but to allow these three groups to initiate choices, if one of the three groups wanted to.

DELEGATE SHAPIRO. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, if I might correct and add one thing. I think that the delegate has brought up a very interesting point which I checked with the original proposal which said, "The General Assembly shall provide by general law optional plans of municipal organization government which may be adopted," which was the original subcommittee report.

PRESIDENT BRODERICK. The Chair recognizes Delegate Whittum.

DELEGATE WHITTUM. Chairman Pasquerilla, you may have answered this question, but if so, I ask your indulgence to clarify it a little further for me.

Under Section 2 in Home Rule, is it conceivable that a county could adopt a home-rule charter as well as a municipality within that county? Each home-rule charter creating services, for example, which might conflict or compete with each other?

DELEGATE PASQUERILLA. It is conceivable, if the General Assembly does not act within the four-year period. But even if the General Assembly does not act, it would become self-executing and it is my opinion that at that point the General Assembly must act. Does Delegate McGeary have anything to add to that?

PRESIDENT BRODERICK. The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. I would just read one sentence from our preparatory report here which all of us have followed pretty closely. It says: "Those not persuaded to the residual power principle contend that to apply it to counties." You were not saying this, but it may have been in the back of your mind, to apply it to counties as well as to cities and boroughs, for instance, would raise all kinds of troublesome and perhaps unanswerable questions on conflict of authority between the county and the political subdivision.

Here is the important sentence. "This appears to re-

sult from a misunderstanding of the plenary power of the legislature to make determinations of this sort under the residual power principle." We felt that this was a very reassuring statement.

DELEGATE WHITTUM. But it is possible; there could be a conflict in powers adopted by the two separate governments which would not be corrected until after the fact, after the General Assembly recognizes the problem. In the interim between the time the General Assembly corrects this and the time that the two governments adopt it, is it possible that there could be chaos in some areas?

DELEGATE McGEARY. I do not think chaos; there could be some conflict.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Chairman Pasquerilla, I understand that paragraph 3 of Section 4, when tied in with the Schedule on page 7, will indicate that the salary system and the complete abolishment of the fee system would go into effect four years after adoption of this local government article. Is that correct?

DELEGATE PASQUERILLA. That is correct.

DELEGATE J. W. KELLER. Did your committee consider the fact that in a four-year period you would have the reelection of certain officers who would have gone into their office and would be entitled under the old law to have fees?

DELEGATE PASQUERILLA. Would you repeat that?

DELEGATE J. W. KELLER. For example, we just had a municipal election, and row officers in many counties, possibly all of them, were elected. Some of those row officers are by law entitled to fees at this time. Assuming this Constitution is to be adopted in April, in four years another group of men would have run and perhaps they would be in a position to say: "Well, this is part of our right under our office."

Did the Committee consider this? I am asking you.

DELEGATE PASQUERILLA. Within the four-year period, the fee system would be out. The General Assembly then is going to have to act on new salary schedules in eliminating the fee system. I do not think it is a problem.

DELEGATE J. W. KELLER. But only if the General Assembly did act would that be true. Is that correct?

DELEGATE PASQUERILLA. I would presume that the General Assembly must act if they want to. I do not think it is a problem. We are saying that the fees are to be eliminated. Fees are established by the legislature, not by constitution. We are mandating in the Constitution, if this is approved, that the fee system is to be eliminated now, and therefore, the General Assembly is going to have to change some of its laws.

DELEGATE J. W. KELLER. And within the four-year period. Is that correct?

DELEGATE PASQUERILLA. That is right.

DELEGATE J. W. KELLER. All right, thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Delegate Pasquerilla, under Section 2 of the proposal, can a county enact a wage tax?

DELEGATE PASQUERILLA. Only if not denied by the Constitution or by the General Assembly or its home-rule charter.

PRESIDENT BRODERICK. We seemed to have covered the questions.

The Chair recognizes Delegate Sahli.

DELEGATE SAHLI. Delegate Pasquerilla, Section 4 reads that the "county officers shall consist of" the following officers. Does that preclude the possibility of some of the smaller counties combining some of these offices?

DELEGATE PASQUERILLA. They already do, which I think is covered by statute, if I am correct.

DELEGATE SAHLI. Would this permit the continuance of that practice?

DELEGATE PASQUERILLA. Oh, yes. The last sentence covers everything when it says, "such others as may from time to time be established by law." This is the exact wording in the present Constitution. All counties now do not have all of these enumerated row offices where they are combined.

DELEGATE SAHLI. Your last reference made, "and such others," would be an addition to?

DELEGATE PASQUERILLA. It could be an addition, but some of the offices are already combined by law.

DELEGATE SAHLI. And that is not to be prevented?

DELEGATE PASQUERILLA. No, that is not to be prevented, because it is an act of the legislature, not the Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rea.

DELEGATE REA. I would like to address a question on the home-rule section.

Right now, we have borough codes and first-class township codes and second-class township codes. I assume that these codes will remain in being and the legislature will have to continue to work with all these various codes and all these various classes of municipalities. Is that correct?

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Under Section 1 we have mandated, we hope, if you agree with us, a uniform procedural code insofar as possible. We thought that it was ridiculous that the time for appeal from a zoning decision in one township may be 15 days and in the next township, 20 days; that one county shall have one method of having tax on sales of real estate and another county has another method, so that in procedural matters, these must be uniform as to everybody.

DELEGATE REA. My specific question is: Right now we operate under the borough code and townships of the first class under their code and townships under the second class under their code. If these municipalities do not adopt a home-rule charter, we will have to have these same codes for these different types of municipalities. Is that not correct?

DELEGATE RAPPAPORT. That is quite correct.

DELEGATE REA. The legislature now will have to adopt a home-rule code for the home-rule municipalities. Is that not right?

DELEGATE RAPPAPORT. That is correct.

DELEGATE REA. What you are doing is adding another form of local government and another code that is going to conflict one with the other.

DELEGATE RAPPAPORT. We hope that the legislature will adopt a home-rule code which will be applicable to all classes. Let me say this, that we have found the present separation of boroughs and townships and third class cities is quite artificial. When you have townships of the second class that have 17,000 people in them and you have cities that have 9,000 people in them, these types of classifications become irrelevant. A township with 17,000 people has the same urban problems as a third-class city with 17,000 people in it and they must cope with them.

The codes are going to have to remain until the legislature, after great study, decides exactly what it wants to do with them. We cannot permit chaos. We have, therefore, provided the four-year period and during that period, these codes will remain in effect and the legislature is going to have to change it very carefully. We came here, many of us, with the idea we had to change it in this constitution. It just would not work, we found. There are just two many problems here and you cannot tamper with just one little thing, because it has too many ramifications. The legislature is going to have to do this.

DELEGATE REA. May I ask then, maybe to get down to your basic thinking, was it your intent below the wording of this that you are trying to provide a structure where every municipality will be a home-rule municipality? Is this the general drift of what you are trying to accomplish?

DELEGATE RAPPAPORT. I think for the general drift, I have to defer to my lawyer friend, Delegate Manderino.

DELEGATE MANDERINO. If I am right on that question, I take the question to be: Some communities will adopt home-rule charters and some will not.

DELEGATE REA. And it will be a mess.

DELEGATE MANDERINO. Right. No, it will not be a mess. I will not agree with that part of it. I might say many States have the home-rule charter system and they are much less a mess than we are. The codes for municipalities who do not adopt home-rule charters, it is true, would remain in effect. They would have to because the only alternative would be to reverse Dillon's Rule and give all residual powers to a community even if it did not have a home-rule charter and that would be the mess because at least the home-rule charter puts a control on the use of residual power in that it must be in the charter and approved by the people. It is bad if 50 percent of Pennsylvania municipalities in 50 years have home-rule charters and 50 percent of them do not, and therefore they are operating by codes? No, it is not bad; it is not a mess.

First of all, 60 percent of the existing codes are procedural matters. Section 1, as was referred to, does mandate a uniformity in procedural matters. Much of the substantive powers that you find in the codes now only comprise maybe 20 to 25 per cent of what is in that code. Most of the differences in the codes are on procedural matters. If we mandate a uniform procedural code and that is done, there is not any question that the existing municipal code will have to be studied and brought up to date to clean it out, so to speak. But if you clean out the codes on procedural matters and just leave the substantive matters in the code, you are going to reduce the unwieldy codes we have; they are going to be reduced greatly in size and even in understanding.

It is hopeful, I think, that not all communities will adopt home-rule charters, but the reverse. In studying this entire question in the next four years for home-rule code, as you state correctly, or something similar to it, and by having to take procedural matters out of the existing codes and put them into a uniform code, it is going to be very difficult for any study group to address itself to that without finding out that you can compile into one code a great deal of the substantive matter that is now in eight or nine different codes. For instance, one substantive power all municipalities in Pennsylvania have is the right to buy paper clips. There is no need for that authority to appear in eight or nine or ten different codes. There could be a uniform code on substance. We have it to a certain extent. We have not mandated that, but you will find various codes worded differently. This municipality may contribute money to industrial development; in another code, this municipality or township may do this. As a result, you have to be an expert in all the codes to know either the procedural or substantive matters.

I would close by saying it is hoped that certain communities will adopt home-rule charters and there will be a uniform state procedural code. In the process of getting to that, we can use, in almost 80 per cent of our matters—the city of Pittsburgh has substantive powers the same as a second class township in many governmental matters and the corporate power is found in different codes. We do not mandate this, but I would see this as being the end result—the simplification of the code both in substance and the mandating of the simplification in procedural matters.

PRESIDENT BRODERICK. The Chair recognizes Delegate Whittum.

DELEGATE WHITTUM. Thank you, Mr. President. I am sure you will have a quick and easy answer to this question. On page 2, lines 21, 22 and 23, how do these sentences affect the element of minority representation that we now have in the county commissioner structure?

DELEGATE PASQUERILLA. It does not change it in any way whatsoever.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl, and we call attention to the fact that we have about six more minutes left under our questioning period.

DELEGATE FOHL. Mr. President, I would like to direct this question to Delegate Manderino.

Did I understand you, in your response to the question of Delegate Rea, to say that the powers of a municipality would be outlined in the home-rule charter?

DELEGATE MANDERINO. Section 2 has the sentence at the end that the municipality having a home-rule charter may exercise any powers not denied by the General Assembly at any time. That requires, during the four-year period, that the General Assembly shall have what was referred to—it will not necessarily be in that form; it is a good phrase—as a home-rule code which will state that home-rule communities shall not exercise or enter into the following areas of jurisdiction: Labor law, divorce law, murder law, just as was done when the Philadelphia home-rule charter was adopted. The General Assembly had to do the same thing. There would have to be such a code denying powers to the municipality.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sharp.

DELEGATE SHARP. I have a question to ask Delegate Manderino again, if I could, please.

Delegate Manderino, taking up in your answer to Delegate Rea, I gather that you feel that the situation would be quite chaotic were residual powers to be given to those governmental units which would not adopt home-rule charters, realizing, of course, that you, when you said that this would create a mess, did not mean it exactly that way.

DELEGATE MANDERINO. No, I meant just that, all except the statement.

DELEGATE SHARP. The question I ask you at the present time is that under our second-class township code, as a matter of fact, do not second-class townships enjoy broad residual powers?

DELEGATE MANDERINO. Yes.

DELEGATE SHARP. They do at the present time?

DELEGATE MANDERINO. Yes, that is exactly what I was saying, Delegate Sharp. The problem of substantive powers in a local government area is that today an attorney, for instance, advising his counsel or his people, might be an expert in the third class city code and note immediately that in a third class city you can spend public money for ambulance service. You could not give an opinion on whether you could do that in a second class township. Recently the second class township, for instance, found out that was a problem. Their solicitors ruled that although all other municipalities in the Commonwealth had a statement in the code substantively to cover this, that they could spend public money for ambulance service, in the second class township code, nobody ever thought of it and it was not in there. They had to run to the legislature and get a bill passed allowing second class townships to spend money for an ambulance.

We think that when a study takes place to mandate a uniform procedural code and they clean out the existing codes, they are going to find out that the substantive powers that are in those codes can be condensed quite a bit and maybe even put into a uniform code so that you would not find a situation where a noncontroversial substantive power is in five codes and not in three or four other codes, whether it is a county or municipality or something like that.

DELEGATE SHARP. By the same token, Delegate Manderino, would it not be easier then to have the legislature prescribe a series of thou shalt nots, such as, thou shalt not engage in divorce law, labor law, and so forth, than the situation you criticize at the present time with the second class code by going to the legislature for "thou shalls" each time a problem arises.

DELEGATE MANDERINO. In other words, are you addressing that to the statement I made that giving residual powers without a home-rule charter would not be desirable and you are saying why not just have the General Assembly have a list of "thou shalt nots" instead of "thou shalt do?"

DELEGATE SHARP. Right.

DELEGATE MANDERINO. The problem with that is this: We are giving through the home-rule charter, a choice to the people of the municipality to determine whether they want to give their government a certain power. For instance, the citizens of Philadelphia and the citizens of Pittsburgh or the citizens of Erie may very well be willing to give a certain power to their local government that the 12 citizens of Seven Springs—which is now, I understand, an incorporated borough in Pennsylvania with 12 registered citizens—may not wish to give. We are actually putting three controls on residual power—the Constitution, the General Assembly and the people themselves in a given municipality. To take away that third control on residual power of the people who approve the home-rule charter would mean that we would be taking that control away in a municipality of 100 and a municipality of 500,000, and it was just felt that there can be differences in residual power that the people would want to give to a large community of half a million or a million and not want to give to a community of 60 or 10 or 500.

The General Assembly can decide what to take away, but we want the people in the municipality also to have that power to limit residual power for their community if they want to because there are certain municipal governments in Pennsylvania today that are sophisticated, with bureaus and boards, with full-time people, for instance, administering certain subject matters that the small municipality is not prepared either financially or in administrative personnel to do. If the people of that community want to give as much residual power to their government in a community of 50 as they do in a community of half a million, fine, they can do it; but we are putting in that additional control that the people must approve the residual power grant that is contained in a home-rule charter.

DELEGATE SHARP. Thank you.

PRESIDENT BRODERICK. The hour is up for discussion on the question, but we have two delegates who apparently have questions, and we shall take those two and then cut it off.

The first is Delegate Woodring, who has been standing there for a long time.

DELEGATE WOODRING. Mr. Chairman, I did not understand your answer about in what manner this document would preserve minority representation in the office of county commissioner.

DELEGATE PASQUERILLA. It says: "Three county commissioners shall be elected in each county. In the election of said officers each qualified elector shall vote for no more than two persons, and the three persons having the highest number of votes shall be elected."

DELEGATE WOODRING. All of whom might be of the same party?

DELEGATE PASQUERILLA. That is exactly the way the present Constitution is written. You could have a situation in Allegheny County where you have three parties. You could have a representative from three different parties, which almost happened or could have happened in Allegheny County. Is that not correct, Delegate Morton?

DELEGATE WOODRING. Thank you, Mr. Chairman.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barry.

DELEGATE BARRY. I would like to ask Delegate Manderino a question about his statement that 60 per cent of all matters relating to codes are procedural in nature. What do you mean by "procedural," Delegate Manderino? And is that an accepted definition in the context in which you are using it?

DELEGATE MANDERINO. I think, as an example and as we said earlier, all attorneys know that the words "procedure" and "substance" do not have black and white lines; there are grey areas. I cannot give you a definition to the point of what would cover each one. I think the committee which considered this realized this problem.

For instance, you will find in the various codes matters of how to advertise for public works, when you must advertise, when you publish. Most of the codes contain a great deal of this matter which differs from municipality to municipality. This is not intended to mandate identical substantive powers to the various municipalities, which is what we were talking about in the last question. It is not intended that, if you give one municipality a certain power, you have to give it to another one; that still remains under the classification system of municipalities.

On procedural matters which do not affect substantive powers, a question might come up on where it falls, and I could not give an answer without a specific problem, and then it would only be a personal opinion; a court would have to determine that.

AMENDMENTS TO PROPOSAL No. 6

PRESIDENT BRODERICK. Now we are ready for the amendments in connection with the first four sections of Proposal No. 6 which have been discussed.

I might add that we have a total of seven amendments which have been received. For the first amendment, the Chair now recognizes Delegate Forster.

DELEGATE FORSTER. Mr. President, I read in place and present an amendment to Section 1.

FORSTER AMENDMENT No. 1 TO PROPOSAL No. 6

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE FORSTER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 1, line 11, by removing the period after "charters" and inserting: as shall be provided by general law by the General Assembly.

Amend Sec. 1 (Sec. 2), page 1, lines 11 and 12, by striking out "The General Assembly shall provide by general law for all municipalities the right and power to frame and adopt a home rule charter.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. Mr. President and fellow delegates, as a man who works with words as a means of earning a livelihood, the redundancy of the first and second sentences of Section 2 offends me. I think we can accomplish by this amendment the same sense and have it much better from the standpoint of wording and style. All we are doing is combining the first sentence with the meaning of the second sentence.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. The original proposal which came out of the subcommittee was exactly the language which Delegate Forster presents, or close to it, which we agreed is better language than what came out of the legislative drafting bureau. We have no objection to it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Forster?

The roll call was recorded as follows:

YEAS—129

Aberman	Dalley	Krill	Richter
Amsterdam	Desmond	Laputka	Roberts
Aurentz	Devlin	Leach	Ruth
Baldrige	Erwin	Lee, L.	Sabli
Baldus	Fawcett	Leinbach	Scales
Baldwin	Fay	Leonard	Scarlett
Banes	Feather	Levin	Scott
Barron	Filson	Manderino	Scranton
Barry	Fleming	Markley	Sebastian
Bashoff	Fohl	Mattioni	Shettig
Benedict	Forster	McGeary	Shively
Benfield	Fortney	McGlynn	Shoemaker
Bloom	Gabreski	Michael	Shrager
Braham	Gehrlein	Miller, D.	Silverman
Brennan	Gerber	Miller, R.	Stout
Broderick	Goldman	Moorhead	Strickler
Brown	Goldstein	Morton	Swope
Buck	Gouger	Murray	Tate
Bunting	Griffith	Nelson	Thomson
Burkholder	Hannum	Orban	Thornburgh
Butera	Harding	Orbin	Tomascik
Cain	Henderson	Otto	Tully
Camardella	Heyburn	Pasquerilla	Van Sant
Caputo	Himes	Pelletier	Waldron
Casey	Hook	Popil	Warman
Clark	Huggins	Pott	Welsh
Clinger	Irvis	Powell	Westerberg
Conley	Jirolanio	Prendergast	Whittum
Corey	Johnson	Rappaport	Wilcox
Cortese	Kauffman	Rea	Wilmarth
Croop	Keller, J.	Redick	Woodring
Cunningham	Kelly	Reynolds	Woodside
Curran			

NAYS—2

Michener	Shapiro

NOT VOTING—32

Allison	Fineman	Kline	Pechan
Bagenstose	Gray	Lane	Percey
Caron	Hatter	Lee, K.	Quiles
Cosetti	Hocker	Mangery	Rovner
Donaldson	Horne	Meyer	Sharp
Donolow	Hosteller	More	Solomon
Dumbauld	Keller, M.	Musselman	Sprogell
Fagan	King	O'Donnell	Stroup

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

FORSTER AMENDMENT No. 2 TO PROPOSAL No. 6

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE FORSTER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 1, line 16, by striking out "A municipality having a home rule charter may exercise any power"

Amend Sec. 1 (Sec. 2), page 2, lines 1 and 2, by striking out all of said lines, and inserting: A municipality having a home rule charter may exercise any power or

perform any function which the General Assembly has heretofore granted or may hereafter grant by a home rule charter unless otherwise limited by this Constitution or by the General Assembly.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. Mr. President and fellow delegates, I hope we have as much success with this amendment as we had with the first one, but I am sure that the chairman will not concur.

In the early session of this Convention, there were references made to Pandora's box and about whether we should open it or not. I felt a lot like Pandora. If you recall, she could look into this box and see all the frightful things that were going to happen, but she could not get any of her fellow townspeople equally excited. So she lived a wildly exciting life and everybody else went about their normal pastimes without worry.

In the deliberations of the Local Government Committee, there was a case of love at first sight with two concepts. One of these was home rule; the other was residual powers, the reversing of Dillon's Rule. We enshrined these concepts and equated them with motherhood.

Home rule is fine when optional forms of government and related powers are specified by the legislature and a municipality can pick from a selection as a smorgasbord. But residual power is another kettle of fish altogether.

Just to refresh our memories on this, Dillon's Rule specified, as it was brought out in interrogation here, that a municipality shall have only those powers specifically delegated to it and none other. By reversing this, we, in effect, create several thousand General Assemblies with the power to enact tax legislation, labor legislation, consumer legislation, ad infinitum.

There was concern here yesterday, and properly so, about Pennsylvania's business and industrial climate, and we took action by a rather substantial majority to provide incentives that would help local groups promote industrial development in their area.

I submit it is as important, if not more important, than tax matters, for business to know exactly the rules, the laws, under which it is operating and playing the game.

It is hard enough for a business to keep track of what is going on in the General Assembly. I think it would be literally impossible even to learn what is going on in thousands of local legislatures with powers to act in this way

We have pointed out, and I am sure it will be pointed out again in the interrogation, that certain degrees of residual power now exist in the various codes, third class cities', first and second class townships'. I submit, however, that if we put this provision of residual power, as broad as it is, in a constitution rather than in codes, it will be much more difficult to deal with it.

Furthermore, a municipality adopting a home-rule charter takes up a new form of government and it will be flexing its muscles and wishing to exercise its powers. So the fact that the municipalities have not now exercised their residual power that they may have in their code is no assurance that they will not do so in the future.

I am not standing here and saying that these evils will happen, but they could happen. So I say, why take the risk? Furthermore, municipalities do not need unlimited power to meet their problems. They do need more power than they have today perhaps, but not unlimited power.

This amendment simply specifies that instead of opening up the flood gates without any restriction whatsoever, a municipality which adopts a home-rule charter shall have the powers that have been granted in any home-rule charter that already exists, and that is Philadelphia. I say it is giving plenty of power to municipalities to give them the power that Philadelphia has.

Thank you.

DELEGATE PASQUERILLA. Mr. President, our committee is opposed to this amendment. As to the city of Philadelphia, we have a saving clause for the city of Philadelphia so that its home-rule charter is not disturbed. Delegate Manderino will take it from here.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Yes, thank you. We would oppose this amendment for basically two reasons. First let me say this: What it attempts to do I do not think there is any objection to, but, in effect, it again is losing faith in the General Assembly. It says that we want to already take what the General Assembly has done in the case of Philadelphia and do that with all other communities. Well, there may be nothing wrong with that but why lock it in? Now the General Assembly, as time goes by, in 10 years, 20, 30, 50 or 60 years, may even want to change the grant of power to Philadelphia or to deny power to Philadelphia that it now has. We think the General Assembly can handle that by our clause that the General Assembly at all times can deny anything it wishes to a municipality.

The other objection is, this can be interpreted to do exactly what we are trying to reverse in the Convention and that is, Dillon's Rule. We want the philosophy, as someone stated before, that communities can do anything except what the state code says "thou shalt not do." The way this is worded in the fourth line, "A municipality having a home-rule charter may exercise any power, perform any function which the General Assembly has heretofore granted, or may hereafter grant" makes it sound to me that that can be interpreted that they have got to positively grant the power rather than negatively deny it, which is really the whole problem of those who criticize Dillon's Rule, that you must keep running to the legislature to get every grant of power that you wish. I do not really think the amendment is needed because we are assuming the General Assembly will live up to its obligations and responsibilities in the full study of home-rule charters. We are not afraid, for instance, that the General Assembly is not going to do exactly what they did in the case of Philadelphia—pass legislation denying what they did not want Philadelphia to go into. Now the General Assembly can do what this amendment does very easily if it thinks that is right. When the General Assembly meets after this Constitution is adopted, all somebody has to do is put in a bill and say that any community in this Commonwealth adopting a home-rule charter is denied all the powers that were denied to cities of the first class. That legislation could be written in two minutes and passed, but we should not be doing that in the Constitution. We are leaving it up to the General As-

sembly to do that. It will not take them four years to do that; they can do it in five minutes simply by saying, we deny all powers to everybody that we did not give to Philadelphia, and that is it. It would accomplish the same purpose as this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. Mr. President, I rise to support the amendment introduced by Delegate Forster. I am pleased to hear from the co-chairman of the committee of the great faith and their renewed and re-renewed faith in what the legislature will do. I do not think that, however, is really consistent with the sword hanging over the legislature's head that begins on line 12, that if they do not do it such and such will happen. I think that if they are going to have full and complete faith, they should have full and complete faith.

This amendment calls for specific uniformity. It will avoid possible fragmentation that could occur in all the units of local government if this provision were not passed. I sincerely urge its adoption.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, Delegate Forster talked about the fact that business has to know the rules of the game. Well, let us find out what business does think about it. In a letter addressed to all the delegates dated January 29, 1968, the Greater Philadelphia Chamber of Commerce made the point, among others, that the explosive growth of industrial parks in the suburbs of Philadelphia demands that suburban political divisions be given the same powers of government as has Philadelphia as a first class city under Pennsylvania laws. They go on to say that they believe, for example, that Lower Merion Township should have equal powers of government to control and protect the safety and health of those who live and work on the west side of City Line Avenue as the city of Philadelphia has for workers and residents on the east side of that dividing street.

Further, we received a comunication from the Intergovernmental Council of Allegheny County Boroughs and Townships. This is not the city talking; these are the councils and the commissioners and the supervisors out in the country of Allegheny County, and they, in position No. 5, ask for residual power for themselves and they feel that they can take care of it.

An example came up in the testimony, I think, before one of the preparatory conferences. I believe it was after questions by Delegate Baldus, the point was made that under the present, I believe it is, Third Class City Code, third class cities have the power to abolish cock fights and dog fights, but the problem of cat fights is not mentioned at all, and, therefore, it may very well be that if the city of Monesson wants to legislate in the field of cat fights, they would have to come up here and get the power to do so for third class cities. And as a further point—I am not trying to take away the livelihood of anybody representing the various township associations—I am informed that well over half the legislation going through the legislature every year deals with these little problems involving residual powers for various units of local government. It is our desire that the legislature be relieved of this burden and that all these little problems can be solved by units of local government, and it is our desire that this be done.

PRESIDENT BRODERICK. The Chair recognizes Delegate Warman.

DELEGATE WARMAN. Mr. President, I move the question on the amendment.

PRESIDENT BRODERICK. Are we ready?

DELEGATE FORSTER. Mr. President, I think the proposer of an amendment on previous occasions . . .

PRESIDENT BRODERICK. You have the right to close.

DELEGATE FORSTER. I am delighted that Delegate Rappaport has spoken in favor of my amendment. He suggests that the Greater Philadelphia Chamber of Commerce says that these surrounding areas should have the same powers as Philadelphia, and this is precisely what my amendment proposes.

That is all I need to say. I think we ought to watch the confusion which could result if we do not do something limiting of this nature in the Constitution.

PRESIDENT BRODERICK. We shall now unlock the voting machine and proceed to vote on the Forster amendment.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Forster?

The roll call was recorded as follows:

YEAS—33

Baldwin	Fohl	Hocker	Reynolds
Cain	Forster	Jirolanio	Richter
Camardella	Fortney	Meyer	Scott
Clinger	Goldstein	Levin	Solomon
Cortese	Gouger	Nelson	Stout
Curran	Harding	Pott	Strickler
Desmond	Henderson	Powell	Waldron
Devlin	Heyburn	Rea	Woodring
Fleming			

NAYS—97

Aberman	Cunningham	Manderino	Scarlett
Amsterdam	Dailey	Mangery	Scranton
Aurentz	Erwin	Markley	Sebastian
Baldrige	Fawcett	Mattioni	Shapiro
Baldus	Fay	McGeary	Sharp
Banes	Feather	McGlynn	Shettig
Barron	Filson	Michael	Shively
Barry	Gabreski	Michener	Shoemaker
Bashoff	Goldman	Miller, D.	Shrager
Benedict	Griffith	Miller, R.	Silverman
Benfield	Hannum	Moorhead	Swope
Bloom	Himes	Murray	Tate
Braham	Hook	Orban	Thomson
Brennan	Irvis	Orbin	Thornburgh
Broderick	Johnson	Otto	Tomascik
Brown	Kauffman	Pasquerilla	Tully
Buck	Keller, J.	Popil	Van Sant
Bunting	Kelly	Prendergast	Warman
Burkholder	Krill	Rappaport	Welsh
Butera	Laputka	Redick	Westerberg
Caputo	Leach	Roberts	Whittum
Casey	Lee, L.	Ruth	Wilcox
Conley	Leinbach	Sahli	Wilmarth
Corey	Leonard	Scales	Woodside
Croop			

NOT VOTING—33

Allison	Fineman	Keller, M.	O'Donnell
Bagenstose	Gehrlein	King	Pechan
Caron	Gerber	Kline	Pelletier
Clark	Gray	Lane	Percey
Cosetti	Hatter	Lee, K.	Quiles
Donaldson	Horne	More	Rovner
Donolow	Hostetler	Morton	Sprogell
Dumbauld	Huggins	Musselman	Stroup
Fagan			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

COMMITTEE MEETING

PRESIDENT BRODERICK. The Chair recognizes Delegate Leach.

DELEGATE LEACH. Mr. President, while the amendment is being distributed, and so that we do not get lost in the confusion of adjournment this evening, I would like to make a committee meeting announcement.

The Officers and the Rules Committee will meet immediately following adjournment this evening in the usual room, 401, fourth floor, center, of the Capitol.

FOHL AMENDMENT No. 1 TO PROPOSAL No. 6

PRESIDENT BRODERICK. The Chair now asks the clerk to take the next amendment, which is Delegate Fohl's amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE FOHL offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 1, lines 12 to 16; page 2, lines 1 and 2 by striking out "If the General" in line 12, all of lines 13 to 16, page 1 and all of lines 1 and 2, page 2

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. Mr. President, this is a very clear and concise amendment and I shall make my comments very short.

This amendment does, as everyone yesterday, today, and the day before has said they wanted to do, and that is, this does place our implicit faith, trust, and confidence in the General Assembly. I have the confidence that with the first sentence in this section saying "The General Assembly shall set up procedures for the adoption of home-rule charters in municipalities," I believe they will. I noticed, in response to most of the interrogation, the tenor of the answers was practically based on the fact that they will. So let us acknowledge that they will and eliminate—it may be more than excess verbiage, but let us eliminate—the alternative proposed in Section 2.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. We have to definitely oppose very strongly this amendment, because it destroys the whole article on home rule. The whole purpose under which we are operating is that we have given the legislature four years to adopt certain laws, and if they do not, this eliminates the self-executing feature of our home-rule proposal.

It seems to me—after discussion with the legislature, and they say they can do it in four years—if we eliminate the four years and it is not done, then we have eliminated the self-executing feature of this article. It may take more than four years, and we have defeated the whole purpose of granting home rule, residual powers, and reversing Dillon's Rule, which is the whole real nut of the Home Rule Proposal Section No. 2.

We urge you to defeat this particular amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. I would like to ask Delegate Pasquerilla a question, please.

PRESIDENT BRODERICK. Yes. You may.

DELEGATE FOHL. When you say that you have talked to the General Assembly or the legislature, just to whom did you talk?

DELEGATE PASQUERILLA. There were members of the legislature in our committee, if you remember, Delegate Fohl. The original committee proposal came out "two years." Somebody suggested five and several of the members of the legislature stated that they felt—including the minority leader—this work could be done within four years and they had no objection to it.

DELEGATE FOHL. Could those "several members" have been just the minority leader?

DELEGATE PASQUERILLA. I do not recall that.

DELEGATE FOHL. I think I do recall it.

DELEGATE PASQUERILLA. But it is not very important.

DELEGATE FOHL. As much respect as I might have for them, the comments of Senator Kline hardly represent—and I think that he probably would not want you to so represent the legislature.

DELEGATE PASQUERILLA. I did not mention his name, Mr. President.

DELEGATE FOHL. The minority leader of the Senate.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President and fellow delegates, it seems to me that the proposal we are here discussing cuts rights to the heart of all that we have said about drafting a Constitution for the next century.

I live in a county which has felt the full burden of the modern world. I have seen farm land in my county go from plowed land to a city of 120,000 in the space of four or five years. If we do not have, in counties like Bucks, Montgomery, Delaware, Chester, Allegheny and those that will surround Scranton and Erie in the future, the right to do the things that this Committee Proposal No. 6 gives in Section No. 2, that is, the right to form home-rule units, the right to govern ourselves intelligently, the right to try to make the adjustment between an urban society and a rural society, it seems to me that we are literally doomed.

I do not see how we can go into the future with the old forms of government hanging around our neck as they do in my county where you have a great new second-class township with some 70,000 or 80,000 in population and you have a borough a few miles away of 200 people, each trying to govern themselves by outmoded forms of government. This cuts right to the heart of a modern constitution. I think it would be disastrous if the amendment proposed here was passed because it cuts out the self-operating form.

I have been, as you may know, a staunch defender of the legislature and in all the debate that follows, I will

continue to be so. I want the legislature to have all its rights. I think the legislature should even have more rights than it now has, but in the past this great Commonwealth has suffered on repeated occasions over the confusion between those tricky little verbs "shall," "will" and "may." I am all for this hard working committee which is trying to pick its way so carefully between those verbs so that in the future we shall have certain rights in this Commonwealth to do the things that are required to be done.

I earnestly recommend that this amendment be defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. I would yield to Delegate Scales.

DELEGATE SCALES. No, please go right ahead.

PRESIDENT BRODERICK. He yields to you, Delegate Scales.

DELEGATE GOLDMAN. No, he just passed it right back to me.

Mr. President, what we are faced with here is a question which was very seriously considered in the standing committee. The sole question is not as Delegate Michener would have put it, whether or not we shall or shall not have home rule; the sole issue is whether it shall become self-enacting home rule, whether or not we should wait for the legislature to do it or whether, in the event of the failure of the legislature to give us these rules, these communities can do it by themselves, by their own initiative, self-enacting.

I would like to ask Delegate Morton to comment on this. During our standing committee meetings, he had some very cogent remarks about the problems involved with a self-enacting, self-executing home rule aspect as to what we have put into it. I think if Delegate Morton would comment on those, I think his comments would be very well taken.

DELEGATE PASQUERILLA. Mr. President, may I have the privilege of correcting Delegate Goldman? In the standing committee, there was never any discussion of eliminating self-executing home-rule charters. We had a disagreement in the committee as to whether counties should have the right of self-executing, but we never disagreed that other municipalities would not have the right. The only question was whether it should be two years or three years or four years and the vote was overwhelmingly for the four years.

DELEGATE GOLDMAN. Delegate Pasquerilla, you missed my point.

DELEGATE PASQUERILLA. I did not miss your point.

DELEGATE GOLDMAN. No, I think you missed the point. I am not quibbling here whether or not the legislature shall establish rules. My whole point is whether this shall become self-executing, and my only point is that Delegate Morton did have some very good remarks in regard to it. He had some remarks which pointed out the obvious dangers in having a self-executing clause in the constitution as we now have it and the amendment which proposes to eliminate it. I am merely suggesting, even though we passed it favorably in our standing committee, that Delegate Morton's comments on this would be well worth having the other delegates listen to.

DELEGATE PASQUERILLA. I only call your attention to make the correction that we did not have serious discussion or we did disagree on the self-executing provision.

Delegate Morton, do you want to come to the microphone if the President will recognize you?

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. In light of what Delegate Goldman said, I am delighted to be here. I only hope that we perpetuated those remarks and can get them into the record.

I would like to clarify one thing. As Co-Chairman of the Home Rule Subcommittee, my remarks on self-executing were directed to the counties; I was opposed to counties having self-executing home rule, and it was not to boroughs, townships and cities. As to those, my position was that there should be some figure above which it was self-executing and below a figure as to which the legislature had complete control.

Population figure: I felt that on a population figure, because as I anticipated, when you adopt a home-rule charter, you have to adopt an administrative code, that it was really only a large community that had a full-time staff which could cope with these things. But it was only a population figure on municipalities.

My main point was on self-executing for counties.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. I oppose the amendment. The self-executing nature of the home-rule provision goes to the very heart of the provision.

Certainly we wish the legislature to take action. We would be very disappointed if the legislature failed to take action, but as this group should be very well aware, there is nothing like a time limit to galvanize the legislature into action.

I think we must defeat this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldwin.

DELEGATE BALDWIN. Mr. President, I rise in favor of this amendment.

Just a few days ago, we were very willing and happy to give the legislature all the power, and many of us were willing to give them unlimited debt. We had the faith in the legislature to carry out the needs of our money in this State. I think we need the faith in the legislature, at this time, to carry out the requests of the Constitutional Convention and allow for home rule.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. Just a brief comment. I rise to support this amendment. It would be inconsistent if I did not.

Since the amendment I offered originally which was defeated was put in as a safeguard against the possibility of the self-executing nature, I think the self-executing idea is a risk we should not take.

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, I rise in opposition to this amendment with the short statement that I

came to this Constitutional Convention not as a policeman.

Delegate Fohl and all the other delegates here wear a badge like I do. I do not consider that to be a policeman's badge; I consider it to be a badge for freedom, if you want to look at it that way.

I, therefore, rise in opposition to this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Otto.

DELEGATE OTTO. Mr. President, as one of the delegates who sponsored a proposal in favor of home rule being granted to boroughs, townships and cities, I would feel remiss if I did not stand in opposition to this amendment. I urge the delegates to vote it down.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Fohl?

The roll call was recorded as follows:

YEAS—12

Baldwin	Curran	Heyburn	Pott
Barron	Fohl	Keller, J.	Powell
Butera	Forster	Meyer	Waldron

NAYS—119

Aberman	Desmond	Leinbach	Sahli
Amsterdam	Devlin	Leonard	Scales
Aurentz	Erwin	Levin	Scarlett
Baldrige	Fawcett	Manderino	Scott
Banes	Fay	Mangery	Scranton
Barry	Feather	Markley	Sebastian
Bashoff	Filson	Mattioni	Shapiro
Benedict	Fortney	McGeary	Sharp
Benfield	Gabreski	McGlynn	Shettig
Bloom	Gehrlein	Michael	Shively
Braham	Gerber	Michener	Shoemaker
Brennan	Goldman	Miller, D.	Shrager
Broderick	Goldstein	Miller, R.	Silverman
Brown	Gouger	Moorhead	Stout
Buck	Griffith	More	Swope
Bunting	Hannum	Murray	Tate
Burkholder	Harding	Nelson	Thomson
Cain	Henderson	Orban	Thornburgh
Camardella	Himes	Orbin	Tomascik
Caputo	Hocker	Otto	Tully
Casey	Hook	Pasquerilla	Van Sant
Clark	Irvis	Popil	Warman
Clinger	Jirolanio	Prendergast	Welsh
Conley	Johnson	Rappaport	Westerberg
Corey	Kauffman	Rea	Whittum
Cortese	Kelly	Redick	Wilcox
Cosetti	Krill	Reynolds	Wilmarth
Croop	Laputka	Richter	Woodring
Cunningham	Leach	Roberts	Woodside
Dailey	Lee, L.	Ruth	

NOT VOTING—32

Allison	Fineman	King	Pelletier
Bagenstose	Fleming	Kline	Percey
Baldus	Gray	Lane	Quiles
Caron	Hatter	Lee, K.	Rovner
Donaldson	Horne	Morton	Solomon
Donolow	Hostetler	Musselman	Sprogell
Dumbauld	Huggins	O'Donnell	Strickler
Fagan	Keller, M.	Peehan	Stroup

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella. For what purpose does the gentleman rise?

DELEGATE CAMARDELLA. I rise to a question of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE CAMARDELLA. Thank you, Mr. President, for the kind word "gentleman."

In the previous amendment by Delegate Forster, I voted in the negative. I would like to change that vote.

PRESIDENT BRODERICK. Your remarks will be put on the record. We cannot change the vote total as such.

BENEDICT AMENDMENT TO PROPOSAL No. 6

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BENEDICT offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 2, line 1, by striking out "by the General Assembly or"

Amend Sec. 1 (Sec. 2), page 2, line 2, by removing the period after "charter" and inserting: or by the General Assembly at any time.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Benedict.

DELEGATE BENEDICT. Mr. President, I would like to preface my brief remarks by saying that this one is not unconstitutional; it is the consensus of opinion of all the committee chairmen.

There had been a question arise that "by General Assembly" might have meant that that was deleted, that it was not going to be used at present. This is a correction that this is forever or it is in the next four years or at any time. This has the backing of the whole committee and I hope it will have the unanimous backing here, for a change.

PRESIDENT BRODERICK. The Chair recognizes Chairman Pasquerilla.

DELEGATE PASQUERILLA. There have been some questions that if and when a municipality adopts a home-rule charter and with it goes residual powers, does the General Assembly remain supreme at all times. In our proposal we had General Assembly before home-rule charter and some of the people here who were in favor of this proposal wanted us to be absolutely sure that the General Assembly would remain supreme and, therefore, we accept this amendment. It does not change the intent of the committee.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Benedict?

DELEGATE MANDERINO. Mr. President, may I make a comment? Some of the chairmen here, Delegate Pasquerilla and I and the others have delegates there and we signal them the way we want them to vote for us. Some of them are not voting the way we are signalling.

PRESIDENT BRODERICK. Everybody has now had an opportunity to read their signals and cast their votes so we are going to ask the clerk to lock the machine and record the vote. I think the answer to this is: If you want an amendment to go through, you have to pick an attractive girl to offer it.

The roll call was recorded as follows:

YEAS—131

Aberman	Desmond	Leach	Roberts
Amsterdam	Devlin	Lee, L.	Ruth
Aurentz	Erwin	Leinbach	Sahli
Baldrige	Fawcett	Leonard	Scales
Baldwin	Fay	Levin	Scarlett
Banes	Feather	Manderino	Scott
Barron	Filson	Mangery	Scranton
Barry	Fleming	Markley	Sebastian
Bashoff	Fohl	Mattioni	Shapiro
Benedict	Forster	McGeary	Sharp
Benfield	Fortney	McGlynn	Shively
Bloom	Gabreski	Meyer	Shoemaker
Braham	Gehrlein	Michael	Shrager
Brennan	Gerber	Michener	Silverman
Broderick	Goldman	Miller, D.	Solomon
Brown	Goldstein	Miller, R.	Stout
Buck	Gouger	Moorhead	Swope
Bunting	Griffith	More	Tate
Burkholder	Hannum	Morton	Thomson
Butera	Harding	Murray	Thornburgh
Camardella	Henderson	Nelson	Tomasčik
Caputo	Heyburn	Orban	Tully
Casey	Himes	Orbin	Van Sant
Clark	Hocker	Otto	Waldron
Clinger	Hook	Pasquerilla	Warman
Conley	Irvis	Popil	Welsh
Corey	Jirolanio	Powell	Westerberg
Cortese	Johnson	Prendergast	Whittum
Cosetti	Kauffman	Rappaport	Wilcox
Croop	Keller, J.	Rea	Wilmarth
Cunningham	Kelly	Redick	Woodring
Curran	Krill	Reynolds	Woodside
Dailey	Laputka	Richter	

NAYS—0

NOT VOTING—32

Allison	Fagan	King	Percey
Bagenstose	Fineman	Kline	Pott
Baldus	Gray	Lane	Quiles
Cain	Hatter	Lee, K.	Rovner
Caron	Horne	Musselman	Shettig
Donaldson	Hostetler	O'Donnell	Sprogell
Donolow	Huggins	Pechan	Strickler
Dumbauld	Keller, M.	Pelletier	Stroup

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

The Chair recognizes another attractive girl, Delegate Brown.

DELEGATE BROWN. Mr. President, I would like to state that I do not think that Committee Chairman Manderino was quite correct in saying that his signals were being lost. We do not need any signals; we know what we are doing.

DELEGATE MANDERINO. Mr. President, I did not mean the other delegates, I mean, for instance, Delegate Scales is voting for me so I will not have to run up. I notice that someone has a "no" vote for Jim Morton on that and he had to have it changed.

PRESIDENT BRODERICK. I just want to point out to the chairmen that that is a violation of the rules. I am sure he will cast his own vote in the future.

FOHL AMENDMENT No. 3 TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment is offered by Delegate Fohl.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE FOHL offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 1, line 15 by inserting after "adoption": , amendment, or repeal

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. Mr. President, I view this as a corrective amendment. I think there is a discussion by our co-chairmen now and if they do not view it as a corrective amendment, I will withdraw it. I view it as a corrective amendment.

PRESIDENT BRODERICK. Let us hear from Chairman Pasquerilla.

DELEGATE PASQUERILLA. We are having a caucus down here, Mr. President.

PRESIDENT BRODERICK. Caucuses are not permitted in this Convention.

DELEGATE PASQUERILLO. We are now studying the language.

PRESIDENT BRODERICK. You are having a discussion, a conference.

DELEGATE PASQUERILLA. It is the consensus of the chairmen that this does clarify the language and we will accept the amendment if the delegates will accept it.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Fohl?

The roll was recorded as follows:

YEAS—135

Aberman	Dailey	Leach	Roberts
Amsterdam	Desmond	Lee, L.	Ruth
Aurentz	Devlin	Leinbach	Sahli
Baldrige	Erwin	Leonard	Scales
Baldus	Fawcett	Levin	Scarlett
Baldwin	Fay	Manderino	Scott
Banes	Feather	Mangery	Scranton
Barron	Filson	Markley	Sebastian
Barry	Fleming	Mattioni	Shapiro
Bashoff	Fohl	McGeary	Sharp
Benedict	Forster	McGlynn	Shettig
Benfield	Fortney	Meyer	Shively
Bloom	Gabreski	Michael	Shoemaker
Braham	Gehrlein	Michener	Shrager
Brennan	Gerber	Miller, D.	Silverman
Broderick	Goldman	Miller, R.	Solomon
Brown	Goldstein	Moorhead	Stout
Buck	Gouger	More	Swope
Bunting	Griffith	Morton	Tate
Burkholder	Hannum	Murray	Thomson
Butera	Harding	Nelson	Thornburgh
Cain	Henderson	Orban	Tomasčik
Camardella	Heyburn	Orbin	Tully
Caputo	Himes	Otto	Van Sant
Casey	Hocker	Pasquerilla	Waldron
Clark	Hook	Popil	Warman
Clinger	Irvis	Pott	Welsh
Conley	Jirolanio	Powell	Westerberg
Corey	Johnson	Prendergast	Whittum
Cortese	Kauffman	Rappaport	Wilcox
Cosetti	Keller, J.	Rea	Wilmarth
Croop	Kelly	Redick	Woodring
Cunningham	Krill	Reynolds	Woodside
Curran	Laputka	Richter	

NAYS—0

NOT VOTING—28

Allison	Fineman	King	Pelletier
Bagenstose	Gray	Kline	Percey
Caron	Hatter	Lane	Quiles
Donaldson	Horne	Lee, K.	Rovner
Donolow	Hostetler	Musselman	Sprogell
Dumbauld	Huggins	O'Donnell	Strickler
Fagan	Keller, M.	Pechan	Stroup

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

GOLDMAN AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment is offered by Delegate Goldman.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE GOLDMAN offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 1, line 15, by removing the period after "charter" where it appears the first time, and inserting: : Provided, however, That under such a charter no municipality shall establish or impose taxes without prior approval of the General Assembly.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. I wish I could say that this was an amendment in the nature of cleaning up language, then maybe we could get it approved immediately. Unfortunately it is not. This is the type of amendment which I think goes to the very nature or the basic heart of local municipalities, and that is, their right to impose taxes upon their citizens.

I see, as we now have this particular proposal, Proposal No. 6 before us, the right of any of these municipalities to adopt a self-executing home-rule charter. Now I recognize that only as a possibility in the event the legislature does not act within four years, but since we have already provided for the legislature's inaction, I think it is necessary to provide for this type of protection. What we now have, or what would be available to local communities, would be to impose a wage tax or any other type of occupation tax upon any of its residents or nonresidents, and that is the important factor—its nonresidents. We could very conceivably have, for example, in a county like Allegheny County, where we have 129 different municipalities and the county itself, all of them adopting their own home-rule charter, all of them providing for the right to impose a wage tax or a business-privilege-occupation tax, and all of the communities capable of imposing this tax on anyone who travels within its borders or makes an occasional sale or transacts any business whatsoever within the confines of that community.

The purpose of this amendment—and I might add that this amendment would still hold true when we later get to the question of whether or not counties should have home rule or self-executing home rule would also apply to just the various municipalities themselves, regardless of whether counties have it—is to require that before any municipality can impose any tax on anyone, it must have prior approval from the General Assembly. The only thing I am attempting to accomplish by this is to prevent a multiplicity of the same type of tax being imposed upon citizens traveling from one community to another. For example, a traveling salesman who makes sales in each of the 129 communities; if we do not have this amendment, each of the communities could impose its tax on this salesman. He would have to pay it 129 times. This is not fair. It is not equitable. I believe this is an area that is clearly one for the legislature to establish who shall have precedence in the right of taxation, and that is all I intend to do by this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caputo.

DELEGATE CAPUTO. Mr. President and fellow delegates, without belaboring the issue here, this would kill the home-rule part of this proposal definitely. Unless you can tax, you cannot conduct programs that may be acceptable to the people of the community. And if you take away the right to tax from the boroughs and cities and townships, then they cannot function under the home-rule charter that we are trying to adopt here in this delegation. I am opposed to the amendment.

DELEGATE GOLDMAN. If I may answer that, please?

PRESIDENT BRODERICK. You may.

DELEGATE GOLDMAN. I do not intend to impose any restrictions on any home-rule charter, on any borough, township, city or county. All I intend to do is to prevent a multiplicity of taxes and allow the General Assembly to establish who shall have the right to tax in order of precedence—not necessarily to say that they cannot tax—just to prevent the multiplicity of the taxes.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scott.

DELEGATE SCOTT. Mr. President, I rise in protest to this amendment. This would bankrupt all the cities, townships, boroughs and counties. We divided the wage tax with the school district in our city to the tune of $360,000 to $400,000 and if this were passed, I do not know what we would do. We cannot wait for the legislature to act. They may not act within a period of two or three years on this. This is a preposterous amendment, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. I merely wanted to make the observation, Mr. President, that if we start in legislating those things that we want the legislature to do, we could spend the next year, perhaps, doing it. We could provide that they shall not pass laws prescribing the punishment for felonies. We could prescribe all those other things that we have carefully avoided prescribing. This really goes to what we have left to the legislature to do and, of course, it should be defeated.

PRESIDENT BRODERICK. The Chair recognizes Chairman Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, the Subcommittee on Home Rule brought out a report which listed powers under home-rule charters and then began to list various limitations.

After much discussion in the standing committee, it was decided that all of these limitations do not belong in a constitution, that this is a matter for the legislature and not for the constitution which we are writing here today.

For instance, some of the things which were eliminated were the right to enact private or civil laws, govern civil relationships, to define and provide for the punishment of misdemeanors and felonies, to regulate public schools. We began to write a whole list of powers which under home rule should be denied. As a result, by standing committee action, all of these things were eliminated from the report and left up to the legislature to establish.

PRESIDENT BRODERICK. Do you wish to be recognized, Delegate Rea?

DELEGATE REA. Fellow delegates, I speak very seriously on this subject and I speak in favor of it probably because I have been a municipal solicitor for many, many years and have represented four or five boroughs and townships. I know that what is being created here when you give home rule is a dangerous thing, because you are also leaving boroughs and townships without home rule.

Right now boroughs and townships have authority to impose taxes as given to them under the Borough Code or the Township Code. They are limited by the legislature to what they can tax. In home rule, if they are allowed to tax anything they want, you are going to create the worst hodgepodge you can ever imagine. In one county, if you have, for instance, ten municipalities, if five of them can only tax as the legislature says they can tax, that is, they have not adopted home rule, and yet the other five which have adopted home rule can tax without legislative authority, you are going to create an unfairness between citizens in the same county who live adjacent to one another.

This is where the problem is. The problem is, as long as you have boroughs and townships existing which must abide by the Borough Code and can only tax as the legislature gives them the power to tax, if half of them are like that, and yet you give the other half of the boroughs and townships, the many thousands which we have in the State, the right to tax any way they want, it is not fair and it is going to create situations where certain municipalities will get a great deal of revenue and the poor boroughs and townships which do not adopt home-rule charters cannot do anything until the legislature finally catches up and says: "Yes, we will give you a little bit more authority to tax."

So please do not dismiss this amendment lightly. It is the heart and soul of every borough and township.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. Chairman, I would like to call attention to the fact that, while the objective, I feel, is proper, the road that is being taken with this amendment is so fraught with danger that I have to oppose the amendment.

I want to call to the attention of the delegates here that one of the mainstays of taxation and tax bases in many local governments in Pennsylvania for many years has been the old Act 481, now known as Act 511, the tax-anything law. I can see nothing but repeal of the tax anything law in this amendment.

I, therefore, have to ask for opposition to this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Warman.

DELEGATE WARMAN. Mr. President, I would like to ask Delegate Goldman a question.

PRESIDENT BRODERICK. I am sure he will be interrogated.

DELEGATE WARMAN. Will existing taxes still be in force under this proposed amendment?

DELEGATE GOLDMAN. Yes. The only thing I am attempting to accomplish by this is where I say: "Provided, however, That under such a charter"—in other words, where you have a charter, it is theoretically assumed, and I think properly assumed, that the municipality adopting this charter has the right to do anything it wants.

We have certain taxes which are in existence at this time; those taxes will remain. The only thing I am trying to eliminate is the creation of new taxes; no new taxes can be created where a community adopts a home-rule charter without the prior approval of the General Assembly. I am trying to avoid the tremendous multiplicity of taxes that will inevitably result.

Delegate Thomson, if I may comment, my opening sentence, my opening words, are: "That under such a charter," and by that I mean, under such a home-rule charter. I do not intend to do away with any of the present tax laws nor any of the present tax structures, but merely limit under the new home rule charter that these communities will have the right to impose new taxes without General Assembly approval.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. It seems to me that the word "approval" is not the correct word in there and that it ought to be without prior authority of the General Assembly.

As I understand, what Delegate Goldman wants to accomplish is that the local municipalities with a home-rule charter cannot tax anything that is not provided either now or hereafter in some statutory authority. I can see merit in that proposal, but I do not like to take exception with my good friend Delegate Thomson over there. If I properly read this and the word "approval" would be changed to "authority", it would mean that before any municipality could impose a tax, they would have to look somewhere in the statutes of this Commonwealth to find the authority to do that one thing, and that does not seem to be an unreasonable proposition to me.

DELEGATE GOLDMAN. If Delegate Woodside wants to offer that as an amendment to the amendment, I would be willing to accept it.

DELEGATE WOODSIDE. Mr. President, I would like to offer it as an amendment, because I think that would be the proper word in there.

PRESIDENT BRODERICK. We are not doing it in the proper manner, but unless the Chair hears objection, you can offer your amendment orally and we will mark the amendments that have been distributed accordingly.

DELEGATE WOODSIDE. Mr. President, I move that this amendment to the proposal be amended by striking out the word "approval" and inserting in lieu thereof the word "authority."

PRESIDENT BRODERICK. We are going to consider the Goldman amendment as having been changed. Is that agreeable with you, Delegate Goldman?

DELEGATE GOLDMAN. That is agreeable with me.

PRESIDENT BRODERICK. The word "authority" having been substituted for the word "approval."

The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I rise, Mr. President, to briefly echo the remarks of my co-member of the Home Rule Subcommittee, Delegate Thomson.

We have heard a tremendous parade of horrors. I cannot conceive of a member of the state legislature coming from a suburban or a rural area who will be representing municipalities that have home-rule charters and

municipalities which do not have home-rule charters in any way agreeing that they shall have different tax powers.

I am sure that the legislature will provide uniform taxing powers, whether you want to call it powers or approval or whatever, to all units of local government whether or not they have a home rule charter.

In our deliberations before the committee, as was stated, I believe, by Delegate Pasquerilla, we decided to eliminate all of this and let the legislature deal with it.

There are many other things that local government could do. For a different township, it could create a felony for littering the highways, unless the legislature told them they could not do it, and they could say people shall spend 10 years in jail for littering the roads. They could grab me when I drive through there if I littered the highway, and I could be sent to jail for 10 years. Even my good friend from Tredyffrin could not help me. Therefore, we think the legislature should have the complete plenary power to regulate taxation, the local laws and everything else, and we are sure that they are going to do it and do a proper job and treat everybody equally, which is precisely what we want.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro, who has been standing there for a while.

DELEGATE SHAPIRO. I have not been standing that long, Mr. President. I was waiting to see if the committee chairman would make this point. Perhaps he had not caught it.

I think Delegate Woodside intended, I suppose, to make a change which would enable home-rule charters to be adopted without loss of taxing powers. I would suggest that I do not think even with his amendment to the Goldman amendment that this is the result.

I believe taxing powers are granted by the legislature to specified classes of municipalities. I submit that a municipality which adopts a home-rule charter is no longer either a first-class township or second-class township or borough or anything else to which the legislature has heretofore granted taxing powers.

Therefore, even with the change, the Goldman amendment would still have the effect of nullifying the self-executing provision which the committee has provided and would prevent any municipality from adopting a home-rule charter unless and until the legislature acted to enable it to collect taxes.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Thank you, Mr. President.

The change of the one word, in our opinion, does not change the amendment. It may change it in meaning, but we would still oppose the amendment for this reason: As Chairman Pasquerilla mentioned, the whole philosophy of home rule is that you do not start legislating in the Constitution. I know we keep talking about what are you going to let the General Assembly do and what you are not going to let the General Assembly do. Do you trust the General Assembly or do you not? Actually, you cannot trust the General Assembly 100 per cent. If you did, you would not need a state constitution. You would not need a Federal Constitution if you trusted Congress 100 per cent.

The reason we have constitutions is because there is a small limited area, and where you draw the line is open to question, where we do not trust men whether they are elected, short, tall or what. The Constitution says there are certain things that are too important and other things are not. I would suggest that under the home-rule proposal as submitted by the committee, there are many more important things that we do not refer to in there that the General Assembly has to deny to local communities.

For instance, under the home-rule proposal as now written and all constitutional home-rule proposals, a city council, if the General Assembly did nothing, could pass its own divorce law. They could tell people in a borough how to get a divorce. Come to City Hall, talk to the Mayor for ten minutes, if he finds in favor of your divorce—

Now we certainly do not intend that to happen, and if we did, we would assume that the General Assembly was not going to fulfill its duties and obligations. But we submit that if all limitations were taken out, so that the General Assembly could enumerate, and this is exactly what they did in the case of Philadelphia. There is nothing in the constitution which limits Philadelphia's home-rule charter. But the General Assembly did not pass a law saying Philadelphia, you have a home-rule charter. Do as you please. No, no, the General Assembly passed a law saying to Philadelphia, you have a home-rule charter, but we take these powers away from you.

The General Assembly will do the enumerating, whether it is in taxes, whether it is in felonies, whether it is in divorces. There are going to be a lot of areas which are going to be taken away from local government.

I reiterate, it is not necessarily that if we were members of the General Assembly we would not vote for this, but the intention is created that if we do not do this, there will be chaos. I assure you that if the General Assembly does not do anything within the next four years under this home-rule charter provision, there will be chaos to an extent.

By the same token, I submit that if the General Assembly does not meet in the next four years, even if we do not change the constitution and they all say no, under the existing Constitution of 1873, there will still be chaos if the General Assembly stays home the next four years under the old constitution. We do not expect them to stay home; we expect them to be here, to do and recognize the problems as they did under the Philadelphia home-rule charter.

Therefore, we would oppose this for the simple reason that if we were going to enumerate, there are many more important things we could enumerate other than this amendment concerning taxation. One which was mentioned was felonies, murders. We do not want municipalities passing under murder laws, but the General Assembly has to provide for this in the home-rule code, and we feel that if we start enumerating, as was done in the subcommittee—and they agreed when we got to the standing committee that if you start enumerating denials, there is no end to it of that which does not belong to the constitution.

I might mention that—this is just a side line, Delegate Goldman, but I think—in the standing committee, you

made the motion that we would delete all the other limitations from the Constitution, and I think the record shows this.

DELEGATE GOLDMAN. Right.

DELEGATE MANDERINO. And I think that the rest of the committee felt that there are just as many other important things in addition to taxation that we should not enumerate. We are definitely relying on the General Assembly to frame an overall study of legislation which will include the matter of taxation and would therefore leave no problem of interpreting this to mean something in the future.

PRESIDENT BRODERICK. Are we ready for the question on this?

The Chair recognizes Delegate Welsh.

DELEGATE WELSH. I would like to move the question.

DELEGATE GOLDMAN. May I just make one comment, Mr. President? I suggest a point of order, Mr. President. Do I have the right to sum up?

PRESIDENT BRODERICK. Delegate Welsh has the floor. Did you want to say something?

DELEGATE WELSH. No, if Delegate Goldman is going to speak again, I suggest a point of order. He has already spoken about four times, and I think the rules—

PRESIDENT BRODERICK. You are absolutely right. The rules limit it to two times on debate, but everybody has been given an opportunity to sum up. Does Delegate Goldman want to make a one-sentence summation?

DELEGATE GOLDMAN. Just a quick sum-up to Delegate Manderino's comments in the field of crimes, in the field of legislation, such as divorce laws. Our legislature has already acted by the very nature of the words of our proposal as it came out of the standing committee. This is already exempt from what a home-rule charter can or cannot put in it. What I am attempting to put in is something of a safeguard that goes beyond what the legislature has already done.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. Chairman, I would say that I still believe that Delegate Goldman's objective is correct. I think this is a completely wrong concept of a way of correcting a situation of which he is afraid. I certainly say I would greatly admire the courage of any municipality in Pennsylvania which, if this were in effect, would form or ask for a home-rule charter and charter power and they could not raise any taxes. It approaches the ridiculous.

Thank you, Mr. President.

PRESIDENT BRODERICK. We are ready for the question.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Goldman?

The roll was recorded as follows:

YEAS—14

Barry	Gouger	Nelson	Warman
Fohl	Heyburn	Pott	Woodring
Forster	Keller, J.	Rea	Woodside
Goldman	Morton		

NAYS—115

Aberman	Curran	Leinbach	Sahli
Amsterdam	Dalley	Leonard	Scales
Ausentz	Desmond	Levin	Scarlett
Baldrige	Devlin	Manderino	Scott
Baldwin	Erwin	Mangery	Scranton
Banes	Fawcett	Markley	Sebastian
Barron	Fay	Mattioni	Shapiro
Bashoff	Feather	McGeary	Sharp
Benedict	Filson	McGlynn	Shettig
Benfield	Fortney	Meyer	Shively
Bloom	Gabreski	Michael	Shoemaker
Braham	Gehrlein	Michener	Shrager
Brennan	Gerber	Miller, D.	Silverman
Broderick	Goldstein	Miller, R.	Solomon
Brown	Griffith	Moorhead	Stout
Buck	Hannum	Mora	Swope
Bunting	Harding	Murray	Tate
Burkholder	Henderson	Orban	Thomson
Butera	Himes	Orbin	Thornburgh
Caputo	Hook	Otto	Tomascik
Casey	Irvis	Pasquerilla	Tully
Clark	Jirolanio	Popil	Van Sant
Clinger	Johnson	Powell	Waldron
Conley	Kauffman	Rappaport	Welsh
Corey	Kelly	Redick	Westerberg
Cortese	Krill	Reynolds	Whittum
Cosetti	Laputka	Richter	Wilcox
Croop	Leach	Roberts	Wilmarth
Cunningham	Lee, L.	Ruth	

NOT VOTING—34

Allison	Fagan	Keller, M.	Pelletier
Bagenstose	Fineman	King	Percey
Baldus	Fleming	Kline	Prendergast
Cain	Gray	Lane	Quiles
Camardella	Hatter	Lee, K.	Rovner
Caron	Hocker	Musselman	Sprogell
Donaldson	Horne	O'Donnell	Strickler
Donolow	Hostetler	Pechan	Stroup
Dumbauld	Huggins		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. We want to recognize the delegate who has our adjournment resolution.

DELEGATE PASQUERILLA. Mr. President, could you tell us before the adjournment resolution how many more amendments we have?

PRESIDENT BRODERICK. Yes, I just want you to know that twice we were on the last amendment, but now we have four more.

DELEGATE PASQUERILLA. Can we finish up the four?

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, may I make a suggestion? You have more amendments. Could they be distributed this evening before we adjourn so that we could look at them and give them some thought tonight?

PRESIDENT BRODERICK. I have no objection to that. I just hope that tomorrow morning when we ask, does everybody have a copy, they will say they have.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener for the adjournment motion.

DELEGATE MICHENER. Mr. President, I move that this Convention do now adjourn until Wednesday, February 14, 1968, at 9 a.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Michener and seconded by Delegate Hocker that we adjourn until Wednesday, February 14, 1968, at 9 a.m., e.s.t.

The motion was agreed to and (at 7:36 p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 **Wednesday, February 14, 1968** **Number 43**

The Convention was called to order at 9 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND WESLEY W. BOWDEN, pastor of the AME Zion Church of Harrisburg, Pennsylvania, offered the following prayer:

Let us pray: Almighty and eternal God, Thou Who hast revealed Thyself to us in the person of Jesus Christ, our Lord, preserve us in Thy righteousness that we may, according to Thy will, exemplify Thy spirit and love in all that we do. In the midst of our changing social order and the restlessness of these bewildered times, may our faith in Thee and our obedience to Thy will keep us strong that together with Thee we may build a life of good will in which prejudice and greed will disappear and the day of brotherhood and mutual service may dawn.

Grant, O God, that the members of this Constitutional Convention be blessed with a right understanding, a pure purpose, and sound judgment. Lift them, we pray, above all party interest to the larger sentiments of public good and human welfare, so that as they labor for the good of all, they may also advance Thy Kingdom upon this earth. Pour out Thy spirit upon our leaders both on the local, state, and national levels, that as they labor for the advancement of our country, they may also labor for the benefit of all our citizens.

Bless our nation, we beseech Thee, the homes of our people, the institutions of human welfare, the agencies of good government, Thy church; and may we learn to work together, in Thy name, that passion and violence may be restrained, and all needless suffering may be prevented. Let Thy spirit prevail with us, and grant us such a peace as rests plainly upon the principles of Thy Kingdom which is for today and tomorrow and forever. Amen.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the secretary, Delegate Michener.

SECRETARY MICHENER. Mr. President, the following members have made requests for leaves of absence:

The delegate from the 10th District, DELEGATE M. V. KELLER, for February 14, on account of road meeting;

The delegate ex officio, DELEGATE STROUP, for February 14, on account of road meeting.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

VALENTINE GREETINGS

PRESIDENT BRODERICK. The Chair recognizes Secretary Michener.

SECRETARY MICHENER. Fellow delegates, on this beautiful Valentine's Day, each lady delegate finds on her desk a valentine from the men of the Convention.

I think it only appropriate that these 11 beautiful ladies, who have been helping us so much, should be so recognized.

QUORUM CALL

PRESIDENT BRODERICK. We will now open the machine for the purpose of determining whether a quorum is present.

I understand the Judiciary Committee is still at a meeting. We will record them as they enter.

The roll was recorded as follows:

Aberman	Dailey	Hostetler	Popil
Aurentz	Desmond	Huggins	Pott
Bagenstose	Devlin	Irvis	Powell
Baldrige	Dumbauld	Jirolanio	Rappaport
Baldus	Erwin	Johnson	Reynolds
Baldwin	Fagan	Kelly	Richter
Banes	Fawcett	Krill	Roberts
Barry	Fay	Leach	Rovner
Benedict	Feather	Lee, L.	Ruth
Bloom	Filson	Leinbach	Sahli
Brennan	Fineman	Levin	Scales
Broderick	Fohl	Manderino	Scarlett
Brown	Forster	Mangery	Scott
Buck	Fortney	Markley	Shettig
Bunting	Gabreski	Mattioni	Shively
Burkholder	Gehrlein	McGeary	Shoemaker
Butera	Gerber	McGlynn	Sprogell
Cain	Goldman	Michael	Swops
Camardella	Goldstein	Michener	Tate
Caputo	Gouger	Miller, D.	Tomascik
Casey	Gray	Miller, R.	Tully
Clark	Griffith	Moorhead	Van Sant
Clinger	Harding	Morton	Waldron
Conley	Hatter	Nelson	Warman
Corey	Henderson	O'Donnell	Welsh
Cortese	Heyburn	Orban	Westerberg
Cosetti	Himes	Orbin	Whittum
Croop	Hocker	Otto	Wilcox
Cunningham	Hook	Pasquerilla	Wilmarth
Curran	Horne	Pelletier	Woodring

PRESIDENT BRODERICK. The electric roll call tabulator indicates that 120 delegates have recorded their presence.

The Chair also notes the presence of the following delegates:

Allison	Kauffman	Percey	Shrager
Amsterdam	Keller, J.	Prendergast	Silverman
Barron	Keller, M.	Rea	Solomon
Bashoff	Kline	Redick	Stout
Benfield	Laputka	Scranton	Strickler
Braham	Lee, K.	Sebastian	Thomson
Donaldson	Meyer	Shapiro	Thornburgh
Fleming	More	Sharp	Woodside
Hannum	Murray		

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 6, Printer's No. 6,** entitled:

Amending the Constitution of Pennsylvania providing for local government in Pennsylvania.

On the question,

Will the Convention agree to the proposal on second consideration?

PRESIDENT BRODERICK. We are going to continue our discussion where we left off yesterday and accepting amendments in connection with the first section of the local government proposal, Proposal No. 6, printer's No. 6.

We are now ready for an amendment. The first amendment to be offered this morning will be offered by Delegate Powell.

The Chair now recognizes Delegate Powell.

DELEGATE POWELL. Mr. President, I read in place and present an amendment to Proposal No. 6.

POWELL AMENDMENT TO PROPOSAL No. 6

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE POWELL offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 1, line 16 by striking out "A municipality" and inserting: Any municipality except a county

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL . Mr. President, this amendment is being introduced for basically one reason, which came out during the interrogation yesterday of the chairman of the subcommittee.

During that interrogation, there were some questions as to who would have what powers. In granting home rule to counties and local municipal governments, a conflict could arise as to who has what powers. This proposal simply takes the county out of the home-rule provision and lets the home-rule choice rest in the hands of the local government units. If, for example, the home-rule provision is adopted which is another class of local government structure, we would have four or five different local government structures. The county government in its classification—I think we have eight classifications of county government—presently has certain duties that it can perform. When we start to cross these powers with the local powers, it is my opinion that much confusion will arise from who has what.

Therefore, I am asking that the county government be taken out of that section of the proposal.

PRESIDENT BRODERICK. The Chair wishes to state for today, and from now on, the rules will be strictly enforced in connection with who speaks regarding these amendments. Under the rules everyone has 10 minutes, no more, and he can speak twice, and no more than twice. That means the proposer has an opportunity to open and to close only. Of course, he will be able to answer any questions. Yesterday we did permit a violation of that in a few instances in order, what I thought was, to expedite the work of the Convention, but from now on we are going to strictly enforce that rule. So I am telling the proposers now, they can open and close.

And now the Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, the Judiciary Committee apologizes to the rest of the Convention for its membership being late this morning. Would you get your recognizers going because some 32 of us have just come out of a meeting, so it will necessitate their being marked present.

PRESIDENT BRODERICK. I am advised by the recognizer that he is recording your presence and the presence of the other Judiciary Committee members as they come in the door.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, the Committee on Local Government is definitely opposed to this amendment for many reasons, and I would like you to recognize the Co-Chairman of the Home Rule Committee, Delegate Rappaport, if you will.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, when I came here, I must confess, my knowledge of local government was rather academic, that which I had having been learned at the Fels Institute.

I, however, had several excellent tutors in the problem of local government, one of whom served on our subcommittee. I learned a great deal about local government and more particularly about second class townships, which I think reflect our problems.

I alluded yesterday to the fact that the name that we put to a government, be it second class township, be it a borough or a third class city, is really irrelevant in terms of governmental problems.

We have a very serious problem, however, in many of our rural counties, and for information on that, I am indebted to our friend Ed Dailey from Sullivan County, who also served on our subcommittee.

Local government, traditionally in America, carries on four functions, that of education, the provision of water and sewer, police and roads. Because of the small population in many of our rural areas—and I understand that Delegate O'Donnell has a list of approximately 100 townships in Pennsylvania that have a population of less than 100 people, we know that 40 per cent of the units of local government in Pennsylvania have a population of less than 1,000 people.

As a result, these units can carry on practically none of the functions of local government. They do not have any schools. Under the very wise legislation passed by the Scranton administration, and I know it sounds odd for me to be saying that, we have school jointures in Pennsylvania now, so that school districts have become consolidated.

The water and sewer problems are handled by authorities. The authorities, in many cases, were not created just to get out of the debt limit, but were created to cut

across the township line and the borough line and do things on a rational basis.

The police power is handled by the state police, with the result the only thing the local government does is handle roads. For that, of course, they get their cut from the Liquid Fuels Tax.

We are aware of this, and our committee considered this long and hard, but we were not satisfied to let the State come in and do this.

There was a very interesting story in the Evening Bulletin last September. It seems there is a little township in Delaware County known as Chester Township. Do not confuse it with the city of Chester; it is entirely different. It is a little township with about 600 people living in it, right outside the city. Some state official was driving by and there he saw on the side of the road about six acres of what he thought was marijuana growing, acres and acres of marijuana, six feet high.

He went to the nearest telephone and called up the township officials, and he was told, sorry we cannot help you. We do not have a board of health. Why do you not call the county seat?

He called up the county seat and he spoke to them—Delaware County is a rather large, sophisticated county—and found out that the county does not have a board of health. You had better call Harrisburg.

By the time Harrisburg investigated it, about two months later, they found that the ground that this stuff was growing on was owned by the county of Delaware.

This is the problem: Are we mandating Delaware County to have a board of health? The answer is no. Before Delaware County could have a board of health under this, they would have to vote on it. All the people would have to vote on it in a referendum. If they do not want it, they do not have to have it.

All we are doing here is providing for the strengthening of a level of government in Pennsylvania that has done nothing. We admit that the counties today are not competent to take on residual powers. There is no question about that. But that they may be so competent in the future, there is no question here. They get these residual powers when they adopt a home-rule charter. Does this mean they have to have a county government to eliminate boroughs and townships? No, they could pass a charter giving themselves residual powers and providing it for just some areas, like air pollution or water pollution or a countywide homicide squad, if they wanted it. At the present time the county does not even have police power, and the problems that we are facing are those which extend over township and borough lines.

I would, therefore, urge strongly the defeat of this amendment. The committee provision does not change anything. It merely provides that the governments concerned and the people can change it as, if and when they desire.

Thank you, Mr. President.

PRESIDENT BRODERICK. Are we ready for the question?

DELEGATE PASQUERILLA. Mr. President.

PRESIDENT BRODERICK. Yes, chairman Pasquerilla.

DELEGATE PASQUERILLA. Could I make a closing statement of just a few minutes?

PRESIDENT BRODERICK. You may.

DELEGATE PASQUERILLA. The Subcommittee on County Government studied very long and hard the problem of county government, and we have recognized that county government today is not what it was 10, 15 or 20 years ago, that of administering a courthouse. In the past, and we do not have to go back too many years, what has happened to county government is that local municipalities, the Federal government and the State continually unload more and more responsibility onto counties to take care of area-wide problems.

Let us just enumerate a few: Counties are now involved in redevelopment work, public housing, library facilities, tourist councils, airports, sports and recreation, public health; they are involved in county planning commissions and, if you please, Mr. President, they are now in the field of education by operating our community colleges. Why then should we deny our counties the great opportunity of providing a better structure of government? We urge the defeat of this amendment.

We have heard a great deal of talk about, is county a local government? I wish Delegate Thomson would pay particular attention to this statement because later on we are going to have an amendment introduced that is going to eliminate the definition of municipality by taking out the word "county".

Let me inform the delegates of this Convention that Act No. 265, passed by the legislature and signed by the Governor, defines municipalities for the purposes of making contributions for the health, safety, welfare and rehabilitation of local communities. The definition of municipalities which is on page 6 of the proposal, "Municipality means a county, city, borough, incorporated town or township," and, therefore, the General Assembly has now established, and rightfully so, that counties are an important part of local government.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, I rise in support of this amendment—which is no surprise really to anyone here—for several specific reasons, the reasons which I made well-known in the committee meetings. There are two of them in particular.

One, by inserting the county as a municipality which shall have self-enacting or self-executing home rule. We have created a duplicity of power; we have created the self-enacting powers both in the counties and in the governmental bodies located within the counties. We immediately have a conflict of interest which will not be resolved until and unless the legislature acts or the Supreme Court acts in an interpretation of what we are writing.

The question of this legislature acting so as to resolve these problems has been met by our committee when it states that if home rule is not granted by the legislature, it automatically becomes self-executing after four years, so that I believe the committee has actually begged the question. They have recognized the problem and then have gone ahead and said it shall be in anyhow. We shall create this problem anyhow even though the legislature may not have acted so as to prevent the problem.

Secondly, in answer to some of the theories that have been given here that the county has the right to handle problems which go beyond the territorial limits of the communities which comprise that county, I agree. This is a county function.

However, we have also provided—and I think very properly provided—in the committee proposal something that goes far beyond counties. We have created an intergovernmental cooperation section and an area government section which goes far beyond the simple fictitious boundary lines of a county. Problems such as water pollution, air pollution, community colleges, roads and airports are problems which at one time, perhaps, were county problems, but are now much greater than simply county problems and, therefore, are being and going to be adequately handled in an areawide provision contained within this proposal.

I believe the counties have lost their original significance and to create the self-executing home rule into them, along with the municipalities located within the county boundaries, is only going to be compounding the problem, creating court cases, demanding legislation which the committee recognizes may not be forthcoming.

Therefore, I have to stand in support of this amendment. I would also like to suggest that Delegate Morton's comments, to which I alluded yesterday, may well have some significant bearing on this, if he would care to comment on them at this time.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Mattioni.

DELEGATE MATTIONI. Mr. President, I rise in opposition to this amendment.

Mr. President, over the past several decades we all too often have come to rely upon the Federal Government for the function of problem-solving in the state levels and in the subgovernments of the State thereunder. However, with the increasing responsibilities that are now placed on the Federal Government, both internationally and nationally, with the ever-increasing complexities of its problems, I think in the future we may find that when we look to the Federal Government, we may not have a meaningful response.

I think, not to repeat what Delegate Rappaport has said, many are the problems that will confront the future generations of this Commonwealth and our country, and the local government article that is before you is an article which does not take away; it is an article which gives to local governments the flexibility that the future may require. It allows for the retention, in the most part, for the government that you now have, and at the same time it gives to the General Assembly the power to create new receptacles within which local governments of tomorrow may build.

It does not, as has been suggested, attempt to place two solids in the same position. Moreover, what it does, geometrically, is to allow for the whole to be equal to the sum of its parts and gives to the General Assembly the power to fit those parts together. Moreover, the fundamental concept of this local government article, if you have read it, and I am sure most of you have, is fairness. It is fairness without sacrifice of the concepts of separation of powers that we respect. Moreover, the removal of county from this local government article creates an unfairness which is not now there; it creates a prejudice which is not now there; it ties the hands of the General Assembly from more meaningful handling of this problem in the future. I do not think this is our intention; I do not think it is your intention. Do not argue today too forcefully for any one proposition, for tomorrow it may be your local government that requires just exactly what is attempted to be removed by this amendment. I urge its defeat. Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bunting.

DELEGATE BUNTING. Mr. President, I will yield to Delegate Morton if this is his pleasure.

DELEGATE MORTON. Go right ahead, Delegate Bunting.

DELEGATE BUNTING. Thank you, Delegate Morton.

Mr. President, I wish to emphasize that such matters as flood control, air pollution, water pollution, sewage disposal do not stop at the township line; they do not stop at the borough line; they do not stop at the city line or even the county line. It is terribly restrictive to say that the effective means for handling these problems must come from a township or borough or city or town and cannot come from the county.

In our committee proposal we have relied greatly upon the General Assembly to preclude the type of conflict which has created such a concern on the part of some delegates. But do not forget that in addition to the General Assembly the voters of the counties must approve any charter provisions that would increase the powers of the counties and here is the final safeguard. With both the General Assembly and the voters in the county considering a charter provision, it would seem that there must be sufficient wisdom to let Pennsylvania meet the problems that are growing every day.

Therefore, I urge the defeat of this amendment.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Mr. President, I did speak on this in Local Government, and I do feel that maybe I should relate my views, particularly in view of the fact that the vote in county government was 22 to 19 to include counties. This was not a clear-cut issue and not one that went through unanimously and, therefore, I do feel that the Convention is entitled to know both sides of the issue and to make its own fair decision.

I, for one, am in complete sympathy that big government and county government have to be strengthened, but I disagree with the philosophical approach on it. One, I start with the basic proposition—maybe I put too much reliance in my forefathers—that the Woodside Commission did not recommend home rule for counties; the Scranton Commission did not recommend home rule for counties. No other proposal that came in from any group that I know of recommended home rule for counties and no one at the public hearings, except one individual who wanted to strengthen county government by seven county commissioners and a complete realignment, recommended home rule for counties.

It was also interesting to me to note that the Department of Community Affairs ran a survey of county officials and out of 464 county officials who replied, only 12 of those county officials said they wanted home rule for counties.

Where I differ on the philosophical approach is this: The legislature can give home rule or any powers it wants at any time to any county. I feel that this is where it

lies. Where I basically differ from what may be the committee report, is the self-executing provision within four years. My reason for this is that we have actually two different areas of local government. We have the county government and we have our boroughs, townships and cities.

It so happens that the county government is the only government which is really operating for the State. It is the agency of the State. The State has elected to administer its judicial system through the county. The State has its state officers, sheriffs and district attorneys, who though really county officials are officials of the State. The county officers, the recorder of deeds and the register of wills, perform functions for the State. They collect taxes for the State.

The State has seen fit by legislation to say that the title for all penal institutions shall be owned by the county and the county shall administer the penal institutions. The State has seen fit to cooperate with the counties on the mental health program and delegate to the counties certain functions to be performed by the counties; the same with homes for the aged, and other policies administered by the State but carried out through the county government, none of which is done by boroughs, cities and townships.

My whole point is that the Commonwealth of Pennsylvania in dealing with county government has treated it as an agency through which it operates. The legislature has done all of this. I feel that, if the legislature is given these responsibilities to carry out the state functions, we should not say to the legislature, within four years you have to give counties home rule or else they shall do it themselves.

It is purely, as I say, a philosophical thing with me, and that is, that the county is the only agency which the Commonwealth of Pennsylvania has elected to confirm state functions, to have them perform for the State. I feel that the legislature should be free to say when it wants county A, B or C to have home rule and when it wants counties to do these other functions and that it can solve this problem. The same as today, if it wanted to grant residual powers to counties, it can do so.

My sole feeling on it is that we as a body should not dictate to the legislature on the county, the only organ of government where they have let them perform state functions for them.

This is the view that I expressed in the County Government Committee. I do feel that since it has been referred to once or twice here that I should give you what I consider to be, maybe, the other side of the coin and the other philosophical approach.

The county government is so closely tied in with the state government that we should leave the legislature free to determine how it is going to function with the county government.

I thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, I think Delegate Morton has well sketched the matter of philosophy which has obtained throughout history. The historical status of the county as an agent of the state government is well established. But I think that the philosophy which must be imbedded in this article is a philosophy which looks toward the future, that takes into account the fact that larger and more efficient functioning units of government may well have to deal with problems which cover, in time and space, a larger quantity than we have had in the past.

I would suggest that that philosophy is reflected in the present proposal, which gives the legislature the opportunity to fashion and frame a network of local governments as it deems most efficient and best able to meet the needs of this Commonwealth.

To ascribe chaos to this proposal requires that you lose the faith, so often expressed on this floor, in the legislature to deal with these problems. It would require that the General Assembly be unable, not once but twice, to deal with the problem of sorting out functions as set forth in this article. It would presume that they would be unable to cope, within the initial four-year period, with the problem of sifting and sorting out functions. It would also presume that, when they were withholding powers and functions from municipalities, they would again be unable to deal with this potential. And certainly it is there, this potential for chaotic conditions.

I would like to underscore my faith in the legislature to deal with these functions, to go through the process of sorting out and sifting, and to speak in support of the proposal as expressing a sound philosophy for local government during the balance of the 20th and the entire 21st centuries.

I, therefore, would rise to speak in favor of the proposal and against the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I rise to speak in favor of the proposed amendment to the proposal.

I am interested in the increased number of functions which were related as recently having been given to the counties. The truth of the matter, however, is that the county government does not have the importance in our setup today which it had when I first entered this legislative hall. They had roads and they had bridges and they had relief and they had a lot of functions which they have lost in the meantime here, while the functions of the local government have increased. Why? Because the local governments have been more efficient in handling those functions than the county government was.

But I do not think that that is really the important issue here. As I see this issue, it is this: There is only one reason why you give residual power, and that is because there are some functions which the legislature does not foresee. We have been talking about trusting the legislature, but residual powers are given to a local government because of something which the legislature does not foresee. If the legislature could perceive all the problems, then you would not need any residual powers, either in the local governments, the local municipalities, or in the county governments. But because the legislature cannot foresee the need for all these powers, it is wise, in my opinion, to give it to one level. But it certainly is not wise to give it to two levels. The legislature cannot catch up with the fact that this power is wanted and needed in trying to designate which one shall have it.

If you have two residual powers, you will be having

forever conflict between the local governments and the county government, both having the power to do the same things, and you will be in the courts all the time to determine which one did it first and which one has superior power. To me, it is an incongruous thing to attempt to give that power on two different levels of government.

Of course it has been said that about 95% of county government is nothing more than the carrying out of the functions of the judiciary. It is a matter of the courts and all the things related to the courts, all the row offices, the district attorney, the register of wills, the recorder of deeds, and all the rest of those, down to the prisons. And, incidentally, there is another case where the law is taking more and more authority away from the counties, rather than putting more and more authority into the counties.

In all those instances the county is not set up and has not been set up over the years and has not proven its ability to deal with these issues as well as the local government.

Therefore, it seems to me to be a very improper thing to give this to two different areas of government. I would much prefer to see you give it to none than to give it to both, although I do think that it ought to be in the cities, the boroughs and the townships rather than in the counties.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Thank you, Mr. President. Fellow delegates, I appear before you as a small county attorney who represents townships, boroughs and school districts. I came to this Convention not knowing the true meaning of home rule and residual powers. This we do not have in our locality. I came here with an open mind.

At this time I rise to oppose this amendment. The basic reason is that, in my mind, the small counties in the State of Pennsylvania need this proposal as submitted by the committee as a whole, because this does more for the small counties than anybody else. It gives us certain things which we have never had in the past. It gives to the legislature the right to deal with problems on which it has been restricted in the past.

I do not agree with Delegate Woodside. I know that he represents one of the associations that I am with also. At the same time, I feel that this association has taken certain stands on counties. I feel that the county government must be given a new horizon for the future. If we fail to do this in this Convention, then we are denying to the people of the small counties an opportunity to handle many of the problems which now exist and should be handled on a countywide basis.

I do not advocate elimination of townships, boroughs, and so forth in small counties. I think this governmental structure is well needed and should stay in existence in the future. But many of the problems of the counties and the townships in my area are very important to the people. Many people used as an example yesterday the Borough of Seven Springs with 12 people. I do not know how they deal with all the problems that they have in their township or borough.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I hope the delegates to this Convention are sufficiently aware of the fact that we are now voting on one of the most important and far-reaching issues that this Convention will consider.

I personally feel that this very issue of home rule, residual power and the entire local government document is the most important. I think it means more to more people than any of the other areas which this Convention will consider. I know some of you are more interested because most of your time has been spent on the judicial article and on other phases, but I wish you would carefully consider what we are talking about this morning because it is important.

We are now lauching into a decision on the question of residual power, whether or not the local municipalities will have inherent power, which they do not now have. Most of us are aware that no local government can do anything that is not specifically assigned to it by legislation from the General Assembly. What the Local Government Committee has done here is fashion a plan that would make it possible for them to do things on their own initiative or under the direction of the General Assembly, under a broad outline sketched by the General Assembly. That is very important.

One of the things I want to impress upon you is that this is an integrated document. We are now at that point in the bend where some are going to try to have their cake and eat it too, and I submit to you that you just cannot do that. This whole thing hangs together or it could well fall if we separate it.

Part of the residual power principle has to rest in the counties. It is a fairly easy thing to see why. I agree with Delegate Thornburgh that we are not talking history. We are not even talking about the present. We are talking about what is going to happen in the future.

Judge Woodside said the counties do not have much to do any more. Perhaps you should check at the courthouse and find out what they are doing today. The recent session of the General Assembly turned back to them the whole program of mental health and mental retardation, a vast program that last year spent $13 million and shortly will be spending millions more to care for this very critical area.

Most counties are now operating very modern homes and hospitals. Many counties are concerned with sewage disposal and garbage disposal. The whole concept of the Governor's Crime Commission and the Presidential attack on crime envisions a police network based more on a county level than on a local level.

I think we have to keep these things in the back of our minds. I want to tell you that if my county today were to vote on whether or not the county should have all the power, I would be opposed to it, but I can see a day in the future when it may very well be necessary. There is not going to be any conflict. I am not trying to fool anybody.

My concept of this is very simple. If the day comes when a county votes for home rule, then there are not going to be any more cities, townships or boroughs within that county unless special provision is made by the General Assembly. No one should be fooled of that fact.

Please understand that the procedure which is built into this is this, and I want to review it for you very briefly. We propose to give the General Assembly four

years to write a rule book; four years to say to the local municipalities, you can do this, you cannot do that, and if there is a conflict, this must happen or that must happen. If they do not do that, if the General Assembly does not write the rules for this kind of thing, then we propose self-initiation where the counties or the local municipalities can initiate, on their own, a local home-rule charter.

That step, I submit to you, is controlled by the people themselves, because no charter can be accepted for a township or for a borough or for a city or for a county until the people vote. I think you would be shortchanging the citizens of the future if you did not leave counties in here.

The whole thing, of course, is subject to vote of the people in this coming primary and any home-rule charter will be subject to the vote of the people. But I think the way we are looking at government today makes it necessary that there be some depository of local governmental powers larger than all those units we now have.

We have to leave that opportunity available to the people.

That is the whole basis of my appeal to you, that we support this document as it came from the Committee on Local Government.

I remind you again that we are at that turn in the road where you cannot have your cake and eat it, too. If some of you are not entirely happy, neither am I. If we begin to chip away at the little things in here that we do not like, before this week is over we will have destroyed the whole concept of home rule and residual power and we will be right back where we started.

I can use the same basic argument that was used on the first proposal. We ought to give the people something to vote on in April.

Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. I did rise to speak in opposition to this amendment, but I think everything which I could have said has been said better than I could ever hope to say it, by the prior speakers.

I think we have had adequate discussion of this, and I, therefore, move the question on the amendment, Mr. President.

PRESIDENT BRODERICK. While we wait for the question, there is just one delegate who has been standing, Delegate Warman. Are you ready for the question?

DELEGATE WARMAN. Yes, I yield to the motion of Delegate Irvis.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Powell?

The roll was recorded as follows:

YEAS—30

Bagenstose	Devlin	Levin	Powell
Baldrige	Erwin	Mangery	Reynolds
Baldwin	Fohl	Nelson	Sebastian
Benedict	Goldman	Orban	Thomson
Benfield	Goldstein	Orbin	Waldron
Cortese	Hatter	Otto	Whittum
Curran	Keller, J.	Pott	Woodside
Desmond	Lee, L.		

NAYS—117

Aberman	Fagan	Kline	Roberts
Amsterdam	Fawcett	Krilt	Rovner
Aurentz	Fay	Laputka	Ruth
Baldus	Feather	Leach	Sahli
Banes	Filson	Leinbach	Scales
Barron	Fineman	Manderino	Scarlett
Barry	Fleming	Markley	Scott
Bashoff	Forster	Mattioni	Scranton
Bloom	Fortney	McGeary	Shapiro
Braham	Gabreski	McGlynn	Sharp
Brennan	Gehrlein	Meyer	Shellig
Broderick	Gouger	Michael	Shively
Brown	Gray	Michener	Shoemaker
Buck	Griffith	Miller, D.	Shrager
Bunting	Hannum	Miller, R.	Silverman
Burkholder	Harding	Moorhead	Solomon
Butera	Henderson	More	Sprogell
Camardella	Heyburn	Morton	Stout
Caputo	Himes	Murray	Strickler
Casey	Hocker	O'Donnell	Swope
Clark	Hook	Pasquerilla	Tate
Clinger	Horne	Pelletier	Thornburgh
Conley	Hostetler	Percey	Tomascik
Corey	Huggins	Popil	Tully
Cosetti	Irvis	Prendergast	Warman
Croop	Jirolanio	Rappaport	Welsh
Cunningham	Johnson	Rea	Westerberg
Dailey	Kauffman	Redick	Wilcox
Donaldson	Kelly	Richter	Wilmarth
Dumbauld			

NOT VOTING—16

Allison	Gerber	Lee, K.	Quiles
Cain	Keller, M.	Leonard	Stroup
Caron	King	Musselman	Van Sant
Donolow	Lane	Pechan	Woodring

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHARP AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment is being offered by Delegate Sharp. The pages will distribute copies of the amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHARP offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 3), page 2, line 7, by inserting after "Adoption": , amendment,

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Sharp.

DELEGATE SHARP. Mr. President, the touchstone of the local government article is, indeed, flexibility of the form of government.

I have proposed this amendment which is a relatively simple amendment. I might say at the offset that I am not particularly pleased with the language "amendment," but if I can explain what is meant by this, I think that the sense will become apparent.

Under the optional form of government, as set forth here, the legislature could provide optional forms A, B, C, and D by the last clause, "Adoption or repeal of an optional form of government shall be by referendum."

It appears to me that by the language of the proposal as set forth, should a municipality adopt optional form A

and then find that they should later like to change to optional form B, it would appear by the language of the proposal that perhaps they should first have to repeal optional form A and then adopt optional form B, calling, under the language of the proposal, for two separate referenda in order to accomplish their purpose.

I note, likewise, that although the situation is not exactly parallel, in the case of home rule there is, of course, provision for direct amendment.

The idea of this proposed amendment is to permit the municipality to change from one optional form to another without the necessity of going through, first of all, repeal and then adoption of the new form by separate referenda.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, the very reason that Delegate Sharp mentioned is the reason why we cannot insert "amendment" in this article. You cannot, in our opinion, amend an optional form of government.

Under the present system on optional forms, you will appoint, in all probability, a commission who will study the various options, who will then recommend to the voters for adoption of an optional form of government. If they want to change from A to B, it cannot be done by an amendment process, but should be done by a complete new referendum where a charter commission or the people will now say, we would rather have optional B instead of optional A.

Therefore, it is not an amendment, but an optional form of government. This is where the General Assembly has in the past laid down ground rules by history for the various cities where they have optional forms of government, one which would be in existence. It is rather difficult to amend an optional form of government; you have to go through the process of a complete new vote.

DELEGATE SHARP. May I ask Delegate Pasquerilla a question? Delegate Pasquerilla, I started my remarks by saying I was not happy with the semantic word "amendment." The question which I am posing to you is this: Once having adopted an optional form of government, say optional form A, and they wish to change to optional form C, if I read it correctly, under the last clause of Section 3, in order to accomplish this purpose they would first have to repeal option A by referendum, and then adopt option C by referendum. Am I correct?

DELEGATE PASQUERILLA. I do not think you are correct on that. That is not our intention and I do not think that is a correct statement.

DELEGATE SHARP. This, of course, as I say, is the purpose of the amendment, to permit the change to be made. It appears to me, that having specifically stated either adoption or repeal in the Constitution, I wonder if we are locking ourselves into that.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I would like to make one comment on this and it is a proper question. I think the answer is very simple. It lies in the language of the charter. I think that any charter commission which presents to the voters a whole new program for local government would include in it a means by which the charter itself could be amended. That is what I had in mind when we put in this language. The adoption or repeal of a whole charter should go to referendum, but I think any charter could properly include and should, it would seem to me, the necessary provisions for any modifications or amendments that a municipality would need to cope with various problems as they arise from time to time. I do not feel it is necessary to put this amendment or this word into the document that the means by which any modifying amendment that would not be far reaching or necessarily involve the complete repeal of the charter could be included within the body of the charter itself.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Sharp?

The roll was recorded as follows:

YEAS—5

Goldman	Scott	Shapiro	Sharp
Rea			

NAYS—129

Aberman	Desmond	Johnson	Powell
Amsterdam	Devlin	Kauffman	Rappaport
Aurentz	Donaldson	Keller, J.	Redick
Bagenstose	Dumbauld	Kelly	Reynolds
Baldrige	Erwin	Kline	Richter
Baldus	Fagan	Krill	Roberts
Banes	Fawcett	Laputka	Rovner
Barron	Fay	Leach	Ruth
Barry	Feather	Leinbach	Sabli
Bashoff	Filson	Manderino	Scales
Benedict	Fineman	Mangery	Scarlett
Benfield	Fleming	Markley	Scranton
Bloom	Fohl	Mattioni	Sebastian
Braham	Forster	McGeary	Shettig
Brennan	Fortney	McGlynn	Shively
Broderick	Gabreski	Meyer	Shoemaker
Brown	Gehrlein	Michael	Shrager
Buck	Goldstein	Michener	Silverman
Bunting	Gouger	Miller, D.	Sprogell
Burkholder	Gray	Miller, R.	Stout
Butera	Griffith	Moorhead	Swope
Camardella	Harding	More	Tate
Caputo	Hatter	Morton	Thomson
Casey	Henderson	Murray	Thornburgh
Clark	Heyburn	Nelson	Tully
Clinger	Himes	Orban	Waldron
Conley	Hook	Orbin	Welsh
Corey	Horne	Otto	Westerberg
Cosetti	Hostetler	Pasquerilla	Whittum
Croop	Huggins	Percey	Wilcox
Cunningham	Irvis	Popil	Wilmarth
Curran	Jirolanio	Pott	Woodring
Dailey			

NOT VOTING—29

Allison	Hocker	Levin	Solomon
Baldwin	Keller, M.	Musselman	Strickler
Cain	King	O'Donnell	Stroup
Caron	Lane	Pechan	Tomascik
Cortese	Lee, K.	Pelletier	Van Sant
Donolow	Lee, L.	Prendergast	Warman
Gerber	Leonard	Quiles	Woodside
Hannum			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHAPIRO AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment is being offered by Delegate Shapiro.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, lines 9 to 11, by striking out "commissioners," in line 9, all of line 10, and "of deeds, prothonotaries, clerks of the courts, and such others" in line 11 and inserting: such officers

Amend Sec. 1 (Sec. 4), page 2, lines 21 to 23, by striking out all of said lines

Amend Sec. 1 (Sec. 4), page 2, line 24, by striking out "above"

Amend Sec. 1 (Sec. 4), page 2, line 24, by striking out "county" where it appears the first time

Amend Sec. 1 (Sec. 4), page 2, line 24, by inserting after "government": of any county

Amend Sec. 1 (Sec. 4), page 2, lines 24 and 25, by striking out "in a county which has adopted" and inserting: by adoption of

Amend Sec. 1 (Sec. 4), page 2, lines 25 to 27, by striking out "The above" in line 25, all of lines 26 and 27

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, my amendment is not proposed in derogation or in criticism of the job done by the Local Government Committee. I think they have done an excellent job.

However, one of the criticisms that I find in the present Constitution, and with respect to local government, remains in the article which they present, and I think that the authority and leeway that has been granted to the legislature by the proposal could be broadened in this respect.

The principal purpose of my proposed amendment is to remove from the Constitution the designation of any officers of county governments. It seems to me that the legislature should have leeway to make changes in this from time to time as the needs arise.

I do recognize that the committee in its proposal has provided for this in a sense. They have provided for adoption of various optional forms of government, for adoption of home-rule charters by county governments.

I think there is still an area, looking at this realistically, that can only be taken care of by the legislature. There are many of our counties which will not adopt home-rule charters, which will not adopt optional forms of government, and I think it should be within the province of the legislature to state that for those counties some of the offices that have become archaic over the years can be abolished, or at least that they can be abolished as elective offices, and allow the functions of those offices, while there are some functions remaining, to be performed by appointive officals, appointed by the heads of the county government. That is the principal reason for the offering of this amendment.

There is a second reason and that is that this constitutional provision, as presented by the committee, preserves a system for election which I find very distasteful and which I think does not accomplish the purpose that was originally intended. And that is this form of each party nominating two persons for an office and then having three people elected. The noble purpose is, of course, to have minority party representation. The actual fact is that we do not get minority party representation in many cases. I became a member of this body through an election conducted in that fashion and I found it very, very unpleasant to know that I was running in a district where only one of the two people running on the Democratic Party was going to be elected. I was really running against my fellow Democrat. I am sure there are Republicans in this body who had this same experience. Every four years we go through this experience in our county in electing county commissioners. I would strike from the proposal this language which preserves this system and leave to the legislature the opportunity to try to find some better method of electing the county commissioners in those counties where they continue to be operated by county commissioners.

I would also like to add that if my proposal is adopted, when the Convention reaches section 3 of the committee proposal, I would then propose an amendment that would preserve for all counties the present form of government, the present offices, until such time as the legislature sees fit to act otherwise.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, will the Chair recognize the Co-Chairman of the Subcommittee on County Government, Delegate Tate?

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, Delegate Shapiro, may I recall a question directed to the body yesterday by Delegate Sprogell, in which the question was raised as to the row offices in much the same form as this question now comes before this body.

My answer at that time was, did we recognize that many features of the existing form of county government, including the row offices, were preserved in part, though greatly modified, in the proposal of the Local Government Committee, but that we thought it was wise to do this because it was our hope that we would not change anything radically immediately. We would make attractive to counties, home-rule and optional forms of government by the other provisions of this proposal, so that counties that felt—and we hope that many will as the years pass by—the modified existing form of government was not quite adequate for their needs would move to a home-rule or an optional form of government.

With that thought in mind, I would like to answer the second part of Delegate Shapiro's argument, and that is, we are preserving an archaic and ineffectual form of county government. I would like to direct the body's attention to page 21 of the local government report where there are enumerated 11 important changes in the row office county government system presently established in the Constitution as it now stands.

I would just like to run through those briefly because I think they are important and I think this body should know that even for those counties which do retain the

existing system of county government, there will be some important and far-reaching changes. Many of these have not yet been mentioned yesterday or today. Therefore, I think I will briefly run through them.

1. Surveyors will henceforth be legislative county officers only.

2. Coroners will henceforth only be legislative county officers, and the General Assembly may provide for medical examiners or otherwise for the performance of the duties presently performed by coroners, in its discretion, as we discussed yesterday.

3. The prohibition against county treasurers succeeding themselves is eliminated.

4. The order of enumeration of county officers is made more logical.

5. The constitutional provision establishing residence requirements for appointed county officers is deleted as being legislative in nature.

6. The constitutional provision requiring county offices to be in the county seat is deleted as being archaic.

7. Compensation of all county officers is to be solely by salary. We feel this may have far-reaching and important effects.

8. All fees received by county officers are to be paid to the county or state treasurer or as otherwise prescribed by statute.

9. The constitutional provision for the accountability of county officers is deleted as being legislative in nature.

10. The provision relating to the election of county commissioners no longer relates also to county auditors, and finally,

11. The provision relating to the election of county commissioners no longer vests the courts of common pleas with the power to fill vacancies in the offices of county commissioner or county auditor.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka.

DELEGATE LAPUTKA. Mr. President, I find myself caught up in a portion of Delegate Shapiro's amendments in which I was interested and that is relative to the elimination of the minority-commissioner type of election.

I would ask Delegate Shapiro if he would agree to striking out that section of his amended proposal and allowing me to consider that as a separate issue?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I could save you some time, Mr. President. May I suggest that my amendment be withdrawn at this time until after Delegate Laputka's amendment has been acted upon. To simply take that out of my amendment would require some other technical changes. I think I would be in a better position to change my proposed amendment, depending on the action of the delegates on his amendment.

AMENDMENT TABLED

PRESIDENT BRODERICK. You want to move that it be placed on the table?

DELEGATE SHAPIRO. I move that it be placed on the table.

PRESIDENT BRODERICK. Is there any objection?

The Chair hears none.

JIROLANIO AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. We will now move on to the next amendment which is being offered by Delegate **Jirolanio.**

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE JIROLANIO offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, line 10 by inserting after "attorneys,": public defenders,

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. May I direct a question to the committee while this is being distributed?

PRESIDENT BRODERICK. Yes, indeed. Proceed.

DELEGATE COSETTI. In the provision in the proposal that places county officers on salary rather than on fees, does that apply also to the fees which they charge the county? I received an inquiry from a constituent of mine who said that certain fees are charged to the county and that the county pays certain of these officers. In Allegheny County there are a considerable number of them on the basis of an archaic fee system.

DELEGATE TATE. The archaic fee system will be abolished. All these officers will now be paid by salary, so that such officers as relied on fees, whether it be from counties, individuals, corporations, or otherwise in the past, and some of them are very substantial, will now have to rely solely upon salaries.

DELEGATE COSETTI. Let me make sure I understand this. These are not fees charged to the general public but are fees charged to the county by virtue of certain functions which these county officers perform?

DELEGATE PASQUERILLA. Mr. President, as indicated by Delegate Tate, it is the intention and it is desirable that all of these be abolished. Just to elucidate on the Allegheny County situation, of course, in Allegheny County they do charge the county fees, but this is just a system to inflate the income in a particular office to indicate that they need more employes in the department.

There is absolutely no need to continue the system, because the county maintains and pays all the salaries of the officers in any event.

PRESIDENT BRODERICK. Everyone has now received a copy of your amendment, Delegate Jirolanio. The Chair recognizes you.

DELEGATE JIROLANIO. Mr. President and members of the Convention, I first want to start out by saying that this amendment has been co-sponsored by Delegates Keller, Kauffman, Barry, Irvis, Huggins, and another gentleman whose name I cannot make out; his writing is worse than mine.

What this amendment proposes to do, members of the Convention, is this: Since we are writing a Constitution which not only is going to serve us today, but is going to serve us in the future, we have suggested an amendment of putting in the words "public defenders." We all

know that within the last five or six years, by reason of various decisions handed down by the Supreme Court of the United States of America and the Supreme Court of Pennsylvania, they have put into existence the term "public defenders." Today, of course, if a man does not have an attorney when he is charged with a crime and he cannot afford to hire one, he must be given an attorney to represent him.

The public defender is nothing new today, and most of the counties in the Commonwealth of Pennsylvania do have public defenders. In my county, of course, we have one who receives the sum of $9,000 and has two assistants. This is prevalent, I understand, in the entire Commonwealth.

We are taking this method for the reason that by putting it in as an officer of county government, it is there and will indicate to the people of the Commonwealth the necessity and the need for this particular officeholder. Today, of course, with the form of convention which we are called upon to have and which we are asked to do, the particular office of public defender will be a necessity.

I realize, of course, that in section 4, the legislature would have the right to place legislation for any other office which they saw fit. But I believe this is very important in many small counties who possibly would not do this unless actively forced to do so.

I ask the Convention to go along and amend the county government by inserting the words "public defenders."

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, no one in this convention is more sympathetic to the office of public defender than I am. I have served as a public defender and I have served as an officer and director of Philadelphia's public defender program for some years.

This was the subject of a delegate proposal—I think perhaps it was Delegate Jirolanio's proposal—that was before our subcommittee and we considered it carefully. However, it was our feeling that, despite the many virtues of a public defender which have just been enumerated, we did not wish to add to the already long list of officers at the county level enumerated in the Constitution.

I would just direct the body's attention to those words in section 4 which say, "and such others as may from time to time be established by law." The legislature has every right to establish this office as a legislative office and has done so in some instances. It will continue to have that right under the proposal. The Local Government Committee felt strongly that the Constitution should not be further burdened by additional offices for some of the reasons that Delegate Shapiro and Delegate Popil and others have already mentioned before this Convention.

Therefore, we oppose this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, society had moved by the 13th century to the point where it began to think of itself as a unit with the right of defense against those individuals who attacked it, and it was in the 13th century that the present office of the district attorney—it was not called that; it was King's Attorney—was first established. Society, I hope, by the latter part of the 20th century has moved, at least in the western culture, to the point where it is willing to admit that it owes the right of protection to the individual who is attacked by society.

All this amendment would do is to say that the right of defense rises to the same level of importance in our culture as the right of prosecution; that the individual has the same right to be defended against society as society has against the individual. It is not an amendment to clutter up the Constitution or to water down the Constitution. It is a statement of principles for the future which will say to all men in the Commonwealth of Pennsylvania, it was the belief of the delegates and it was the belief of the people of this Commonwealth in the latter part of the 20th century that the right of defense of the individual is of equal importance to the right of the State to be protected. This is the reason I signed the amendment. This is the reason I urge its adoption by this Convention.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, may I interrogate the sponsor of the amendment, please?

PRESIDENT BRODERICK. I am sure he would stand for interrogation. Proceed with your question.

DELEGATE SHOEMAKER. Delegate Jirolanio, would you tell me, do you imply by this amendment that the public defender would be learned in the law, an attorney?

DELEGATE JIROLANIO. Yes, I would.

DELEGATE SHOEMAKER. What provision then, sir, would you make for those counties that do not currently have more than two or three lawyers in the county at this time, if this were a mandate by the Constitution?

DELEGATE JIROLANIO. We cannot force it. It is like the amendment that was in the Constitution before concerning the county surveyor; nobody took the job even though it was open. At least it is there if the people want it. As Delegate Irvis has said, it stands for a statement of principles, and that is what is very important at this particular time, building up this Constitution in the amendment that I have before you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. As a delegate, like Delegate Irvis, from Allegheny County where the first legislative public defender office was established, I would rise to speak in support of this amendment. I just want to add a very brief remark. I am not an advocate of enumeration of specific county officers, and I introduced a proposal consistent with my views. At the same time, if we are going to have the specification which is set forth in Committee Proposal No. 6, it seems to me entirely appropriate to add the office of public defender to balance the scales of justice with the district attorney's office. I think that this is an entirely appropriate, forward-looking addition.

I would urge the adoption of the amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barron.

DELEGATE BARRON. If someone wishes to speak in opposition, Mr. President, because I am a cosponsor of

this amendment, I certainly would acknowledge the President's practice in these matters.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I thank Delegate Barron.

As Delegate Tate, although not as extensively as he has, I too have served as a voluntary defender and from time to time still do. One of my law partners is frequently appointed on murder cases. However, I must speak in opposition to this, although I was one of the cosponsors of the delegate's proposal. If we put this into the Constitution, it will violate, first of all, the basic philosophy of this committee, which was to make no changes in local government but to let all changes come from the legislature or from the people, as we have provided.

Secondly, I fear that the public defender would become an elective office. The district attorney is responsible to the community at large for law enforcement, and it is proper that he should be elected because there is a potential for tyranny in that office. The public defender must have his sole responsibility to his client. He must have no responsibility whatsoever to anyone else except his duties as an officer of the court.

I am going to speak on another section about the great virtue of elected law officers as opposed to selected law officers, but I feel that this officer must not be elected.

I can foresee somebody campaigning on the platform that he will prosecute no one who is caught rioting in the streets. We are all against rioting in the streets. However, people who are apprehended for this are entitled to counsel and are entitled to independent counsel who are not worried about re-election.

I therefore must oppose the enshrinement of this office in the Constitution for those reasons, although I am firmly in favor of the public defender system.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, may I interrogate a member of the committee?

PRESIDENT BRODERICK. I am sure they will stand for interrogation.

DELEGATE STRICKLER. Do I understand that if the public defender is included in this provision, that you would look to the legislature to define the duties and the nature of the office?

DELEGATE TATE. That is correct, the same as all the other enumerated offices in the past.

DELEGATE STRICKLER. And they would be elected and also paid a salary?

DELEGATE TATE. That is right.

DELEGATE STRICKLER. Thirdly, would they be under the jurisdiction of the courts of common pleas in the various counties?

DELEGATE TATE. Insofar as this office of public defender might be an officer of the court, he would be subject to the jurisdiction of the court, yes, just as the district attorney would be, I presume.

DELEGATE STRICKLER. But it is true now that we have a number of volunteer public defenders in counties, do we not?

DELEGATE TATE. Yes, and they are attorneys and subject to the jurisdiction of the court as officers of the court.

DELEGATE STRICKLER. Thank you.

DELEGATE TATE. You are welcome.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, may I address a question to Delegate Tate?

PRESIDENT BRODERICK. He has no objection to answering your question. Proceed.

DELEGATE HANNUM. Delegate Tate, we all know of your splendid services with the office of the public defender. Is it not a fact that the Federal program does provide funds for the public defender in Philadelphia?

DELEGATE TATE. There are several Federal programs that impinge in this area. One relates under the Federal Criminal Justice Act, such as the Federal Court; one comes from the Antipoverty Program and relates to certain specified areas of concern in poverty areas.

However, the more traditional functions of the public defender program are particularly and mainly the defense of those charged with felonies in the courts of quarter sessions. These are not handled under any Federal funding program.

DELEGATE HANNUM. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Thank you, Mr. President.

I speak with a great deal of enthusiasm in support of this particular amendment. I, as some of you know, come from a small county and, frankly, it is in these small counties where they are having problems finding out what a public defender is, who shall pay him, and what kind of lawyer he shall be.

The current practice as it prevails in my county and in a number of counties devolves in this fashion: I have been looked down on from the throne of justice by the lord of the fief, who is the president judge of my court, upon many occasions, and who said: "Mr. Barron, we have a man here who is without counsel. Would you defend him?" This, so far, I have been able to do and am quite happy to say so. However, of course, if I am unable to do so because of prior pressing commitments in a particular week of court, it becomes a most onerous burden.

The situation further devolves in this fashion, that since the county commissioners pay the public defender under the present practice, it very frequently falls that the county solicitor, by a curious coincidence, which I am sure is just that, although I am not as sure as I would like to be, winds up being a defender on a fee basis for the particular indigent defendant.

I submit to you that if we are to have the concept enshrined in our courts of Gideon v. Wainwright, the public is entitled to know that there is a man who is independent of the court, independent of the county solicitor, and one who is solely there for the purpose of representing those who do not have the money to be defended. The situation is not now thus.

If we are to consider worthy of presentation such officers as treasurer, register of wills, recorder of deeds, prothonotaries and clerks of the court, who do merely ministerial duties, are we not entitled to have as a statutory and now constitutional officer one who is to defend

the public who cannot hire private counsel, and that he be on the same level as the district attorney who prosecutes or, unfortunately, as may occur, persecutes?

I suggest that if Gideon v. Wainwright has any substantive meaning to this delegation, we are entitled to have a constitutional office of public defender.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, fellow delegates, I too speak in favor of this amendment.

The history of the legislation involving public defenders is curious. Gideon v. Wainwright now goes back quite a number of years, and yet it was only within the last two or three years that the legislature enacted a bill which permitted counties to have a public defender. It was strictly on a "may" basis. I understand that quite a number of the smaller counties do not yet have a public defender. In some counties the practice goes like this: Instead of, as Delegate Barron said, naming the county solicitor, who probably has some experience, the county bar association will set up a committee of four or five of the youngest attorneys in the county. These young attorneys then rotate and act as the public defender.

I submit to you that the Supreme Court has not only held that a criminal must be defended, but that he must be adequately defended. This, I predict, if it continues as a practice, will be the reason for many people taking appeals to the appellate courts saying, yes, I had a defense, but, no, it was not adequate.

By inserting and consecrating the office of public defender in the Constitution, we are giving it the dignity that it is entitled to and we are assuring ourselves, or at least attempting to assure ourselves, and the public that this will be a man with the competency to provide the defense necessary.

Therefore, I would urge you very strongly to support this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, ladies and gentlemen of the Convention, in the matter of the proposed amendment, I personally can testify that throughout this Commonwealth the practice of the defense of indigents is not uniform. It is not on any scientific basis and it falls far below the standards that an honest society should give to those who are called before their courts.

Although we have had legislation making provisions for the public defender, it was drawn pretty much as some of our school legislation has been drawn; it was poorly drawn. It is a bad statute.

In our county we have no appointed public defender. In the adjacent county, equally as large as ours, they have a public defender who works at a salary, but, perhaps, this young man would be happy to work for nothing.

The history of our law here in Pennsylvania has been such that lawyers everywhere have freely and gladly given of their time to serve the indigent when appointed by the court. But this has been far less than perfect. I was a district attorney for four years, and at a period earlier, eight or ten years before that, I served as an assistant district attorney.

The quality of the defense has never measured up to that of the prosecution. I think we should adopt this if only to make uniform throughout this Commonwealth that in each of the counties there shall be public defenders and that we do not have to depend upon a poverty program which sets up three or four administrative officers and possibly one or two very junior lawyers.

But this amendment has merit and, as far as I am concerned, I am speaking to it, because for most of my adult life, that is since becoming a lawyer, I have spoken of this great need.

Those of you lawyers who have served in defense of an indigent defendant can point with pride to the wonderful work that you did, but, if you remember, you could name nine or ten other cases where the fellow went by the board because his counsel was less than true counsel at that time.

Our indigents and those who come before the court for justice should not necessarily be a practice or proving ground for those who would engage in our profession.

I hope I am speaking to the lawyers present, if they would listen to me. The public defense of our indigents has been a state shame for many years. Those of us who are familiar with the rulings of our Third Circuit Federal Court know they pointed this out. Pennsylvania did drag its feet. We did not heed Gideon v. Wainwright. Although our courts certainly now heed it, they once totally disregarded it.

I would speak in favor of the amendment, and I think that some of the members of the committee who are knowledgeable in this should stand and perhaps agree that if you cannot have a recorder of deeds, you might, as my red-headed friend, Delegate Barron, says, see fit to place the public defender on your list.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I should like to ask a question of Delegate Tate, if I may?

PRESIDENT BRODERICK. Yes, I am sure he will answer. You may proceed.

DELEGATE SHAPIRO. Delegate Tate, I believe you said there was a proposal before your committee on this subject?

DELEGATE TATE. Yes.

DELEGATE SHAPIRO. And you rejected it because you did not want to add to the long list of enumerated officers? I believe that was your answer.

DELEGATE TATE. That was the principal reason, yes.

DELEGATE SHAPIRO. Did you consider at all substituting this office for one of the enumerated offices in order not to make the list any longer?

DELEGATE TATE. No, I think the feeling of our committee was that if we could, as we did in a couple of instances, reduce the list, we did not want to bring it back up to its prior number just for the sake of keeping the numbers the same.

DELEGATE SHAPIRO. Would you say that this office is of equal importance with the district attorney?

DELEGATE TATE. Personally, I would say yes.

DELEGATE SHAPIRO. Are there not some of these other offices which might be dropped? Would not your

committee now consider dropping one of these other offices and substituting public defender?

DELEGATE TATE. No, the retention of those offices was not based upon their importance to any particular governmental units or the people involved. It was an effort to preserve traditions which were important to many people in the Commonwealth for such short or long time as those persons around the Commonwealth might feel that those traditions were worth preserving but, as I said before, to go on to newer and better things as soon as possible.

DELEGATE SHAPIRO. You did drop some offices that were enumerated previously, did you not?

DELEGATE TATE. We dropped the office of surveyor because the universal opinion, as far as our committee knew, was that this officer had absolutely no further useful function in the Commonwealth.

DELEGATE SHAPIRO. That does not eliminate the office of coroner, does it?

DELEGATE TATE. We dropped the office of coroner from the Constitution. It remains as a legislative office. We recognized that that falls into a different category than the surveyor, because coroners do perform a necessary service. The question before our committee in that connection was whether there should be some other form of office, such as medical examiner. We decided we would leave that question to the legislature.

DELEGATE SHAPIRO. The dropping of the office of surveyor did not eliminate that office either, did it?

DELEGATE TATE. No, the legislature would have to eliminate that from the county code. I understand many counties do not even bother with electing a surveyor anymore and many more elect them but do not pay them a salary.

DELEGATE SHAPIRO. The dropping of some of these others from the Constitution would not eliminate those offices, would it?

DELEGATE TATE. That is correct. However, the legislature, we hope, will take cognizance from our action with respect to coroners and make such other changes as it deems wise. We do not feel we wish to encourage necessarily in this part of the scheme of our local government article, legislative change in the other respects.

DELEGATE PASQUERILLA. Mr. President, may I ask, in order to expedite debate here, that we stick to the amendment before us, which is that of public defenders, and not discuss the row offices. I understand we have a great deal more amendments to go through.

DELEGATE SHAPIRO. I think I was on the subject. I was trying to determine why the committee felt that it was important to preserve these others and not to add the office of public defender.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cortese.

DELEGATE CORTESE. Mr. President, I have represented and counseled the poor without a fee, and I believe that every attorney has done that. I believe that the service of the public defender is an absolute necessity in our democracy.

A question, however, arises in my mind and I now should like to interrogate Delegate Tate.

PRESIDENT BRODERICK. You may proceed with your question.

DELEGATE CORTESE. Delegate Tate, in the event that the public defender becomes an elective office, would there be a risk in losing Federal grants?

DELEGATE TATE. This is a question that had not occurred to our committee, but I think it is a very serious question. Along the lines of the questions Delegate Hannum was asking a moment ago about Federal antipoverty or other grants that fall into this area, I think that there might be a very serious question, if it became an elective office whether those Federal grants might be lost. Therefore, I think it would be extremely dangerous to pass this amendment before we had a definite legal opinion on that question. I do not have that answer because it is not my proposal and I would think it might be appropriate for the sponsors of this amendment to give us an opinion on that. If that opinion is not favorable, I think it would be extremely dangerous to pass this amendment.

DELEGATE CORTESE. Thank you very much.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, may I answer the question that was just proposed by saying this, that there are very, very few counties which have accepted the Federal grant. Many of the counties, especially the bar associations, recommend not taking the Federal grant because it has entirely too many strings attached to it, number one.

Number two, I am absolutely sure that the Federal grants would not be affected if the Convention would pass this kind of an amendment. As a matter of fact, I would say that the Federal grants would be coming more readily because it then would be incorporated in our Constitution, and the government would know just exactly where it is going and the circumstances for which it was going. So I definitely feel that that question is unfit at this time. It is merely another issue to becloud the issue which is not here at all, and I believe that the proposed amendment is a good one.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Thank you, Mr. President.

I believe there is confusion existing between public defender and legal aid societies. I represent the Washington-Greene County Antipoverty Program as vice president, and we just finished putting through a program to provide legal aid services to the poor. This does not include representation for public defender. The public defender is separate from legal aid, and in the provisions from the Federal Government, they do not allow any funds to be used to represent people in criminal actions. This is restricted. I do not have with me today the provisions of this, but I do not want this body to be confused on this particular issue. I have worked in this capacity for a period of two and one-half years in our area, and I am very familiar with it. Other counties in the State of Pennsylvania have adopted legal aid societies which were funded by Sargent Shriver's program and not to be confused with public defender.

Also on this particular matter, I am probably the most recent appointee by the court to serve an indigent defender in a murder case. I received this appointment three weeks ago by the court in our particular county.

I speak in opposition to the proposal for one basic reason, the same as I expressed in the committee structure. There are many counties in the State of Pennsylvania that do not have attorneys who would serve in the capacity of public defender. Therefore, these offices would go vacant the same as surveyor goes vacant today. No one would run for these particular offices and they would be vacant, so we would still be back in the same problem, we have been in before. This is very fine in the city of Philadelphia, in the city of Pittsburgh, in Allegheny County and the other large counties, but the rural counties in the State of Pennsylvania could not and would not support this matter because of the lack of the number of attorneys in the bar associations. This may open the door for us to get some fresh blood in our counties. If this would do this, I would favor it, but I am afraid that a lot of city attorneys would not come out and live in the country with the rest of us.

This matter has been debated and, therefore, at this time I would ask Delegate Jirolanio whether he would accept an amendment to his proposition and say "be apponted" rather than "elected"?

DELEGATE JIROLANIO. Most vehemently, no.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I think the question Delegate Cortese points up is a very, very serious problem, but I think the problem is not quite as Mr. Cortese has framed it.

I ask this question: What would happen if the Federal Government withdrew its grants from the office of the public defender and what would happen if all the public agencies which now help to support the public defender withdrew their support? I think that the answer to this question shows that there is an absolute need to establish a public defender system in the Constitution so that, in the event that private support and Federal Government support is withdrawn, we will have the machinery established by law to continue a very necessary program.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I do not wish to seem impolite to the delegates who made these financial arguments, but we are not here today dealing with pounds and pence; we are not dealing with dollars and cents; we are not here dealing with the question of how do we pay for it. We are dealing with the matter of principle and principle alone and we may as well face it. We are dealing with a very primal question of whether we believe that the right of defense is as important as the right of prosecution. That is what we are dealing with, and many of us do not want to face that question because it defies our own selfish interests.

Each human being thinks his defense is more important than the defense of anyone else. What I am here saying is, I hope we have reached the point in history where we admit that the defense of others is coequal with the defense of our own interests. If we believe that, we vote to make the office of public defender coequal with that of the prosecuting office of district attorney. If we have not yet reached that point, then we quibble about the matter of how do we pay for it, how do we find them.

It seems sensible to me that if we have no difficulty in our counties of finding men to run for the office of prosecution attorney, district attorney, there must also be those men in those same counties who will consider running for the office of defense attorney of equal importance. I do not think think there would be a problem of finding men of the bar, learned in the law, who will accept the challenge to run for office to defend those who need defense, but all this talk about how do we pay for it, Federal grants; I did not hear anyone talking about that about the office of prosecution.

We will find a way of paying for it if we establish the principle here today that we believe the defense of an individual is as important as we claim to believe it to be in this democracy. If we do not really believe it, if we think society is more important than the individual and the defense of societal rights more important than the defense of individual rights, then let us say so. But if we believe that the defense of individual rights rises at least to the equal of the defense of societal rights, then, gentlemen and ladies, let us say that.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. Delegate Irvis has a beautiful theory, I admit. But, however, having practiced in criminal law for the past 45 years, I want to tell you that I am surprised that the lawyers have not gotten up and said something in their own behalf.

We lawyers practice criminal law. That is the field where a great many lawyers derive their bread and butter, from criminal law. It is beautiful to say that we should have a defender. I agree in principle with a public defender, that is, somebody who needs defense but does not have the means to obtain it. But to put it on the same status as the district attorney, who represents the Commonwealth of Pennsylvania for the enforcement of the law, to me is going too far because that is adding insult to the attorneys who practice criminal law.

I want to tell you this, that in our county they get a good defense, and county commissioners provide meager pay for those attorneys. However, the judges of our county pick the best criminal lawyers to defend the indigent and those who need defense.

It seems to me also that if you did put up a public defender and if you did elect a public defender of the same status as you elect a district attorney, the people of the county would say, have a right to that public defender the same as anybody else, and there would not be any criminal law practice for the attorneys who practice criminal law.

It seems to me that we have the Federal Government coming in, and our bar association has established a system where they can go and get their defense, besides the defense which the court gives them, if they say they are indigent and in need of defense.

It seems to me that we would be going too far by putting that in our Constitution and making an office of public defender, because I think the public is being defended. We have good criminal lawyers who are able, and if the people do not have the money, we as lawyers will defend them without cost and without indignities to our position. We will assume that responsibility and I think every bar association has done so, except maybe in

the large cities. I do not think we should put it in there just for the large cities which need a public defender. They have provided for the public defenders, as I understand it, and it should not be made a part of our Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. Mr. President, yesterday, when I first saw this amendment, I was inclined to vote against it. After thinking it over and listening to the debate, I would like to add my voice in favor of the amendment.

As a former district attorney, I can attest to what Delegate Solomon stated, and that is, that the appointment of defense counsel has been very mediocre. As a matter of fact, as district attorney I felt sorry for the attorney in many cases who was appointed to defend an important case. I too have served by appointment in minor cases and in murder cases. I feel that by making this office elective and giving it stature, you will have more competent defense of the men and women who need this defense and who do not have the means.

I subscribe to the statements of Delegate Irvis in that respect. Therefore, I would ask that you vote in favor of this amendment.

PRESIDENT BRODERICK. May I suggest to the delegates that I think maybe you are ready for the question. There is one delegate who has not been heard and that is Delegate Roberts. After we have heard from him, we shall vote, if it is agreeable.

The Chair recognizes Delegate Roberts.

DELEGATE ROBERTS. Mr. President, I was just going to call for the question.

PRESIDENT BRODERICK. Good. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Jirolanio?

The roll was recorded as follows:

YEAS—62

Aberman	Cosetti	Krill	Prendergast
Allison	Fagan	Laputka	Ruth
Amsterdam	Fay	Leinbach	Scales
Bagenstose	Feather	Mattioni	Scranton
Baldrige	Filson	McGlynn	Shapiro
Baldus	Fineman	Michael	Sharp
Barron	Forster	Michener	Shettig
Barry	Fortney	Miller, H.	Shrager
Brennan	Hostetler	Nelson	Silverman
Broderick	Huggins	Orban	Solomon
Brown	Irvis	Orbin	Sprogell
Buck	Jirolanio	Otto	Swope
Caputo	Johnson	Percey	Thomson
Casey	Kauffman	Pott	Thornburgh
Clinger	Keller, J.	Powell	Warman
Conley	Kline		

NAYS—78

Baldwin	Devlin	Kelly	Reynolds
Aurentz	Donaldson	Leach	Roberts
Banes	Dumbauld	Lee, L.	Sahli
Bashoff	Erwin	Levin	Scarlett
Benedict	Fawcett	Manderino	Sebastian
Benfield	Fohl	Mangery	Shively
Bloom	Gabreski	Markley	Shoemaker
Braham	Gehrlein	McGeary	Strickler
Bunting	Goldman	Meyer	Tate
Burkholder	Goldstein	Miller, D.	Tully
Butera	Gouger	Moorhead	Van Sant
Camardella	Griffith	More	Waldron
Corey	Hannum	Morton	Welsh
Cortese	Harding	Murray	Westerberg
Clark	Henderson	O'Donnell	Whittum
Croop	Heyburn	Pasquerilla	Wilcox
Cunningham	Himes	Popil	Wilmarth
Curran	Hocker	Rappaport	Woodring
Dailey	Hook	Redick	Woodside
Desmond	Horne		

NOT VOTING—23

Cain	Hatter	Musselman	Rovner
Caron	Keller, M.	Pechan	Scott
Donolow	King	Pelletier	Stout
Fleming	Lane	Quiles	Stroup
Gerber	Lee, K.	Rea	Tomascik
Gray	Leonard	Richter	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Tomascik.

DELEGATE TOMASCIK. I should like to be recorded as voting "aye" on the amendment just passed.

PRESIDENT BRODERICK. We can spread your remarks on the record. How do you wish to be recorded?

DELEGATE TOMASCIK. I voted "aye."

MEETING OF COMMITTEE ON STYLE AND DRAFTING

PRESIDENT BRODERICK. The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON. The Committee on Style and Drafting will meet immediately after the recess in Room 500, North Office Building. Lunch will be served. As to whatever time the recess is, heaven and President Broderick alone know, but please come there immediately after recess, to Room 500.

PRESIDENT BRODERICK. I want to assure you that only heaven knows.

MEETING OF JUDICIARY COMMITTEE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, as an announcement, the Co-Chairmen of the subcommittee of the Judiciary Committee will meet for luncheon in Room 615, which is on the fifth floor of the Capitol Building, and lunch will be on the Co-Chairmen of the Judiciary Committee.

PRESIDENT BRODERICK. Thank you.

LAPUTKA AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka.

DELEGATE LAPUTKA. I read in place and present the following amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE LAPUTKA offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, lines 21 to 23, by striking out "In the election of" in line 21, and all of lines 22 and 23

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Laputka.

DELEGATE LAPUTKA. This amendment is quite simple in its understanding. As stated before, it is simply an amendment to eliminate the necessity for the compulsory election of a minority commissioner in the county setup. Obviously, if the home-rule type of provision is adopted for the county, this probably would change and would be of no significance as it is in the city of Philadelphia. This does not apply to Philadelphia since they have a home-rule charter. Any county that would adopt a home-rule charter would probably—and I submit to the committee on this—change to whatever type of election they would have. For those counties who did not and who are presently in this status is what this amendment pertains to.

Many of the delegates have experienced what happened with the minority type election when they ran for office as delegates. They experienced the fact that they found themselves in contest with their fellow running-mate in a particular office, and in some localities it got down to a judicial determination and a contest for the determination of the delegates. This often happens in the commissioners' fight. It is an archaic idea which I believe should be eliminated.

In Luzerne County this has happened many times and in the past eight years we have had two different occasions on which a rather upsetting and disturbing type of situation occurred. In 1959 we elected two Democratic commissioners and one Republican. This was a change of administration and a consequent change in the patronage of the county commissioner's office, the registration office, highways and so forth down the line. Within one year thereafter, one of the commissioners changed his party affiliation. Some problems arose and he switched his allegiance to the Republican Party; consequently, there was a change in many of the offices once again and a court action came out of it. The court action started by an action quo warranto by the district attorney, who was then a Democrat, and it ended up in our Supreme Court. Justice Cohen, who handed down the decision in the case, of course, decided that there was no vacancy created by the fact that he had switched his allegiance from one party to the other, but he went on in his opinion—and I want to quote from his opinion. This, incidentally, for the benefit of those of you who are not acquainted with it, was the case of the Commonwealth v. Jennings, reported in 409 Pennsylvania, at 513. Justice Cohen, in summing up the case after making the decision that no vacancy had been created by the switching of the parties, stated this—"Finally and most important to attribute to the framers of the Pennsylvania Constitution, the intention of requiring a public officeholder to continue after taking office as a representative of his political party would be to charge them with the complete misunderstanding of the nature of the American political system. Once a person assumes public office, he becomes a representative of all of his constituents and not merely those who voted for him or happened to belong to his political party." He went on to say, "In the discharge of their official duties the three commissioners, or auditors, do not act as representatives of the majority or the minority party, but as officials in conformity with the duties prescribed by the laws of the Commonwealth, uncontrolled and uninfluenced by any party affiliations or obligations. In this country this is the theory upon which all officials —municipal, state and Federal—are expected to act and upon which they must act if our system of government is to be preserved."

Gentlemen, there are many instances where this has happened where the minority commissioner, is, in effect, a rubber stamp for the majority commissioners and the only difference of opinion seems to exist in the patronage of the county, not in their official functions, not in their legislative functions, but in patronage. Incidentally, Justice Cohen said in that same opinion: "We cannot be blind to the political reality that in areas where one party has clear superiority the so-called minority representative is often controlled by the majority party through its power over the distribution of patronage even though no formal change occurs in his party registration."

Gentlemen, I say to you quite sincerely, the idea of a minority commissioner is archaic. The committee saw fit to take the auditors out of this classification and put the auditors in the upper paragraph relative to all other county officers, and I submit that this also should be done with the minority commissioner.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Roberts.

DELEGATE ROBERTS. Mr. President, I think that we all are aware that there are some real problems in having a minority commissioner, but I also proceed myself in feeling that misuse does not invalidate proper use. I feel that in many of the counties of Pennsylvania without the minority commissioner who serves as a check on the majority, the political parties that are in the minority would have absolutely no hope. So I rise to oppose this amendment and also to bring to the attention of this assembly that without the minority-representation principle, many of us would not be here and this would be tragic.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. I must oppose this amendment because of a profound statement which has recently been made about American politics. This statement emanates from the State of Arkansas where a dreadful mismanagement of government affairs has been uncovered in the state prisons. One of the commentators on this development has pointed out that had Arkansas had a viggorous minority system—and more expressly a minority representation—during the past 20 years, it would be inconceivable that the mismanagement of their prison system could have long continued, that some cantankerous minority member, in this case a Republican, would simply have heard about this, would have seen a reason for uncovering it and would have paraded it before the people of Arkansas. Indeed, it was not until a minority Governor was elected, with, I believe, only two members in the House and Senate to support him, that this dreadful malfeasance was uncovered.

I live in a county where the minority-majority system has been abused. We Democrats have sometimes suffered from the superior manipulation of some very clever Republicans. I personally have gone through this in which one of our best Democrats was suborned by the other side, but that was just for two years. In the long reach of our county it has been to our advantage to have minority representation simply to probe into the dark places. I agree that had Arkansas had minority representation, this miserable performance would not have been permitted; I agree that in my county the minority representation has served a marvelous function in uncovering unsavory things that should be uncovered. I would not like to see any weakening of our two-party system perpetrated by this Convention merely because at times it goes off the track.

Fellow delegates, we have not heard of anything in this Convention that did not go off the track part of the time; that is the testimony of almost every speaker. Nothing is perfect, but this is a good safeguard to the basic principles of democracy.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I do not think there is any more ardent advocate of the two-party system than I in this Convention. I have worked very hard for it; I worked for it for 20 years in my county, but I also lived through this system of minority representation both in my county and in Philadelphia before that.

I think the previous speaker is unaware of the history of politics in Philadelphia, for example. I cannot give any personal statement as to what went on in Philadelphia prior to 1915, but, secondhand, it was not much different than it was after 1915. From about 1915 until sometime about the middle of the 1930's there was no minority representation in Philadelphia other than a nominal representation.

I should like to point out to this Convention that what this amendment does is not remove or destroy minority representation, but simply leave in the hands of the legislators the opportunity to perhaps find some other method of electing minority representatives which will insure that the representatives who are so elected do, in fact, represent the minority-party voters of their county.

In Philadelphia for at least 20 years and probably longer than that, Philadelphia had only a puppet Democratic Party dominated and led by a puppet who was installed by the Republican Party.

In Montgomery County when I moved in there, the same condition existed and had existed in Montgomery County for many, many years and it took us something like eight years before we got a Democrat selected by Democrats in the position of minority county commissioner. I think that we ought to understand that we are not voting against minority representation here; we are not trying to destroy minority representation if we vote for this amendment; we are simply trying to allow the legislature to seek a more effective way of insuring that we do, in fact, have minority-party representation.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I was the proponent of the individual proposal for the removal of the minority commissioner. At that time I indicated that they were something less than useful. I rise to my feet again to state that we are talking about responsible government in the Commonwealth and in the same breath are having this committee come up and continue to retain what is in the law under 409 Pennsylvania Supreme Court opinion, not even an anachronism, something which is a figment of somebody's imagination, that many years back a minority commissioner would serve a vital need in our counties.

It has been an absolute fake, and I would ask the chairmen of the committee to indicate to us what they have learned concerning the efficacy of the minority commissioner with the exception of retaining some overgrown vestige of the so-called minority party.

DELEGATE PASQUERILLA. Mr. President, might I answer that question?

PRESIDENT BRODERICK. Yes, Delegate Pasquerilla.

DELEGATE PASQUERILLA. The committee approach on county government was very simply this: There was strong sentiment among the people on the committee that we should come up with one plan of county government which would be the existing modified form, and the committee voted to retain the minority commissioner representation.

It is difficult for any constitution to provide a county government for 67 counties in Pennsylvania that will work. It was, therefore, our feeling that the solution to the problems of county government lies in the fact that the General Assembly should establish optional forms of government which they can adopt by referendum which will fit and suit the needs of their county, or they can go through the route of home-rule charters to fit the need of their county.

We felt this was the best way to solve the problem of the structure of government in counties.

DELEGATE SOLOMON. I would like to speak again to the chairman and ask if he has any recollection of an amendment which was proposed this morning tearing out the word "county" from home rule and about which a report was received from numerous county commissioners throughout the State indicating that they were in favor of not being given the privilege of home rule.

Does that accord with his ideas of good, responsible county government?

DELEGATE PASQUERILLA. That is all the more reason, Mr. President, why the committee felt that we should do something to strengthen county government and that is the reason why we came out with this far-reaching proposal. The fact that they did not respond is the one thing which excited us and made us responsive to the fact that we should do something about it.

And bear in mind one thing: In a Constitution we cannot solve the problems. Only people and elected officials can solve the problems which they do on the local level. All we can do is provide the structure of government, and that is the purpose of the Constitution.

DELEGATE SOLOMON. What other system of government within this Commonwealth has a parallel system of a minority commissioner?

DELEGATE PASQUERILLA. There is no parallel system, I do not think, perhaps anywhere in the world maybe; I do not know.

DELEGATE SOLOMON. Let us get rid of this, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope or Delegate O'Donnell.

DELEGATE SWOPE. I yield to my friend, Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, to complete the historical review initiated by Delegate Shapiro, I might point out that the classic example of a puppet minority party was the situation in the city of Philadelphia before 1915 and, if I recall correctly, I think they were referred to as the O'Donnell Democrats.

I disassociate myself from that group. I suspect, however, that the very argument raised by Delegate Roberts in favor of defeating the amendment may be very well the best argument in favor of supporting it, because I, too, have in mind that were it not for minority representation, I would not have been here. So that might suggest to the Assembly that it might be a good idea to remove minority representation.

In a more serious vein, the minority representation situation in the counties has not, in my recollection—and I have only been in politics 20 years, which is not a long time compared with some in this body, but in that period of time—in the county in which I reside and in the counties which surround the county in which I reside, minority representation has not in fact worked in the way that philosophically or idealistically you would expect it to work. It has in fact not been a sounding board for a minority point of view because the minority representative has in fact been elected by the majority party. He keeps very quiet, indeed, to make certain that when he wishes to run for re-election, he does not incur the animosity of the majority party.

In like manner, the way in which it has worked out—and I have spoken to members on both sides of the aisle on this amendment in those counties where there is a minority party, invariably every four years there is a political donnybrook which keeps the minority party weak. For that reason, I would ask this Convention to give some very serious consideration, indeed, to abolishing the present system of minority party representation at the county level.

I am informed that there is an amendment on the way. It is perhaps the very next amendment. I believe it is sponsored by Delegate Swope and may very well solve the problem in its entirety.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, the sponsor of this amendment has, I believe, not said on the floor here, that I heard, although I was busy with the Drafting Committee up there, whether the purpose of his amendment is to eliminate completely minority representation or to accord with Delegate Solomon's interpretation that this would put it back into the legislature and the legislature might come up with a reasonable plan of minority representation. May I ask Delegate Laputka to answer that?

DELEGATE LAPUTKA. Yes, Delegate Swope, my real purpose is to get the mandate out of the Constitution along with the line of what the committee has decided, that they were going to leave these matters up to the legislature. As it is now, it is mandated in the Constitution and my proposal is to get that mandate out. How it is handled thereafter, either by the legislature, home rule or whatever the case may be, this is satisfactory with me.

DELEGATE SWOPE. I thank the delegate for the illumination of his purpose. It is my purpose to have it in the Constitution and to see that minority representation on a sound basis is accorded in the Constitution. My amendment, if it is coming to the floor shortly, I hope, through the drafting room, will provide for just that thing.

I recall, I am old enough to remember the O'Donnell Democrats in Philadelphia and it has been truly said by Delegates O'Donnell and Shapiro that the minority representation of Philadelphia County's commission or board at that time was a travesty and was a laughing stock as a possible minority representation. I have lived in this county for almost 50 years, for 40 of which I have tried in my modest way to maintain against being held in derision by my friends in this county for trying to maintain a semblance of a minority party, and four years after four years everything that we have tried to do in having a cohesive minority party was destroyed by the majority party picking our minority county commissioner.

My proposal will eliminate that possibility and we will then have true minority representation where each party will select its own county commissioners plus a chairman of the county commissioner board and then we will leave this twilight realm of being a minority party under the domination of the majority party.

My friends, if we destroy the thought and the idea of minority representation in this country, we will have taken the first step in coming to a one-party government. I might say to my friend, Judge Solomon, that this Convention is writing into the judiciary article the very concept of minority representation in the boards that are to be created for suggesting names for judges of the state courts. If it is good in that place, my friends, it is good at the root of democracy in our counties. I hope this amendment will be defeated and I will present mine later on.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Thank you, Mr. President. I rise in protest against the amendment. First of all, we have heard quite a few arguments about fighting for the third spot on the ballot, the maneuvering of the opposite party, the problem of competing for the third slot against your own party. I see nothing wrong with this. Surely there is nothing wrong with competing for elected public office.

One of the most important phases, as I see it, is control of the election machinery. I think it is very, very wrong to have one political party in complete control of political election machinery.

I come from Philadelphia, from a big city. I belong to a majority party. I realize in the past there had been abuses. Today it is still a two-to-one registered Democratic city. The Republican Party has its own minority representation which is not controlled by the Democratic Party; it happens to be a Republican leader. I am sure Bill Devlin would agree with me on that fact. I think a two-party system must be maintained in this area.

Several individuals have said that this would weaken the two-party system. I must disagree on that. I think

the problems that have been brought up are the exceptions rather than the rule. In fact, one-third of the members in this room happen to represent minority parties. They would not be here if they did not.

I speak against this amendment and I urge its defeat.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, members of this delegation, perhaps in history I can speak with more minority representation in my county than in any county in the State of Pennsylvania. Only twice in our long history have we had two Republican county commissioners. The rest have all been Democratic, and may I say to this delegation that the information that the minority representation had in the commissioner meetings, the information he afforded to the press, the information he afforded to the voters of Columbia County was a very tangible weapon with which our county government was kept on the right track, because they knew that everything would be divulged that was wrong; everything that was not as it should be would be divulged. Therefore, it did keep the majority commissioners in the right line as far as the people were concerned.

The prior speaker referred to a subject that I wanted to bring up. It is one of the most important. The election department comes under election and registration. Perhaps I should say it comes under the jurisdiction of the county commissioners. We have seen fit, because of the activity of the minority party, to have a registration clerk on duty all the time who is of the minority party to make certain that the representation is there for both sides of the aisle.

I think that this would be a horrible mistake. I was shocked when my neighbor, Delegate Laputka, presented this amendment. I know of the troubles Luzerne County has had. I am only a few miles away from them and they have had trouble up there, but it has not been, I think, due to the fact of the makeup of the county commissioners' office so far as the makeup in and of itself, but of the individuals who were the representatives of the makeup.

This has gone on for quite some time. It is not the first time, and I think even the minority there did bring out very salient facts, very valuable information, through TV exposure and newspapers to the voters of Luzerne County. I can see why he feels as energetic about it as he does, but I think this would be a shock to our representatives to take away this minority representation.

For 40 years I have been a sponsor of the two-party form of government. I am not going to quit now; I am going to go on for the rest of my life. And might I say in my county I have been in the minority all through the years. However, now and then we carry our county for our side. We have a Republican judge. I just put in a row officer by 12 votes this year. We lost all the rest, but it gives us an incentive to fight for and to give the voters something, and we do have representation.

I would like to urge the defeat of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Reynolds.

DELEGATE REYNOLDS. Mr. President, I rise to oppose this amendment and would like to ask that the delegates vote it down.

I listened to Delegate Michener tell about Arkansas. I was born in a State which had the one-party system, North Carolina, and let me tell you that if it ever happens here, you will have trouble on your hands. It is not fair to either party. I have been in the minority all my life; I was born in the minority, so I know what it is to be in the minority. But you can be honorable in the minority, and I must say Delegate O'Donnell has reassured me that the O'Donnells are not all like the ones who used to control in Philadelphia.

Delegate Shapiro has said that he has straightened the thing out in Montgomery and Chester Counties and Delaware, so it looks like we are getting in good shape. I hope we will vote this down and not allow it to go to the legislature or anyone else. Let us guarantee that we shall have a two-party system and minority representation by putting it in the Constitution.

I sat here all this week and last week when people were saying we were sent here to do this and do that. We are here to have good government, and I believe if we keep the two-party system and if we keep the minority representation, we will have good government. I am asking that we vote it down.

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. I move the question.

PRESIDENT BRODERICK. Delegate Orban moves the question.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Laputka?

The roll was recorded as follows:

YEAS—16

Bunting	Fay	Laputka	Shapiro
Caputo	Harding	O'Donnell	Solomon
Conley	Johnson	Pelletier	Sprogell
Donaldson	Kauffman	Rappaport	Woodside

NAYS—121

Aberman	Devlin	Krill	Reynolds
Allison	Dumbauld	Leach	Richter
Amsterdam	Erwin	Lee, K.	Roberts
Aurentz	Fawcett	Lee, L.	Sahli
Bagenstose	Feather	Leinbach	Scales
Baldrige	Filson	Levin	Scarlett
Baldus	Fineman	Manderino	Scranton
Baldwin	Fohl	Mangery	Sebastian
Banes	Forster	Markley	Sharp
Barron	Fortney	Mattioni	Shettig
Benedict	Gabreski	McGeary	Shively
Bloom	Gehrlein	McGlynn	Shoemaker
Braham	Goldman	Meyer	Shrager
Brennan	Goldstein	Michener	Silverman
Broderick	Gouger	Miller, R.	Stout
Brown	Griffith	Moorhead	Strickler
Buck	Hannum	More	Swope
Burkholder	Hatter	Morton	Tate
Butera	Henderson	Murray	Thomson
Cain	Heyburn	Nelson	Thornburgh
Camardella	Hines	Orban	Tomascik
Casey	Hocker	Orbin	Tully
Clark	Hook	Otto	Waldron
Clinger	Horne	Pasquerilla	Warman
Corey	Huggins	Prendergast	Welsh
Cosetti	Irvis	Popil	Westerberg
Croop	Jirolanio	Pott	Whittum
Cunningham	Keller, J.	Powell	Wilcox
Curran	Kelly	Rea	Wilmarth
Dailey	Kline	Redick	Woodring
Desmond			

NOT VOTING—26

Barry	Fleming	Leonard	Quiles
Bashoff	Gerber	Michael	Rovner
Benfield	Gray	Miller, D.	Ruth
Caron	Hostetler	Musselman	Scott
Cortese	Keller, M.	Pechan	Stroup
Donolow	King	Percey	Van Sant
Fagan	Lane		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. Delegate Shapiro, I understand you want your amendment to be considered, so we will entertain your motion to take it from the table.

DELEGATE SHAPIRO. Mr. President, the amendment that I previously offered I would like withdrawn. I have an amendment which deals only with the part of it that was not dealt with by the last amendment and I have altered it in some respects. I do not know whether it has been distributed or could be distributed at this time.

PRESIDENT BRODERICK. I understand it is not ready, so we will pass it until we get it ready.

Now I want to ask one question. Delegate Swope has an amendment dealing with this same subject. Is that ready? It is not.

IRVIS AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment we will take up is the amendment of Delegate Irvis. I am going to ask the clerk to read the amendment and I am going to ask the pages to distribute copies of Delegate Irvis' amendment, and we will then recognize Delegate Irvis.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE IRVIS offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, line 10, by inserting after "attorneys,": public defenders,

Amend Sec. 1 (Sec. 4), page 2, line 13, by inserting after "officers": except for public defenders who shall be appointed as shall be determined by the General Assembly.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I was extremely grateful for the vote, which I noted on the last amendment, to insert the public defenders as constitutional officers.

This amendment would also insert public defenders as constitutional officers with this difference: The last amendment would have called for the election of that officer. This amendment states that the public defenders shall be appointed as shall be determined by the General Assembly. The reason for that last phrase is because we cannot know as we sit here today what form of government the various counties will have, and indeed what form of government the first class city of this Commonwealth, Philadelphia, may have at the time of the appointment of a public defender. This language would also answer the objections of those delegates who were fearful that if we established the office of public defender as a constitutional office, anyone wishing a defense would have the right to it. The General Assembly would have the right when it defines the appointment powers to also define the limits of the office; and, of course, historically a public defender has been the defender of the indigent, not the defender of the wealthy. I wish to reassure those delegates who have these fears, either latent or overt, that no court in the land is going to permit a wealthy man to be defended by a public defender, nor would the taxpayers long permit that sort of practice.

I would urge that those of you who voted in the negative on the last amendment reconsider your vote on this one, because I believe it answers the objections of a number who voiced those objections to me. It would give the status and dignity that I have asked of this delegate assembly to the office of public defender. It would be, in my opinion, a moral victory for this Constitutional Convention to approve this amendment.

PRESIDENT BRODERICK. Does anyone wish to be heard?

The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, fellow delegates, I rose in opposition to the original proposal and asked a question of Delegate Jirolanio pertaining to the use of the term "elected". Now I rise in support of this present proposal because it now puts it on the basis of being determined by appointment. I feel that this brings it into perspective as far as public defenders are concerned.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I think that the concept that we have been talking about is a fine one and I am in wholehearted support of the basic concept that the gentlemen who have been supporting this kind of thing are talking about. I was a former district attorney and I know that side of the picture. I was a former public defender and I know that side of the picture. But, gentlemen, we are making a mistake if we are going to insert this kind of concept in this place in this amendment. This concept does not belong in a place where it can be ripped right back out any time someone changes the structure of local government. If you want to insert the concept, insert it in the Bill of Rights or insert it in some other place, but why here? This is the wrong place for it. I oppose the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cain.

DELEGATE CAIN. Mr. President, I opposed that amendment previously, but because of the change, I want to go on record as voting in favor of it. I think that the status of the public defender's office should be raised; it should be elevated, and this is about the only way to do it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, I would like to answer a question which I believe is in the mind of my friend, Delegate Irvis.

Two days ago we celebrated the birthday of one who many of us feel was the greatest man this country ever produced. He said, "The government shall do for the people only that which they cannot do for themselves." I assure you, Delegate Irvis, that I speak only as a lawyer and I truly feel, sir, that in the private effort—and I am talking about foundations, I am talking about the community chest, I am talking about implementing this great principle in which both of us believe that the little fellow or the poor fellow should get the utmost aid he possibly can. I assure you that—one of the things that also concerns me is that the problems may be not brought out too clearly where the public defender and the district attorney are both possibly of the same party. I could think of that problem. But principally, Delegate Irvis, I speak and fully believe and both of us know as lawyers that it is better that 99 persons who have done wrong should go free than that one innocent person should suffer. That is our system. We both believe in it and we both believe in the principle. I am only speaking to what I think is the better way to do it and the way it is done now, and I am sure you understand that, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Horne.

DELEGATE HORNE. Mr. President, I move the question.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Irvis?

The roll was recorded as follows:

YEAS—75

Aberman	Conley	Kauffman	Prendergast
Allison	Cortese	Keller, J.	Rappaport
Amsterdam	Cosetti	Kline	Redick
Aurentz	Dalley	Laputka	Reynolds
Bagenstose	Devlin	Mangery	Ruth
Baldrige	Donaldson	Markley	Scales
Baldus	Erwin	Mattioni	Scranton
Baldwin	Feather	McGeary	Shapiro
Banes	Filson	McGlynn	Sharp
Barron	Fineman	Miller, R.	Shettig
Barry	Fohl	Murray	Shrager
Broderick	Forster	Nelson	Silverman
Brown	Gouger	Orban	Solomon
Burkholder	Hook	Orbin	Swope
Cain	Horne	Otto	Thomson
Camardella	Huggins	Petletier	Thornburgh
Caputo	Irvis	Percey	Tomascik
Casey	Jirolanio	Popli	Warman
Clinger	Johnson	Pott	

NAYS—60

Benedict	Gehrlein	Levin	Shively
Benfield	Gerber	Manderino	Shoemaker
Bloom	Goldman	Meyer	Spregell
Braham	Goldstein	Michael	Stout
Brennan	Griffith	Michener	Strickler
Buck	Hannum	Moorhead	Tate
Bunting	Hatter	More	Tully
Butera	Heyburn	Morton	Waldron
Clark	Hocker	Pasquerilla	Welsh
Corey	Kelly	Powell	Westerberg
Croop	Krill	Richter	Whittum
Cunningham	Leach	Roberts	Wilcox
Curran	Lee, K.	Sahli	Wilmarth
Desmond	Lee, L.	Scarlett	Woodring
Fortney	Leinbach	Sebastian	Woodside

NOT VOTING—28

Bashoff	Fleming	Keller, M.	Pechan
Caron	Gaboreski	King	Quiles
Donolow	Gray	Lane	Rea
Dumbauld	Harding	Leonard	Rovner
Fagan	Henderson	Miller, D.	Scott
Fawcett	Himes	Musselman	Stroup
Fay	Hostetler	O'Donnell	Van Sant

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

SHIPIRO AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment will be the Shapiro amendment which is now ready. The pages are distributing the amendment. I am going to ask the clerk to read it and then we will recognize Delegate Shapiro.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, lines 10 and 11, by striking out "treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts,"

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. The amendment as now proposed, Mr. President, eliminates any efforts along the lines which Delegate Laputka and Delegate Swope have indicated their amendments have or will try, and I confine myself in this amendment to removing from the proposal the enumeration, not of all, but of some of the offices, the row offices, which are presently in the proposal. It is proposed that the commissioners, comptroller or auditor, and district attorney remain in the enumeration and the other offices be deleted, so that, so far as the Constitution is concerned, the legislature cannot tamper with county commissioners, cannot tamper with the auditor or controller or the district attorney, and it is left to the legislature to determine what other offices, what county officers, there shall be in those counties which have not adopted one of the elective methods or a home-rule charter.

The proposal now simply would delete from the enumeration of offices those other offices except the ones I mentioned.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I think that we have discussed this matter at great length, and all I want to do is to reiterate the committee's position, that we are opposed to this amendment. Since it has been thoroughly discussed, I would hope that we could limit debate on this in some way and proceed with the vote.

DELEGATE SHAPIRO. Mr. President, I have one other point to make. The committee chairman said that the whole approach here was to leave as much to the legislature as we possibly could, and we think my proposal is in that direction.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, my view on this matter may be very briefly expressed.

It is my opinion that if we are going to have politics at the county level, you have to have some prizes for which to compete. Perhaps it should not be that way, but that is the way people are. As I think over my career in public office and private life and as I compare the people who might have been appointed to these offices with those who have been elected in my county, I can see that occasionally we might have been "bettered" if the officers had been appointed.

However, there is a fallacy inherent in this. This assumes that the person who is going to make the appointment is always wise and always just, and that is not always the case. I have seen men in my position whose judgment I would not have wanted to consider.

In short, I believe with Secretary Michener that there is a process which is working at all time, the people governing themselves, and at many points the people are glad to leave the subject of abstract principles and go to persons and personalities. There is nothing wrong with that.

That is why I am going to vote against this amendment.

PRESIDENT BRODERICK. Does anyone else wish to be heard?

DELEGATE WALDRON. I move the question, sir.

PRESIDENT BRODERICK. Is everybody ready for the question? We shall unlock the voting machine and proceed to vote on the Shapiro amendment. Will the Convention agree to the Shapiro amendment? That is the question.

The roll was recorded as follows:

YEAS—12

Bunting	Laputka	Percey	Sprogell
Burkholder	Michael	Shapiro	Stout
Johnson	Morton	Solomon	Swope

NAYS—115

Aberman	Croop	Kauffman	Redick
Allison	Cunningham	Keller, J.	Roberts
Amsterdam	Curran	Kelly	Ruth
Aurentz	Dailey	Krill	Scales
Bagenstose	Desmond	Leach	Scarlett
Baldrige	Devlin	Lee, K.	Scranton
Baldus	Donaldson	Lee, L.	Sebastian
Baldwin	Fay	Leinbach	Sharp
Banes	Feather	Levin	Shettig
Barron	Filson	Manderino	Shively
Barry	Fohl	Markley	Shoemaker
Bashoff	Forster	Mattioni	Shrager
Benedict	Fortney	McGeary	Silverman
Benfield	Gabreski	McGlynn	Strickler
Bloom	Gehrlein	Meyer	Tate
Braham	Gerber	Michener	Thomson
Brennan	Goldman	Miller, R.	Thornburgh
Broderick	Goldstein	Moorhead	Tomasulk
Brown	Gouger	More	Tully
Buck	Griffith	Murray	Waldron
Cain	Hannum	Nelson	Warman
Camardella	Harding	Orban	Welsh
Caputo	Hatter	Orbin	Westerberg
Casey	Heyburn	Otto	Whittum
Clark	Hook	Pasquerilla	Wilcox
Clinger	Horne	Pelletier	Wilmarth
Corey	Huggins	Powell	Woodring
Cortese	Irvis	Rappaport	Woodside
Cosetti	Jirolanio	Rea	

NOT VOTING—36

Butera	Fleming	Lane	Prendergast
Caron	Gray	Leonard	Quiles
Conley	Henderson	Mangery	Reynolds
Donolow	Himes	Miller, D.	Richter
Dumbauld	Hocker	Musselman	Rovner
Erwin	Hostetler	O'Donnell	Sahli
Fagan	Keller, M.	Pechan	Scott
Fawcett	King	Popil	Stroup
Fineman	Kline	Pott	Van Sant

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SWOPE AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. Now we shall take up Delegate Swope's amendment. I ask the clerk to read the amendment and we shall ask the pages to distribute copies of the amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SWOPE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, lines 21 to 23, by striking out all of said lines and inserting: Boards of three county commissioners shall be elected in each county and in the nomination of commissioners each political party or body shall nominate one person for chairman and one person for member of the board of commissioners; and in the election of commissioners each qualified elector shall vote for one person as chairman and one person as a member of the board of commissioners, and the person having the highest number of votes for chairman shall be elected chairman and the two other persons having the highest number of votes for member of the board shall be elected members of the board; any casual vacancy in the office of county commissioners shall be filled, by the court of common pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner whose place is to be filled.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I have already made my peroraton so I will speak mildly concerning the few points that, perhaps, I did not cover before or not to a sufficient emphasis.

Our forefathers in adopting the Constitution of 1873-74 deemed it wise to give minority representation in this very important office in the county structure of government. I want to preserve this, but I want to purify it. I want to make it possible for each party, particularly in those counties where there is a wide disproportion between the numbers of the minority party and the numbers of the majority party in the electorate, to preserve for each party its right to name its candidates to the board of county commissioners. We have already done this in the election of the delegates to this Convention. It is being proposed in the judiciary article, and I call upon the members of the Judiciary Committee, a large body, to think carefully about this amendment, whether it is not in harmony with the plan that they are proposing for the selection of the selection boards on the judges of the state courts.

I would hope, Mr. President, that after careful reflection and without the necessity of a long debate that we might come to the conclusion that minority representation is worth preserving, and if it is worth preserving, it is worth being preserved in purity.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Thank you, Mr. President.

It is with regret that I must oppose this amendment made by my neighbor, Delegate Swope.

There are two objections to this as I see it on behalf of the Local Government Committee, and particularly on behalf of the Subcommittee on County Government.

First, and I think it is an important one, is that it includes in its last clause the existing language giving powers of appointment to the court of common pleas, which our committee felt strongly and unanimously should be taken away from the court of common pleas. Therefore, I would oppose it for the inclusion of that final clause.

In addition, as has been stated before today, this proposal, while it has some attractive merit to it, does make a change in the existing form of county government which we feel is very substantial. With a smile I might say that if we make the existing forms too attractive, we may not encourage enough counties to move into home rule and the optional forms of government, which is the philosophy of the whole local government article.

More seriously, I think that it was the feeling of our committee and subcommittee that we did not want to make this sort of a major change in the existing form of county government so that, in effect, something pretty close to the existing form of county government only modernized in its most essential needs would remain for counties as an optional form of government either to stay with or to be used at any time in the future in addition to those set forth by the legislature and the home-rule route, which we hope will be used by more and more counties over the years. Therefore, I speak in opposition to this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. Thank you, Mr. President.

I would like to direct an interrogation to Delegate Swope.

PRESIDENT BRODERICK. Delegate Swope, will you consent to be interrogated by Delegate Orban?

The gentleman has indicated that he consents. You may proceed.

DELEGATE ORBAN. Delegate Swope, I would like to know how you will determine that the appointee voted for the commissioner whose place is to be filled.

DELEGATE SWOPE. If I understand the query correctly, I think it is fully and specifically answered by the fifth line from the bottom, "any casual vacancy in the office of county commissioners shall be filled, by the court of common pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner whose place is to be filled."

DELEGATE ORBAN. My question is, how are you going to know that the appointee voted for the commissioner whose place is to be filled?

DELEGATE SWOPE. Mr. President, this is presently a part of the Constitution, and I think that the court has found it possible to satisfy itself that its appointment to fill a vacancy is from one who has stated that he voted for the man whose office becomes vacant.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, members of the delegation and particularly you, Mr. Swope, I do not know how you are going to determine these offices. You nominate in your primaries. You may have a slate of 10 candidates running on either party or on each respective party. The two highest will be the men who go on the election ballot at the general election. How are you going to determine—there is no provision here—which one of these two shall be running for the chairman of the board?

DELEGATE SWOPE. I think Delegate Croop has misread the language. There will be a separate election for chairman. There will be a separate place on the ballot for chairman. There will be one candidate nominated by each party, not necessarily only two parties. There might be two or three or four parties. We have four parties now in my county. This office will be separate; there will be a separate place on the ballot. The one receiving the highest number of votes will be chairman of the board.

DELEGATE CROOP. At the general election and not when they are being nominated? In other words, they do not have to be designated as running for chairman of the board? This will automatically happen because of the number of votes they get?

DELEGATE SWOPE. Yes, he will be running for chairman on a separate place on the ballot. The candidate receiving the highest number of votes for that office will be the chairman of the board.

DELEGATE CROOP. I am still confused as to how he gets his place on the ballot at the general election under the present Election Code.

DELEGATE SWOPE. I think it is very simple. There will be a primary election and at the primary election there will be two places on the ballot—one for chairman and one for member. Each party will nominate one for chairman and each party will nominate one for member. This will guarantee that the minority party or each party will select its nominee for two members of the board under the chairman who will be guaranteed election in the fall, unless there is an independent ticket which might take it away from somebody.

DELEGATE CROOP. All right, let me give you this coincidence, perhaps the two highest vote-getters at the primary election, neither name appears for chairman.

DELEGATE SWOPE. I am afraid that the delegate is still misreading the purpose of this amendment. There will be only one highest man from each party selected to run for the office of chairman. There will be only one candidate selected by each party to run for the office of chairman. In the general election, the one receiving the highest number of votes will be chairman.

DELEGATE CROOP. I still come back then—that is what I said. Four candidates at the general election will be running for county commissioner, three of whom will be elected because of their votes tabulated and the highest will automatically be the chairman of the board. Is that the working of this?

DELEGATE SWOPE. The delegate insists on combining these two. They are not combined. The highest of the two or of the five who are nominated for chairman will become chairman and all the others will be out of the picture on that particular line, and then each party will have nominated one for member of the board and the two receiving the highest number of votes will become the second and third members of the board.

DELEGATE CROOP. I have the highest respect for your knowledge, Delegate Swope, through many years of knowing you, but I still admit I have spent about 35 years in this political arena and I am still confused. I am wondering what the voters are going to be.

DELEGATE SWOPE. I do not see how there should be any confusion. The people running for chairman will know that if they do not receive the highest vote, they do not become chairman. One of these candidates losing the chairmanship might possibly have more votes than the two who are running for the second and third members, but that is out of the picture. The chairmanship is a separate election and the two members are also a separate election.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Maybe I will confuse this and maybe I will clear it up. Let me try. I went over to ask Delegate Swope much the same kind of question that Delegate Croop has just asked him. As I understand it, the determination of the members, the two members of the board of commissioners, will be made in the primary, and the only thing that comes out in the general election is the determination of the chairmanship. Now is this correct?

DELEGATE SWOPE. That is correct.

DELEGATE SCRANTON. In which case may I say I think it is utterly ingenious.

DELEGATE PASQUERILLA. Mr. President, for the first time I now understand we are going to elect county commissioners in a primary election?

PRESIDENT BRODERICK. Delegate Swope, would you answer the question? The Chair feels that you should answer the question about your amendment.

DELEGATE SWOPE. Who is my interrogator?

PRESIDENT BRODERICK. Chairman Pasquerilla asked the question, Delegate Swope.

DELEGATE SWOPE. The answer is, yes. May I amplify it, please? I was raised in Lebanon County which had about the same disproportion in the two parties as Dauphin County has and in the same direction. I have been very unfortunate all of my life.

DELEGATE PASQUERILLA. The answer to your problem is to change your Party affiliation in Dauphin County.

DELEGATE SWOPE. It is too late. In Lebanon County for many years, the Democratic Party being in the hopeless minority, by reason of some interpretation of the law which I do not understand—I was quite a young man—the Democratic Party nominated only one candidate for the office of county commissioner, thus insuring to the Party its right to select its minority representative on that board, and this is what I want for the rest of the State.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Swope?

The roll was recorded as follows:

YEAS—28

Allison	Gerber	O'Donnell	Shapiro
Amsterdam	Gouger	Popil	Shettig
Bloom	Horne	Pott	Shrager
Bunting	Mattioni	Powell	Sprogell
Burkholder	McGlynn	Reynolds	Stout
Cosetti	Michael	Richter	Swope
Feather	Michener	Scranton	Tomascik

NAYS—100

Aberman	Dailey	Johnson	Pelletier
Aurentz	Desmond	Kauffman	Rappaport
Baldrige	Devlin	Keller, J.	Redick
Baldus	Erwin	Kelly	Roberts
Baldwin	Fawcett	Krill	Ruth
Banes	Fay	Laputka	Sahli
Barron	Filson	Leach	Scales
Barry	Foht	Lee, K.	Scarlett
Bashoff	Forster	Levin	Sebastian
Benedict	Forney	Manderino	Shively
Benfield	Gabreski	Mangery	Shoemaker
Braham	Gehrlein	Markley	Solomon
Brennan	Goldman	McGeary	Striekler
Broderick	Goldstein	Meyer	Tate
Brown	Griffith	Miller, D.	Thomson
Buck	Hannum	Miller, R.	Thornburgh
Butera	Harding	Moorhead	Tully
Camardella	Hatter	More	Waldron
Caputo	Heyburn	Morton	Warman
Casey	Himes	Murray	Welsh
Clark	Hocker	Nelson	Westerberg
Corey	Hook	Orban	Whittum
Croop	Huggins	Orbin	Wilcox
Cunningham	Irvis	Otto	Wilmarth
Curran	Jirolanio	Pasquerilla	Woodring

NOT VOTING—35

Bagenstoso	Fagan	Lane	Rea
Cain	Fineman	Lee, L.	Rovner
Caron	Fleming	Leinbach	Scott
Clinger	Gray	Leonard	Sharp
Conley	Henderson	Musselman	Silverman
Cortese	Hostetler	Pechan	Stroup
Donaldson	Keller, M.	Percey	Van Sant
Donolow	King	Prendergast	Woodside
Dumbauld	Kline	Quiles	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

AMSTERDAM AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. And now we have the Amsterdam amendment to this proposal.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE AMSTERDAM offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 2, line 2, as amended, by removing the period after "charter OR BY THE GENERAL ASSEMBLY AT ANY TIME." and inserting: , but no such municipality shall engage in any proprietary or private business except as authorized by the General Assembly.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, this amendment is to incorporate into the committee's proposal the same type of protection that the Philadelphia charter contains and the identical language, or almost the identical language. The charter in Philadelphia provides that no city shall engage in any proprietary or private business except as authorized by the General Assembly. This is to provide that unless the General Assembly shall specifically permit a municipality to engage in a proprietary or private business and, therefore, compete directly with proprietary and private businesses, that power shall not exist. That is not one of the residual powers.

I understand that one of the difficulties that the committee had with this was that if it started enumerating this and perhaps others, there might be a failure to enumerate all that was intended. Therefore, it was dropped. Now if that is so, that seems to me to be purely a language problem, and if we think this is good we certainly ought to be able to find the language to put it in so that it would not cause that type of difficulty.

Thank you, sir.

PRESIDENT BRODERICK. The Chair recognizes Chairman Pasquerilla.

DELEGATE PASQUERILLA. As a business man, I can well sympathize with Delegate Amsterdam. We have our problems of competition, too. However, we are opposed to this amendment for the same reason that Delegate Amsterdam got up and spoke on when he said that this restriction is contained in Philadelphia's home-rule charter, the charter which was adopted by the city of Philadelphia and apparently outlined by the General Assembly.

We oppose this restriction not because it is not a good one, but once again because there are many, many things that are equally important that the General Assembly must do to provide restrictions under a home-rule charter. Therefore we just do not like these kinds of things; they do not belong in a constitution.

As Delegate Amsterdam stated, this was done in his home-rule charter, and I am sure that the General Assembly will take care of similar problems when it lays down the ground rules for the adoption and repeal of home-rule charters.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barry.

DELEGATE BARRY. I would like to interrogate Delegate Amsterdam.

PRESIDENT BRODERICK. Proceed with your question; he will answer it.

DELEGATE BARRY. Delegate Amsterdam, the courts have defined certain functions of public bodies as being proprietary rather than governmental, for example, operating a water works or a gas works, operating parks, operating an airport. Would this amendment prevent a county from acquiring property for park purposes or building an airport? Would it prevent a city from acquiring a water works or a sewage disposal plant without specific authority from the General Assembly?

DELEGATE AMSTERDAM. Yes. Unless the General Assembly approved of that going into the home-rule charter, the city itself, or the municipality itself would not have the right to include that. In Philadelphia this was argued at great length at the time the charter was adopted and it was felt that it was so important that it had to be specifically approved in order to be incorporated as a part of the powers of the municipality.

DELEGATE BARRY. Then I must speak against this amendment and point out that a large number of functions now performed by governmental bodies are in fact proprietary functions, such as, the operation of parks, recreation centers, the operation of airports by public bodies, such as, the Greater Pittsburgh Airport, the operation of public utility-type installations, the water works in the city of Pittsburgh, the Allegheny County Sanitary Disposal Plant. If it was to grant home-rule powers at all, I think it would be unfortunate to so restrict the local government that it could not engage in these functions.

DELEGATE PASQUERILLA. Mr. President, I think I can help Delegate Amsterdam.

DELEGATE AMSTERDAM. I suspect I need it, Mr. President.

DELEGATE PASQUERILLA. In a home-rule charter, we say they are allowed to perform any function not denied by this Constitution, and since we are not yet on section 9 on page 3, we do have restrictions whereby "The General Assembly shall not authorize any municipality or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation."

I think we have automatically denied them this right, or at least a great part of it, under Section 9, Delegate Amsterdam.

DELEGATE AMSTERDAM. I agree that a good part of it, Mr. President, is covered by that, but I felt that the restriction was so important that this body ought to vote on whether they think this type of activity, competing with private enterprise, should be allowed without specific legislative authorization.

I think we have had a very complete discussion for some time over this entire area and, unless someone desires to speak further, I am quite willing that we vote at this time.

PRESIDENT BRODERICK. We are all ready for the vote. We shall unlock the voting machine.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Amsterdam?

The roll was recorded as follows:

YEAS—13

Allison	Braham	Goldman	Meyer
Amsterdam	Clark	Gouger	Swope
Bashoff	Forster	Heyburn	Warman
Benedict			

NAYS—117

Aurentz	Fawcett	Lee, K.	Reynolds
Bagenstose	Fay	Leinbach	Richter
Baldrige	Feather	Levin	Roberts
Baldus	Filson	Manderino	Ruth
Baldwin	Fohl	Mangery	Sahli
Banes	Fortney	Mattioni	Scales
Barron	Gabreski	McGeary	Scarlett
Barry	Gehrlein	McGlynn	Scranton
Benfield	Gerber	Michael	Sebastian
Bloom	Goldstein	Michener	Shapiro
Brennan	Griffith	Miller, D.	Sharp

Broderick	Hannum	Miller, R.	Shettig
Brown	Harding	Moorhead	Shively
Buck	Hatter	More	Shoemaker
Bunting	Himes	Morton	Solomon
Burkholder	Hocker	Murray	Sprogell
Butera	Hook	Nelson	Stout
Camardella	Horne	O'Donnell	Strickler
Caputo	Hostetter	Orban	Tate
Casey	Huggins	Orbin	Thornburgh
Clinger	Irvis	Otto	Tomasetk
Corey	Jirolanio	Pasquerilla	Tully
Corlese	Johnson	Pelletier	Waldron
Cosetti	Kauffman	Popil	Welsh
Cunningham	Keller, J.	Pott	Westerberg
Curran	Kelly	Powell	Whittum
Dailey	Krill	Rappaport	Wilcox
Desmond	Laputka	Rea	Wilmarth
Devlin	Leach	Redick	Woodring
Erwin			

NOT VOTING—33

Aberman	Fineman	Lee, L.	Rovner
Cain	Fleming	Leonard	Scott
Caron	Gray	Markley	Shrager
Conley	Henderson	Musselman	Silverman
Croop	Keller, M.	Peehan	Stroup
Donaldson	King	Percey	Thomson
Donolow	Kline	Prendergast	Van Sant
Dumbauld	Lane	Quiles	Woodside
Fagan			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. The Chair understands that we have one more amendment to be offered in connection with this matter and that is the Cosetti amendment. The Cosetti amendment presented a question of which Delegate Cosetti is aware and which has been referred to counsel. The duplicating machine is temporarily out of service and the chair believes that all delegates should have a copy of counsel's opinion.

This might be a good time to break, rather than to hold up the proceedings for the purpose of distributing the opinion.

RECESS

PRESIDENT BRODERICK. If agreeable to the delegates, the chair suggests that we recess for lunch and come back here at 1:45 p.m., which will give us an hour and a half.

It was agreed to.

AFTER RECESS

The time of recess having expired, the Convention was calicd to order.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

NORTH PENN GUESTS WELCOMED

PRESIDENT BRODERICK. Before we get to the proceedings for this afternoon, the Chair would like to call to the attention of the delegates that we have up in the gallery children from North Penn High School.

I understand we also have with us today the North Penn League of Women Voters.

They are guests of the delegate who is doing such a splendid job here, Delegate Sprogell.

We are glad to have you with us.

MRS. FLORENCE COHEN AND WOMEN OF DEMOCRATIC CLUB WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, while we are on introductions, could I have the honor of introducing a group who is here on my behalf?

PRESIDENT BRODERICK. Certainly.

DELEGATE MURRAY. Fellow delegates, I take pleasure in introducing Mrs. Florence Cohen and the women from our Democratic Club of the 17th ward in Philadelphia.

PRESIDENT BRODERICK. We arc very pleased to have you with us.

I just want you to know that Delegate Murray is doing a good job.

DELEGATE SHOEMAKER'S NEPHEW WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, if I may, for the record I would like to state that I have as my guest a delegation of one from Red Lion Area High School in York County, my nephew, Thomas Kearny.

Thank you.

PRESIDENT BRODERICK. We are happy to welcome Thomas here today.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I rise to a question of personal privilege.

PRESIDENT BRODERICK. Would you state what your question of personal privilege is.

DELEGATE AMSTERDAM. Yes, sir. A question appears to have been raised by a delegate as to my integrity and the propriety of my actions on the floor yesterday.

PRESIDENT BRODERICK. That would seem to be a matter of personal privilege. You may continue.

DELEGATE AMSTERDAM. Before I continue, I should like to determine the accuracy of the statement that has been reported in the press as having been made by Delegate Richard Gerber. I would like to ask whether he will stand for interrogation?

PRESIDENT BRODERICK. Delegate Gerber?

DELEGATE GERBER. Mr. President, I will stand for interrogation.

PRESIDENT BRODERICK. Delegate Gerber says that he will be happy to be interrogated.

DELEGATE AMSTERDAM. I would have asked for this sooner, Mr. President, except for the fact that Mr. Gerber did not appear until shortly before recess this morning and, therefore, I let it hold over until this afternoon.

I read out of the Bulletin for Tuesday, February 13, 1968. It is an article over the by-line of Duke Kaminski. I read parts of the article as follows: "The Convention last night authorized the legislature to give special tax concessions for the private promotion and development of

industrial and commercial properties." Then it goes on and gives some more detail and then this follows: "When the amendments were approved, Gerber told newsmen 'This benefits speculators in industrial parks and shopping centers. Gus Amsterdam stands to benefit by this more than anyone in the Commonwealth because he is in the business and I want you to quote me on that.'"

I would like to know whether that is an accurate statement of what Delegate Gerber said yesterday.

DELEGATE GERBER. It is.

DELEGATE AMSTERDAM. Mr. President, it seems to me that this is an entirely inappropriate and improper thing for any delegate to have said. I might say that I checked yesterday with general counsel and with the parliamentarian in order to determine whether I, as a member of the executive committee and the board of a public utility, might properly speak upon matters which involve public utilities in the State and might properly vote upon those matters. I was assured, in no uncertain terms, that it was quite proper and it was exactly what I, as a delegate, would be expected to do representing the people who elected me to this Convention. I might also say that it was indicated that many of us who are delegates here are affected as citizens, as lawyers, as businessmen, by matters of taxation, by matters having to do with the judiciary, local government, and so on. None of these things, I am told, prevents us from discussing and voting upon these matters.

It seems to me that this remark made by one delegate in regard to another is completely improper and impugns that delegate's integrity and perhaps even leaves open the question whether that delegate's vote was a proper one so that the activities which took place yesterday when that delegate voted may not even have been proper activities on the part of this Convention.

Under the circumstances, sir, I would like you, if you would, to assign this to a committee of delegates so that they may determine exactly what is the proper thing to do in this matter, so that we can have a determination of what delegates may or may not do and whether this type of activity and this type of statement on the floor by a delegate is to be condoned by this Convention.

I thank you, sir.

QUESTION REFERRED TO COMMITTEE ON RULES

PRESIDENT BRODERICK. We will refer the matter to the Rules Committee.

The Chair recognizes Delegate Reynolds.

DELEGATE REYNOLDS. I think the body itself should not wait for the Rules Committee on that. I have been on the Judiciary Committee, serving with Delegate Amsterdam. I am a Republican from Philadelphia and he is a Democrat and we do not always agree on everything, but I do not think anybody should impugn the motives of his voting or talking on any article he had yesterday. I think now we ought to show our confidence while we are waiting for the Rules Committee and I so move that we give him a vote of confidence that his motives were pure and that there was nothing wrong with what he did. I so move.

PRESIDENT BRODERICK. Delegate Reynolds, I want to say the question has already been referred to the Rules Committee. Of course, the body is free to take whatever action it desires, but the matter has been placed in the hands of the Rules Committee where I do think it should be studied.

DELEGATE REYNOLDS. Thank you, Mr. President, but the Rules Committee may wait two or three days. Here is a man with a good reputation; here is one of our delegates who thinks he has been unduly attacked. I think we ought to express our confidence or lack of confidence in him here now. I move that we now give him a vote of confidence.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, may I thank the delegate very much and suggest to him that there is a proper procedure and I would be perfectly willing to await the outcome of that proper procedure. I think this is a matter of far too much importance to be taken up hurriedly. I think it ought to be examined carefully. We ought to determine exactly what should be done, and I am perfectly willing to abide by the decision of the Convention.

PRESIDENT BRODERICK. The Chair thanks the gentleman.

The Chair recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, I would like to second the motion of Delegate Hobson Reynolds.

PRESIDENT BRODERICK. We have a motion on the floor by Delegate Hobson Reynolds. It has been seconded by Delegate Hannum. You have also heard the remarks of Delegate Amsterdam in connection with the motion. What is the desire of the body?

I now recognize Delegate Leach.

DELEGATE LEACH. Mr. President, I would believe, as a point of order, that the matter would have to be discharged from the committee to be in proper form. Am I correct?

PRESIDENT BRODERICK. The Chair has, in effect, already ruled that this matter has been referred and was referred prior to Delegate Reynolds' motion to the Rules Committee. I think that that is where it belongs and I think the body can take the appropriate action as soon as the Rules Committee reports on it. I also want to point out that the delegate in question indicated that that procedure was agreeable to him.

Unless I hear to the contrary, we will abide by the matter having been placed in the Rules Committee.

The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. May I say this to Delegate Amsterdam, that I personally respect his integrity. I know that he came here with a good purpose in mind. I think that every member of this Convention came here with that particular purpose.

I want to remind this Convention that I have been maligned, cursed at and written about, and everything else, especially with the station in Scranton. After all, when you come here, there is one thing that you have to learn to do—you have to learn to take it. I agree with Mr. Amsterdam 100 per cent and I know that he is sincere. I believe that every member here knows that he is sincere. I do not think that we should vote on this particular measure for this reason, Mr. President, that a delegate

does have the right to express his opinion. Unfortunately, in this particular case, it was expressed not in the best manner. As I understand from Mr. Pasquerilla and some others, they are somewhat peeved and angered because they were not included in the same classification as Mr. Amsterdam in being able to make a lot of money under that proposition.

PRESIDENT BRODERICK. The Chair recognizes Delegate Buck.

DELEGATE BUCK. Mr. President, I merely wish to remind the delegates that the amendment, which apparently triggered the statement that has been referred to, originated with me. The only reason that Mr. Amsterdams' name got on the proposal was because I asked him whether he would cosponsor it with me. If the committee that is going to look into this matter wishes to interrogate me, I will be very happy to meet with them.

Thank you.

PRESIDENT BRODERICK. Thank you, Delegate Buck.

COSETTI AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment is being offered by Delegate Cosetti. The Chair requests the pages to distribute the amendment and the opinion of counsel.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE COSETTI offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 2, line 2 by removing the period after "charter" and inserting: provided that in the case of cities with a population in excess of three hundred thousand, the General Assembly may not provide for such denial except by a law applicable to all cities with a population in excess of three hundred thousand having a home rule charter.

On the question,

Will the Convention agree to the amendment?

Counsel Opinion No. 30 is as follows:

COUNSEL OPINION No. 30

Q. Is a proposed amendment to Committee Proposal No. 6 which requires uniformity in the case of cities with a population in excess of 300,000 under Section 2, Home Rule, of Committee Proposal No. 6, Printer's No. 6, within the Convention's jurisdiction?

A. No.

Discussion: As we have recited in each of our prior opinions, the Convention is one of limited jurisdiction. Act No. 2 of 1967 in Section 7 defines the area of scope as to this issue. It recites the Convention shall have power concerning "Local Government (now covered by Articles XIII, XIV and XV and part of Article IX)." In other areas the scope is broader, for example, concerning the Judiciary, the Act provides "Judicial Administration, Organization, Selection and Tenure (now covered in part by Article V)." The broadening phrase "in part" is not within the Local Government delegation of power. Article XIII concerns New Counties, Article XIV, County Officers and Article XV, Cities and City Charters. These subjects comprise only a small portion of the numerous aspects of the larger field of local government. If the Legislature in authorizing the Convention had intended to limit the Convention to these three categories, it could have expressly referred to these Articles without referring to the words "Local Government." It is our opinion that by using these words the General Assembly clearly intended to give the Convention plenary powers with respect to all aspects of this broad topic, whether or not contained in the enumerated Articles.

On the other hand, it is Counsel's opinion that the comparison in language justifies some restrictive view of the Convention's authority, particularly where the Convention would address itself head-on and directly contradictory to an existing Constitutional provision, not within the articles encompassed by Act No. 2 of 1967 and therefore an area restricted to this Convention.

Unfortunately, the language chosen by the proposed amendment meets with such an obstacle.

The section of the amendment in issue provides as follows:

> "provided that in the case of cities with a population in excess of three hundred thousand, the General Assembly may not provide for such denial except by a law applicable to all cities with a population in excess of three hundred thousand having a home rule charter."

The existing Constitutional provision which we believe is presently contradictory of this provision quoted above is contained in Article III, Section 20. This, the Convention will note, is the Article dealing with legislation, outside the scope of the Convention to enlarge, abridge or alter; and this subject matter has been mentioned in prior opinions of Counsel.

This leads us, of course, to the effect of Section 20 of Article III of the Constitution upon the authority of the Convention over Local Government. Section 20 provides that "The Legislature shall have the power to classify counties, cities, boroughs, school districts and townships according to population, and all laws passed relating to each class, and all laws passed relating to, and regulating procedure and proceedings in court with reference to any class shall be deemed general legislation within the meeting of this Constitution." This provision permits the General Assembly to classify local governments and to enact legislation relating to each class which might otherwise be invalid as special legislation under Section 31 of Article III.

A comparison of the proposed amendment with the language of Article III, Section 20 indicates a direct confrontation. The amendment would prohibit the General Assembly from the right given to it by Article III, Section 20 to classify between

and among cities in excess of 300,000 and to pass laws "relating to each class" which "shall be deemed general legislation within the meaning of this Constitution." The amendment provides the contrary; namely, that as to cities in excess of 300,000 where the Legislature now has the right to differentiate and to provide different laws, there shall now be a constitutional prohibition against such differentiation and a mandatory requirement for uniformity in legislation.

We believe this view of the scope of Article III, Section 20 is strengthened by the recent amendment to that section which deleted certain prior existing limitations on the total classes the Legislature could establish under this section. The recent amendment became effective just last year. It was adopted May 16, 1967 and removed the restriction on the Legislature theretofore in existence, which recited the maximum number of classes for counties, cities, school districts and boroughs which the Legislature could create. Thereby, the Legislature can now, without limitation as to the number of classes, legislate as to each class separately which differs in size or population.

In view of the above, we believe that the proposed amendment to Committee Proposal No. 6, Printer's No. 6 is beyond the jurisdiction of the Convention.

MARVIN COMISKY
Counsel to Convention

PRESIDENT BRODERICK. Before recognizing Delegate Cosetti, we want to point out, and the Chair does so regretfully, that we had to rule on this amendment which was presented by Delegate Cosetti, and, I think, by Delegate Baldus, also. The Chair requested and received an opinion of counsel in connection with this amendment. It is Opinion No. 30.

I understand the opinion has been distributed, together with the amendment. According to the opinion of counsel, which is in front of you, this particular amendment would not come within the authority of this Convention, briefly, because it would violate Article III, Section 20, of the present Constitution which is not within our authorization, pursuant to Act No. 2.

With that the Chair now recognizes Delegate Cosetti.

MOTION TO APPEAL

DELEGATE COSETTI. Thank you for the promptness of your ruling, Mr. President. Would it be appropriate at this time for me to appeal your decision?

PRESIDENT BRODERICK. Yes, indeed. You have the right to appeal the Chair's decision in this matter. I want to state again that the Chair's decision was based on counsel's opinion, which has been distributed.

DELEGATE COSETTI. I therefore appeal your decision, Mr. President, and offer Delegate Baldus as a second.

PRESIDENT BRODERICK. Yes. It has been appealed and, therefore, I take it we are now to present the question. The question is, by the way, shall the decision of the President stand as the judgment of the Convention in connection with this matter?

The Chair now recognizes Delegate Cosetti.

DELEGATE COSETTI. Thank you. Mr. President, I would call your attention in this matter to something an older man of another generation, but who, I think, is of our spirit, said recently—that older man was Pope John the XXIII—when he called the Church which he loved to "an Aggiornamento," as he called it, an opening of windows, a letting in of fresh air, a renewal of spirit.

The people of Pennsylvania have called us in this same spirit to an aggiornamento. They wanted us to shed some light, the light of a new day, on some of the old corners of Pennsylvania government. This Constitutional Convention, especially this article on local government, is intended to open windows and to let some fresh air into some of these musty corners.

The committee's proposal offers all the municipalities of this State a new form of government, home-rule charters. This is new. This is intended to be a new instrument for all local municipalities. It is a proposal which looks to the future, and I favor it.

Unfortunately, this new instrument will not create a meaningful choice for my city, the city of Pittsburgh. And I want no doubt about it. I do have a personal interest in this. Pittsburgh in many ways is in a class by itself, and those of us who live there rejoice in this. We are the second largest city of this State. We are the heart of the eighth largest metropolitan area in the United States. We remain the steel capital of the world. We have demonstrated by the combination of all the resources of our city that we can combine to renew our commercial areas.

Even though all of this is true, unfortunately for Pittsburgh, we are in a legal class by ourselves. We are the only city in the State that is a city of the second class. A law applicable only in the city of Pittsburgh is a general law in the State of Pennsylvania. The legislature of Pennsylvania can act uniquely in this regard, with regard to Pittsburgh. It can act as our town council and, unfortunately, the chairman of this committee on second class cities is, in another way, the mayor of our city.

We have faith in the legislature when it acts as a legislature for all of Pennsylvania. Its effect on these broad areas of Pennsylvania has been good, equitable, and fair. We have confidence that it will do the right thing in these areas.

However, when the legislature can deny powers to a single municipality, a peculiar set of alliances and combinations occurs in the legislature. This peculiarity does not always result in good government. I do not wish to speak about them in particular, but I just call your attention to them in general.

What we are asking is that the city of Pittsburgh, if the city of Pittsburgh goes through charter procedure and if the voters accept this charter, that we be treated in the new way, that we be treated as a new charter city. We are not asking that the old method be changed and that if we do not adopt a charter that we be treated any differently. We are asking that if we do adopt the charter that we be treated differently. If we can be singled out after we have adopted a charter, this article will mean very little to the city of Pittsburgh.

Perhaps I could conclude my remarks by using another Biblical quotation from the Gospel of John in which a reference is made to "new wines and old skins." I think

the inference is that new wine will burst the old skin. It is the desire of this Convention, I think, to place before the citizens of Pennsylvania a new wine, and in that sense, we are asking that the Chair's ruling be overturned.

During the two months of this Convention I have grown, indeed, to respect the counsel for his fairness and knowledge of the law. His confidence among so many bright lights of the law has been apparent, but I have also learned that lawyers disagree and that the law eventually is what the court says it is.

In this case, the law is what the delegates of this Convention say it is. The people and the legislature did not conceive we would so limit our action, Mr. President, and that is the gist of my appeal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus.

DELEGATE BALDUS. Thank you, Mr. President.

I feel a little like David before Goliath in the chair, but I would like to have this opportunity to persuade my fellow delegates that the Chair's ruling in this matter is incorrect.

The question before these delegates is the same question that is before the courts of this Commonwealth in construing any statute or law of the General Assembly. The question is: What did the General Assembly intend when it enacted Act No. 2? Did it intend to prohibit us from restricting the General Assembly in the future from depriving powers of home-rule cities in a certain way, and in the way we have proposed it in our amendment, that is, that it must deprive the powers of one city over 300,000, therefore, it must treat all the cities over 300,000 the same.

It is the job of this Convention now to decide in its mind what was the intention of the legislature when it enacted Act No. 2. Counsel has presented to us an opinion and, in my view, this opinion states that this amendment is in direct confrontation and directly contradicts Article III, Section 20, of the Constitution.

I submit in the first instance, that there is no direct confrontation.

Article III, Section 20, states: "The legislature shall have power to classify counties. . . ." That is the first part of that section. Our amendment would in no way restrict the power of the legislature to classify counties, cities, boroughs and school districts according to population. It would have that power to make the classifications by law. I can see no conflict whatever between the two.

The second provision is that ", . . all laws passed relating to each class" . . . "shall be deemed general legislation. . . ." The argument is that our language requiring it to act with respect to all cities over 300,000 when it denies a home-rule city a power of that size interferes with and directly confronts the power granted under this provision.

I submit to you delegates that this language says merely that all laws passed relating to each class shall be deemed general legislation. It does not say that the General Assembly shall have the right to pass laws relating to each class of municipalities with respect to all subjects, and that is the kernel of the holding of counsel in that case. He is saying that it is beyond the powers of this Convention to restrict the legislature in its act of restricting local governments. He bases his opinion on this language, that all laws passed relating to each class shall be deemed general legislation.

I submit to you, ladies and gentlemen, that the language does not say that. It merely says that when the legislature passes one applicable to a city, it shall be deemed general legislation, but it must have the authority to pass that law from some source. That source comes from this Constitution and I believe that we can withdraw that power in the same way with respect to this provision.

Even if there is a conflict or a modification, it is only a slight and infinitesimal one relating to only a very narrow class of legislative acts. If that is the case, and I submit to you if you read this language and read our proposal, that the contradiction would not even be perceivable to the average person, let alone a direct confrontation.

The position of counsel is that no matter what the conflict, even if there is only a slight conflict, this Convention is not empowered to enact such a law. I submit this is a narrow, technical position. It is not supported by the background and the language used by the legislature itself.

I would like to direct your attention to the act itself. The act says that the Constitutional Convention shall have the power by a vote of a majority to make recommendations on the following subjects, one of which is local government. It then goes on to restrict our powers. It says the Convention shall not consider or include in its recommendations any proposal which clearly permits or prohibits an income tax. It then says that we may not modify or change the uniformity clause or the Motor License Fund, and it specifically enumerates the areas in which we may not tread. There are no other specific limitations on our power. That is the way the law reads.

I think it is important to note that the prior printer's number of this Act No. 2 which came before the legislature adds this, and I direct your careful attention to this.

This was the earlier proposal. It said the Convention shall not directly or indirectly modify, alter or change any other section or article of the Constitution. Now the legislature perceived that if it left that language in there which would prohibit any indirect modification of the Constitution that it would place us in an intolerable straitjacket, and I submit to you that is what the Chair's ruling does to us in this case. It is imposing upon us the language which was specifically rejected by the legislature. Their omission of this language from the final bill —it was passed into Act No. 2—clearly indicates that it was their intention that we should not be so restricted, and that they, as men knowledgeable of the ways of government, realized that if we acted with respect to one area of local government or in taxation and finance that we would indirectly modify the powers and authorities granted in other parts of the Constitution. I submit to you it was the intention of this legislature by the bill it passed to permit us to make slight modifications in other areas.

Further, an analysis of the debates before the House indicates that in the passage of Act No. 2 there was no concern about restricting the power of this body to act with respect to home rule. In fact, the background, the debate before this General Assembly, indicates clearly that the General Assembly intended to grant a broad

plenary power to this body to enable us to enact the most progressive and farsighted reforms in the area of home rule that we desire. And I submit it may well have had in mind the type of reforms that have become common in the area of home rule. I submit to you the language that was approved by the Constitution of New York this last year wherein it enacted a proposal almost identical to the one we are suggesting here. It said there that every local government shall have all the powers unless denied to a reasonable class of not less than five local governments. That is the type of provision that we are suggesting here. It is the type of provision that belongs in the Constitution. We believe that the General Assembly, when it enacted Act No. 2, intended this body to have that power.

Thank you, Mr. President.

PRESIDENT BRODERICK. Thank you, Delegate Baldus.

The Chair now recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I do not want to get into a long discussion on the legal principles here involved. I do want to say this, however: The legislature and through it, the people, have limited our rights and powers.

This question was submitted to counsel, and I have read rather hastily the opinion submitted to us by them. It seems to me that counsel is correct.

Now we all took an oath that we would keep within the provisions of the Act. I can see how there is a difference of opinion in some of these matters. Delegate Baldus very ably presented his position, but upon examination of this opinion of counsel and the realization that they gave it very careful consideration and came to the conclusion which appears to me to be the correct one, I think we ought to give very, very serious consideration to any circumstance in which we would overrule the Chair and our counsel on a matter of this kind. Therefore, I urge the delegates that on this matter we resolve any doubt in favor of the ruling of the Chair, which appears to me, in the first instance, to be absolutely correct and, in the second instances, to have been very well considered by our legal counsel.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I would, if I may go a bit further than Delegate Woodside, suggest, Mr. President, in all deference, that I would appear as an advocate for the speaker in this particular instance. Delegate Cosetti's idea falls in the very first several paragraphs of the speech that he gave to you. Remember how he opened,—"We will examine some of the old corners of Pennsylvania government . . . some of the musty corners." There was, you know, fought in this land, and there is a battlefield of that war very near here, a resolution called nullification, and this was the idea that the Supreme Court in its rulings and Congress in its enactments could be nullified and done away with by an act of an individual state legislature. There was a suggestion on this floor at the beginning, I suggest Mr. President, that by virtue of being a Constitutional Convention, what we did, upon ratification of anything that was beyond the exact scope of our call, nonetheless when the people did so ratify, that this would be constitutionally enacted. This was put to the test, and I respectfully submit this house rejected that concept, and I urge quite properly so. I, for one, campaigned on a very plain platform that I wanted to come down here to Harrisburg to look into four broad general topics within the call of the Convention. This I am here to do and propose to the end of this Convention to continue doing. I did not come down here to discuss anything beyond, and I do not propose to do it and I would urge that this house do not fall into the error that is proposed here.

My learned friend, Delegate Cosetti, waxed eloquent when he quoted the venerable and late Pope John. He quoted from the New Testament, and I admire his familiarity with Holy Writ. I would, however, call to his attention the parable which our Savior told about the lord who was leaving and, Mr. President, he left three servants talents. To one he left one, to another he left five, Mr. President, and to the third he left ten. I have not figured out whether this Convention was granted one talent by the voters or five. I am well satisfied, Mr. President, we were not granted ten. And with this thought in mind, I would urge that the law is not what we say it is here; the law is as we have been sent. Interestingly enough, as pointed out by counsel, the judiciary article is very carefully covered, and counsel has underlined in his opinion that the judiciary concepts to be considered were now covered in part by Article V. The mandate on local government where three specific articles were specified in their entirety and the fourth by the use of the word "part" indicates clearly the scope of our attention.

I urge, Mr. President, that you be supported in this matter.

Thank you.

MOTION TO TABLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, on behalf of Delegate Brennan, I wonder if I can request that this matter be tabled until tomorrow morning until he and other delegates have an opportunity to look at it and investigate it more thoroughly?

PRESIDENT BRODERICK. I hear a chorus of nays here, Delegate Barry. I would assume that we do not have consent for that request.

DELEGATE BARRY. I move that it be tabled.

PRESIDENT BRODERICK. Has the motion been seconded?

DELEGATE BALDRIGE. Mr. President, I second the motion.

PRESIDENT BRODERICK. It has been seconded by Delegate Baldrige. The motion is that this be tabled until tomorrow, that is, the question on the appeal. Is that correct, Delegate Barry? Is that the correct statement of your motion, that it be tabled until tomorrow?

DELEGATE BARRY. Yes.

On the question,
Will the Convention agree to the motion?
The motion was not agreed to.

PRESIDENT BRODERICK.

The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President and fellow

delegates, I rise to speak in behalf of the opinion of counsel and in behalf of the President's decision.

I think from past experiences you ladies and gentlemen already know that at one previous time I had presented a proposal of my own from the floor or I had, rather, supported one that was presented on the floor and one that was very close to me, and yet I felt that even though it was close to me it was outside the scope of the jurisdiction of this Convention. I, therefore, most reluctantly, but I felt, most properly, withdrew my support of that particular proposal.

Many arguments have been made prior to today for creating an open Constitution, an open Convention, one in which we can deal and discuss any single question, any item, any article of the present Constitution that we so desire, and that, perhaps, we could even continue our term of existence well beyond February 29. I do not subscribe to this theory nor do I believe that the majority of delegates here subscribe to that type of a theory. I believe we have to come out with a very proper Constitution, but one which will be very definitely and very unequivocally limited to the call which the people gave us.

In discussing this particular proposed amendment to the article on local government, and let me add parenthetically and I think both of the standing co-chairmen will admit to this, it was in the area of local government that we had our most disturbing problems of whether or not we were within or without the call of this Convention. The question came up frequently.

I think we have now gone well beyond the call of the Convention by admitting this particular amendment. What we have attempted to do or what will be attempted to permit by this particular amendment will be to say that those cities over 300,000 will have special powers within the home-rule charters as opposed to any other type of home-rule charter being granted.

Let us call a spade a spade. What are we talking about? We are talking about Pittsburgh and Philadelphia. That is all. I think that if we get involved in legislation actually of this nature, we are going way beyond the call of the Convention, we are disturbing the uniformity which we are not permitted to discuss, and I think even beyond that we are going into a section which is clearly not part of our call of the Convention, and that is in Article III, Section 20, where the legislature has the absolute and sole right to make the classifications of the various types of local communities. For us to create a different type of classification which this amendment would call for clearly is legislative in nature, clearly falls within the purview of Article III, which we are not entitled to discuss, and it clearly goes well beyond the call of this Convention.

I strongly urge that we uphold the suggestion, the rulings of the Chair. The opinion of counsel is clearly on point. It is not one which I believe is debatable at all. It is one which is directly on point, is entirely correct and one which we should and must uphold.

I am afraid that if we do not uphold this particular ruling, we will open wide the Convention to let anything come in, and although I did not at the time realize I had coined a phrase, really "open Pandora's box" to let everything come in and most assuredly jeopardize the entire success of this Convention by not having the acceptance of the people. I think we must turn down this amendment and uphold the ruling of the Chair.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, I think it is beyond question that this is a close question legally and I would not, certainly, challenge the opinion of our counsel. However, on the merits, I am so impressed with the need for taking action, such as suggested by the Baldus-Cosetti amendment, that I would rise to support the appeal. It seems to me that what is being provided for in the amendment, in view of the closeness of this legal question, we can act on in this instance while firmly keeping our hand on the lid of a box belonging to a certain lady and that the parade of horribles envisioned by Delegate Goldman will not occur. I think this is a very close legal question and I think that putting it in context of the entire local government article, the amendment suggested, that this Convention would not be acting irresponsibly to sustain the appeal.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. Mr. President, fellow delegates, I do not agree with Delegate Thornburgh that this is a close question and I do not agree with his proposition that simply because it is close, if it were close, that we should open the door. If we begin by passing on these matters because they are close, we will be here until Christmas as it has been said before.

There is one thing that I think Delegate Baldus failed to call to the attention of the Convention on the question of confrontation. In Article III, Section 20, the legislature is given the right to make classifications. The effect of the proposed amendment is to negate that right that the legislature has and the proposition is clearly set forth on page 4 of the Opinion of Counsel, and I would like to read it.

"The amendment provides the contrary; namely, that as to cities in excess of 300,000, where the Legislature now has the right to differentiate and to provide different laws, there shall now be a constitutional prohibition against such differentiation and a mandatory requirement for uniformity in legislation."

I submit that the Chair should be sustained in his position and, Mr. President, I move the question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Mattioni.

DELEGATE MATTIONI. Mr. President, if the vote is to support the Chair, does that in any way affect the possibility that questions may be raised later in regard to the judiciary article which may in and of itself, in certain particulars, exceed the scope of this Convention? I refer particularly to the rationale of Counsel Opinion No. 30, and I relate directly to Committee Proposal No. 7, Sections 1(b), 8(b), 9, 16 and 18. I think that all of those sections are in conflict with Article II and Article III of the Constitution as it now stands. They take away a function of the General Assembly, and I think that Sections 9 and 18 take away, and are in conflict with, Article IV to take away from the veto power of the Governor. I be-

lieve that Section 16 infringes upon the impeachment function of the General Assembly.

My question very specifically is this: If we vote to support the Chair here, do we implicitly agree with the rationale in Counsel Opinion 30?

PRESIDENT BRODERICK. I can only say, Delegate Mattioni, the questions which you are raising about the judiciary article are questions that are not before us now and, of course, will come before us, and if raised, we will rule on them at that time. The question has been moved here and if we may we . . .

DELEGATE MATTIONI. Then do I take it, Mr. President, that when the judiciary article is discussed we can at that time, if we consider it appropriate, raise the questions of whether or not certain of those sections are in conflict with other sections of the Constitution and, therefore, beyond our scope?

PRESIDENT BRODERICK. I think that is correct. When those questions come before the Convention, the question as to whether or not they are within our authority can always be raised.

DELEGATE MATTIONI. Thank you, sir.

PRESIDENT BRODERICK. The Chair states the question: Shall the decision of the Chair stand as the judgment of the Convention? All those voting "aye" are voting to sustain the Chair; those voting "no" are voting to reverse the decision of the Chair.

The Chair just wants to state that we ruled, not on the basis of the merits of this proposal, but on the basis that it was not within our authority to discuss the proposal or to take it up.

On the question,
Will the Convention sustain the decision of the Chair?

The roll was recorded as follows:

YEAS—92

Aberman	Fay	Krill	Richter
Bagenstose	Feather	Leach	Roberts
Baldwin	Fleming	Lee, L.	Ruth
Barron	Fohl	Leonard	Sahli
Barry	Forster	Levin	Scales
Bloom	Fortney	Manderino	Scarlett
Braham	Gerber	Mangery	Scranton
Broderick	Goldman	McGeary	Sebastian
Brown	Goldstein	Meyer	Shettig
Bunting	Griffith	Miller, R.	Shively
Burkholder	Hannum	Moorhead	Shoemaker
Cain	Harding	More	Sprogell
Clark	Hatter	Morton	Stout
Corey	Henderson	Nelson	Strickler
Cortese	Heyburn	O'Donnell	Swope
Croop	Himes	Orban	Tate
Cunningham	Hocker	Orbin	Thomson
Curran	Hook	Otto	Tully
Dalley	Johnson	Pasquerilla	Westerberg
Desmond	Kauffman	Pott	Whittum
Devlin	Kelly	Powell	Wilmarth
Erwin	Keller, J.	Rea	Woodring
Fawcett	Kline	Reynolds	Woodside

NAYS—42

Aurentz	Conley	Jirolanio	Percey
Baldrige	Cosetti	Laputka	Popli
Baldus	Dumbauld	Leinbach	Rappaport
Banes	Filson	Mattioni	Shapiro
Bashoff	Fineman	McGlynn	Shrager
Brennan	Gabreski	Michael	Silverman
Buck	Gehrlein	Michener	Thornburgh
Camardella	Gouger	Miller, D.	Warman
Caputo	Hostetler	Murray	Welsh
Casey	Huggins	Pelletier	Wilcox
Clinger	Irvis		

NOT VOTING—29

Allison	Fagan	Markley	Scott
Amsterdam	Gray	Musselman	Sharp
Benedict	Horne	Pechan	Solomon
Benfield	Keller, M.	Prendergast	Stroup
Butera	King	Quiles	Tomascik
Caron	Lane	Redick	Van Sant
Donaldson	Lee, K.	Rovner	Waldron
Donolow			

The majority of the delegates having voted to sustain the decision of the Chair, the question was determined in the affirmative, and the decision of the Chair was sustained.

O'DONNELL AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. We have another amendment, the amendment of Delegate O'Donnell. The pages will distribute the amendment while the clerk will read it.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE O'DONNELL offered an amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, lines 21 to 23, by striking out all of said lines and inserting: One chairman and two members shall be elected as county commissioners in each county where such officers are chosen. Each political party or body shall nominate not more than one candidate for the office of chairman and not more than one candidate for the office of member. Each qualified elector shall vote for not more than one candidate for each office. That candidate for chairman receiving the highest number of votes for that office shall be elected chairman. The two candidates for the office of member receiving the highest number of votes for that office shall be elected.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, this proposed amendment has a surface similarity to amendments already considered in this house, but I believe the parliamentarian has ruled that it is different. I must confess that I have taken the ideas and the thoughts of Delegate Swope and I have taken the approach described by Delegate Michener. I have attempted in this proposal to solve the problem created by Delegate Swope's proposal and some of the problems created by Delegate Laputka's effort earlier this morning.

The net effect of this amendment is to continue the guarantee of minority party representation on the county commissioners in each county, plus a new wrinkle.

Mr. President, I am not sure everyone can hear me.

PRESIDENT BRODERICK. Yes.

DELEGATE PASQUERILLA. Maybe they just do not like what he is saying, Mr. President.

DELEGATE O'DONNELL. I was saying, sir, that the net effect of this amendment would be to preserve the concept of minority representation on the board of commissioners in each county where there are to be boards of

commissioners, but adds this new wrinkle. It permits the minority party, if it so chooses, to run one member. It therefore obviates and eliminates the matter of control by the majority party over the minority party. It eliminates the situation where the two minority members are not running against the majority party candidates, but against one another.

I believe it is necessary to preserve the viability as a part of the two-party system in Pennsylvania of those minority parties throughout the State where the majority party has a very substantial registration ratio.

I happen to be one of Her Majesty's Loyal Opposition, so-called, in one of the counties of Pennsylvania, and we do have this problem and I understand that this problem is had by all of the parties where there is a substantial registration margin throughout the state of Pennsylvania.

I might say, Mr. President, that I have spoken in the well to a number of the members of the Local Government Commission and have been advised by them that they do not have any strong objections to this proposal.

PRESIDENT BRODERICK. The Chair recognizes Chairman Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, shall I call upon Delegate Scranton to straighten me out on the language this time because he did it the last time?

PRESIDENT BRODERICK. I do not think he straightened us out; he just said it was ingenious.

DELEGATE SCRANTON. Mr. President, this morning I enlightened the whole body by informing them that it was a highly ingenious thought, which promptly got 28 votes. I am sure that did it.

Now I would like to say that it is not only highly ingenious, but, sincerely, if you really believe that the reason is that they decided to have a minority commissioner in the county commissioner setup, you should vote for this amendment, because it would really establish a true minority commissioner not subject to being bought off or influenced by the majority.

I hope that will get 29 votes.

Thank you.

DELEGATE PASQUERILLA. Mr. President, needless to say, for the fourth or fifth time now today, our committee, of course, is opposed to this amendment. I would hope that we would not spend too much time debating it, because we have debated it rather lengthily this morning on a number of occasions. Apparently the Convention is satisfied with the committee's report in retaining the present system hopefully that we will get into optional forms of government and home rule.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, I do not intend to debate this amendment, because I think the same type of substance has been well debated and has gone down to defeat several times. I am sorry that we have to consider one so similar again.

I would like to ask Delegate O'Donnell what the significance is of the last sentence in this amendment.

DELEGATE O'DONNELL. Yes, certainly. I would be happy to describe to you the entire mechanics by which this would be worked out. The reason we have not considered this before today is that the proposals before us today had certain problems connected with them which this one has avoided. It is as simple as that.

DELEGATE CURRAN. I think I understand the mechanics, and the mechanics seem to indicate that there only will be two people running for the office of member.

DELEGATE O'DONNELL. No, sir. There could be 30, if there were political bodies or third parties or what-have-you who chose to run.

Let us talk practical brass tacks, Delegate Curran. Right now in almost evey substantial majority county in the Commonwealth of Pennsylvania, nomination by that party is tantamount to election of two members of the board of commissioners, and I think you, sir, would concede that is true in your county, in Montgomery County, in Chester County, and you name them. Consequently, nomination by party elects two members of the board of commissioners now.

The only thing that this would change is that the minority party, instead of being obliged to run two men running against one another, would permit the minority party to run one man if it so chose for the office of member of the commissioners, and if it so chose, one man to run for the office of chairman, as simple as that.

DELEGATE CURRAN. Delegate O'Donnell, I think we all understand what you are trying to achieve and I think that the Convention has spoken on several occasions that it is not in sympathy with your amendment, that is all.

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka.

DELEGATE LAPUTKA. Mr. President, I believe my position, as far as the minority commissioner is concerned, needs no further pleading. I do see that this does the one thing that I was objecting to, and that is, it does ensure a true minority commissioner and does eliminate the contest in their own political parties as far as candidates are concerned. To that extent, I would be for it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Westerberg.

DELEGATE WESTERBERG. Mr. President, I believe that this matter has been debated quite fully and I would like to call for the question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I simply want to say that I accept the amendment offered by Delegate O'Donnell as being a good substitute for mine.

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil.

DELEGATE POPIL. I just wanted to ask Delegate O'Donnell a question to correct something in my own mind.

PRESIDENT BRODERICK. You may proceed.

DELEGATE POPIL. Delegate O'Donnell, perhaps this is repetition, but I did not get the full scope of your amendment. I just want to simplify this. Let us take the Republican Party. It shall nominate two men. The Republican organization shall endorse two candidates, one for chairman and one member.

DELEGATE O'DONNELL. That is correct. Two different offices.

DELEGATE POPIL. Yes. The Democratic Party does likewise. It endorses two men.

DELEGATE O'DONNELL. If they so choose.

DELEGATE POPIL. That is correct. Now, the man who receives the highest number—now we are talking about a nomination—both of these men will be nominated. The Republican Party will nominate two men; the Democratic Party will nominate two men.

DELEGATE O'DONNELL. That is correct, sir.

DELEGATE POPIL. All right. Now we come to the general election. Are we going to have a special slot for the chairmanship?

DELEGATE O'DONNELL. No, sir. Let me try, if I can again, to explain the mechanics of this. I do not think it is complicated.

It is true that each party has the privilege of nominating two men, but not two men as is now the case for the same office. Each party will nominate one man for the office of chairman of the board of commissioners and each party will nominate one man for the office of member. Consequently, both on a portion of the ballot for nomination in the primary and a portion of the ballot in the general election there will be a Republican and a Democrat and whatever other political bodies there are, each of them with their candidate for chairman of the board of commissioners, and in another section or squire, if you will, or on your voting machine section, there will be a Democratic candidate, a Republican candidate, and any number of other candidates by political bodies for the office of member of the county commissioners.

That man who receives the highest number of votes for chairman is elected chairman, and those men on the other section of the ballot who receive the highest number of votes for the office of members are elected members. It is as simple as that.

DELEGATE POPIL. In other words, the man who ran for chairman may be eliminated?

DELEGATE O'DONNELL. No, it is absolutely impossible because there is—

DELEGATE POPIL. The man who ran for chairman, sir, as I see it, will be eliminated. However, the other two members will be elected.

DELEGATE O'DONNELL. Oh, I am sorry, I misunderstood you. Do you mean to suggest it is necessary in every case that a candidate from some party for the office of chairman will, in fact, be elected to the office of chairman? I take it that you understand that?

DELEGATE POPIL. That is correct.

DELEGATE O'DONNELL. Now, if the Democratic Party runs a man for the office of Chairman and the Republican Party runs a man for the office of chairman, only one of the two will receive the majority of votes, and, therefore, will be elected.

It is assumed of course, Delegate Popil, that both parties will have that in mind when they select their slate.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, Delegate O'Donnell has said that the secret of his suggestion comes from the fact that the minority party could, in fact, nominate only one man when they might nominate two. But this is an open primary and parties are made up of individuals, and I know of no proceeding by which the party could decide that nobody could run except the party who was selected by the party authorities.

DELEGATE O'DONNELL. May I answer that interrogatory, sir?

PRESIDENT BRODERICK. Yes, indeed.

DELEGATE O'DONNELL. Delegate Braham, what I have attempted to get across here in my explanation—let us return, if you will, to the election machinery. It is true that in each party a dozen men could file their names in the primary to seek the office of, say, chairman of the county commissioners. In like manner, any unlimited number of men could file for nomination to run in the primary for the office of member, but when the primary is over and the voters at the primary have spoken, the majority of Republican electors will have selected their one candidate for chairman and they will also have selected their one candidate for member. In like manner, the Democratic electors who have voted in that primary will have chosen their one candidate for chairman and their one candidate for member. Now it is as simple as that.

DELEGATE BRAHAM. Well, of course, then there would be no election except as to chairmen. You cannot be sure there will be only one member from each party and you cannot preclude them from being more than one member.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I think this amendment should be voted down for three reasons. First of all, it is obvious no one here understands it. I still campaign from door to door in the sixth ward of Beaver Falls and I could never convince my voters what they were doing. Secondly, no one has ever told us what the word "body" means in the third line of this amendment. That could be almost anything. And third, and please keep this in mind, I do not question the fact that in many counties the minority commissioner has been a problem, but he has been a problem after the election, not before the election. It is not the mechanics of the election that makes this system bad. It is the fact that the majority block buys him off after he is elected and he plays golf every afternoon while they run the government, and this will not solve that. I think this idea could better be planted in the implementing legislation that will come on some of the alternative forms of county government which is built right into the proposal. I think it should be defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, fellow delegates, this proposal should be defeated for two very substantial reasons. One, the proposal asks a county to decide whether it is going to be a one-party county or a two-party county. Now if you are well snowed under as the minority party, you would follow this plan, but in a borderline case you would fight it out to the finish. You would put up your two best men and you would hope to win both seats and if you lose—too bad. Well, I think the natural tendency of political fighting is that you must retain the illusion that you are going to win, otherwise the party deteriorates.

The second thing is perhaps more serious, that the minority party would put up its better man, I would hope, for the chairman, and then if he loses in that part of the

fight you are stuck with the secondary man automatically, and that again is a penalty to the party, so I would think that this amendment should be defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. I move the question, Mr. President.

DELEGATE HOCKER. Mr. President.

PRESIDENT BRODERICK. Delegate Hocker.

DELEGATE HOCKER. I have gone over this amendment and I think it is in the wrong convention. I think it ought to go to the Democratic National Convention in Chicago.

PRESIDENT BRODERICK. Are we ready for the question on this?

The question recurs,

Will the Convention agree to the amendment offered by Delegate O'Donnell?

The roll was recorded as follows:

YEAS—26

Bunting	Gerber	Pott	Shrager
Burkholder	Gouger	Powell	Silverman
Clinger	Hostetler	Rea	Solomon
Conley	Kelly	Richter	Sprogell
Fay	Laputka	Scranton	Stout
Filson	Michael	Shapiro	Swope
Fineman	O'Donnell		

NAYS—103

Aberman	Curran	Kauffman	Percey
Aurentz	Dailey	Keller, J.	Popil
Bagenstose	Desmond	Kline	Rappaport
Baldus	Devlin	Krill	Reynolds
Baldwin	Dumbauld	Leach	Ruth
Banes	Erwin	Lee, L.	Sabli
Barron	Fawcett	Lehnbach	Scales
Barry	Fleming	Levin	Scarlett
Benedict	Fohl	Manderino	Sebastian
Benfield	Forster	Mangery	Sharp
Bloom	Fortney	Mattioni	Shettig
Braham	Gabreski	McGeary	Shively
Brennan	Gehrlein	McGlynn	Shoemaker
Broderick	Goldman	Meyer	Strickler
Brown	Goldstein	Michener	Tate
Buck	Griffith	Miller, D.	Thomson
Cain	Hannum	Miller, R.	Thornburgh
Camardella	Harding	Moorhead	Tully
Caputo	Hatter	More	Warman
Casey	Henderson	Morton	Welsh
Clark	Heyburn	Murray	Westerberg
Corey	Himes	Nelson	Whittum
Cortese	Hocker	Orban	Wilcox
Cosetti	Hook	Orbin	Wilmarth
Croop	Huggins	Otto	Woodring
Cunningham	Johnson	Pasquerilla	

NOT VOTING—34

Allison	Feather	Leonard	Roberts
Amsterdam	Gray	Markley	Rovner
Baldrige	Horne	Musselman	Scott
Bashoff	Irvis	Pechan	Stroup
Butera	Jirolanio	Pelletier	Tomascik
Caron	Keller, M.	Prendergast	Van Sant
Donaldson	King	Quiles	Waldron
Donolow	Lane	Redick	Woodside
Fagan	Lee, K.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

DELEGATE PASQUERILLA. I am sorry we called on Delegate Scranton. We lost two votes.

PRESIDENT BRODERICK. You are going to find out sometime what he means by ingenious.

DELEGATE SCRANTON. Mr. President, it is just really tragic that the delegates as a whole would be influenced by a man of Senator Kline's influence who does not seem to understand the question.

UNIT 2, PROPOSAL No. 6

PRESIDENT BRODERICK. I am happy to report that we have finished the amendments on part one. Pursuant to our agreement with the committee we are now ready to take up part two. We have allotted not more than one hour for the explanation and questions in connection with part two, and part two includes Sections 5, 6, 7 and 8 of Proposal No. 6, so I now turn it over to the chairman, Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, we would ask the following people to come forward to take their seats with us: The Co-Chairman of the Consolidation Committee, Delegate Cunningham and Delegate Westerberg; the Structure and Organization Co-Chairmen are to remain; and Delegate Shoemaker.

PRESIDENT BRODERICK. While the delegates are coming forward the Chair would remind the delegates that now is the time to get your amendments up to the amendment table where our assistant parliamentarian and solicitor is, Tom Balaban, and also where you will be assisted by Vice Presidents Casey and Orban, to get the amendments organized so that we can take them in some order.

DELEGATE PASQUERILLA. Is Delegate Banes here?

Mr. President, I would request that you recognize the co-chairman of the committee who promised me he would not take an hour to explain briefly sections 5, 6, 7 and 8, Co-Chairman Manderino.

PRESIDENT BRODERICK. The Chair is happy to recognize Co-Chairman Manderino.

DELEGATE MANDERINO. Thank you, Mr. President.

Members of the Convention. We are on Unit 2 of the proposal, what we are calling Unit 2, Sections 5, 6, 7 and 8.

Section 5 is entitled Intergovernmental Cooperation. Essentially, it provides that municipalities have the right to cooperate or agree or to delegate or transfer functions, powers and responsibilities to other units, which is comprehensive, taking in state units, federal units, local units and any newly created units. We currently have legislation which permits certain cooperation and agreement, but this goes further and guarantees additional cooperation and agreement and, more importantly, the delegation and transfer of functions.

Again, it is a look-see into the future where certain problems are going to have to be handled on a greater area basis than they are currently being handled, but it does provide that the municipalities determine whether they wish to do this.

Section 6 is entitled Area Government. Section 6 does not provide anything which the General Assembly does not now have the power to do, but, again, in keeping with the philosophy of the article, it was intended to spell out that the functions, powers and responsibilities in certain cases within the discretion of the General Assembly be provided for in areas rather than in local municipalities.

Section 7 is called Area-wide Powers, and is the section

which grants the General Assembly authority to give power in a given geographical area. If intergovernmental cooperation or area government takes place, various things might come under that. The example that was used in committee, for instance, was the taxation power. The General Assembly may have a limit on the millage which municipalities could impose and might give municipalities in a certain area additional powers for an additional mill, for instance, if it were needed or necessary to enter into a intergovernmental cooperation or an area government arrangement to do or perform a particular function in that area.

Section 8 has four essential sections to it. Under Consolidation, Merger or Boundary Change, we have had various questions about the meaning of this. I shall take them one section at a time here.

The first one, that the General Assembly shall provide, within two years, uniform legislation establishing a procedure for consolidation, merger or change of boundaries in municipalities; was intended to actually eliminate the hodgepodge of legislation which governs these matters in various municipalities. Under this first paragraph, we shall address ourselves directly to the question of what is called piecemeal annexation. Section 8 does not prevent piecemeal annexation as it now exists, but it does say that if the General Assembly is going to permit it to exist, it must permit it to exist on a uniform basis throughout all municipalities in order that the same reasons that might necessitate piecemeal annexation from, for instance, a second class township as today might necessitate it in a given condition from a borough or first class township or a city—highly unlikely, but still possible—and that the municipalities should be treated uniformly since we have all sorts of municipalities and all the classifications which range from very low population figures to very high population figures.

The second paragraph called Initiative would give the right to municipal governments if they wish to consolidate, merge or change boundaries, that if a majority of those in each municipality vote and desire to consolidate, merge or change boundaries, they could not be prevented from doing so. They do not need anyone's approval and specifically the approval of the governing body, because at times the interests of the governing body do not coincide with the interests of the people where the people may be prepared to accept and desire a merger, consolidation or boundary change and the elected officials, because of the offices they hold, do not wish to encourage or approve a consolidation, merger or boundary change.

The second paragraph gives the local municipalities, by voting on the ballot in the affirmative, the right, if they wish to do so, to do these things.

The third paragraph entitled Study talks about the agency of the Commonwealth that is set up. This was done in an attempt to meet various problems that it is felt exist in the Commonwealth. For instance, there are various occasions in the Commonwealth where several municipalities talk and talk for months and years about consolidation and merger, but nothing is ever done about it even though nobody seems to oppose it. Probably one of the reasons is that, if we look to private enterprise, when two companies are planning to merge, the boards of directors do the talking but there is much money spent on studying the problem. The attorneys and the accountants and the solicitors get together and study exactly what would happen here if we did consolidate or merge.

Many small communities today that think about doing this, except for hiring a private firm, cannot get the available statistics and data as to exactly how it would affect each municipality, their taxes, perhaps, their obligations, their bonded indebtedness and that kind of thing.

This was an intent to say to the state government, local municipalities should be given assistance in this area and, therefore, an agency should be set up to have the responsibility to study these problems and to advise local municipalities on these problems, so that the local municipalities could come to the state agency and request information, studies and results. The last part of that paragraph states, "an initiating local referendum." It perhaps should be plural "referenda," and I would like to address myself to that for a moment.

The intent there was that if the agency of the State were going to spend money in order to study a particular consolidation, merger or boundary change and advise municipalities that it might be a waste of money if these studies ended up in desk drawers of elected officials. We should not be afraid of allowing people to vote on them and that the state agency would therefore have the power, not under this section to initiate consolidation, but to initiate placing it on the ballot for the people to vote. I think it is felt that this provision would not be used very often and perhaps hardly at all. However, it is a tool that puts teeth into that pragaraph so that if the state agency were to complete a study and mail it back to local officials, it would not end up in the desk drawer. If it did, the state agency could always encourage placing it on the ballot if it was important to the interests of the people. If the local officials refused, then the state agency could put it on the ballot only. They could not initiate the merger or the consolidation, but they could put it on the ballot and it would be fought out at the polls as to the merits of the consolidation, merger or boundary change.

After those three had been decided upon, there was fear by some members of the committee that some of these provisions might take away the currently existing power of the General Assembly to provide various other methods by which consolidations, mergers and boundary changes would be accomplished. Therefore, paragraph 4 was put in, entitled "Legislative Power." Paragraph 4 is intended to preserve the exact authority that the General Assembly has today in these areas of consolidation, merger and boundary changes without any intent to limit the power that now exists or to enlarge it, leave it exactly as it is, even though we have provided for study help in paragraph 3, for the people to do it if they wish in paragraph 2, and for uniformity in legislation concerning these matters in paragraph 1.

That briefly comprises an explanation of those sections and I am sure we will have questions requesting further explanations.

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera.

DELEGATE BUTERA. Mr. President, I have several questions I would like to direct to the gentleman by way of explanation. I think I know the answers to them, but I would like them to be a matter of record.

In Section 6, Area Government, would the gentleman please advise the body whether this section gives any greater or lesser powers to the legislature than it presently has.

DELEGATE MANDERINO. I would say the answer to that is, no, it does not give the General Assembly any greater power than it now has. Currently there is no prohibition in the Constitution against the General Assembly exercising power itemized in Section 6. Therefore, Section 6 spells out the philosophy and the intent of the future, but does not grant any additional powers that the General Assembly does not now possess.

DELEGATE BUTERA. Now still on Section 6, I believe later in your proposal you define municipalities as including both what we consider local government and also county government.

DELEGATE MANDERINO. Yes.

DELEGATE BUTERA. Does your answer apply to both local governmental units and county governmental units?

DELEGATE MANDERINO. Yes, it does. The power is not enlarged as to either. We believe it is the identical power that the General Assembly now has.

DELEGATE BUTERA. I believe the reason for that is that the present Constitution is silent on this particular matter.

DELEGATE MANDERINO. That is correct.

DELEGATE BUTERA. In Section 7, the intergovernmental cooperation in areawide powers, is it also true that the legislature presently has the power to do what is proposed under Section 7?

DELEGATE MANDERINO. I would say, basically, yes, with one exception however. In Section 7 it does say the General Assembly may grant powers within a given geographical area. In other words the General Assembly under Section 7 could say that in a certain area, for instance, the townships and boroughs in that area, if they enter into an intergovernmental cooperation or an area government, could have additional taxing power or additional debt limit power in order to allow the intergovernmental cooperation or the area government to function properly.

I think the General Assembly could do that today by proper classification because the Constitution does say they can classify municipalities and they could arrive at classifications to do that. I think they could do that under their legislative power; however, perhaps not under their present classification.

DELEGATE BUTERA. In Section 8 on boundary changes, with the exception of your approach as to uniformity of laws affecting all municipalities, is there anything in Section 8 which is new, that is to say, that the legislature does not have the power to so act on today?

DELEGATE MANDERINO. No, I do not believe there is, excepting, as you say, the uniform legislation in the first paragraph. I think the power that the General Assembly is given in that section are all powers that the General Assembly now possesses.

DELEGATE BUTERA. In the second paragraph entitled "Initiative," you provide for a majority vote of those voting in each municipality before a boundary can be changed or a government merged. I then notice in paragraph 4, under "Legislative Power," you provide that nothing herein shall prohibit the legislature from doing anything else with regard to changing boundaries, merger, and so on.

Are these two sections consistent or is one of them redundant?

DELEGATE MANDERINO. No, we do not think so. We think that the section entitled "Initiative," in effect, says that the municipalities have a right to do something if they wish. Legislative power is saying that the current authority of the General Assembly as it exists today is preserved.

DELEGATE BUTERA. Mr. President, I think probably this particular section of the Local Government Proposal is as broad as any that we have seen in any of the proposals as yet, in that it gives all power to the legislature in dealing with local government. Is that correct?

DELEGATE MANDERINO. Section 8?

DELEGATE BUTERA. Sections 5, 6, 7, and 8.

DELEGATE MANDERINO. Sections 5, 6, 7, and 8—putting them together in answer to your question—do not give the General Assembly any power which it does not currently have. Those sections do give to local municipalities certain powers which they now do not have, but it does not destroy the overall supremacy of the General Assembly, which the General Assembly now has. The two places where we are giving the municipalities rights if they wish, in Section 8, to consolidate, merge or change boundaries, they can do so without being prevented if they so wish, by majority vote; in intergovernmental cooperation and delegation and transfer of function, they can do that now. Some of that they can now do; some of it they could not do without enabling legislation.

DELEGATE BUTERA. Further, did the committee consider in those areas where the status quo is retained, that is, other than those areas in which you give local government additional powers, merging these four sections into, perhaps, one sentence, giving the General Assembly the power and just enumerating the powers which it has given to the General Assembly in these four areas?

DELEGATE MANDERINO. In Sections 5, 6, 7 and 8?

DELEGATE BUTERA. Yes. Let me rephrase my question.

It seems to me that you have given the General Assembly the power to regulate, with certain exceptions, local and county government. I was wondering whether the committee, in drafting this proposal, considered just making a general statement to that effect rather than spelling out each of these concepts in greater detail as you have done.

DELEGATE MANDERINO. I would say it was considered and rejected. It was felt that each of the areas was of sufficient importance to separate them in the article.

DELEGATE BUTERA. I thank the gentleman.

I would just like to make one statement. Mr. President, these four sections, I think, are good. I think the committee has done its job in permitting the General Assembly to be the controlling body as to our local government in this Commonwealth, with one or two exceptions. I am fearful because of the breaking down of the four sections that perhaps we are waving a red flag in front of those who traditionally have opposed changes in our local government structure by the use of certain words and the use of certain descriptions of government. I feel that it may be wise to at least consider today some amalgamation of these sections, so that we do not make it appear to be

the intention of this Convention that we are attempting to eliminate our present system of local government without the people having something to say about it, either through their representatives or through a referendum.

I intend to support these sections, but I would like to pose this question, perhaps to the Committee on Style and Drafting, because in an area such as that from which I come, when the words "area government" are mentioned, without about a two-hour explanation, there are many people who are afraid that they are going to lose their rights that they have come to enjoy and have come to use very well. In light of that and in light of saving this section, I think we should consider the practicalities, perhaps, of some of the language and also some of the way in which it is set forth. Perhaps this is just language and perhaps the Committee on Styling and Drafting has this power. I am not certain and I do not think anybody is, but I just would like to present my thoughts to the Convention.

I thank you, gentlemen.

DELEGATE MANDERINO. Delegate Butera, may I say one other thing which, I think, addresses itself to the question and the problem or the concern?

In Section 1, as we mentioned yesterday, the opening sentence of the article, "The General Assembly shall provide by general law for local government within the Commonwealth," is intended that in all areas of local government, unless specifically stated, there is a right by initiative and referendum by the vote of the people, that the General Assembly remains the supreme controlling provision for local government within the Commonwealth. We think that is as that existing situation is today. The only thing the General Assembly would not be able to overrule, it would appear in the entire article, is where we provide that if something goes on the ballot by initiative and referendum and the people vote for it, then they would have the right to have that.

DELEGATE BUTERA. Yes, I understand that, Mr. President, and I think that perhaps—and I may be wrong on this—that an initial sentence in Section 1 would be sufficient and then, perhaps, two or three more sentences, giving the local municipalities the opportunity to express themselves in some other way would be sufficient and that this excess verbiage possibly is not necessary and may only, as a practical matter, defeat our initial intention in Section 1 in the first sentence.

PRESIDENT BRODERICK. The Chair recognizes Delegate Whittum.

DELEGATE WHITTUM. Thank you, Mr. President.

Delegate Manderino, will you explain to me, please, under Section 5, "Intergovernmental Cooperation," should a municipality decide to delegate or transfer one or more of its functions to another municipality under what procedure would it be able to regain these powers, if, at a later time, it decided to revoke the contract?

DELEGATE MANDERINO. I think, first of all, it would depend upon what was contained in the original delegation or transfer of the function; on what the local municipality had agreed to in the first instance.

In other words, if the local municipality had agreed, in the first instance, that it be an irrevocable delegation, then I think it would be an irrevocable delegation because two communities would have an interest in the matter.

For instance, if two communities were to agree to delegate their power over garbage collection to a board or a commission in the area, both communities have an interest. When they first negotiate how to do this, if they agree to delegate that power to a board in the area, for instance, similar with what we do with a regional authority today, then it would not be workable for one community, in any event, to pull back without the permission of of the other community because it could affect the other community's right.

However, if, in the first place, they provided that reservation to pull back, the local community itself, then it appears they would have that right to pull back because they provided for it in the first instance.

I might also call attention in that regard that this states that the local municipalities can do these things with their functions, powers and responsibilities that they have. They only have the functions, powers and responsibilities which the General Assembly gave to them. If the General Assembly were to take certain powers and responsibilities away from the jurisdiction of local government, the General Assembly would remain supreme as to those powers, functions and responsibilities that it took out of the jurisdiction of local government, if it took it into the state level, for instance.

DELEGATE WHITTUM. Am I correct, then, in paraphrasing your remarks, that the municipality should, if there is any possibility of attempting to regain these powers, provide so in the contract which initially delegates those powers.

DELEGATE MANDERINO. I believe so, yes.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I would present a trifling suggestion as to style; nevertheless, it might point to some of the matters referred to by Delegate Butera.

In Section 6 we provide: "The General Assembly shall provide for the establishment and dissolution of government of areas." That sounds like red ruin and the breakup of laws when you talk about commanding the government to dissolve the government of areas. I think it had better be looked at by the people in Style and Drafting.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. To me, when I look at Sections 5, 6, and 7, I see a similarity in all these which, as Delegate Butera pointed out, could possibly be capsulized into one section. Could you please quickly capsulize the differences between 5, 6, and 7?

DELEGATE MANDERINO. Yes. Briefly, what is done under Section 5 is done by the local municipalities themselves. What is done under Section 6 is done by the General Assembly, and what is done by Section 7 is done by the General Assembly, but it makes it clear that the General Assembly can give special additional powers in a given area where there exists either 5 or 6.

Now, the General Assembly could do that now, but there might be some question whether it would be considered special legislation for a given area. It could do it by changing classifications of municipalities, however.

DELEGATE POWELL. One further question in regard to all three of these sections, actually, or 6 and 7, any-

way: I come from a township which is presently participating in a regional cooperative type of government. One of the requirements we found recently, to close our ditches and to apply for federal funds, was to have the six municipalities which are involved in this project, this regional cooperation, vote to okay this, inasmuch as they had ditches coming up also, although we are the only ones applying.

Is there any danger or has it been discussed in committee that in these three sections—I am more concerned with Sections 6 and 7—the Federal Government might require this before Federal funds may come back to the local municipalities? The point I just cited is that there is such a requirement now under regional cooperation. I would like it clarified.

DELEGATE MANDERINO. Right. We think it would depend upon the program. We do not think that we are providing anything here that gives, curtails or increases the General Assembly's authority now. If the General Assembly ever wanted to take action in the State to permit the receipt of Federal funds, it may or may not. I do not think it would affect any existing powers or agreements or regional setups that have been entered into or will be entered into. It does not take anything away from that.

DELEGATE POWELL. No, that was not my question. I would assume that. My question is, what will become of qualifications for various municipal governments which participate in this type of area government to apply for federal funds? Was that discussed? You probably do not have the answer offhand, but was it discussed?

DELEGATE MANDERINO. Yes, that was discussed, but we cannot very well answer what the Federal Government will require. We do know that in certain programs the Federal Government now requires that a certain area or regional approach has to be taken before you are eligible for funds, but the Federal Government sets its standards by looking at the whole country and we cannot very well say that the Federal Government would or would not make certain things prerequisites to the receipt of Federal funds. It already has done so in certain areas. I think that is the direction the Federal Government has been moving for some time, yes.

DELEGATE POWELL. Thank you.

PRESIDENT BRODERICK. Are there any further questions? If not, I suppose we are ready to take up the amendments.

This amendment we have here is an amendment offered by Delegate Goldman. I am going to ask the clerk to read the amendment and the pages to distribute the amendment.

GOLDMAN AMENDMENT TO PROPOSAL No. 6

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE GOLDMAN offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 5), page 3, line 3, by removing the period after "unit" and inserting: Provided, however, That in the case of a newly created governmental unit, the governing body of such newly created governmental unit shall be elected by the people in the area affected.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, while the amendment is being passed out, may I address the delegates on this?

PRESIDENT BRODERICK. I want to remind Delegate Goldman and the others who speak on these amendments that under the procedure we can only speak twice. The proposer can open and close and these are considered his two times.

DELEGATE GOLDMAN. I would like to have the delegates turn to the proposal as it was originally submitted, Committee Proposal No. 6, Section 5, on the bottom of page 2, and follow along with me if they can. This jumps around in words.

We start out with "Intergovernmental Cooperation." It states: "A municipality, by act of its governing body;" that is the point in there that I am trying to make by this amendment; then it goes on to say that a municipality, "by initiative and referendum." But the important part here is that by act of its municipal body it shall have the right to "transfer any function, power or responsibility and delegate or transfer any function, power or responsibility to one or more governmental units including other municipalities, the Federal Government," and then at the end "or any newly created governmental unit."

The point that I am trying to make is this: A municipality, one or more, can agree with each other, without having gotten a vote of the people, to transfer rights, functions and powers to a newly created governmental unit. The transfer of power carries with it the right of taxation and it is doing this by an agreement between several communities. By reason of this agreement, the people who will be affected by the creation of this new governmental unit will have no control over those persons who will administer and handle the operations and functions of this new unit, which also has with it the right of taxation. So we have a new unit, created by agreement, not able to be elected by the people, having the right of taxation over the people whom it serves, and no control by these people, or no right of control by these people over the officials governing that newly created unit.

This is a problem which I think bears serious consideration. It is the purpose of the amendment. The amendment provides for adding these words at the end of Section 5: "Provided, however, That in the case of a newly created governmental unit, the governing body of such newly created governmental unit shall be elected by the people in the area affected."

I am simply asking that if you are going to create a new governmental unit and if it is going to be created by agreement of two communities or if it is going to be created by initiative of the people, let the people still have the right of electing the officials of this new governing body which has the right of taxation over its people. Do not take away the right of taxation representation from the people.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. On behalf of the committee, we should like to oppose this amendment. We think it is entirely too restrictive and can really stop the progress that has already been made.

I would like to point out, first of all, that what has been described by the proposer of the amendment actually goes on today in some respect when you create a regional authority. It is done without election of the people, with great powers in the authority to borrow millions of dollars and to impose revenue costs and revenue assessments in the case of sewage or water upon users. These are not popularly elected. However, the authority system you now have must follow what the General Assembly has set up.

Actually, this gives an alternative under this Section 5 by the delegation in transfer of functions to a new governmental unit to give local government an option if it does not wish to follow the authority system as set up. For instance, as an example, in a regional matter, they might set up a regional board. New governmental unit does not mean municipality. Governmental unit could mean, for instance, two communities setting up a board where they might now set up an authority. Setting up a board for any function—it might be garbage collection. We think it would be too restrictive to require that the five representatives on the regional garbage board be popularly elected or the five representatives on a regional air pollution board be popularly elected.

We have found that under the authority system that although it has its evils, it also has various benefits. This preserves many of those benefits, but allows the local community to set up some of its own standards when it sets up a regional board, rather than necessarily following what is already outlined in the authority's act. We think that in some cases, if a local municipality were to delegate a lot of functions to a new commissioner board, it might want to provide that they be popularly elected and it could be so under this, but we seriously doubt whether public officials would transfer, except for isolated specific functions to a new governmental unit. In that situation we feel that popular elections would not be workable and we leave to the local governing body how to set up their appointment and selection.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Silverman.

DELEGATE SILVERMAN. I wanted to ask Delegate Goldman if, under the provision as it stands now, any two governments which wanted to could not provide for such a popular election?

DELEGATE GOLDMAN. Could they provide for a popular election?

DELEGATE SILVERMAN. Yes, after there is a merger or when some new governmental unit is created. If they want to have the governing body of this new unit elected, can they not provide for it now?

DELEGATE GOLDMAN. Without this constitutional provision, no.

DELEGATE SILVERMAN. Under the proposal they cannot provide for it?

DELEGATE GOLDMAN. Under the proposal I suppose they could, but there is nothing in here mandating that they should.

DELEGATE SILVERMAN. They can but they do not have to?

DELEGATE GOLDMAN. I would imagine that by their agreement they could so provide for it.

DELEGATE SILVERMAN. But the proposal does not deny them that right?

DELEGATE GOLDMAN. No. It does not give it to them, either.

DELEGATE SILVERMAN. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I would like to speak against the amendment, if I may.

In Section 5 we set up a very flexible arrangement, but in every case it is either the governing body of the municipality which is popularly elected or there is initiative and referendum, which is again by the people, that sets up this agency.

It very well may be more convenient to have each municipality send one or two delegates there. It may not be a necessity for a continuing governing board. It may not be worth the time and the taxpayers' money to put this on the ballot. This is up to the local governing bodies that are elected by the people, or it is by initiative and referendum. It may be a sanitary district. You may want experts on this.

Therefore, I would ask the Convention to support the committee and continue the flexibility which is necessary. We are writing a Constitution, not legislation.

PRESIDENT BRODERICK. Are we ready to vote on this?

DELEGATE GOLDMAN. May I make one final comment on this?

PRESIDENT BRODERICK. Yes, Delegate Goldman.

DELEGATE GOLDMAN. I do not deny anything that Delegate Rappaport has said. It is possible under the initiative section, initiative and referendum, that the issue could be put to the people along with the initiative as to whether or not to set up this type of newly organized government, or provide within that same act, within the same voting act, that the officials will be elected. All I am suggesting is that it should be in there, and that in any agreement between the communities it should provide for the election of the officials who are going to, thereafter, levy and impose taxes upon those people whom it has power over.

I am merely suggesting that we prevent an evil by giving the people the right to elect those officials who are going to impose taxes on them. This has been a major objection of authorities and, I think, unless we put this amendment in, we are going to be getting back to that same objectionable feature.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Goldman?

The roll was recorded as follows:

YEAS—6

Forster	Gouger	Otto	Pott
Goldman	Meyer		

NAYS—106

Aberman	Curran	Kline	Reynolds
Aurentz	Dailey	Krill	Richter
Bagenstose	Desmond	Laputka	Sahli
Baldrige	Devlin	Leinbach	Scales

Baldwin	Dumbauld	Levin	Scarlett
Banes	Erwin	Manderino	Shapiro
Barry	Fawcett	Mangery	Sharp
Bashoff	Fay	Markley	Shively
Benedict	Feather	Mattioni	Shoemaker
Benfield	Filson	McGeary	Shrager
Bloom	Fineman	McGlynn	Silverman
Braham	Fortney	Michael	Solomon
Brennan	Gabreski	Michener	Sprogell
Broderick	Gehrlein	Miller, D.	Swope
Bunting	Goldstein	Miller, R.	Tale
Burkholder	Griffith	Moorhead	Thornburgh
Butera	Harding	Morton	Tomascik
Cain	Hatter	Nelson	Tully
Caputo	Henderson	O'Donnell	Waldron
Casey	Heyburn	Orban	Warman
Clark	Hook	Orbin	Welsh
Clinger	Huggins	Pasquerilla	Westerberg
Conley	Irvis	Pelletier	Whittum
Corey	Johnson	Powell	Wilcox
Cosetti	Kauffman	Rappaport	Woodring
Croop	Keller, J.	Redick	Woodside
Cunningham	Kelly		

NOT VOTING—51

Allison	Fohl	Lee, K.	Rovner
Amsterdam	Gerber	Lee, L.	Ruth
Baldus	Gray	Leonard	Scott
Barron	Hannum	More	Scranton
Brown	Himes	Murray	Sebastian
Buck	Hocker	Musselman	Shettig
Camardella	Horne	Pecham	Stout
Caron	Hosteller	Percey	Strickler
Cortese	Jirolamio	Popil	Stroup
Donaldson	Keller, M.	Prendergast	Thomson
Donolow	King	Quiles	Van Sant
Fagan	Lane	Rea	Wilmarth
Fleming	Leach	Roberts	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

MORTON AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. We will now take up the amendment offered by Delegate Morton. The pages will distribute it.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE MORTON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 5), page 3, line 3, by removing the period after "unit" and inserting: subject to such restrictions, limitations and regulations if any as hereinafter may be prescribed by the General Assembly.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Morton.

DELEGATE MORTON. Mr. President, my amendment is designed to insure one thing, that on intergovernmental cooperation the legislature can, if it so desires, remain supreme.

I was interested in Delegate Butera's remarks and interrogation of Delegate Manderino when he asked him about the first section which says, "The General Assembly shall provide by general law for local government within the Commonwealth." The answer was that this controlled in the legislature everything except what we had by initiative and local referendum.

In Section 5 we provide by initiative and local referendum where they can make transfers in delegation of functions. I think we should all be aware of the fact that under the Intercooperation Joint Municipal Activities Act, right now, municipalities can cooperate with each other, but they cannot delegate their powers and functions. This provision goes further and provides for a delegation of powers and functions by the governing body or by initiative and referendum.

I am not opposed to that, but here are my worries. Suppose the good city of Sharon, and I do not think it ever would, would delegate to Youngstown, Ohio, irrevocably, municipal garbage collection and, thereafter, they would want to create a county-wide garbage collection and maybe the legislature no longer has any right to say to Sharon, come on back in and stay with the county. Or suppose that the city of Pittsburgh would delegate to the Federal Government its entire police power.

I only want to insure that the legislature still remains supreme if it wants to step in and reorganize the police power or maintain a county. The whole thrust of this amendment is that in every other section, and if you will look at them, in Section 2, in Section 1, we talk of the General Assembly; in Section 4, we speak of the General Assembly; in Sections 6, 7 and 8, we refer to the General Assembly; but in Section 5 we are silent. To me, the mere fact that we are silent in Section 5 could lead to a very strong argument that if a municipality delegates a function, no longer is the legislature supreme and, therefore, the legislature cannot act in the future.

If you will notice, I have couched my language to be anything as hereinafter adopted by the legislature only to protect the possibility that the legislature will always be supreme as to local government matters.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. The committee is opposed to this amendment, although in spirit in the committee discussions, the objections which Delegate Morton raises are not in spirit objectionable. However, there was great concern on putting anything in here which would indicate that no community could move until enabling legislation had been passed by the General Assembly. There has been enabling legislation by the General Assembly on this first portion, "Cooperation and Agreement," but the General Assembly has not permitted the transfer or delegation of powers, functions, and responsibilities. It was the committee's feeling that this was most important as the right of local communities. We are stating this so that it will be a matter of Convention record, although we do not think there is any concern because of the way it is written.

We should like to say this: You can only give away that which you have and local governments do not have a sovereign right over their functions and powers. They only have a limited right to exercise a power as long as the General Assembly says it is theirs. So that if a city were to delegate its power to another unit, it can only give away what it has, and it does not have an irrevocable power. It is our feeling that it is implicit, therefore, that the General Assembly would remain supreme in taking any power away that it has given to a local government.

It would prevent the General Assembly, however, from canceling an agreement or a delegation that local government units entered into if the local government was still

responsible for that power or function. If they want to take it away from local government, altogether, they can do so because they never granted them absolute power in the first place. Under today's Constitution, or this Constitution, the General Assembly could take away from local governments the right to collect garbage, the right to clean streets and remove snow—which we would all be happy if they did and paid for it. They could remove any power, function, or responsibility from a local community because they are not sovereign entities.

Therefore, we think the amendment is not a necessary amendment because implicit in the grant of power is the General Assembly's right to remove what they gave at any time from local government.

Further than that, to put the language in could then be interpreted that no community could move unless the General Assembly acted, and we do not wish that interpretation. We specifically want to guarantee to the local communities that if they are given the power and responsibility and function, that they can then use it in a cooperative agreement or in a delegation agreement, revocable on their terms or irrevocable on their terms, but it would never be irrevocable because they were never given that full power by the General Assembly.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, just one comment to Delegate Manderino's statement. Under the home-rule charter that we are giving now to local communities, the communities do have irrevocable power unless specifically taken away by the legislature.

DELEGATE MANDERINO. That is correct.

DELEGATE GOLDMAN. Unless the legislature has moved in, and what we are asking then is for the legislature to move in and specifically state in detail everything that a local community can or cannot do so that if the legislature has not spoken, the local community can irrevocably give away a particular power. I support the amendment as a restriction on that give-away of power.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Just a summary. This in no way affects the rights granted in the preceding sections because they could act. If the legislature never acts, that is fine with me, but I want to make sure that, contrary to what Delegate Manderino says, if they delegate their power and give it away, they no longer have that power and that the legislature is still supreme in this field. This is the only section where nowhere do we refer to the General Assembly.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Morton?

The roll was recorded as follows:

YEAS—29

Baldrige	Filson	Meyer	Richter
Baldwin	Fohl	Michael	Shapiro
Benedict	Forster	Moorhead	Sharp
Benfield	Goldman	Morton	Silverman
Brennan	Griffith	Pott	Waldron
Corey	Keller, J.	Powell	Whittum
Curran	Leinbach	Rea	Wilcox
Dumbauld			

NAYS—94

Aberman	Devlin	Kline	Reynolds
Aurentz	Erwin	Krill	Ruth
Baldus	Fawcett	Laputka	Sahli
Banes	Fay	Leach	Scales
Barry	Feather	Leonard	Scarlett
Bashoff	Fineman	Levin	Scranton
Bloom	Fortney	Manderino	Sebastian
Braham	Gabreski	Mangery	Shettig
Broderick	Gehrlein	Markley	Shively
Brown	Goldstein	Mattioni	Shoemaker
Buck	Gouger	McGeary	Shrager
Bunting	Hannum	McGlynn	Solomon
Burkholder	Harding	Michener	Sprogell
Butera	Hatter	Miller, D.	Swope
Cain	Henderson	Miller, R.	Tate
Caputo	Heyburn	Nelson	Thornburgh
Casey	Hook	Orban	Tomascik
Clark	Hocker	Orbin	Tully
Clinger	Huggins	Otto	Warman
Conley	Irvis	Pasquerilla	Welsh
Cortese	Jirolanio	Popil	Westerberg
Cunningham	Johnson	Rappaport	Woodring
Dailey	Kauffman	Redick	Woodside
Desmond	Kelly		

NOT VOTING—40

Allison	Fagan	Lee, K.	Quiles
Amsterdam	Fleming	Lee, L.	Roberts
Bagenstose	Gerber	More	Rovner
Barron	Gray	Murray	Scott
Camardella	Himes	Musselman	Stout
Caron	Horne	O'Donnell	Strickler
Cosetti	Hostetler	Pechan	Stroup
Croop	Keller, M.	Pelletier	Thomson
Donaldson	King	Percey	Van Sant
Donolow	Lane	Prendergast	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

MORTON AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. Now we have another amendment offered by Delegate Morton.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE MORTON offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 6), page 3, line 5, by striking out "establishment and dissolution of"

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Mr. President, as I understand it right now, the general law is that the General Assembly can create area governments. The sole import of this amendment is to delete the words "establishment" and "dissolution" because I feel they may be a restriction. As Delegate Bloom pointed out, the minute you put something in the Constitution and it talks about dissolution, it just strikes me to be a real red herring.

There was a question raised by Delegate Tate in one of the meetings as to whether you said establishment and dissolution may mean that they could not provide the manner of operation.

I think the deletion of these two words only reenforces a salable product and still gives the General Assembly complete power in creating area governments, which they now have.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Mr. President, the committee's comment is that it does oppose the amendment, although in substance we do not feel it changes what Section 6 says. However, the committee adopted this language, and it does provide for the establishment and dissolution, so it implies that the government of areas may exist in certain functions and responsibilities and 10 years later may not be needed and may be taken out.

For instance, we might have a government of an area in a specific function for the next 20 years. If a county in a certain area were to get home rule, the county might take over that function and it could be dissolved.

I think it is implicit in Delegate Morton's amendment, that it is a change, but we feel it would be better to read as it now reads in Section 6.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Morton?

The roll was recorded as follows:

YEAS—32

Baldrige	Clinger	Forster	Pott
Baldwin	Conley	Goldman	Powell
Bashoff	Corey	Griffith	Rea
Benfield	Cosetti	Laputka	Sharp
Braham	Curran	Leinbach	Thornburgh
Brennan	Dumbauld	Meyer	Waldron
Burkholder	Fleming	Michael	Whittum
Butera	Fohl	Morton	Wilcox

NAYS—90

Aberman	Fineman	Leonard	Ruth
Aurentz	Fortney	Levin	Sahli
Baldus	Gabreski	Manderino	Scales
Banes	Gehrlein	Mangery	Scarlett
Barry	Goldstein	Markley	Scranton
Bloom	Gouger	Mattioni	Sebastian
Broderick	Hannum	McGeary	Shapiro
Brown	Harding	McGlynn	Shively
Buck	Hatter	Michener	Shoemaker
Bunting	Henderson	Miller, D.	Shrager
Cain	Heyburn	Miller, R.	Silverman
Caputo	Hocker	Moorhead	Solomon
Casey	Hook	Nelson	Sprogell
Clark	Huggins	Orban	Strickler
Croop	Irvis	Orbin	Swope
Dalley	Jirolanlo	Otto	Tate
Desmond	Johnson	Pasquerilla	Tomasclk
Devlin	Kauffman	Popil	Tully
Erwin	Keller, J.	Rappaport	Warman
Fawcett	Kelly	Redick	Welsh
Fay	Kline	Reynolds	Westerberg
Feather	Krill	Richter	Woodring
Filson	Leach		

NOT VOTING—41

Allison	Fagan	Lee, L.	Roberts
Amsterdam	Gerber	More	Rovner
Bagenstose	Gray	Murray	Scott
Barron	Himes	Musselman	Shettig
Benedict	Horne	O'Donnell	Stout
Camardella	Hostetler	Peehan	Stroup
Caron	Keller, M.	Pelletier	Thomson
Cortese	King	Percey	Van Sant
Cunningham	Lane	Prendergast	Wilmarth
Donaldson	Lee, K.	Quiles	Woodside
Denolow			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

WESTERBERG AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment is an amendment offered by Delegate Westerberg.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE WESTERBERG offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 8), page 3, lines 18 to 21, by striking out all of said lines and inserting: Study. The General Assembly shall designate an agency of the Commonwealth to study consolidation, merger and boundary changes, advise municipalities on all problems which might be connected therewith, and initiate local referendum.

On the question,

Will the Convention agree to the amendment?

DELEGATE WESTERBERG. Mr. President, this changes one word from "delegate" to "designate." Then to carry out the language, I had to change some verbiage. It does not change anything except that one word, and I ask that it be adopted.

It is really a correctional amendment and it is approved by the committee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Mr. President, I might say that the one word which Delegate Westerberg refers to, and I think we should mention it, the original language said "delegate," and this is changed to "designate," because there was some concern that perhaps "delegate" might imply the delegation of legislative power, and that was not intended. "Designate" clearly spells it out. The rest of the change was then to make the grammatical meaning correct.

The committee favors this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. I just want a one-sentence answer from the committee as to why they have this in here at all?

DELEGATE MANDERINO. This section, the entire section on Study?

DELEGATE SCRANTON. Yes.

DELEGATE MANDERINO. That question was asked a little earlier. The purpose is this: It was felt that there was sufficient concern that municipalities throughout the Commonwealth today need assistance, even in cases where there is much talk about consolidation and merger, but nobody is there to figure out the cost, the tax situation, how things will be affected, and we, in effect, want the State to do this. It was felt important enough because of the consolidation and merger problems that we should specifically mention the responsibility of the General Assembly to do this and advise the municipalities.

The last part was put in concerning initiate local referendum to put teeth into it so that a study would not be made and then end up in desk drawers; that it could be

placed on the ballot for a vote of the people if they so desired.

We might add one other thing. The General Assembly could do this on its own, without being in the Constitution, exactly what is here. It was felt, however, by the committee that this was one item which was not taken out, because it was felt that the problems of the next 50 to 100 years in the Commonwealth of Pennsylvania and elsewhere are exactly this problem of consolidation, merger and boundary changes to meet the future and that it was a responsibility which could be so significant that we should indicate it in the Constitution.

DELEGATE SCRANTON. In other words, you came to the conclusion that the General Assembly might not do this, and you wanted to make sure they did.

DELEGATE MANDERINO. Yes, because of its importance.

DELEGATE SCRANTON. It is a rather unusual thing to put in a Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I want everybody to know that that mystified looking gentleman is Delegate Scranton and not Delegate Kline, who apparently does not understand what is going on.

The delegate raises an interesting question, and I want everyone to understand that there is more to this than merely establishing an agency to do studying, because that agency would also have the power to move into a local area and initiate a local vote in order to achieve some of these things, if the local people did not take the initiative.

It seems to me that is a very gutty proposal and it has a lot of power to it. I favor it, but do not think it is just some glorified new agency, because it just is not that.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. There was another reason why this was placed in the recommendation for the Local Government Article.

We had some recommendations whereby some of the persons who appeared before the Preparatory Committee and also before the Local Government Committee wanted to mandate a boundary commission. The responsibility of that boundary commission would be to establish a time schedule as to when and how consolidation of communities should take place without a referendum.

The committee felt that this was wrong, that while the so-called boundary could study and do its job was correct, that nothing in this Constitution should, by implication, say that you must consolidate, you must merge, without the approval of the voters. This was the purpose of inserting this particular article in the Constitution.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—121

Aberman	Baldus	Dumbauld	Laputka
Bagenstose	Desmond	Kline	Richter
Baldrige	Devlin	Krill	Ruth
Sahli	Erwin	Leach	Scales
Baldwin	Fawcett	Leinbach	Scarlett
Banes	Fay	Manderino	Scranton
Barry	Feather	Mangery	Sebastian
Bashoff	Filson	Markley	Shapiro
Benedict	Fineman	Mattioni	Sharp
Benfield	Forster	McGeary	Shettig
Bloom	Fortney	McGlynn	Shively
Braham	Gabreski	Meyer	Shoemaker
Brennan	Gehrlein	Michael	Shrager
Broderick	Gerber	Miller, D.	Silverman
Brown	Goldman	Miller, R.	Sprogell
Buck	Goldstein	Moorhead	Stout
Bunting	Gouger	Morton	Strickler
Burkholder	Griffith	Nelson	Swope
Butera	Hannum	Orban	Tate
Cain	Harding	Orbin	Thornburgh
Caputo	Hatter	Otto	Tomascik
Casey	Henderson	Pasquerilla	Tully
Clinger	Heyburn	Pelletier	Waldron
Conley	Hocker	Popil	Warman
Corey	Hook	Pott	Welsh
Cortese	Huggins	Powell	Westerberg
Cosetti	Irvis	Rappaport	Whittum
Croop	Kauffman	Rea	Wilcox
Cunningham	Keller, J.	Redick	Wilmarth
Curran	Kelly	Reynolds	Woodside
Dailey			

NAYS—5

Aurentz	O'Donnell	Solomon	Woodring
Johnson			

NOT VOTING—37

Allison	Fohl	Lee, K.	Percey
Amsterdam	Gray	Lee, L.	Prendergast
Barron	Himes	Leonard	Quiles
Camardella	Horne	Levin	Roberts
Caron	Hostetler	Michener	Rovner
Clark	Jirolanio	More	Scott
Donaldson	Keller, M.	Murray	Stroup
Donclow	King	Musselman	Thomson
Fagan	Lane	Pechan	Van Sant
Fleming			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

JOHNSON AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. Our next amendment is one offered by Delegate Johnson. I want to ask the clerk to read that amendment and I am going to have the pages distribute it. I will then recognize Delegate Johnson.

The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON. I think the order was that Delegate Pelletier's amendment was to be presented first because if it passed, mine is unnecessary.

PRESIDENT BRODERICK. We will check it. That is not the way they were given to me.

If it is agreeable to you, they tell me that it was set up by the committee that your amendment would come next, Delegate Johnson. If there is any conflict, I would be glad to discuss it.

DELEGATE JOHNSON. This is all right.

PRESIDENT BRODERICK. Is it all right this way?

DELEGATE JOHNSON. I think, Mr. President, it might be helpful if I would read Section 8, lines 15 and 16, as they would be changed by this proposed amendment. It is partly a matter of clarification and partly an attempt to be realistic and to put into the Constitution only that which is functional and which is likely to be utilized.

PRESIDENT BRODERICK. We have not had the clerk read your amendment. Would you yield for just a second. Would the clerk read it, please?

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE JOHNSON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 8), page 3, line 15, by striking out "municipal governments" and inserting: the voters of two or more municipalities

Amend Sec. 1 (Sec. 8), page 3, line 16, by removing the comma after "consolidate" and inserting: or

Amend Sec. 1 (Sec. 8), page 3, line 16, by striking out "and change boundaries" and inserting: municipalities

On the question,

Will the House agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON. Then I will read it as it would appear if the amendment would pass.

"Initiative. By initiative and referendum, the voters of two or more municipalities shall have the right to consolidate or merge municipalities upon a majority vote of those voting thereon in each municipality, without the approval of the governing bodies." I think it is a clarification, instead of using the term "municipal governments" to note "the voters of two or more municipalities." I realize that there are definitions of terms and they are spelled out, but it seems to me it would be helpful for an understanding to simply say, the voters of two or more municipalities shall have this power.

The part that is stricken "and change boundaries," is, of course, a very important matter. At the present time, and I believe, Delegate Manderino, I am correct in interpreting your opening statement that these amendments or these changes bring no additional power. Is that true? The General Assembly at the present could arrange for such referenda by law?

DELEGATE MANDERINO. Yes, they could.

DELEGATE JOHNSON. I am thinking, as you know, the change will affect boundaries. It is not realistic to have it in the present form because you would not get a majority vote of both of the municipalities concerned because the one that would be losing territory would be thinking in terms of tax revenue, and I am thinking in terms of people, persons, those who have homes, those who are serviced at the present time by the area in which they live. The General Assembly has provided means for negotiations. We are by this article providing for a very careful study and it seems to me that this inclusion of "change boundaries" is absolutely unnecessary at this time.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Mr. President and members of the Convention, speaking on behalf of the committee, we are in opposition to the amendment.

There are three portions to this amendment. The first line which changes "municipal governments" to "the voters of two or more municipalities" does not make much of a change. The voters still must do it, but it does take out the initiative which is provided for in that section—initiative and referendum. We feel that is important so that the people can initiate, if they wish, consolidation, merger or boundary changes.

The effect of the rest of the amendment, as it appears to me, is to permit, by initiative and referendum, consolidations and mergers, but not the change of boundaries so that it would read municipalities would have the right to consolidate or merge but not to change boundaries. We would oppose this because the intent of this paragraph is, if people wish to do these things, they should not be prevented from doing so. As we stated earlier, Delegate Johnson referred to the fact that people in a given area may wish, in order to get services, to become a part of an adjoining municipality, what I called earlier, piecemeal annexation. That can be done under the first paragraph if the General Assembly provides uniform legislation. They must provide uniform legislation though and treat everyone in the State equally. If they do, that can be done under the first paragraph. But this paragraph guarantees rights to the people that, if they wish to merge, consolidate or change boundaries, they can do so. It would appear to us illogical to allow them to consolidate or merge if they want to but not allow them to change their boundaries if they wish to, by a majority vote in each municipality. So we would oppose the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Thank you, Mr. President, but Chairman Manderino discussed it very adequately.

PRESIDENT BRODERICK. The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON. May I make one correction? I am entirely at a loss to understand Chairman Manderino's statement that this change takes the words "initiative and referendum" out; it does not.

DELEGATE MANDERINO. May I apologize to Delegate Johnson? I am sorry. You are not deleting that, and "initiative and referendum" still stay in, so I will retract those remarks; I misinterpreted that part of it.

The second part, however, still remains in, that it allows, by initiative and referendum, consolidation and merger but does not allow boundary changes, and we feel that there is no reason to make that distinction.

PRESIDENT BRODERICK. Are we ready for the question?

DELEGATE MANDERINO. Yes.

PRESIDENT BRODERICK. Will the Convention agree to the amendment offered by Delegate Johnson?

The roll was recorded as follows:

YEAS—18

Barry	Himes	Morton	Tomasclk
Dumbauld	Johnson	Nelson	Whittum
Filson	Kauffman	O'Donnell	Wilcox
Goldman	Keller, J.	Pelletier	Woodring
Gouger	Laputka		

NAYS—103

Aberman	Curran	Leach	Ruth
Aurentz	Dailey	Lee, L.	Sahli
Baldrige	Desmond	Leinbach	Scales
Baldus	Devlin	Leonard	Scarlett
Baldwin	Erwin	Levin	Scranton
Banes	Fawcett	Manderino	Sebastian
Bashoff	Fay	Mangery	Shapiro
Benedict	Feather	Markley	Sharp

Benfield	Fineman	Mattioni	Shettig
Bloom	Forster	McGeary	Shively
Braham	Fortney	McGlynn	Shoemaker
Brennan	Gehrlein	Meyer	Shrager
Broderick	Gerber	Michener	Silverman
Brown	Goldstein	Miller, D.	Sprogell
Bunting	Griffith	Miller, R.	Stout
Burkholder	Hannum	Moorhead	Strickler
Butera	Hatter	Orban	Swope
Caputo	Henderson	Orbin	Tate
Casey	Heyburn	Otto	Thornburgh
Clark	Hocker	Pasquerilla	Tully
Clinger	Hook	Popil	Waldron
Conley	Hostetler	Pott	Warman
Corey	Huggins	Powell	Welsh
Cortese	Irvis	Rappaport	Westerberg
Croop	Kelly	Redick	Wilmarth
Cunningham	Krill	Reynolds	

NOT VOTING—42

Allison	Fagan	Lane	Rea
Amsterdam	Fleming	Lee, K.	Richter
Bagenstose	Fohl	Michael	Roberts
Barron	Gabreski	More	Rovner
Buck	Gray	Murray	Scott
Cain	Harding	Musselman	Solomon
Camardella	Horne	Pechan	Stroup
Caron	Jirolanio	Percey	Thomson
Cosetti	Keller, M.	Prendergast	Van Sant
Donaldson	King	Quiles	Woodside
Donolow	Kline		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PELLETIER AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. Mr. President, I read in place and present the following amendment:

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE PELLETIER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 8), page 3, lines 11 to 23, by striking out "Uniform Legislation." in line 11; all of lines 12 to 23, and inserting: The General Assembly shall enact uniform legislation establishing the procedure for consolidation, merger or change of boundary of municipalities.

The General Assembly may delegate to an agency of the Commonwealth the responsibility for studying the consolidation, merger and boundary changes, and for advising municipalities on all problems which might be connected therewith.

If the General Assembly fails to enact legislation within a period of two years following the adoption of this provision municipalities shall have the right to consolidate, merge and change boundaries by action of their governing bodies or by initiative and referendum by majority vote of those voting in the area affected.

Nothing herein shall prohibit or prevent the General Assembly from providing additional methods for consolidation, merger and boundary change.

On the question,
Will the Convention agree to the amendment offered by Delegate Pelletier?

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. Mr. President, fellow delegates, I offer this amendment with a good deal of hesitation because this article has been very carefully drawn and I respect the work of the committee, but as I understand its philosophical approach, it has been to give a maximum of choice to the General Assembly and to the municipality.

The purpose of this amendment really is to give even more choice than has been allowed by the committee's proposal. I suppose what I am objecting to most in the committee proposal is putting in the Constitution that particular provision relating to the initiative and referendum. It seems to me that this creates more inflexibility rather than providing for a broad grant of power to act on the part of the General Assembly and the municipalities.

Under this article the General Assembly would have full power to fix means of annexation, consolidation, merger and changes of boundary by uniform legislation. If it did not do so, or does not choose to do so, by uniform legislation, then two methods would be provided for the municipalities to move, either by vote of the action of the governing body or by initiative and referendum by majority vote of those voting in the area affected, but this does not come into play if the legislature has acted.

I would submit, fellow delegates, that this is a more flexible means of providing for annexation, consolidation and boundary changes than is presently before you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Mr. President, the committee opposes this amendment. A lot of the language here is identical to the committee's language and some of its mandates are identical to the committee's language mandating uniform legislation and the prevention clause about legislative power. However, two important changes are not noted: One is it takes away the power of the state agency to initiate local referendum, and we feel that does nothing more than allow the people to vote on it and they should not have that right taken away. In the third paragraph, it does destroy the effect of paragraph 2 of Section 8 of the committee proposal, by which paragraph we wish to guarantee to people that if they did wish to consolidate, merge or change boundaries, no one should be allowed to stop them at any time. We still feel that is a good principle, that if the people wish to do it, no one should be able to say no.

We would oppose the amendment.

DELEGATE BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I would like also to call the delegates' attention to the fact that the wording of this language requires a vote only in the areas affected, which would continue the present piecemeal legislation which is permitted only in the Second Class Township Code. I am not speaking for or against that method; sometimes my heart swings both ways. This would make a very serious change in the proposal and I am sure that each delegation should know that that is in there.

DELEGATE MANDERINO. Yes, thank you. Delegate

Shoemaker is just pointing that out. I missed that at the end of that sentence in the third paragraph.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. And not only, Mr. President, what Delegate Kline pointed out, but insofar as the governing body is concerned, in this amendment there is a less vote required than there is in many circumstances regarding a change of zoning. It would seem to me that a merger or consolidation is much more important than a change of zoning.

PRESIDENT BRODERICK. Do you wish to be heard in a summation, Delegate Pelletier?

DELEGATE PELLETIER. I would simply say, Mr. President, that I suspect you are putting in the Constitution something here that certain lobbyists have tried for a great many years to get into legislation. I am talking about the committee proposal.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Pelletier?

The roll was recorded as follows:

YEAS—20

Baldrige	Huggins	Laputka	O'Donnell
Broderick	Johnson	Leach	Pelletier
Burkholder	Kauffman	Michael	Sahli
Cosetti	Keller, J.	Michener	Shettig
Dumbauld	Kelly	Morton	Sprogell

NAYS—106

Aberman	Fawcett	Lee, L.	Ruth
Aurentz	Fay	Leinbach	Scales
Baldus	Feather	Leonard	Scarlett
Baldwin	Filson	Levin	Scranton
Banes	Fineman	Manderino	Sebastian
Barron	Forster	Mangery	Shapiro
Burry	Fortney	Markley	Sharp
Benedict	Gabreski	Mattioni	Shively
Benfield	Gehrlein	McGlynn	Shoemaker
Bloom	Gerber	Meyer	Shrager
Braham	Goldman	Miller, D.	Silverman
Brennan	Goldstein	Miller, R.	Stout
Brown	Gouger	Moorhead	Strickler
Buck	Griffith	Nelson	Swope
Bunting	Hannum	Orban	Tate
Caputo	Harding	Orbin	Tomascik
Casey	Hatter	Otto	Tully
Clinger	Henderson	Pasquerilla	Waldron
Conley	Heyburn	Popil	Warman
Cortese	Himes	Pott	Welsh
Croop	Hocker	Powell	Westerberg
Cunningham	Hook	Rappaport	Whittum
Curran	Hosteller	Rea	Wilcox
Dailey	Irvis	Redick	Wilmarth
Desmond	Jirolanio	Reynolds	Woodring
Devlin	Kline	Richter	Woodside
Erwin	Krill		

NOT VOTING—37

Allison	Donaldson	Lane	Quiles
Amsterdam	Donolow	Lee, K.	Roberts
Bagenstose	Fagan	McGeary	Rovner
Bashoff	Fleming	More	Scott
Butera	Fohl	Murray	Solomon
Cain	Gray	Musselman	Stroup
Camardella	Horne	Pechan	Thomson
Caron	Keller, M.	Percey	Thornburgh
Clark	King	Prendergast	Van Sant
Corey			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera.

DELEGATE BUTERA. Mr. President, I would like to be recorded as voting "aye" on that last amendment.

PRESIDENT BRODERICK. We will have that placed on the record.

MORTON AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment is offered by Delegate Morton and I will ask the pages to distribute it.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE MORTON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 8), page 3, line 20, by striking out "initiating" and inserting: recommending

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Mr. President, this is my third and last amendment on the progression of figures where I picked up three votes the last time; it would take me 17 amendments before I would have one adopted.

Before I am struck down by the committee saying we are opposed to this, I would like to bring out that the vote on inserting "initiative and referendum" was 19 to 17 at the committee meeting when this amendment was added. Now under section 8, sub-para (b), we have by initiative and referendum a municipality can merge, consolidate or change boundaries. Under the definition of "initiative," it only takes 10 percent of the voters in a municipality who voted for Governor the last time to put a matter on the ballot. I say, if we have a government agency and there is not 10 percent of the people in either of the communities who are interested in putting it on the ballot, there is no need for the government agency to initiate it. We have the mechanism where, if the government agency makes studies and recommends and 10 percent in each of the communities involved are interested, let them put it on the ballot and not have a government agency coming in to a municipality and putting something on the ballot for the people to be voting on there.

The only import of the whole thing is to say that the government agency can recommend initiative and referendum and the people themselves take it from there, and if 10 percent want to put it on the ballot, it can be put on. Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Manderino.

DELEGATE MANDERINO. The committee would oppose this amendment that is being recommended. We amended it to be "initiating"; so it is to change "initiating" to "recommending" in a local referendum.

First, as I mentioned, this provision places teeth which

we think will very seldom have to be used, or very seldom be used, but nonetheless it is there so that the work the state agency would do would have to be placed on the ballot if they so desired. We feel that it is very seldom that the state agency would do this except in an extreme case. Now if you change it to "recommend," there is more of a danger that the state agency would get into a public debating contest with local officials.

If you recommend, recommend to whom? Our danger is that these reports will end up in the desks of elected governing officials. If you are recommending, you can still send them back and they will end up in the desks of elected officials. If you want to recommend to the people so they can use initiative and referendum—Delegate Morton is correct; they could—you would have to either publish in a newspaper what the state agency recommended or have a publicity campaign to let them know. We think this would be worse and get the state agency into open competition with the local governing body, when the clear-cut way to decide it is to place it on the ballot and then when the provision is on the ballot, when the election is coming up, then the competing interests can then make their views known. Again we say it allows the people to decide, so we would oppose this amendment.

PRESIDENT BRODERICK. Does anyone else wish to be heard on this amendment? Do you wish to make another statement, Delegate Morton? We will put it to a vote. Are we ready for the question?

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—48

Baldrige	Fleming	Laputka	Pott
Baldwin	Fohl	Leach	Powell
Brennan	Forster	Lee, L.	Reynolds
Butera	Goldman	Leinbach	Ruth
Clinger	Goldstein	Meyer	Sahli
Cortese	Griffith	Miller, R.	Scales
Cosetti	Harding	Moorhead	Sharp
Curran	Heyburn	Morton	Waldron
Dailey	Himes	O'Donnell	Warman
Desmond	Huggins	Orban	Whittum
Devlin	Irvis	Orbin	Wilcox
Dumbauld	Jirolanio	Otto	Wilmarth

NAYS—73

Aberman	Croop	Johnson	Scarlett
Aurentz	Erwin	Kauffman	Scranton
Baldus	Fawcett	Keller, J.	Sebastian
Barry	Fay	Kline	Shapiro
Bashoff	Feather	Krill	Shively
Benedict	Filson	Leonard	Shoemaker
Benfield	Fineman	Levin	Shrager
Bloom	Fortney	Manderino	Silverman
Braham	Gabreski	Mangery	Sprogell
Broderick	Gehrlein	Mattioni	Stout
Brown	Gerber	McGeary	Strickler
Buck	Gouger	McGlynn	Swope
Bunting	Hannum	Michael	Tate
Burkholder	Hatter	Michener	Tomasetik
Caputo	Henderson	Miller, D.	Tully
Casey	Hocker	Pasquerilla	Welsh
Clark	Hook	Popil	Westerberg
Conley	Hostetler	Richter	Woodring
Corey			

NOT VOTING—42

Allison	Fagan	Musselman	Roberts
Amsterdam	Gray	Nelson	Rovner
Bagenstose	Horna	Pechan	Scott
Banes	Keller, M.	Pelletier	Shettig
Barron	Kelly	Percey	Solomon
Cain	King	Prendergast	Stroup
Camardella	Lane	Quiles	Thomson
Caron	Lee, K.	Rappaport	Thornburgh
Cunningham	Markley	Rea	Van Sant
Donaldson	More	Redick	Woodside
Donolow	Murray		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I understand that completes the amendments on Section 2.

PRESIDENT BRODERICK. That is a very happy understanding. That completes the amendments on Section 2, and we are now ready to go to unit 3, which includes Sections 9, 10, 11, 12, 13 and 14.

UNIT No. 3, PROPOSAL No. 6

DELEGATE PASQUERILLA. Mr. President, unit 3 pertains mostly to local debt and appropriation and we would like to call, if you would please recognize, the Co-Chairmen of the subcommittee to come forward—Delegate Scales and Delegate Moorhead—and I understand Delegate Scales will present an explanation of Sections 9, 10 and 12.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scales.

DELEGATE SCALES. Mr. President and members of the Convention, the first section for consideration under this third portion of the local government package is Section 9, beginning at the bottom of page 3 of the local government proposal.

This section is entitled "Appropriation for Public Purposes." You will notice that the first sentence of this section is identical with the present Constitution. The second sentence is an added section, added to the terms of the present Constitution, and is designed to complement subsection (d) in the state taxation and finance article which we approved by our vote earlier this week.

The purpose of this section is to permit the General Assembly to set standards by which local governmental units, including all forms of local government, may make grants, aids, loans, and also give subsidies to various types of public service, economic, commercial and industrial organizations where the public welfare is involved. The last sentence of Section 9 is intended to preserve the right which local government already has in this area, particularly those delegates from Philadelphia who have been concerned to preserve their present rights to contribute to such things as the Port Authority, the Sesquicentennial Celebration in Philadelphia, Robin Hood Dell, and other similar public service activities.

Section 10 is the main section under our local finance provisions concerning local government debt. The first matter to observe in Section 10 is that the General Assembly is given the right to set local debt limits. At the present time in our Constiution, the local debt is established at five per cent of assessed valuation in cases where no referendum is asked for and at 15 per cent where a referendum is held to approve the borrowing. Under our provision, the present system is abolished and the legislature is given the right to set these local debt limits. In this sense, the article is very similar, we feel, to the state taxation and finance article which we considered earlier this week.

You will notice that in permitting the legislature to set the local debt limits, we mandate that in so doing the legislature must tie in the debt limitation to revenue. We are attempting to abolish assessed valuation as a standard for borrowing power. Like the State Taxation and Finance Committee, we feel that when money is borrowed it must be paid back, and when it is paid back it is paid back out of revenues and not out of assessed valuation. We feel that this part of our article is a very progressive step and complements the work of the State Taxation Committee.

In addition, you will notice that we exclude certain matters from the debt limit that will be set by the legislature. We exclude any debt which is self-sustaining or self-liquidating, any projects which are self-liquidating or self-sustaining, and also any projects which are partially self-liquidating to the extent that they are self-liquidating. In addition, we exclude any projects which have heretofore been declared to be self-liquidating or self-sustaining, such as the school-building debt, the school-building programs which we are already engaged in. On line 12 you will notice that any referendum debt, any debt approved by the electorate, is also excluded from the debt limit, which corresponds with the amendment we approved earlier this week in considering the State Taxation article.

Beginning on line 15 of Section 10, we are recommending a new paragraph which replaces the paragraph in the present Constitution which calls for an annual tax to be imposed when indebtedness is incurred. We feel that the annual tax provisions of the present Constitution are virtually meaningless, and instead we require a covenant which shall be binding upon the local municipality to be executed. We feel that this covenant will be similar to the trust indentures that now exist with respect to authority financing, and we feel that the covenant will be an aid in establishing the credit of the bond market. In addition, we have deleted from the paragraph, starting on line 15, a provision that exists in the present Constitution which would require all local financing issues to be retired within a 30-year period.

If I may skip Section 11, which deals with local apportionment, I would like to comment briefly on Section 12. Section 12 is on Philadelphia debt, and Section 10 covers all debt in the Commonwealth, including the school district in Philadelphia. Section 12 deals only with the debt of the city of Philadelphia.

Our committee had been asked specifically by the delegate from Philadelphia to preserve the present constitutional debt limits that apply to the city of Philadelphia. Those debt limits presently are lower than the debt limits that apply for the rest of the Commonwealth. As you will notice, those limits are 13.5 per cent where there is a referendum and three per cent without a referendum. There are certain members of our committee who feel that Philadelphia, perhaps, is being somewhat shortsighted in insisting upon its present debt limits, but we would point out that those limits are more restrictive, more restrictive in the city of Philadelphia than the limits we are recommending for the rest of the Commonwealth.

Section 12 is intended to be an exact duplication of the present debt limits for the city of Philadelphia, and as heretofore, no debt shall be incurred by the county of Philadelphia.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, would the Chair recognize the Co-chairman of the Subcommittee on Local Apportionment, Delegate Hook, to explain Section 11?

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, fellow delegates, I think the best way to explain this section is to take it out and read it. It is a very short section. I believe we have debated a portion of it for two and one-half days here on the floor. I only call to your attention here that the purpose of this section is to place in our Constitution the provision providing for local apportionment.

This provision here would not include areas that elect at-large or areas such as the city of Philadelphia which operate under a home-rule charter, whereby they elect at-large and also by wards.

The proposal has to do only with areas that are elected in wards or by districts. This proposal would not pertain to second class townships since they elect at-large. This proposal pertains to boroughs, also certain first class townships and third class cities. That is all I have on it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, Section 13, which is reserved for Section 8 of Article XIV; pertains to the city and county of Philadelphia which will remain as is and there are no changes in that particular article.

Section 14 contains definitions used in this article so that we would not have to repeat throughout the article, municipality, initiative and refcrendum.

Section 3 on page 7 is an adoption schedule.

We are now ready for questions.

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil.

DELEGATE POPIL. Mr. President, I would like to ask Delegate Scales a question regarding Section 10 entitled, "Local Government Debt."

Delegate Scales, I note that the provision here provides that the General Assembly shall prescribe the debt limits, and it is based on the amount of total revenues coming in to each municipality. You do not prescribe a formula here. My question is: In scheduling, have you given any thought as to what the debt limit shall be in accordance with what it is presently and how is it going to affect local authorities?

DELEGATE SCALES. In answer to the first part of your question, Delegate Popil, we have not specifically considered what debt limits the legislature should set. Our purpose specifically was to permit broad latitude on the part of the legislature in setting that limit, and, in fact, our intent is to permit the legislature to, perhaps if it wishes, set different limits for different classes of municipalities, particularly in view of the fact that the first part of the local government article deals extensively with home rule, residual powers and home-rule charters. We feel unqualified to make a judgment now as to what forms of government may need rather extensive borrowing power and which forms may not 25 or 30 years from

now. So we purposely stayed away from that kind of designation.

As far as the authorities are concerned, our intention is to not eliminate authority financing but rather to approach the problem from the opposite direction, to provide for an expanded choice on the part of local governmental units. We on the committee feel that authorities are very desirable in many instances. We feel that local government should have the opportunity to make that choice and to choose for themselves in which case they should use authority financing and in which cases they should proceed by either nondebt revenue bonds or by general obligation bonds.

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilmarth.

DELEGATE WILMARTH. Mr. President, I would like to ask Delegate Scales a question concerning lines 7, 8 and 9 in Section 10. I do not know whether or not Delegate Scales would like to answer this. This, perhaps, is a bit academic, Delegate Scales, because the General Assembly will by law prescribe, but did you consider in your committee what would happen to school districts if they borrow the debt limit on total revenue? I ask you this because in total revenue do you count revenue or do you intend to have revenue only at the local effort or including that from state reimbursement? This is going to make a tremendous difference as to how the General Assembly, perhaps, may act on this.

DELEGATE SCALES. When we first began to consider this specific problem in one of our early drafts, we used the term "tax revenue." We became very concerned about using "tax revenue" because of the fact that local government's problem is significantly different from the problem on the state level. We were concerned about money coming from Project 70, for example; we were concerned about revenue coming from parking meters. Our ultimate decision was to permit the legislature to define the term "revenue" as we have done in these three lines so as to solve the problem which I think you are concerned about.

DELEGATE WILMARTH. My only question is this: I wonder if the General Assembly can solve such a problem because if it interprets revenue as from reimbursement, revenue to the various school districts varies so tremendously I cannot imagine a formula that would fit all of them, and this is why I am concerned about using revenue as a base.

DELEGATE SCALES. I would think, therefore, that the legislature with that broad variation would choose not to include such an item in revenue and instead gauge their percentage accordingly so that the percentage would be a different percentage than they would use if they included something else in the revenue concept.

DELEGATE WILMARTH. While I am on schools, I also have a question on local apportionment, lines 23 and 24. Do you care to answer this or one of the other members?

PRESIDENT BRODERICK. Delegate Wilmarth, I understand that Delegate Hook will answer your question.

DELEGATE WILMARTH. Delegate Hook, you say on line 23—and this I assume has to do with school districts—"to the extent it shall not be elected at large."

DELEGATE HOOK. Delegate Wilmarth, I will answer that question immediately for you. This proposal does not include school districts.

DELEGATE WILMARTH. All right, because this would be almost impossible.

DELEGATE HOOK. I forgot to include that in my statement. This does not include school districts.

DELEGATE WILMARTH. Is this by implication or have I missed this being spelled out, that it does not include school districts, because we have mentioned school districts repeatedly?

DELEGATE HOOK. If you turn over to page 6 under the definitions at the top of the page, it says, "'Municipality' means a county, city, borough, incorporated town or township." It does not include school districts, and where it was stated before it specifically mentions school districts under the local debt structure.

DELEGATE WILMARTH. As long as this is clarified; otherwise, it would be completely unworkable.

DELEGATE HOOK. We are in agreement with you on that.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, may I interrogate Delegate Hook for a moment, please?

PRESIDENT BRODERICK. The gentleman has indicated his willingness. You may proceed.

DELEGATE MICHENER. Chairman Hook, Section 11, local apportionment, is a new concept in our form of local government, is it not?

DELEGATE HOOK. It is.

DELEGATE MICHENER. From what principle does this stem? Is there a supposition that the Supreme Court is going to extend Baker v. Carr into the local level? Have there been any decisions of our courts in Pennsylvania on this?

DELEGATE HOOK. I believe Delegate Wilmarth was concerned with school districts and I believe that the school districts have gotten into this problem of apportionment, Delegate Michener, and for the future this could be a problem here in local government also.

DELEGATE MICHENER. Are you satisfied then, Chairman Hook, that a borough, for example, which has three wards grossly out of line one with the other should be required to bring them within some kind of reasonable harmony if they are going to elect the officials from those wards?

DELEGATE HOOK. I do.

DELEGATE MICHENER. Good.

DELEGATE HOOK. I would like to comment also, Delegate Michener, on that statement that probably the biggest reason for this proposal is because of the fact that we are going to adopt home-rule charters, we hope, in the State of Pennsylvania. We want this in our Constitution to serve as a guideline if they go into home-rule charters.

DELEGATE MICHENER. Good.

PRESIDENT BRODERICK. The Chair recognizes Delegate Otto.

DELEGATE OTTO. Mr. President, with respect to local apportionment, where are the teeth that will require this local apportionment after one year?

DELEGATE SHOEMAKER. I do not believe we heard the question.

DELEGATE OTTO. I am concerned about how are you going to be sure that the local communities will impose this apportionment within the one year after certification period?

DELEGATE SHOEMAKER. The problem was discussed in the subcommittee and in the committee and some debate took place as to whether or not specific teeth should be put into the Constitution specifying in the alternative, for instance, that if a local apportionment constitutionally is not abided with, they would automatically, for instance, be elected at-large. There are other alternatives—turning it over to commissions and so forth.

The general feeling of the subcommittee and the standing committee was rather than do that, we should allow the present statutory remedies which currently exist to compel such things to remain in effect, and also if the legislature desired to supplement this, it is certainly implied and not prohibited herein. In other words, any degree of party could go to court, writ of mandamus, et cetera. That is the remedy.

DELEGATE OTTO. Thank you.

PRESIDENT BRODERICK. Delegate Shrager, do you have a question?

DELEGATE SHRAGER. Yes, of Delegate Scales.

Section 9 on lines 1 through 3, on page 4, at the top of the page.

DELEGATE SCALES. Yes.

DELEGATE SHRAGER. The present grants to private schools by the city of Philadelphia and in turn where the school then offers a scholarship to a resident of Philadelphia, would that remain intact under this section?

DELEGATE SCALES. Yes, it is our intention that that would remain intact. The reason for choosing the language in lines 1, 2 and 3 to correspond to the language in the first sentence of Section 9 is to maintain intact and do exactly what you would like to do with respect to those grants now approved in the city of Philadelphia.

DELEGATE SHRAGER. Is that taken care of by the word "individual" in line 3? Am I correct where it says "institution or individual, is preserved"?

DELEGATE SCALES. Yes, that is correct.

PRESIDENT BRODERICK. I think we have had our question-and-answer period. We are ready for the amendments. I think, perhaps, the fellow delegates would like to know that at the present time we have to this section a total of three amendments. When we have completed those three amendments, we still have some amendments in connection with Proposal No. 4 and at least one amendment in connection with Proposal No. 5. Right now it would look as though we just have a total with these three, one to Proposal No. 5, making four, and about three amendments on Proposal No. 4 would make a total of seven amendments. I think when we take care of those, we should be able to terminate our activities for the day and take care of the judiciary article the first thing tomorrow morning. With steady application as we have been doing on the local government, I think we will be able to complete that judiciary article sometime on Friday.

The first amendment is an amendment offered by Delegate Whittum. I am going to ask the clerk to read the amendment and we will distribute the amendment.

WHITTUM AMENDMENT TO PROPOSAL No. 6

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE WHITTUM offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 4, line 10, by inserting after "shall": include those obligations of the units of local government which are to be repaid from lease rentals or other charges payable directly or indirectly from revenues of such unit, but shall

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Whittum in connection with his amendment.

DELEGATE WHITTUM. Thank you, Mr. President.

First of all, I would like to compliment the Local Government Committee and in particular the Subcommittee on Local Government Debt for doing what I think to be an outstanding job. I think it is coincidental and laudable that the philosophy and the content of this Section 10 fits in very well with that in Proposal No. 3 which we have passed through second reading several days ago.

However, I think that there is one exclusion in this section which almost defeats its purpose, and that is that they do not attempt to bring within the limitation imposed on debt by the General Assembly, the debt created by authorities. Authorities were created originally for the sole and only purpose of evading the debt limit. This is why we have them today. This is why on the state level we attempted to include them in the limitations and we feel that Section 10, by excluding them, really makes the section an innocuous and almost meaningless section since, if a municipality can continue to borrow without limit through the authority device, there really is little purpose in having a debt limit at all.

The purpose of this amendment is to include within the debt limit as defined by the General Assembly those obligations which are repaid directly or indirectly from revenues of the municipalities. The Local Government Committee's report to the Convention which accompanied their proposal did an outstanding job of outlining the concepts behind this, and, as we told you on the subject of state debt, the ability to repay is really the key point in establishing a limit. The ability to repay today, as the Local Government Committee has told us, is in direct relation to the amount of revenues of the local government, but when you exclude authority debt, which is repaid by taxes, you have defeated your objectives. For this reason Delegate Amsterdam and myself have introduced this amendment which we think will really complement and make the section here a complete section. We think that as it is, it is inconsistent and it is not in concert with the philosophy adopted in Proposal No. 3. We recognize the merits of authorities. We have no intent to abolish them or to restrict them. All we say is that if the authority debt is to be repaid by tax revenues of the issuing body, those obligations should come within the limit.

Thank you, Mr. President.

PRESIDENT BRODERICK. Does the committee wish to be heard?

DELEGATE SCALES. Mr. President, the committee very strongly opposes this amendment. Our committee considered specifically whether or not authorities could be abolished. We also considered specifically whether or not authority financing should be brought within the debt limits. It seems to me that the spirit of our current proposal, far from being in conflict with the state taxation proposal, is very complementary to that proposal.

As I recall, what we approved in approving the state finance package, in that state financial package the school debt, the money paid to schools, was excluded from the debt limits. It seems to me that the purport of this amendment would be to bring all school financing within the debt limit which is exactly what we do not wish to do. Authorities, I might say, were created not only for the reason of getting around the very restrictive debt limits that have plagued us in earlier years.

There are a number of reasons why authority financing is desirable, and the purpose of our committee proposal, as I stated earlier, is not to abolish one form or another of financing, but rather to give the local communities a real choice between these alternative methods of financing. It seems to us that authority financing very often brings into government people whose abilities and contributions would otherwise be unavailable. It seems to us also that the members of authorities very often are not subjected to the same political considerations to which our elected officials are subjugated. We feel also that through authority financing a negotiated sale which often can result in a lower interest rate may be employed without, as in a general obligation financing arrangement, having to use sealed bidding which very often results in a somewhat higher interest rate. We feel that authority financing in Pennsylvania has an excellent history and we would hesitate and be very suspicious of any attempt to upset the present bond market as it relies upon authority financing.

It seems to us that in the final analysis, the real check upon exorbitant debt is not so much in the debt limit itself but rather in the bond market, and we have seen through the course of 20 years of authority financing that hardly ever, if ever, had we had failures in the authority school financing field.

I would say finally, Mr. President, that the amendment as proposed seems to be contradictory in that if the amendment were inserted as suggested by the amendment, it would still, at the same time, leave intact the language in Section 10 on line 10 of page 4, which, on the one hand, while including within the debt limit of school financing, would at the same time in the following few words exclude the school financing from the debt limit.

I think the amendment is contradictory and, perhaps, somewhat meaningless in the context of the rest of the section. We find also, of course, that in the school financing field, we have the local government working hand in hand with the state government and often up as high as 80 per cent of the funds are supplied by the state government. We feel it would be a mistake to hamper the choice of local government in this area.

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, I also rise in opposition to this amendment and I take issue with Delegate Whittum pertaining to the distinctions and differences and inconsistencies which he claims between this section and Article III on the state debt which was adopted a few days ago.

First of all, it has been pointed out the state section does exclude, for example, school rentals and school leases, based on the fact that through local effort there is a contribution from local tax revenues in this area. It would seem fit under the provisions of that article to exclude that portion of the General State Authority school authority debt to the extent that it was being repaid through the local taxing unit.

I would also want to point out that in Section 10 there is an alternative to the use of authorities. Since much criticism has been made of local municipalities exceeding the debt limits by use of this authority device, it specifically provides in Section 10, line 12, that the local municipality may by referendum vote approve a project which would be self-sustaining from its revenues so that the moneys used for constructing any local project through a referendum, that portion of the debt would not be applicable also under the debt limit provisions.

Therefore, I ask you to vote against this particular amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Clark.

DELEGATE CLARK. Mr. President, I rise to urge a vote in favor of this amendment. I can agree with much of what Delegate Scales has said about the integrity of authority financing and bond market providing a check and balance for this type of financing.

However, this question was considered in great depths by the Taxation and State Finance Committee. The basic consideration in our judgment was fiscal integrity and that debt created in one way or another would be included in the total debt of the governing body.

It seems to me that if we do not plug this loophole, we still need an opportunity for local government to create debt through the authority device without any control upon it.

Therefore, I urge a vote in favor of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Whittum. Do you wish to make a closing statement before we put the question?

DELEGATE WHITTUM. Yes, Mr. President.

I would like to respond to the delegates who have opposed this amendment. Delegate Scales related the merits and the benefits of authority financing which he has very ably outlined in the Local Government Committee's report.

I concur entirely with the benefits of authorities. In no way are we attempting to abolish or restrict or restrain their use. All we are saying is, if you have a debt limit, it is meaningless unless you include within that debt limit the borrowing that is repaid by tax revenues. If you do not include them, you might as well not have a limit, because the municipalities are going to go through the authority device as soon as they approach the limit established by the legislature. The argument that the limit would be too low is fallacious because the General Assembly is granted the authority to establish these limits, and will. This limit will be a meaningful limit in relationship to the ability of the municipalities to repay the debt.

As to the argument of school authorities, in the proposal on state debt, we specifically excluded the public school building authority from the state debt limit because that debt is repaid by the local government. This is just what we are trying to apply in this amendment here. If the debt is to be repaid by the revenues of the municipality, that debt must come within the limit. On the state level, while the debt is incurred by the state public school building authority, it is repaid by the local government. All the legislature has to do is establish a meaningful ceiling for school districts, for municipalities, for counties, and there will be no problem in including these within it. Unless it does the entire section becomes a meaningless device.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, I wanted to rise and speak in favor of this amendment, but I did want to make an amendment to the amendment which has not yet come out. Do I wait or can I say what it is?

PRESIDENT BRODERICK. You may say what it is. We understand it is on its way and we will have it distributed.

DELEGATE LEONARD. The concept that was discussed here by Delegate Whittum is wholeheartedly supported by myself, but what I think ought to be excluded from the authorities are those authorities which are joint governmental authorities with the local government unit itself and one or more other local government units.

I would like to make an amendment to this that would exclude from these authorities obligations which would go under the total debt, that debt which has been incurred by the local government and one or more other local governments.

PRESIDENT BRODERICK. While we are having it prepared, do you have the language that you could show the delegates?

DELEGATE LEONARD. I believe it would be payable directly or indirectly from revenues of such units excluding authorities—I do not have it—by the local governmental unit and one or more others. If I can get it back in half a minute—

PRESIDENT BRODERICK. We will be at ease until we get the amendment. In the meantime, we will recognize the chairman of the committee, Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, if you want to pass over that, there is another amendment here which the committee will accept for a change of wording which we think helps clarify the language and we can, perhaps—

PRESIDENT BRODERICK. Would Delegate Whittum yield until we take this other amendment? Your amendment is on the floor.

DELEGATE WHITTUM. I do not know the nature of the other amendment, Mr. President.

DELEGATE PASQUERILLA. It is one word, Mr. President. It does not affect local finance or local debt.

PRESIDENT BRODERICK. May I ask you, does it pertain at all to the subject?

DELEGATE PASQUERILLA. No, it does not, but since we are in agreement to accept the language I thought while we were waiting for the printing to be done—

PRESIDENT BRODERICK. Would you have any objection?

DELEGATE WHITTUM. I have no objection, Mr. President.

AMENDMENTS TABLED

PRESIDENT BRODERICK. We will just temporarily table Delegate Whittum's amendment and Delegate Leonard's amendment and take up the amendment of Delegate Baldwin.

BALDWIN AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. We have the Baldwin amendment now which has been distributed.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BALDWIN offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 14), page 6, line 7, by striking out "any" and inserting: each

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, we feel that this language does clarify the intent better. Therefore, we would accept this amendment.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Baldwin?

The roll was recorded as follows:

YEAS—127

Aberman	Devlin	Laputka	Reynolds
Aurentz	Erwin	Leach	Richter
Baldrige	Fawcett	Lee, L.	Sabli
Baldus	Fay	Leinbach	Scales
Baldwin	Feather	Leonard	Scarlett
Banes	Filson	Levin	Scranton
Barron	Fineman	Manderino	Sebastian
Barry	Fohl	Mangery	Shapiro
Bashoff	Forster	Markley	Sharp
Benedict	Fortney	Mattioni	Shettig
Benfield	Gabreski	McGeary	Shively
Bloom	Gehrlein	McGlynn	Shoemaker
Braham	Goldman	Meyer	Shrager
Brennan	Goldstein	Michael	Silverman
Broderick	Gouger	Michener	Solomon
Brown	Griffith	Miller, D.	Sprogell
Buck	Hannum	Miller, R.	Stout
Bunting	Harding	Moorhead	Strickler
Burkholder	Hatter	More	Swope
Butera	Henderson	Morton	Tate
Caputo	Heyburn	Murray	Tomascik
Casey	Himes	Nelsen	Tully
Clark	Hocker	O'Donnell	Waldron
Clinger	Hook	Orban	Warman
Conley	Hostetler	Orbin	Welsh
Corey	Jirolanio	Otto	Westerberg
Cortese	Johnson	Pasquerilla	Whittum
Cosetti	Kauffman	Popil	Wilcox
Croop	Keller, J.	Pott	Wilmarth
Curran	Kelly	Powell	Woodring
Dailey	Kline	Rappaport	Woodside
Desmond	Krill	Redick	

NAYS—0

NOT VOTING—36

Allison	Dumbauld	King	Rea
Amsterdam	Fagan	Lane	Roberts
Bagenstose	Fleming	Lee, K.	Rovner
Cain	Gerber	Musselman	Ruth
Camardella	Gray	Pechan	Scott
Caron	Horne	Pelletier	Stroup
Cunningham	Huggins	Percey	Thomson
Donaldson	Irvis	Prendergast	Thornburgh
Donolow	Keller, M.	Quiles	Van Sant

The majority having voted in the affirmative, the question was determined in the affirmative, and the amendment was agreed to.

BLOOM AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. The next amendment is offered by Delegate Bloom.

The clerk will read the amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BLOOM offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 14), page 6, line 6 by striking out "ten" and inserting: five

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. Mr. President, my amendment only makes it a little easier to open the door in order to take advantage of all the great opportunities which are offered by local government.

Delegate Pasquerilla, is there any objection to this amendment?

DELEGATE PASQUERILLA. Delegate Bloom, I have to answer that in two ways. Our committee discussed whether we should have 10 per cent or five per cent and agreed on 10 per cent. If you are asking me personally my opinion, my personal opinion is that five is all right, but the committee voted for 10 per cent. I hope I have not confused you or anybody else.

DELEGATE BLOOM. There is one other reason I did it, because one of the other matters coming up has the same clause in it, an initiative referendum. It only requires five per cent and I believe we ought to have this door just as wide open as the other door.

I ask for the question; I do not think there is any question about it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Otto.

DELEGATE OTTO. Mr. President, I would like to ask the chairman of the committee a question.

With respect to the local apportionment section and the application of this percentage, presently what is required in an initiative ballot?

DELEGATE PASQUERILLA. On local apportionment?

DELEGATE OTTO. That is right.

DELEGATE PASQUERILLA. I do not think it pertains to local apportionment at all. Maybe it does, just a minute.

It does not apply. There is no referendum under local apportionment. The purpose of this amendment is to reduce the 10 per cent under initiative to 5 per cent which, as Delegate Bloom says, makes it a little easier to get on the ballot. The 10 per cent was the committee's recommendation. I am not going to make a great point about it. I think the delegates can decide in their own minds what they want to do.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Bloom?

The roll was recorded as follows:

YEAS—73

Baldrige	Fineman	Leonard	Scarlett
Barron	Forster	Mangery	Shapiro
Barry	Fortney	Markley	Sharp
Bloom	Gabreski	Mattioni	Shettig
Braham	Gehrtein	McGeary	Shively
Brown	Gouger	McGlynn	Shoemaker
Buck	Hannum	Miller, R.	Shrager
Bunting	Henderson	Moorhead	Silverman
Burkholder	Himes	Murray	Solomon
Casey	Hocker	Orbin	Sprogell
Clark	Hook	Otto	Stout
Clinger	Hostetler	Pasquerilla	Strickler
Conley	Irvis	Rea	Swope
Corey	Jirolanio	Redick	Tate
Croop	Johnson	Reynolds	Thornburgh
Dailey	Kelly	Richter	Tomascik
Fawcett	Krill	Sahli	Waidron
Feather	Leinbach	Scales	Welsh
Filson			

NAYS—49

Aberman	Desmond	Keller, J.	Orban
Aurentz	Devlin	Kline	Popil
Baldwin	Erwin	Leach	Polt
Baldus	Fay	Lee, L.	Powell
Banes	Fleming	Levin	Rappaport
Bashoff	Fohl	Manderino	Sebastian
Benedict	Goldstein	Meyer	Tully
Benfield	Griffith	Michener	Warman
Broderick	Harding	Miller, D.	Westerberg
Butera	Hatter	More	Wilcox
Caputo	Heyburn	Morton	Wilmarth
Cortese	Kauffman	Nelson	Woodside
Curran			

NOT VOTING—41

Allison	Dumbauld	Laputka	Roberts
Amsterdam	Fagan	Lee, K.	Rovner
Bagenstose	Gerber	Michael	Ruth
Brennan	Goldman	Musselman	Scranton
Cain	Gray	O'Donnell	Scott
Camardella	Horne	Pechan	Stroup
Caron	Huggins	Pelletier	Thomson
Cosetti	Keller, M.	Percey	Van Sant
Cunningham	King	Prendergast	Whittum
Donaldson	Lane	Quiles	Woodring
Donolow			

The majority having voted in the affirmative, the question was determined in the affirmative, and the amendment was agreed to.

DELEGATE PASQUERILLA. We should congratulate Delegate Bloom. Mr. President, we are now left with the amendment to the amendment on local debt and I think that cleans up our unit 3. Is that correct?

PRESIDENT BRODERICK. We understand the amendment to the amendment has now been distributed. The clerk will read the amendment to the amendment.

LEONARD AMENDMENT TO AMENDMENTS TO PROPOSAL No. 6

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE LEONARD offered the following amendment, which was read by the Clerk:

Amend page 1 of the amendments, fourth line of amendments, by inserting after "unit,": excluding those for the joint benefit of the local government and other governmental units,

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, the purpose of this amendment to the amendment is merely to go along with the thinking of Delegate Whittum's amendment which would include all authority borrowings as a part of the total debt. This would exclude from that the authorities for the joint benefit of the local government and other governmental units, and, I think, bring it into compliance with our own debt section for the state debt, this section for the local debt. It seems to me that the local debt should be prescribed very similarly to the way the state debt is prescribed, and this would go to achieve that purpose.

PRESIDENT BRODERICK. Does anyone wish to be heard in connection with the amendment to the amendment offered by Delegate Leonard?

DELEGATE SCALES. Mr. President, I only wish to say that the Committee on Local Government is opposed to both the amendment to the amendment and the amendment itself for the reason that we regard it as a very limiting feature. Also, we feel that the inclusion of these amendments then contradicts the other language in the section which has not been changed.

PRESIDENT BRODERICK. Are we ready for the question?

We are first voting on the amendment to the amendment offered by Delegate Leonard, and then we will vote on the Whittum amendment.

On the question recurring,

Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—34

Baldus	Forster	Miller, R.	Sharp
Baldwin	Fortney	Nelson	Shively
Brennan	Keller, J.	Orban	Solomon
Burkholder	Krill	Otto	Whittum
Butera	Lee, L.	Pott	Wilcox
Clark	Leinbach	Powell	Wilmarth
Cosetti	Leonard	Rea	Woodring
Curran	Meyer	Shapiro	Woodside
Fohl	Michener		

NAYS—95

Aberman	Fawcett	Kauffman	Reynolds
Aurentz	Fay	Kelly	Richter
Baldrige	Feather	Kline	Sahli
Banes	Filson	Laputka	Scales
Barron	Fineman	Leach	Scarlett
Barry	Gabreski	Levin	Scranton
Bashoff	Gehrlein	Manderino	Sebastian
Benedict	Gerber	Mangery	Shettig
Benfield	Goldman	Markley	Shoemaker
Bloom	Goldstein	Mattioni	Shrager
Braham	Griffith	McGeary	Silverman
Broderick	Hannum	McGlynn	Sprogell
Brown	Harding	Michael	Stout
Buck	Hatter	Miller, D.	Stricklar
Bunting	Henderson	Moorhead	Swope
Caputo	Heyburn	Mora	Tate
Casey	Himes	Morton	Thornburgh
Conley	Hocker	Murray	Tomascik
Corey	Hostetler	Orbin	Tully
Croop	Hook	O'Donnell	Waldron
Dalley	Huggins	Pasquerilla	Warman
Desmond	Irvis	Popil	Welsh
Devlin	Jirolanio	Rappaport	Westerberg
Erwin	Johnson	Redick	

NOT VOTING—34

Allison	Donaldson	King	Quiles
Amsterdam	Donatow	Lane	Roberts
Bagenstose	Dumbauld	Lee, K.	Rovner
Cain	Fagan	Musselman	Ruth
Camardella	Fleming	Pechan	Scott
Caron	Gouger	Pelletier	Stroup
Clinger	Gray	Percey	Thomson
Cortese	Horne	Prendergast	Van Sant
Cunningham	Keller, M.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

WHITTUM AMENDMENT TO PROPOSAL No. 6

PRESIDENT BRODERICK. Are we ready for the question on the Whittum amendment?

The Chair recognizes Delegate Whittum.

DELEGATE WHITTUM. Mr. President, to sum up in one or two sentences, the thrust of this amendment is in no way designed or intended and will not be restrictive or limiting in any way. It will not affect the amount of debt that can be outstanding. The legislature will still have the authority to establish the limit. All this does is include within debt that debt which the taxpayers have to repay and this is precisely the reason for a limitation. We are attempting to make the thing consistent. There is no restrictive intent or purpose behind this. Thank you, Mr. President.

On the question,

Will the Convention agree to the amendment offered by Delegate Whittum?

The roll was recorded as follows:

YEAS—44

Baldrige	Heyburn	Orban	Solomon
Braham	Himes	Otto	Sprogell
Brennan	Hocker	Pott	Stout
Buck	Keller, J.	Powell	Swope
Burkholder	Krill	Rea	Warman
Clark	Lee, L.	Richter	Westerberg
Curran	Leinbach	Shapiro	Whittum
Fohl	Leonard	Sharp	Wilcox
Forster	Meyer	Shively	Wilmarth
Fortney	Morton	Shrager	Woodring
Gouger	Nelson	Silverman	Woodside

NAYS—85

Aberman	Desmond	Irvis	O'Donnell
Aurentz	Devlin	Jirolanio	Orbin
Bagenstose	Erwin	Johnson	Pasquerilla
Baldus	Fawcett	Kauffman	Popil
Baldwin	Fay	Kelly	Rappaport
Banes	Feather	Kline	Redick
Barron	Filson	Laputka	Reynolds
Barry	Fineman	Leach	Sahli
Bashoff	Gabreski	Levin	Scales

Benedict	Gehrlein	Manderino	Scarlett
Benfield	Gerber	Mangery	Scranton
Bloom	Goldman	Markley	Sebastian
Broderick	Goldstein	Mattioni	Shettig
Brown	Griffith	McGlynn	Shoemaker
Bunting	Hannum	Michael	Strickler
Butera	Harding	Michener	Tate
Caputo	Hatter	Miller, D.	Thornburgh
Casey	Henderson	Miller, R.	Tomascik
Conley	Hook	Moorhead	Tully
Corey	Hostetler	More	Waldron
Croop	Huggins	Murray	Welsh
Dalley			

NOT VOTING—34

Allison	Donaldson	Lane	Quiles
Amsterdam	Donolow	Lee, K.	Roberts
Cain	Dumbauld	McGeary	Rovner
Camardella	Fagan	Musselman	Ruth
Caron	Fleming	Pechan	Scott
Clinger	Gray	Pelletier	Stroup
Cortese	Horne	Percey	Thomson
Cosetti	Keller, M.	Prendergast	Van Sant
Cunningham	King		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

JUDGE HOMER KREIDER WELCOMED

PRESIDENT BRODERICK. I am advised that in the back of the hall we have with us today Judge Homer Kreider, who is the President Judge of the Common Pleas Court in Dauphin County.

I would like him to stand up so we can give him our usual cordial greeting and welcome.

We are glad to have you with us.

That completes the amendments in connection with Proposal No. 6.

I think I express the gratitude of each and every delegate here when I say to the Local Government Committee and its chairmen, Delegates Pasquerilla and Manderino and all its co-chairmen and every member of that committee, I think they have done a magnificent job.

The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, may we thank the president, the staff and the delegates for their indulgence, their helping us out in this local government article and their cooperation. It was a real pleasure to have had the opportunity. We started at 4:30 yesterday, it is now 5:15 and we are most happy to relinquish this microphone.

PRESIDENT BRODERICK. We think you have done a good job. If the Judiciary Committee can do it in an equal amount of time, we will all be happy.

The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I want to congratulate the Committee on Local Government. I consider myself a pro. I have been up here since 1959 and I have never seen a steamroller move as smoothly and as relentlessly in my life before as this one.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. I think the record should note that the only steamroller we came into head on and lost was the "Irvis Public Defender Steamroller."

COMMITTEE MEETING

JUDICIARY, Co-Chairmen Scranton and Amsterdam, full committee, Senate Majority Caucus Room, Thursday, February 15, 1968, at 8:30 a.m., e.s.t.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, when the judiciary proposal starts tomorrow morning, four things will be considered:

First of all, there will be a meeting of the full Judiciary Committee tomorrow morning at 8:30 a.m. in the Senate Majority Caucus Room.

Secondly, the schedule which Mr. Amsterdam, when he introduced the proposal, said would come along with it is now being distributed to every member, and tomorrow morning it will be printed with the proposal available for your use.

Third, I can get a piece of minutia out of the way. In the proposal there is one misprint. On page 8, line 11, Proposal No. 7, it should read, "Section 16 of Article VI," not "Section 6 of Article VI."

Fourth, the presentation by the Judiciary Committee tomorrow—if you have your Proposal No. 7 with you—will be as follows: The first presentation will be of Sections 1 through 9 and Sections 17 and 18, which include all the provisions having to do with the organization and the administration of the judicial system and the unified judicial system which the committee has advocated.

The second sectional group will be provisions 10 through 12, which are the most contentious of all, dealing with the selection of judges.

The next one will be Section 13, which deals with the tenure of judges; the next will be Section 14, which deals with the retirement of judges, and the next is Sections 15 and 16, which deal with the discipline and removal and incompatible activities of the judiciary. In other words, there will be five different sections. After discussion and interrogation of each, needless to say, they will each in turn be open to amendment, full amendments of any type, sort or description.

I hope you will take note of this to facilitate the effort tomorrow. In contrast, of course, not because of the nature of the substantive matter with which we are dealing at all or the fact that it is the least contentious, but because of the fact that this is the way things should be done in a convention. Unlike a steamroller, I assure you this will be democracy at work.

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to second consideration of **Committee Proposal No. 4, Printer's No. 15,** entitled:

Amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

LEONARD AMENDMENT TO PROPOSAL No. 4

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATE LEONARD offered the following amendment, which was read by the clerk:

Amend Sec. 2 (Sec. 27), page 3, line 28, by striking out "Appropriations" and inserting: Operating budget appropriations

Amend Sec. 2 (Sec. 27), page 3, line 30, by inserting after "available": in a fiscal year

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Now we are going to take up Proposal No. 4, printer's No. 15, which is on second consideration.

The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, the day before yesterday, I guess it was Monday, I introduced a rather comprehensive amendment to Proposal No. 4. As a result of the legal opinion that arose yesterday about 2:30, it was agreed that we would hold out the amendments on Section 27. These amendments which are now being offered are to Proposal No. 4, printer's No. 15, which is on the desk today.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard for a statement.

DELEGATE LEONARD. The purpose of this amendment is to clarify the language in this section so it will now read "operating budget appropriations made by the General Assembly shall not exceed the actual estimated revenues available in a fiscal year for said appropriations." This is saying what we have said before in other words, but because of certain deletions, we have to put this in. It is saying that the General Assembly shall adopt a balanced budget.

I recommend the adoption of this amendment.

PRESIDENT BRODERICK. Does anyone else wish to be heard? Apparently not.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Leonard?

The roll was recorded as follows:

YEAS—127

Aurentz	Fay	Laputka	Redick
Bagenstose	Feather	Leach	Reynolds
Baldrige	Filson	Lee, K.	Sahli
Baldwin	Fineman	Lee, L.	Scales
Banes	Fleming	Leinbach	Scarlett
Barron	Fohl	Leonard	Scranton
Barry	Forster	Levin	Sebastian
Bashoff	Fortney	Manderino	Shapiro
Benedict	Gubreski	Mangery	Sharp
Bloom	Gehrlein	Markley	Shettig
Braham	Gerber	Mattioni	Shively
Brennan	Goldman	McGeary	Shoemaker
Broderick	Goldstein	McGlynn	Shrager
Brown	Gouger	Meyer	Silverman
Buck	Griffith	Michener	Sprogell
Bunting	Hannum	Miller, D.	Stout
Burkholder	Hatter	Miller, R.	Strickler
Butera	Henderson	Moorhead	Swope
Caputo	Heyburn	More	Tate
Clark	Himes	Morton	Thornburgh
Clinger	Hocker	Murray	Tomascik
Conley	Hook	Nelson	Tully
Corey	Hostetler	O'Donnell	Waldron
Cortese	Huggins	Orban	Warman
Cosetti	Irvis	Orbin	Welsh
Croop	Jirolanio	Otto	Westerberg
Curran	Johnson	Pasquerilla	Whittum
Dailey	Kauffman	Popil	Wilcox
Desmond	Keller, J.	Pott	Wilmarth
Devlin	Kelly	Powell	Woodring
Erwin	Kline	Rappaport	Woodside
Fawcett	Krill	Rea	

NAYS—1

Cunningham

NOT VOTING—35

Aberman	Donaldson	Lane	Roberts
Allison	Donolow	Michael	Rovner
Amsterdam	Dumbauld	Musselman	Ruth
Baldus	Fagan	Pechan	Scott
Benfield	Gray	Pelletier	Solomon
Cain	Harding	Percey	Stroup
Camardella	Horne	Prendergast	Thomson
Caron	Keller, M.	Quiles	Van Sant
Casey	King	Richter	

The majority having voted in the affirmative, the question was determined in the affirmative, and the amendment was agreed to.

LEONARD AMENDMENT No. 2 TO PROPOSAL No. 4

PRESIDENT BRODERICK. The clerk will read the second amendment which is also being offered by Delegate Leonard.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE LEONARD offered the following amendment, which was read by the clerk:

Amend Sec. 2 (Sec. 28), page 4, line 7, by striking out "of funds" and inserting: available for operating expenditures

Amend Sec. 2 (Sec. 28), page 4, line 8, by striking out "assigned for appropriation" and inserting: appropriated

On the question,

Will the House agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, this was a very difficult section for the committee. We, unfortunately, had many, many different opinions from many different experts, but I think the proposed language that is now submitted in this amendment is properly saying what the committee intended to say. It will now read: "All surplus available for operating expenditures shall be appropriated by the General Assembly during the ensuing fiscal year."

I recommend the adoption of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I have a problem with understanding it. I have been looking at it for over a week, a part of that time at the request of this very committee.

Am I given to understand that if there is a surplus fund in any year, it could not be transferred over to another fund in that same year where there is a shortage, but it must, of necessity, be carried on to the following year?

I, perhaps, could state that better in terms of a hypothetical question, if I may.

Suppose the State were to appropriate, say, $10.5 million for certain building projects and $10.5 million for a second building project. It turns out that the first building only cost $10 million, but the second building costs $20 million. Under the present scheme under the present Constitution, they could use the other half million dollars and shift it over to the building for which there is a shortage. Under this proposal, the additional half million dollars would have to be carried over to the following year which would, presumably, then create a shortage for the building which was underestimated. Is that the intent of this committee?

DELEGATE LEONARD. This is for operating expenditures, Delegate O'Donnell; not for capital expenditures.

DELEGATE O'DONNELL. Well then, for operating expenditures, suppose the same figures were to operate in the Department of Revenue and it so happened that the Secretary was able to operate his department on one-half million dollars less, whereas the Department of Public Instruction, because of demands arising during the year, required one-half million dollars more, am I given to understand under your proposal that that half million may not be transferred from the Secretary of Revenue's account over to the Department of Public Instruction's but must, of necessity, be carried to the following or, as you call it, ensuing year?

DELEGATE LEONARD. I am not exactly sure. This would clearly require another appropriation. If one department has used up all of its funds, it would have to have a deficiency appropriation, and I do not think that the intent of this is to eliminate that. If there is any money left over at the end of the year from lapses that occur within the department or from revenues that were received in excess of that which was estimated, that would then become a surplus.

DELEGATE O'DONNELL. I think I understand what you intend to do, but my problem is a question as to whether or not you have not actually made the problem more difficult of solution rather than less. My point is: I am aware that unlapsed funds are subject only to appropriation and it was my impression that is what you intended to accomplish. But when you say in a Constitution that lapsed funds, therefore surplus funds, shall become available for appropriation only in the ensuing year. are you not unnecessarily tying yourself into a knot?

DELEGATE LEONARD. I do not believe so. The intent of the committee in this case was to say, if there were a surplus as of June 30, 1968, that this has to go in as revenue in effect for the year ending June 30, 1969.

DELEGATE O'DONNELL. Delegate Leonard, then I assume you had intended to say that if there are, at the end of the fiscal year, surplus funds, then it will be carried over, but you do not say that in your proposal. If you had meant to say in your proposal surplus funds that are there at the end of the fiscal year will be carried over to the ensuing year, I have no problem, but you speak of surplus funds, period.

DELEGATE LEONARD. No. We intend the surplus to be that which is—well, actually a surplus, as far as I am concerned, is not finalized until the end of the year for you are never able to determine what the surplus is until the close of the fiscal year. But I agree that the intent is that it is the surplus at the end of the year.

DELEGATE O'DONNELL. Delegate Leonard, I would beg to correct you, at least to this one extent. Almost every appropriations bill includes, or at least has an important section in it, that uncommitted and unencumbered funds shall lapse. Now uncommitted and unencumbered funds for any given number of projects can lapse in the middle of the year. If your intention was to make it apply only to surpluses at the end of the year, I wonder if it would be appropriate, Mr. President, to permit time for an amendment in that respect to be prepared to make that clear.

I, would, therefore, move that this specific amendment be laid on the table until that intent could be cleared up.

DELEGATE LEONARD. May I ask Delegate Wilcox if he would like to make a comment on that?

DELEGATE WILCOX. I think you have expressed the intent of the committee, that it is surplus at the end of the year, any surplus at the end of the fiscal year.

DELEGATE WOODRING. Members of the Convention, this amendment and this section is to correct a situation or change a situation. Heretofore, I believe, surpluses had to be placed into the sinking fund, and now instead of that, there being no sinking fund—the sinking fund has been abolished—any surpluses will be put into the next fiscal year's budget to dispose of it. Contrary to what Delegate O'Donnell said, I think there can be no surplus until the end of the fiscal year. At that time the surplus, if any, goes into the next year's budget rather than to go into the sinking fund as heretofore. I think this is a proper amendment and should be approved.

PRESIDENT BRODERICK. Delegate O'Donnell.

DELEGATE O'DONNELL. I do not speak against approving the amendment, sir. I have inquired of the office of the Auditor General and of the office of the State Treasurer on this precise point to help Chairman Leonard with this specific language, and they advised me that there are surpluses that come up due to lapses that occur during the middle of the year. Therefore, I think it most appropiate that if this committee intends to refer only to surpluses that exist at the end of the year as being carried over to the ensuing year, that it would be most appropriate to lay it on the table for that very minor language change.

DELEGATE LEONARD. We have no objection providing it is going to be done today.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, as a former assistant fiscal officer, and notwithstanding the statement made by Delegate O'Donnell that I might be perhaps in opposition to my recent dear boss, I would like to say that there are no lapses until the end of the year. Knowledge that lapses will likely happen is current before the end of the year, but there are no lapses until the end of the year.

DELEGATE O'DONNELL. Mr. President, I withdraw my motion.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I think the matter of semantics has arisen here again on the floor of the Convention. The CPAs are obviously using the word surplus in a very technical sense and I am quite sure in a very correct sense. The fact of the matter is, those of us who deal daily with state government do not use the term precisely in this manner and I am concerned about its definition before a court.

I point out to you that several years ago there developed in the state budget what was referred to commonly as a surplus. There was an increase of income over estimates. That is the way, I guess, the CPAs would refer to it. We, however, called it a surplus. The Governor referred to it as a surplus. You might call it an incipient surplus, I do not know. It amounted to approximately $25 million, and I think $18 million of it was given as a bonus to the various school districts of the Commonwealth at that time, during that fiscal year.

Now what concerns me is this: What happens in a similar situation if this amendment goes into the Constitution as it is drawn? Would we then be prohibited from using that $18 million within that fiscal year? Would we have to wait and tell the school districts, even though you need it, and we know we have it, we cannot, under our Constitution, give it to you this year; we must wait until the next fiscal year to give it to you. If that would be the interpretation of this language, then I think the amendment is faulty and perhaps needs to be redrawn.

DELEGATE LEONARD. I did not quite get one thing, Delegate Irvis.

DELEGATE IRVIS. Perhaps the question is not so hypothetical because it did happen. Suppose the Governor were to say that our income is running approximately $20 million above what we estimated. It appears that we are going to have a surplus of $20 million. We think we ought to divide this $20 million this fiscal year among the school districts. Would your amendment preclude this being done?

DELEGATE LEONARD. Well it seems to me that under the rules of appropriations that you could probably make an appropriation during that year of any funds you had. Is that not right?

DELEGATE IRVIS. Why do we not listen to the words of wisdom from the late Governor?

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. I want you to know that I think Delegate Irvis is a marvelous person. I do not have words of wisdom, but the event that he is referring to occurred while I was Governor. The interpretation that was given to us at that time—it was looked into at that time very thoroughly—was that you do not have a surplus until the end of the fiscal year. If you, therefore, appropriate moneys especially for a school district as we did at that time, you are not appropriating surplus. Therefore, his particular phraseology would still pertain and would not interfere with such a suggestion as was made at that time and was carried through and the kind of thing that you are talking about, Delegate Irvis.

DELEGATE IRVIS. In that case, Mr. President, I would not have any objection to voting for the amendment. That was the one thing which concerned me, as to the definition of surplus. I was under the impression that it had been defined differently, but if we have the precedent that it is not defined in the maner in which I believed, then, of course, my objection would be groundless.

DELEGATE O'DONNELL. Mr. President, then my reason for comment is that it was not defined at all. It would seem to me if you put the words "surplus at the end of the year" in there, it would define it to satisfy all and sundry. There would never be any problem thereafter.

DELEGATE FINEMAN. Mr. President, it would seem to me that if funds were lapsed during the course of the year, they would be properly entitled "surplus funds." As I read this proposed language, since they are properly described as surplus funds, these moneys that were lapsed could not be used in that year for appropriation purposes but would have to go over and form part of the beginning surplus of the new fiscal year.

DELEGATE LEONARD. If they were lapsed?

DELEGATE FINEMAN. If they were lapsed. That is what I am talking about. That happens very frequently during the course of the year. If funds should develop through lapses, then the legislature would be precluded from spending that money in the year in which the lapses take place because this language says that surplus must go over to the ensuing fiscal year.

I think that the suggestion made by Delegate O'Donnell is a very proper one since it was the intention of the committee to refer to surplus at the end of the year developing both from lapses and receipts of money above estimates, and I would have no objections to that. I think Delegate O'Donnell's amendment is a meritorious one.

DELEGATE LEONARD. We would certainly accept that.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I believe that since the issue is so simple and so clear-cut that perhaps the rules might be waived to permit that amendment to be made from the floor.

PRESIDENT BRODERICK. Yes, the rules can be waived, but I say let us get the language straightened out first.

DELEGATE LEONARD. I would wait for the language from Delegate O'Donnell and would be willing to accept it. I just want to say that in the present Constitution it talks about surplus funds and that is where the committee picked up the words in Section 12 of Article VIII.

AMENDMENT TABLED

PRESIDENT BRODERICK. You have another amendment, have you not?

DELEGATE LEONARD. Yes.

PRESIDENT BRODERICK. Could the Chair suggest that we prepare that amendment and lay this on the table? We will take up your next amendment while this is being redrafted.

DELEGATE LEONARD. That is all right, Mr. President.

LEONARD AMENDMENT No. 3 TO PROPOSAL No. 4

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE LEONARD offered the following amendment, which was read by the clerk:

Amend Sec. 2 (Sec. 27), page 4, lines 1 and 2, by striking out the colon in line 1 and "(1) APPROVE" in line 2 and inserting: approve

Amend Sec. 2 (Sec. 27), page 4, line 2, by inserting after "year.": Funds created by debt shall not be expended unless an appropriation therefore is authorized by the General Assembly. Debt shall not include that portion of obligations which are to be repaid, when so determined by the Auditor General, (1) from charges made to the public for the use of the assets financed, or (2) from lease rentals or other charges payable by a school district or local taxing authority, or (3) by agencies or authorities created for the joint benefit of this Commonwealth and one or more other State governments.

Amend Sec. 2 (Sec. 27), page 4, lines 3 and 4, by striking out both of said lines

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, yesterday when the major amendment was being considered, there were some words in that amendment that legal counsel ruled to be outside the jurisdiction of this Convention. These words that are here which state: "Funds created by debt shall not be expended unless an appropriation therefore is authorized by the General Assembly" are the words that legal counsel has approved as being satisfactory for this section and, therefore, is a proper subject for debate.

This is a question of the philosophy of government. It is a question as to whether or not we believe in the Article III, I believe it is Section 24, where it says that all public moneys shall only be spent from appropriations. Article IV of the Constitution goes on to say that all appropriations are subject to a partial or a so-called item veto. The purpose of this amendment is to bring into the overall scheme of government that all expenditures, whether they be for operating or capital purposes, be by appropriation and, therefore, would be subject to item veto.

We want to point out to this body that in the debt proposal that is now in the Committee on Style and Drafting, we have brought within the definition of debt of the Commonwealth all debt of the General State Authority and the Highway and Bridge Authority. It is true, however, that in that proposal we did not eliminate or say that authorities could not exist; therefore, it is possible that the General Assembly can continue to use the authorities and pass an authorization bill which would authorize the authorities to incur debt. The debt incurred by the authorities would clearly be general obligation bonds because another section of that Proposal No. 3 puts the full faith and the credit behind the bonds whether they be issued by the State itself or by the authorities.

There is a substantial opening in this proposal that we wanted to bring before this body for your consideration and your decision. We have all heard the term "pork barreling" which is, as I understand it, the working out between various people in government for one to have a project in his home town if he will give a project to another person in the other person's home town. Having everything under an item veto may or may not eliminate pork barreling, but it would give the Governor the final say on every single project for which government money is going to be spent.

So we have the issue which is before you now. The purpose of this amendment is to bring this issue before you so that you clearly know what you are doing. We do not want to propose an article and then have someone come later and say you left this tremendous loophole in here. This amendment would mean that every nickel of capital expenditures would have to come by way of appropriation and, therefore, every appropriation for capital expenditure would give the last word to the Governor as to whether he would want that project or does not want that project.

With this, I will leave the decision up to you. We want it to be crystal clear just what is happening so you can decide whether you want the Governor to have the final veto on every capital project or whether you think that he only will have his say along with some other people through the development of the capital budget and the development through the General State Authority Board.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, there is undoubtedly merit in what Delegate Leonard seeks to do in this proposal, but I am compelled to point out to you some other things that will happen if we adopt the language here, "Funds created by debt shall not be expended unless an appropriation therefore is authorized by the General Assembly."

First of all, I feel at the moment there are adequate safeguards in the law that created the General State Authority and the method by which we pass a GSA bill. The Planning Commission reviews it and the Governor still has the final say, because he can always veto that legislation.

There is unquestionably some interplay in the legislature among members as to what projects will ultimately get into the overall GSA bill. But I see nothing necessarily wrong with that.

If you apply this language to the General State Authority, I submit to you that you must also apply it to the other borrowing in the Commonwealth, including the $500 million which we recently borrowed for the purpose of conservation. If you do that, you will have the biggest pork-barreling job you ever saw in your life in the Commonwealth of Pennsylvania.

We ran into that last year when, in the enabling legislation for that half-billion dollar program, some members tried to subject the spending of that money to legislative appropriation, and the hue and cry was so strong from the people in Pennsylvania that we had to backtrack and change our methods.

I submit that you can, when you borrow the money—if you do it on the ballot or otherwise—lay down adequate safeguards as to who is to spend it and how it is to be spent without subjecting it on a year-to-year basis to legislative appropriation. I think there is adequate control in the hands of the Governor now in both in-

stances. But believe me, if you want to have all the people who supported that $500 million bond issue down here on those steps tomorrow morning, you pass that language and you give to the General Assembly the right to determine what happens to that $500 million and you will have them here. You see, these things are two-edged swords. They cut both ways.

I understand what Delegate Leonard says we are about to do. I think he and all the other delegates can take assurance in the fact that the final action of the General Assembly on the General State Authority bill is still subject to the veto of the Governor, and I think there is enough interplay and enough responsibility on the part of the members to protect us in that safeguard.

I, therefore, oppose this amendment on that basis.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I rise to vigorously oppose this amendment.

During the course of the debate which took place yesterday over the question of certification of revenues, I endeavored to spell out at length the need to place this legislative body, the General Assembly, on an equal footing with the Executive Branch of government, to stand these men and women on their feet so that they can be the type of body that the original Constitution intended that they be.

There is no need to travel this road twice at length, except to point out once again that I said that what you were endeavoring to do yesterday by putting the certification in the hands of the Governor exclusively was to thwart the will of the people.

I say to you again today that to put this language into the Constitution would thwart the will of the people. There is no capital project undertaken by this Commonwealth unless it is approved by a majority of 253 Representatives and Senators. Is it not thwarting the will of the people to have a majority of 253 men and women vote to construct a certain project and then to have the Governor be in a position to line-veto that project? That is exactly what this language will do, allow the Governor to line-veto.

You spoke, Delegate Leonard, about pork-barreling. Have you given any thought to the pressure points that are placed in the hands of a Governor in trying to extract from a reluctant legislature that which the Governor, in his sole wisdom, thinks should be enacted and which the legislature has denied to the Governor by this kind of language? What happens is, you will be summoned to the front office. Again I say this is a tactic where the market is not exclusively cornered by either the Republicans or Democrats. Chief executives of both parties are guilty of this kind of thing, but you will be summoned to the front office. If I have sponsored a piece of legislation calling for the construction of a dental laboratory for Temple University and it is in this General State Authority proposition, the front office will say to me, Now Mr. Fineman, I do not think you have been cooperating on the tax program. Are you interested in your dental laboratory for Temple University? You better get in line, or else Temple University is going to lose their dental laboratory.

I am calling the shots squarely and candidly right now and I am putting it on the table. This is precisely what happens in the operation of government in here, so when you talk about pork-barreling, I want you to contemplate for just a moment what can happen if you take this tool and put it in the hands of a chief executive. You will make this legislative body nothing, eventually, but a rubber stamp.

It is understandable, I think, that I guard zealously, or attempt to guard zealously, what I consider to be the proper prerogatives of the legislative body since I am a legislator. But by protecting these rights I am also protecting the rights of the people because the people have sent duly-elected Representatives and Senators to this General Assembly and they sent these people here to voice their opinions and their thoughts for them. And if the majority of these 253 people decide, in their wisdom, that there should be a certain capital project, why should there be one man elected in the front office who can override the thinking of 253 men and women who comprise our General Assembly?

The fact is that this General Assembly does, through appropriations, really pass upon the merits of these things because when a project is built through the General State Authority, the project is then leased to the Commonwealth. The Commonwealth pays rentals and those rentals are in the General Appropriations Bill and the legislature is called upon to pass upon it. So we are, in effect, voting on the appropriation. I say to you that if you were to incorporate this language into the Constitution you would be doing nothing other than handcuffing and locking in the legislature so that it could not operate effectively and efficiently and responsively.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I would like to correct the learned legislator.

First, there are only 252 in the legislature. Outside of that, I concur with both of the last two speakers.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I think you are the fellow who ruled there were only 252.

Mr. President, not being a legislator anymore and never anticipating coming back into this field, I must agree with Delegate Fineman.

First of all, if you ever want strong government, and I think we have good strong government in Pennsylvania, you must have the separation of the three forms of government: Administrative, Legislative, and Judicial. You must keep them each strong within themselves.

If this amendment passes, what you are doing is allowing one form of this government to override the will and thinking of another form in what I term an unnatural manner. I have to agree with Delegate Fineman—present company excepted, I do not think that Governor Scranton would ever do this because I do not think he is ever going to run for governor again, he said he would not and I believe him. You have a sword here that you are putting in the hands of the governor of this Commonwealth. If he is a smart governor, he will put this piece of legislation through first and then he will go after the thing that is going to be very hot, like taxes and so on, and then he is going to do exactly what Delegate Fineman

said, and this has been done before. He will call the men in and will say if you do not do this then I will use the pencil on you. He is going to leave, but the men in the legislative body and the women in the legislative body who are closer to the voters of this Commonwealth than anyone else are going to have to go back home and make an excuse why they did not get that particular project that the people needed and that they worked so hard to get in its original form.

Mr. President, I think this is a real bad, terrible amendment as presented.

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera.

DELEGATE BUTERA. Mr. President, I would concur with the prior speakers in opposing this amendment. I realize its intent and I, perhaps, could support it except for the fact that the executive presently does exercise a tremendous amount of control over the capital fund budget for the GSA or whatever, and, therefore, I think to give complete control would be improper.

Mr. President, without reiterating what others have said I would add this: The fear of pork barreling, which we all share, cannot be solved by this kind of an amendment in this Constitution; it can only be solved by the calibre of men and women who serve in the General Assembly.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I do not know that I can add very much to what has been already stated at these microphones in opposition to this amendment, except this: There are those forces which move throughout history which tend to support the theory of kingship; there are those forces throughout history which tend to believe in the power of the people. They are constantly, continually and, perhaps, continuously in conflict. Those forces meet in conflict here on this floor of this Constitutional Convention today.

There are those men and women who seriously and sincerely believe that the opinion of one man—whether he be called king, president, chief executive or governor—is a sharper, more incisive, more dependable opinion than that of 253 or 252, whichever figure you want to settle on. I happen to be aligned and have always been aligned with those who believe—although we may decry sometimes the fact that people do not move rapidly enough and do not always agree with us when we know we are right and the people are wrong—eventually the people rule, the people survive. I am opposed to this amendment because the 253 who meet in the Senate and in the House of Representatives represent the voice of the people much more closely than does the one king or chief executive or president or governor who sits in the executive mansion. And in this particular proposal, we are taking from the people the right to control the future of the General State Authority, and we are giving a weapon to the executive to use, willy-nilly, to pursue his own private or public purposes.

I am not here to say that all governors will use this weapon. I say this quite honestly, I do not think William Scranton ever did, and I could name several others who never did and never would, but I am not at all certain that you can say that about all governors in the future. I do not want to give the chief executive of this Commonwealth a club to beat over the heads of the members of the legislature. If they make a decision as to how capital funds should be expended under the General State Authority, that should be the decision of the people. No governor, whether he be Republican or Democrat, ought to have the right to change that decision, therefore, I urge that you vote in the negative on this proposition.

PRESIDENT BRODERICK. The Chair recognizes Chairman Leonard.

DELEGATE LEONARD. Mr. President, I would just like to say, in summing up the debate, several of us felt that with this financial management proposal and with the debt proposal that is going through this Convention, that we wanted to point out just what was happening. We wanted to point out and allow this group to decide whether or not they wanted to allow the Governor an item veto on capital projects. It was for this purpose that this was submitted.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Leonard?

The roll was recorded as follows:

YEAS—29

Baldwin	Forster	More	Shively
Bloom	Goldman	Morton	Waldron
Braham	Goldstein	Pasquerilla	Warman
Brennan	Hannum	Pott	Whittum
Broderick	Leach	Powell	Wilcox
Cortese	Mangery	Rea	Woodring
Devlin	Meyer	Reynolds	Woodside
Erwin			

NAYS—98

Aberman	Desmond	Kelly	Popil
Aurentz	Fawcett	Kline	Rappaport
Bagenstose	Fay	Krill	Richter
Baldrige	Feather	Laputka	Ruth
Baldus	Filson	Lee, K.	Sahli
Banes	Fineman	Lee, L.	Scales
Barron	Fleming	Leinbach	Scarlett
Barry	Fohl	Levin	Sebastian
Bashoff	Fortney	Manderino	Shapiro
Benedict	Gabreski	Markley	Shettig
Benfield	Gehrlein	Mattioni	Shoemaker
Brown	Gerber	McGeary	Shrager
Buck	Gouger	McGlynn	Silverman
Bunting	Harding	Michael	Solomon
Burkholder	Henderson	Michener	Sprogell
Butera	Heyburn	Miller, D.	Stout
Camardella	Hocker	Miller, R.	Strickler
Caputo	Hook	Moorhead	Swope
Clinger	Hostetler	Murray	Tate
Conley	Huggins	Nelson	Thornburgh
Corey	Irvis	O'Donnell	Tully
Cosetti	Jirolanio	Orban	Welsh
Croop	Johnson	Orbin	Westerberg
Curran	Kauffman	Otto	Wilmarth
Dailey	Keller, J.		

NOT VOTING—36

Allison	Dumbauld	Lane	Roberts
Amsterdam	Fagan	Leonard	Rovner
Cain	Gray	Musselman	Scott
Caron	Griffith	Pechan	Scranton
Casey	Hatter	Pelletier	Sharp
Clark	Himes	Percey	Stroup
Cunningham	Horne	Prendergast	Thomson
Donaldson	Keller, M.	Quiles	Tomascik
Donolow	King	Redick	Van Sant

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

LEONARD AMENDMENT No. 4 TO PROPOSAL No. 4

PRESIDENT BRODERICK. We understand that the Leonard amendment incorporating the suggestions of Delegate O'Donnell has now been prepared and is being distributed. I am going to ask the clerk to read the amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE LEONARD offered the following amendment, which was read by the clerk:

Amend Sec. 2 (Sec. 28), page 4, lines 7 to 9 by striking out all of said lines and inserting: Section 28. Surplus.—All surplus of operating funds at the end of the fiscal year shall be appropriated during the ensuing fiscal year by the General Assembly.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. This is the amendment that was prepared while we were discussing the other amendment. Do you have a statement to make on it, Delegate Leonard?

DELEGATE LEONARD. We are satisfied with the words in this amendment, Mr. President.

LEONARD AMENDMENT No. 2 WITHDRAWN

PRESIDENT BRODERICK. The first amendment has been withdrawn and this is being substituted in its place. That is correct, is it not?

DELEGATE LEONARD. Yes, sir.

PRESIDENT BRODERICK. The question recurs,
Will the Convention agree to Amendment No. 4 offered by Delegate Leonard?

The roll was recorded as follows:

YEAS—126

Aurentz	Erwin	Laputka	Reynolds
Bagenstose	Fawcett	Leach	Richter
Baldrige	Fay	Lee, K.	Sabli
Baldwin	Feather	Lee, L.	Scales
Banes	Filson	Leinbach	Scarlett
Barron	Fineman	Leonard	Scranton
Barry	Fleming	Levin	Sebastian
Bashoff	Fohl	Manderino	Shapiro
Benedict	Forster	Mangery	Shettig
Benfield	Fortney	Markley	Shively
Bloom	Gabreski	Mattioni	Shoemaker
Braham	Gehrlein	McGeary	Shrager
Brennan	Gerber	McGlynn	Silverman
Broderick	Goldman	Meyer	Solomon
Brown	Goldstein	Michael	Sprogell
Buck	Gouger	Michener	Stout
Bunting	Griffith	Miller, D.	Strickler
Burkholder	Hannum	Miller, R.	Swope
Butera	Harding	Moorhead	Tate
Camardella	Henderson	More	Tomascik
Caputo	Heyburn	Morton	Tully
Clark	Himes	Murray	Van Sant
Clinger	Hocker	Nelson	Waldron
Conley	Hook	O'Donnell	Warman
Corey	Irvis	Orban	Welsh
Cortese	Jfrolanio	Otto	Westerberg
Cosetti	Johnson	Popil	Whittum
Croop	Kauffman	Pott	Wilcox
Curran	Keller, J.	Powell	Wilmarth
Dailey	Kelly	Rappaport	Woodring
Desmond	Kline	Rea	Woodside
Devlin	Krill		

NAYS—1

Orbin

NOT VOTING—36

Aberman	Donolow	King	Redick
Allison	Dumbauld	Lane	Roberts
Amsterdam	Fagan	Musselman	Rovner
Baldus	Gray	Pasquerilla	Ruth
Cain	Hatter	Pechan	Scott
Caron	Horne	Pelletier	Sharp
Casey	Hostetler	Percey	Stroup
Cunningham	Huggins	Prendergast	Thomson
Donaldson	Keller, M.	Quiles	Thornburgh

The majority having voted in the affirmative, the question was determined in the affirmative, and the amendment was agreed to.

KLINE AMENDMENT TO PROPOSAL No. 4

PRESIDENT BRODERICK. I understand we have an amendment being offered by Delegate Kline. That amendment is being prepared. The clerk has a copy and I am going to ask him to read the amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE KLINE offered the following amendment, which was read by the clerk:

Amend Sec. 2 (Sec. 27), page 4, lines 1 and 2, by striking out the colon in line 1 and "(1) APPROVE" in line 2 and inserting: approve
Amend Sec. 2 (Sec. 27), page 4, lines 3 and 4, by striking out both of said lines

On the question,
Will the House agree to the amendment?

PRESIDENT BRODERICK. While the copies are being prepared, you do not mind making your statement and we will have them distributed before we vote.

DELEGATE KLINE. Mr. President, part of the earlier amendment that was defeated that Delegate Leonard had put in had the effect of removing on page 4, lines 3 and 4, which read "annually approve a financial plan for no less than each of the succeeding five fiscal years." It is my understanding that it had been the intention of Chairman Leonard that that be taken out. It occurred to me when we were busy defeating his other amendment that by defeating it we still have these two lines. I had the bureau draft an amendment that only takes out those two lines. That is the net effect of the amendment.

I would yield to Chairman Leonard. I think he agrees that it should be done.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. This, I thought, was in the amendment yesterday. We went through to take these two lines out and it came through today, so something went wrong. We clearly approve of deleting these two lines.

PRESIDENT BRODERICK. In other words you agree to the amendment.

DELEGATE LEONARD. Yes.

PRESIDENT BRODERICK. I think we will have this amendment distributed. As soon as it is distributed, if you have not had a chance to look at it we will—I might make another happy announcement. This is the last amendment. I always say that with my fingers crossed.

It is the last amendment to Proposal No. 4, Printer's No. 15. Next we will take up Proposal No. 5. I understand we have one amendment on that and we will then be finished for the day.

The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. A number of people around me would like an explanation of why they are removing this five-year limit.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. I hope Delegate Leonard has some ideas, too. I really think this is clearly an administrative function and the Governor has the power, if he so desires, as does the General Assembly, to lay plans ahead. It would seem to me that in a few years the Governor may want a six-year plan or a seven-year plan or a ten-year plan. To restrict it in the Constitution to a five-year plan, although the idea may be good, I think is unwise. That would be my feeling on removing it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. As you can gather, Mr. President, and the delegates can gather, we have had some real difficulty with this Proposal No. 4.

One of the major, if not the major problem, that we have had is that when the committee would talk to each expert, we would get different answers. We finally got down to what we felt was the right answer and then we would talk to another expert and he said that this would not work, and so forth. But to strike out these two lines here, we finally agreed that it would have no significance and would probably be a waste of time for the legislature to review and to adopt or approve a five-year plan of the Governor. It would not have any legal effect on the legislature. We have accomplished our purpose in that the Governor must submit to the legislature and to the people the full disclosure of the five-year plan, but there is no need for anyone to adopt it.

We recommend that these be deleted.

PRESIDENT BRODERICK. Thank you.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Kline?

The roll was recorded as follows:

YEAS—123

Aberman	Erwin	Laputka	Richter
Aurentz	Fawcett	Leach	Ruth
Baldrige	Fay	Lee, K.	Sahli
Baldus	Feather	Lee, L.	Scales
Baldwin	Filson	Leinbach	Scarlett
Banes	Forster	Leonard	Scranton
Barron	Fortney	Levin	Sebastian
Barry	Gabreski	Manderino	Shapiro
Bashoff	Gehrlein	Mangery	Shettig
Benedict	Gerber	Mattioni	Shively
Benfield	Goldman	McGeary	Shoemaker
Bloom	Goldstein	McGlynn	Shrager
Braham	Gouger	Meyer	Solomon
Brennan	Griffith	Michael	Sprogell
Broderick	Hannum	Michener	Stout
Brown	Harding	Miller, D.	Swope
Bunting	Henderson	Miller, R.	Tate
Burkholder	Heyburn	Moorhead	Thornburgh
Butera	Himes	More	Tomascik
Camardella	Hocker	Morton	Tully
Caputo	Hook	Murray	Van Sant
Clark	Hostetler	Nelson	Waldron
Clinger	Huggins	O'Donnell	Warman
Conley	Irvis	Orban	Welsh
Corey	Jirolanio	Orbin	Westerberg
Cortese	Johnson	Otto	Whittum
Croop	Kauffman	Popil	Wilcox
Curran	Kelly	Pott	Wilmarth
Dailey	Keller, J.	Powell	Woodring
Desmond	Kline	Rea	Woodside
Devlin	Krill	Reynolds	

NAYS—1

Rappaport

NOT VOTING—39

Allison	Donatucci	King	Redick
Amsterdam	Dumbauld	Lane	Roberts
Bagenstose	Fagan	Markley	Rovner
Buck	Fineman	Musselman	Scott
Cain	Fleming	Pasquerilla	Sharp
Caron	Fohl	Pechan	Silverman
Casey	Gray	Pelletier	Strickler
Cosetti	Hatter	Percey	Stroup
Cunningham	Horne	Prendergast	Thomson
Donaldson	Keller, M.	Quiles	

The majority having voted in the affirmative, the question was determined in the affirmative, and the amendment was agreed to.

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 5, Printer's No. 16,** entitled:

Amend the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

PRESIDENT BRODERICK. We now move on to Proposal No. 5, printer's No. 16.

The Chair recognizes Delegate Buck.

DELEGATE BUCK. Mr. President and fellow delegates, in order to allay the concern expressed by a number of our delegates that my amendment to Section 1A(d) of Committee Proposal No. 5 may lead to certain abuses because it is broad enough to include commercial projects by the private sector, I wish to move that we reconsider the amendment for the purpose of voting favorably upon an amendment to my amendment that will restrict the special tax benefits of Section 1A(d) solely to the purchase of land by nonprofit industrial development corporations for the construction of new industrial plants to create more jobs for Pennsylvania.

For your general information, the Bureau of Industrial Development of the Department of Commerce informed me yesterday morning that there are now 351 such nonprofit industrial development groups in Pennsylvania; that since the creation of the Pennsylvania Industrial Development Authority it has made 755 loans to these groups aggregating $146 million; that the total cost of the projects involved is $389 million; that new employment opportunities have been created for 101,000 persons; and that a payroll of $451 million annually has been added to the income of Pennsylvanians.

Obviously, the type of special tax relief contemplated merely implements one of our State's most effective programs for economic growth.

I, therefore, wish at this time to move to have reconsidered the vote by which my amendment to Proposal No. 5 was adopted on Monday, February 12.

MOTION TO RECONSIDER

PRESIDENT BRODERICK. It has been moved by Delegate Buck that the vote by which his amendment was carried be reconsidered, and has that a second?

DELEGATE CROOP. I second the motion.

PRESIDENT BRODERICK. That has been seconded by Delegate Croop. It has been moved and seconded, therefore, that we reconsider the vote by which the Buck amendment was adopted on Monday.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—125

Aberman	Devlin	Kline	Rea
Aurentz	Erwin	Krill	Reynolds
Sagenstose	Fawcett	Laputka	Richter
Baldrige	Fay	Leach	Ruth
Baldwin	Feather	Lee, K.	Sahli
Banes	Filson	Lee, L.	Scales
Barron	Fohl	Leinbach	Scarlett
Barry	Forster	Leonard	Scranton
Bashoff	Fortney	Manderino	Sebastian
Benedict	Gabreski	Mangery	Shapiro
Benfield	Gehrlein	Mattioni	Shettig
Bloom	Gerber	McGeary	Shively
Braham	Goldman	McGlynn	Shoemaker
Brennan	Goldstein	Meyer	Shrager
Broderick	Gouger	Michael	Silverman
Brown	Griffith	Michener	Solomon
Buck	Hannum	Miller, D.	Sprogell
Burkholder	Henderson	Miller, R.	Stout
Butera	Harding	Moorhead	Strickler
Camardella	Heyburn	More	Swope
Caputo	Himes	Morton	Tate
Casey	Hocker	Murray	Tomascik
Clark	Hook	O'Donnell	Thornburgh
Clinger	Hostetler	Orban	Tully
Conley	Huggins	Orbin	Waldron
Corey	Irvis	Otto	Warman
Cortese	Jirolamio	Pasquerilla	Welsh
Cosetti	Johnson	Popil	Westerberg
Croop	Kauffman	Pott	Wilcox
Curran	Keller, J.	Powell	Woodring
Dailey	Kelly	Rappaport	Woodside
Desmond			

NAYS—2

Bunting	Nelson

NOT VOTING—36

Allison	Fagan	Levin	Roberts
Amsterdam	Fineman	Markley	Rovner
Baldus	Fleming	Musselman	Scott
Cain	Gray	Pechan	Sharp
Caron	Hatter	Pelletier	Stroup
Cunningham	Horne	Percey	Thomson
Donaldson	Keller, M.	Prendergast	Van Sant
Donatow	King	Quiles	Whittum
Dumbauld	Lane	Redick	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

AMENDMENT TO BUCK AMENDMENT ON PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair now recognizes Delegate Buck.

DELEGATE BUCK. Mr. President, I offer an amendment to my amendment.

PRESIDENT BRODERICK. The Clerk will now read the amendment to the amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BUCK offered the following amendment, which was read by the clerk:

Amend page 1 of the amendments by striking out lines 6 to 9 and inserting after "economy", page 4, line 1 of Printer's No. 16: or promoting industrial development through the medium of a non-profit corporation

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Did you wish to make a statement in connection with your amendment to the amendment, Delegate Buck?

DELEGATE BUCK. I merely wish to say, by way of explanation, that this amendment to my amendment deletes that part of the original amendment that extends the benefits of this section to commercial development and restricts it solely, as is set forth on the amendment to the amendment, for the purpose of promoting industrial development through the medium of a nonprofit corporation.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, fellow delegates, I want to say I am for this amendment. This amendment gets to the very heart of the problem that I vigorously fought against—the original amendments—which is, that this amendment will prevent speculators from going into areas and taking advantage of tax rates that the committee did not feel were appropriate for investment speculation. Rather, on the other hand, this amendment presents the opportunity for nonprofit corporations to participate in partnership with the government in developing areas that need it. It is consistent with the spirit of subsection (d) in that this will help the communities who need rehabilitation, need redevelopment and need renewal. Therefore, at this time, Mr. President, I would like to state that as a vigorous opponent against the original Buck amendment, I am very much in favor of the amendment to the amendment which has been presented here this afternoon.

PRESIDENT BRODERICK. Does anyone else wish to be heard, either pro or con on the amendment to the amendment?

The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, fellow delegates, yesterday when I talked to you on this subject, I, perhaps, did not quite clearly read the language. This is what I was talking for, the nonprofit corporation organized by the communities, through the cooperation of the citizens in the community, all of whom served without any compensation, at their own expense, so there would be no profit to anyone except to bring in these types and kinds of industries. I think it was just an oversight. I urge you now to vote for this amendment so that this progress can be made.

PRESIDENT BRODERICK. Are we ready for the question?

On the question recurring,
Will the Convention agree to the amendment to the amendment?

The roll was recorded as follows:

YEAS—122

Aberman	Desmond	Kline	Reynolds
Aurentz	Devlin	Krill	Richter
Bagenstose	Erwin	Laputka	Ruth
Baldrige	Fawcett	Leach	Sahli
Baldus	Fay	Lee, K.	Scales
Baldwin	Feather	Lee, L.	Scarlett
Banes	Filson	Leinbach	Scranton
Barron	Fohl	Leonard	Sebastian
Barry	Forster	Levin	Shapiro
Bashoff	Fortney	Mangery	Shettig
Benedict	Gabreski	Mattioni	Shively
Benfield	Gehrlein	McGeary	Shrager
Bloom	Gerber	McGlynn	Silverman
Brennan	Goldman	Meyer	Solomon
Broderick	Goldstein	Michael	Sprogell
Brown	Gouger	Michener	Stout
Buck	Griffith	Miller, D.	Strickler
Burkholder	Hannum	Miller, R.	Swope
Butera	Harding	Moorhead	Tate
Camardella	Henderson	More	Thornburgh
Caputo	Himes	Morton	Tomascik
Casey	Hocker	Murray	Tully
Clark	Hook	Orban	Waldron
Clinger	Hostetler	Orbin	Warman
Conley	Huggins	Otto	Westerberg
Corey	Irvis	Pasquerilla	Whittum
Cortese	Jirolanio	Popil	Wilcox
Cosetti	Johnson	Pott	Wilmarth
Croop	Kauffman	Rappaport	Woodring
Curran	Keller, J.	Rea	Woodside
Dailey	Kelly		

NAYS—4

Braham	Bunting	Nelson	Shoemaker

NOT VOTING—37

Allison	Fleming	Markley	Redick
Amsterdam	Gray	Musselman	Roberts
Cain	Hatter	O'Donnell	Rovner
Caron	Heyburn	Pechan	Scott
Cunningham	Horne	Pelletier	Sharp
Donaldson	Keller, M.	Percey	Stroup
Donolow	King	Powell	Thomson
Dumbauld	Lane	Prendergast	Van Sant
Fagan	Manderino	Quiles	Welsh
Fineman			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

PRESIDENT BRODERICK. The question is now, will the Convention agree to the Buck amendment as amended?

On the question,

Will the Convention agree to the amendment as amended?

The roll was recorded as follows:

YEAS—123

Aberman	Desmond	Kline	Reynolds
Aurentz	Devlin	Krill	Richter
Bagenstose	Erwin	Laputka	Ruth
Baldrige	Fawcett	Leach	Sahli
Baldus	Fay	Lee, K.	Scales
Baldwin	Feather	Lee, L.	Scarlett
Banes	Filson	Leinbach	Scranton
Barron	Fohl	Leonard	Sebastian
Bashoff	Forster	Levin	Shapiro
Benedict	Fortney	Manderino	Shettig
Benfield	Gabreski	Mangery	Shively
Bloom	Gehrlein	Mattioni	Shrager
Braham	Gerber	McGeary	Silverman
Brennan	Goldman	McGlynn	Solomon
Broderick	Goldstein	Meyer	Sprogell
Brown	Gouger	Michael	Stout
Buck	Griffith	Michener	Strickler
Burkholder	Hannum	Miller, D.	Swope
Butera	Harding	Miller, R.	Tate
Camardella	Henderson	Moorhead	Thornburgh
Caputo	Himes	More	Tomascik
Casey	Hocker	Morton	Tully
Clark	Hook	Murray	Waldron
Clinger	Hostetler	Orban	Warman
Conley	Huggins	Orbin	Westerberg
Corey	Irvis	Otto	Whittum
Cortese	Jirolanio	Pasquerilla	Wilcox
Cosetti	Johnson	Popil	Wilmarth
Croop	Kauffman	Pott	Woodring
Curran	Keller, J.	Rappaport	Woodside
Dailey	Kelly	Rea	

NAYS—4

Barry	Bunting	Nelson	Welsh

NOT VOTING—36

Allison	Fineman	Markley	Redick
Amsterdam	Fleming	Musselman	Roberts
Cain	Gray	O'Donnell	Rovner
Caron	Hatter	Pechan	Scott
Cunningham	Heyburn	Pelletier	Sharp
Donaldson	Horne	Percey	Shoemaker
Donolow	Keller, M.	Powell	Stroup
Dumbauld	King	Prendergast	Thomson
Fagan	Lane	Quiles	Van Sant

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

COMMITTEE MEETINGS

JUDICIARY, Co-Chairmen Scranton and Amsterdam, Senate Majority Caucus Room, Thursday, January 15, 1968, at 8 a.m., e.s.t.

LOCAL GOVERNMENT, Co-Chairmen Manderino and Pasquerilla, entire committee, Penn Harris Hotel for dinner, Wednesday, February 14, 1968, immediately after today's session.

PROPOSAL No. 4

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil.

DELEGATE POPIL. Mr. President, I do not like to throw a monkey wrench into the possibility of an adjournment, but I have talked to several of the delegates and I want to make reference to Proposal No. 4 and especially to an amendment that was approved yesterday. In my opinion and in the opinion of several of the delegates, this amendment has been left up in the air. We have not implemented machinery to put this amendment into effect. I come back to what, perhaps, may be a touchy situation and this is the amendment regarding the preaudit and the postaudit.

It reads, "The same Commonwealth officer or department shall not have responsibility for both the preaudit and postaudit function." It is left hanging in the air and we do not know now who was to conduct the preaudit and who was to conduct the postaudit. I think this is a very, very important part of this Constitution which should be given some real serious consideration.

I would like at this time, therefore, Mr. President and fellow delegates, that we reconsider this particular proposal and then table it, perhaps, for a day or so to give it more serious thought so we can come back with some concise answers and something that will implement this preaudit and postaudit function.

Therefore, Mr. President, I would like to offer a motion to reconsider lines 6 and 7 of Proposal No. 4, printer's No. 15.

PRESIDENT BRODERICK. Let me just point out some-

thing. I am not trying to change your motion, but I want to say, number one, the amendments of yesterday were not printed and put into this proposal because we had not finished the consideration of the proposal. Number two, we finished amending the proposal today; that will be on the calendar tomorrow, still on second consideration, still subject to amendment, so I do not think we need any motion on it.

DELEGATE POPIL. Fine. I am agreeable if this is subject to amendment tomorrow.

PRESIDENT BRODERICK. After you see the proposal with all the amendments, perhaps you will be satisfied; perhaps you will still be dissatisfied and you can then look it over and propose an amendment.

DELEGATE POPIL. Thank you.

PRESIDENT BRODERICK. It will be on the calendar for second consideration tomorrow because it was amended today.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Waldron for the adjournment motion.

DELEGATE WALDRON. Mr. President, I move that this Convention do now adjourn until Thursday, February 15, 1968, at 9 a.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Waldron and seconded by Delegate Orban that this Convention do now adjourn until Thursday, February 15, 1968, at 9 a.m., e.s.t.

The motion was agreed to and (at 6:24 p.m., e.s.t) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 Thursday, February 15, 1968 Number 44

The Convention was called to order at 9 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND OSCAR ARNAL, Pastor of the Ohio View Lutheran Church of Industry, Pennsylvania, offered the following prayer:

Let us bow our heads for a word of prayer.

You alone, Lord, God, remain our reason for calling this a new day instead of just another day, and You alone form the sole reason for us to live instead of just exist. We seek You in the morning, because the day may be long and weary. If our lives are filled with drudgery, cause us again to hear the words of the Psalmist, "This is the day you have made, O Lord, cause us to rejoice and be glad in it."

But, Lord, we are not kidding anybody, unless perhaps ourselves. The glory of this Convention is dying and the newness of it has gone by the board. Perhaps some here wish the prayer would stop because there are more important things to do and some may feel Your place at the worktables is unimportant. Others by bowing their heads may be just bowing their heads to concession and formal tradition. But, Lord, we all need to stop and beg You to set right our twisted views of political vocation. Perhaps some claim to represent a voting public, when, in fact, they represent themselves and the gain and prestige they get from it. Is it party position, local interests and power struggles that guide this Convention? Lord, we are not naive. We know there is too much of this here; therefore, we ask for Your pardon. Forgive these Your people for their fears from pressure, their succumbing to monotony and for short tempers. Let Your compassion rest upon us for we are only men.

Give us such a sense of Your awareness that we do not separate church and State as to put You outside the Capitol of this Commonwealth. Lord Christ, let there be no obstruction to keep You beyond these doors because You might be too sectarian. With an awareness of Your presence, even the most monotonous of chores becomes a task in Your name. Cause this Convention to see that they are called to serve people with needs, fears and dreams just as we all have. Let them present a final work designed to meet the needs of our people. Let this be the Convention's first concern.

We close our request to you, O Lord, with a thank you for all that we have and are, for new friends and experiences, for the opportunity to serve you through the political arena of life by serving others. Thank you for Jesus Christ, Your sure testimony that You are not ashamed of humanity but took it up through Him. Because You lived among us and our problems, Lord Christ, we are grateful to know that through You every task can move from dream to reality. We offer this prayer on the basis of Your invitation for us to bring all that we have to the Father's chambers. Amen.

JOURNAL ON SECRETARY'S DESK

PRESIDENT BRODERICK. The Chair recognizes Secretary Michener.

SECRETARY MICHENER. Mr. President, and fellow delegates, I have on my desk the Journal for February 5, 1968.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the secretary, Delegate Michener.

SECRETARY MICHENER. Mr. President, the following members have made requests for leaves of absence:

The delegate from the 19th District, DELEGATE THOMPSON, for February 15, because of his wife's illness;

The delegate from the 28th District, DELEGATE SHOEMAKER, for half of February 15, because of appearance in court;

The delegate from the 9th District, DELEGATE HEYBURN, for half of February 15, because of a committee meeting.

DELEGATE SWOPE who had asked for permission to be absent yesterday is here. He wants to be in on the action too.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

QUORUM CALL

PRESIDENT BRODERICK. We will now unlock the voting machines for the purpose of recording our presence.

The roll was recorded as follows:

Amsterdam	Desmond	Keller, J.	Reynolds
Aurentz	Devlin	Keller, M.	Richter
Bagenstose	Dumbauld	Kelly	Roberts
Baldrige	Erwin	Krill	Rovner
Baldus	Fagan	Laputka	Sabli
Baldwin	Fawcett	Leach	Scales
Banes	Fay	Lee, L.	Scarlett
Barron	Feather	Leinbach	Scranton
Barry	Filson	Leonard	Sebastian
Bashoff	Fohl	Levin	Shapiro

Benedict	Fortney	Manderino	Shettig
Benfield	Gabreski	Mattioni	Shively
Bloom	Gerber	McGeary	Shrager
Braham	Goldman	McGlynn	Silverman
Brennan	Goldstein	Meyer	Solomon
Broderick	Gouger	Michener	Sprogell
Brown	Gray	Miller, D.	Stout
Buck	Griffith	Miller, R.	Strickler
Bunting	Hannum	Moorhead	Swope
Burkholder	Harding	More	Tate
Cain	Hatter	Morton	Thornburgh
Camardella	Henderson	Nelson	Tomascik
Caputo	Heyburn	O'Donnell	Tully
Caron	Himes	Orban	Van Sant
Casey	Hocker	Orbin	Waldron
Clark	Hook	Otto	Warman
Clinger	Horne	Pasquerilla	Welsh
Conley	Hostetler	Pelletier	Westerberg
Corey	Huggins	Popil	Whitlum
Cortese	Irvis	Pott	Wilcox
Croop	Jirolanio	Rappaport	Wilmarth
Curran	Johnson	Rea	Woodring
Dailey	Kauffman	Redick	Woodside

PRESIDENT BRODERICK. One hundred and thirty-two delegates having recorded their presence, a quorum is established.

The Chair also notes the presence of the following delegates:

Aberman	Forster	Mangery	Prendergast
Allison	Gehrlein	Markley	Ruth
Butera	King	Michael	Shoemaker
Cosetti	Kline	Percey	Stroup
Fineman	Lee, K.	Powell	

QUESTIONS OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, I rise to a question of personal privilege.

PRESIDENT BRODERICK. Would you state what your question of personal privilege is in a sentence or so?

DELEGATE GERBER. Yes, I apologize to Delegate Amsterdam for apparently offending him.

Thank you, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. Mr. President, may I make a brief announcement which I think the Convention should know?

A number of delegates are keeping their coats and hats down at the foot of the stairs out here—at the foot of the stairs on the main floor of the Capitol. The day before yesterday Delegate Mattioni's coat was stolen and yesterday mine was stolen. It is not a safe place to keep your coats.

PRESIDENT BRODERICK. I am going to ask our executive director to see if we cannot provide a safer place for our coats and hats.

CALENDAR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 7, Printer's No. 20**, entitled:

Repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

On the question,

Will the Convention agree to the proposal on second consideration?

PRESIDENT BRODERICK. And now as promised yesterday, we are ready to take up on second consideration, Proposal No. 7, printer's No. 20, which is the judiciary article. At this time I am going to ask the chairman of the Committee on Judiciary, who announced yesterday that we would take this up in sections as we did the Local Government article, if he will please come forward and take the front microphone.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, may I make a parliamentary inquiry?

PRESIDENT BRODERICK. Yes, Delegate Pasquerilla.

DELEGATE PASQUERILLA. Before we get into the judiciary article on Proposal No. 7, printer's No. 20, should we not act to pass on second consideration the other three articles so that Style and Drafting can begin their work? We are running so short of time.

PRESIDENT BRODERICK. It is a good suggestion, but we have promised and planned to take up the judiciary article first because it was so important that we complete second consideration of the judiciary article today and tomorrow. As soon as we complete discussion on the judiciary article, we will take up these other articles for second consideration.

Style and Drafting still has Proposals Nos. 1, 2 and 3, and the committee has not as yet reported these out and we will get these to them just as soon as we can complete judiciary, if that is agreeable to the delegates. I think it will be in the interests of the Convention to get the judiciary article through this week.

DELEGATE PASQUERILLA. Mr. President, are you talking about the complete discussion, amendment and second consideration of the judiciary article?

PRESIDENT BRODERICK. No, we are talking about having the second consideration on the amendments to the judiciary article today and tomorrow. We expect that we will have time tomorrow to take up the second consideration of the other articles.

DELEGATE PASQUERILLA. Mr. President, we have been through all these items so many times, and we can rehash, and rehash and rehash. I think it is in order to determine if printer's Nos. 17, 18 and 19, Proposals Nos. 4, 5 and 6—if there is no objection, why not immediately pass them on second consideration into Style and Drafting?

PRESIDENT BRODERICK. If that is the will of the delegates. I can only tell you that we have had proposals on second consideration before and they are subject to amendment on second consideration.

Yesterday we told Delegate Popil, in connection with the proposal on the tax article, that he could, if he wanted to, present an amendment. Frankly, in view of our determination that we had made to take the judiciary this morning, I, unless I am overruled by the delegates, would like to stick to that determination.

DELEGATE PASQUERILLA. Let us find out if there are any amendments. If we waste more and more time here on reconsiderations and more amendments, we are never going to get this Convention completed.

PRESIDENT BRODERICK. I want to assure you the Chair is not encouraging or asking for amendments, but one of the things the Chair wants to have done is the consideration of the judiciary article, which we have promised the delegates. We said the judiciary article would be number one this morning, and as far as the Chair is concerned—one of the things I try to do is to live up to my promises—we would take it up number one today.

DELEGATE PASQUERILLA. But it has been history in this Convention, Mr. President, that the more these things set on the table for second consideration the more we rehash the same old problems constantly, and I think we should get them completed on second consideration and get them over to Style and Drafting.

MOTION TO ADVANCE PROPOSAL No. 6 TO THIRD CONSIDERATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. I move, Mr. President, that Proposal No. 6, printer's No. 19, be passed from second consideration over to Style and Drafting. If there are any problems on Taxation and Finance, they can speak for themselves.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. I will second Delegate Pasquerilla's request.

PRESIDENT BRODERICK. The question is,

Will the Convention agree to advance Proposal No. 6, printer's No. 19, to third consideration?

The roll was recorded as follows:

YEAS—107

Aurentz	Devlin	Kelly	Roberts
Bagenstose	Dumbauld	Krill	Rovner
Baldus	Erwin	Laputka	Sahli
Baldwin	Fagan	Leach	Scales
Barron	Fawcett	Lee, L.	Sebastian
Bashoff	Fay	Leinbach	Shapiro
Benedict	Feather	Leonard	Shively
Benfield	Fineman	Levin	Shrager
Bloom	Fohl	Mangery	Silverman
Braham	Fortney	Mattioni	Solomon
Brennan	Gabreski	McGeary	Sprogell
Broderick	Goldstein	McGlynn	Stout
Brown	Gray	Meyer	Strickler
Buck	Griffith	Michener	Swope
Bunting	Hannum	Miller, D.	Tate
Burkholder	Harding	Miller, R.	Thornburgh
Butera	Hatter	Moorhead	Tomasetik
Caputo	Henderson	More	Tully
Caron	Himes	Nelson	Van Sant
Casey	Hocker	Orban	Waldron
Clark	Hook	Orbin	Warman
Conley	Horne	Otto	Westerberg
Corey	Hostetler	Pasquerilla	Wilcox
Cortese	Huggins	Popil	Wilmarth
Croop	Jirolanio	Pott	Woodring
Dailey	Johnson	Rea	Woodside
Desmond	Kauffman	Redick	

NAYS—9

Camardella	Morton	Pelletier	Reynolds
Clinger	O'Donnell	Powell	Whittum
Gouger			

NOT VOTING—47

Aberman	Filson	Lane	Richter
Allison	Fleming	Lee, K.	Ruth
Amsterdam	Forster	Manderino	Scarlett
Baldrige	Gehrlein	Markley	Scott
Banes	Gerber	Michael	Scranton
Barry	Goldman	Murray	Sharp
Cain	Heyburn	Musselman	Shettig
Cosetti	Irvis	Pechan	Shoemaker
Cunningham	Keller, J.	Percey	Stroup
Curran	Keller, M.	Prendergast	Thomson
Donaldson	King	Quiles	Welsh
Donolow	Kline	Rappaport	

The majority of the delegates having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

Ordered, that Proposal No. 6 be advanced to third consideration.

PROPOSAL No. 4, PRINTER'S No. 17

PRESIDENT BRODERICK. We might as well take up Proposal No. 4, printer's No. 17, and the question is, will the Convention agree to advance Proposal No. 4, printer's No. 17, to third consideration?

The Chair now recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I was given to understand that there was a move afoot to reconsider one of the amendments that had been inserted in Committee Proposal No. 4. If that is so I would not like to see this Committee Proposal No. 4 shunted along without adequate consideration being given to the individual who said he was going to make such a motion.

PRESIDENT BRODERICK. I certainly agree we do not want any of it shunted along, but we have the question on the floor, whether or not Proposal No. 4, printer's No. 17, should go over to third consideration.

PARLIAMENTARY INQUIRY

The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Point of parliamentary inquiry, Mr. President. I support the Chair's ruling 100 per cent. I just wondered if a few comments in this regard might not be in order.

It seems to me that we made, in effect, what is a moral commitment to this membership that these bills would not be just shoved through, willy-nilly, that this morning would be reserved for consideration of the judiciary article. I support the Chair's announced plan to place these matters, as it were, on the side until we can go into this judiciary matter.

As a member of Style and Drafting I can assure all the committee members having to do with Local Government and State Taxation and Finance, that these articles are already in the hands of Style and Drafting in an informal fashion, so there will be no actual loss of time.

PRESIDENT BRODERICK. Therefore, do I take it that you want to abide by what was the Chair's original determination, to hold Proposal No. 4 and Proposal No. 5 on the calendar for second consideration until we complete the judiciary?

MOTION TO ADVANCE PROPOSAL No. 5 TO THIRD CONSIDERATION

The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, speaking for Proposal No. 5, it appears that there is no objection to that, and I would move that it be considered and agreed to on second reading.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hocker.

DELEGATE HOCKER. I disagree with the chairman of the committtee. I am perfectly willing to go along with Proposal No. 6. I think the committee is satisfied there, but our entire committee is not satisfied with Proposals Nos. 4 and 5, and I object to his motion to just flip them over. Delegate Popil explained yesterday why he does not want them to move, and I think that for the good of this Convention neither one of those two should move.

MOTION WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I rise to a point of parliamentary procedure. There is nothing before the convention; the motion was not seconded and, by your leave, I would like to withdraw the motion.

PRESIDENT BRODERICK. We will consider the motion withdrawn and, therefore, the Chair would declare that Proposal No. 4 and Proposal No. 5 will remain on the calendar until we complete consideration today and tomorrow of the amendments to the judiciary article.

POINT OF PARLIAMENTARY PROCEDURE

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, a point of parliamentary inquiry, please.

PRESIDENT BRODERICK. Yes, you may proceed.

DELEGATE CASEY. I wonder if Delegate Woodring would respond to a question concerning Proposal No. 5, this being the only proposal I rise to discuss?

Delegate Woodring, is there to be a schedule attached to Proposal No. 5, and if so, when is that schedule to be brought before the Convention?

DELEGATE WOODRING. Mr. President, Proposal No. 5, printer's No. 18, has at the end thereof, "Section 3. The following schedule is adopted: Section 1, 1(a), 1(a.1) and 1(c) of Article VIII shall take effect as soon as possible, but no later than July 1, 1970."

DELEGATE CASEY. May I further inquire of the gentleman when that schedule was made a part of this proposal?

DELEGATE WOODRING. It appeared for the first time under printer's No. 18.

DELEGATE CASEY. Which is the present printer's number?

DELEGATE WOODRING. Yes.

DELEGATE CASEY. Was a vote taken by this Convention on the schedule?

DELEGATE WOODRING. The record will reflect what votes have been taken on Proposal No. 5.

DELEGATE CASEY. Well, sir, I ask you as chairman of the committee. I recall no such vote.

DELEGATE WOODRING. There was no vote specifically taken on a schedule.

DELEGATE CASEY. Mr. President, this is highly irregular and out of order, and I object to the addition of a schedule to any substantive proposal without ever having discussed it or considered it by this Convention.

PRESIDENT BRODERICK. In connection with the schedule on the judiciary article and in connection with the schedule on the taxation article, it was the understanding of the Chair when those proposals were presented that the schedules were not prepared, but as soon as they were prepared the Chair would accept them and attach them to the proposals. They are now before you on consideration and they are subject to your amendment, change and discussion when we come to them.

We will now take up the judiciary article.

According to yesterday's determination of our chairmen of the Judiciary Committee—

The Chair recognizes Delegate Powell.

DELEGATE POWELL. Mr. President, on that schedule, if my recollection is correct, and Delegate Leonard can correct it, if he is here, we voted on that schedule, to my knowledge, three weeks ago Friday. On Friday morning we discussed the schedule attached to Proposal No. 5 quite thoroughly, just for the record.

PRESIDENT BRODERICK. Thank you, Delegate Powell.

The Chair now recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, so that the record will not be clouded with any uncertainty, my objection is not to what the committee did or did not do; my objection is to the fact that this Convention was unaware of this schedule and never was called upon to vote on it up to this moment.

PRESIDENT BRODERICK. My answer to Delegate Casey is that it is still open to debate, amendment, discussion, and vote. It will remain on the calendar and when we take up that proposal the schedule is subject to amendment, discussion, and debate.

Pursuant to our understanding that the judiciary would be the first thing this morning, the Chair will now recognize that this is the first thing. The Judiciary is going to take up first, I understand, Sections 1 through 9, 17 and 18.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. What the Judiciary Committee would like to do, if possible, is as follows: Take these articles section by section, as I explained yesterday afternoon, the first one of which is Sections 1 through 9, and 17 and 18. These have to do with the administration and the organization of the judicial system. This was handled primarily by one subcommittee of the Judiciary Committee headed by Delegates Woodside and Sprogell.

If the other subcommittee chairmen would come up front and sit here at the desk, I think we can continue our work. What we would also like to do, Mr. President, with the permission of the Convention, is that I will make a few opening remarks; Delegate Amsterdam will then briefly explain Sections 1 through 9 and 17 and 18. It will then be open to interrogation and then amendment of those 11 sections.

The Judiciary Committee, Mr. President, had in mind primarily three philosophies in the development of this particular article. The first was the efficiency of administration of the judicial system, a very important point, in some ways the most important point that is being made in this article. The people's access to their courts should be easy and clear and swift and the roads to justice should not be encumbered by administrative roadblocks or confusing procedural sidesteps or deceptive alternates. Uniformity and clarity and simplicity throughout one statewide judicial system are the objectives to be sought here, and we felt this should be instituted through the application of modern concepts of public administration and efficiency in a way that would be meaningful to the individual litigant.

One of the people who testified before our committee on December 27, not representing, incidentally, any special group, and it was a woman, epitomized in our opinion precisely what we are trying to do when she said that this Constitution, and particularly the judiciary article, should not be for judges; it should not be for lawyers—she might have added, or even for late Governors—but for the people of Pennsylvania. She was a little fed up with a great deal of commentary and opinion by lawyers and judges and comparatively little hearing on the subject from people.

In this basic philosophy we have tried to do two or three major things: One, establish for the first time in Pennsylvania a unified judicial system with a central body, which is the Supreme Court, empowered to furnish overall supervision and direction of that administration. It goes all the way down the line through the justices of the peace so that there no longer would be "lords of fiefdom" or, indeed, there would be no judicial fiefdoms left.

Secondly, that we would minimize, to the best of our ability, the jurisdictional questions that are the travesty of much of the present operation of the court, so that people, when they come to court, are not thrown out because they are in the wrong jurisdiction.

Thirdly, an item under the efficiency of administration which we have established as of major importance is the judicial inquiry and review board which we will get to later in the day.

The second major philosophical attempt we have made here is to free judges on all levels of nonjudicial activities and political interests. It seemed to us that judges should be free of influences that distract them from their judicial duties or diminish their freedom to act according to the highest judicial standards.

Politics and nonjudicial activities should not be in the way of excellence in judges and in the emission of justice. This primarily comes out in this judiciary article in the fields of the method of selection of judges on all levels and in the field of incompatible activities of judges, which we will get to, likewise, later.

The third and equally important principle which the committee attempted to place in this article was a flexibility for the future. Over and over again we were reminded, as I hope the Convention is every day, that amending this Constitution is no different from amending the one we presently operate under, a very intricate, a very laborious, a very difficult job on any contentious subject. It necessitates, as you know, to amend the Constitution that you are about to put into being, and we cannot change this amendment process, the necessity of two successive legislatures approving same, by both houses, and likewise this to be followed by a vote of the electorate.

So when you are deciding on this article, as with every other part of this Constitution, remember you are deciding almost permanently, because to amend it is a very difficult thing to do. Bearing this in mind, the committee is recommending two options so that we will have some flexibility in the future for changes that might be necessary or could be worthwhile as to changing the thinking as it occurs in these United States with regard to the judicial systems of the States, so that there is an opportunity for improvement or change at some future time, although the electorate may assert itself when they want it and when the people themselves decide this is for them.

These two options, as you know, pertain first of all to the question of each judicial district, they being allowed to choose for themselves between the election of judges or the selection of same; and, secondly, in the cases of the justices of the peace in every jurisdiction except Philadelphia having a self-same type of option.

These are in general the three things which the committee was anxious to do and has tried to set down in this particular article. May I say to you two or three practical things. First of all, this is not St. Valentine's Day, but it might be for lawyers because today will be their greatest love feast in the history of Pennsylvania. I can assure you, by what has happened within the Judiciary Committee that this is a lawyer's field day and they get superor hypertechnical and it is extremely difficult to follow them at all times, although when you are framing a judicial article, this is important.

I say to you secondly that it is not only their love feast, but apparently it is the love feast for the amendment process—democracy at work—because as of late last night we had some 70-odd amendments to this judicial article. We now have close to 100 and I am sure that before the day is over it will be greater than that, which is an all-time high for everybody except what Delegate Cortese showed me this morning that the Italian Parliament had three months on 4,800 amendments to a new proposal. But it will be a world's record for Pennsylvania and for this Convention.

I do not want to treat this lightly. It is extremely important for all of you to think of this in terms of what the Judiciary committee has been through. Let me give you one example so that you will know what you are up against and so you will try to keep your tempers and to keep wits working. I mean that honestly.

In the selection of judges, for example, not only did the subcommittee work very hard and very long on this subject, but likewise the Judiciary Committee had several long sessions on them, intermittently interrupted, incidentally, by a few hours' sleep at night at least. Now presumably, not only will we have all that we went through but all the things that may occur to any other member of this Convention in the way of an amendment to that particular section of the judiciary article kaleidoscoped into literally one day.

I assure you that when our invocator said this morning that this will be long and weary and difficult, he was absolutely correct. I just warn you in advance, from our own experience, please try to keep calm, ply your minds to what is basic and important and not let them get with-

ered up or, may I say, fragmented by a lot of minutia because, frankly, this is technical, this is difficult. It is, I think, the most technical and the most difficult of the things that will come before you.

I sincerely hope that you will remember what I said by this evening, that it has been long and weary and to keep your senses and to do the right thing is difficult. It demands tremendous attentional powers.

With that I would like to call on our esteemed co-chairman and eminent person in this Convention, Delegate Amsterdam, who will outline to you briefly the sections that we are now going to be interrogated upon, which are Sections 1 through 9, 17 and 18, dealing with the administration and organization of the judicial system.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. We have before us, members of the Convention, Committee Proposal No. 7, printer's No. 20. I hope you will all have the same copy because the earlier drafts, of course, have been changed in lines and in various ways and if we are all working from the same draft it would be considerably easier.

As Delegate Scranton has indicated, the judiciary article is intended to set up a unified judicial court system, and you will note in Section 1 of the article we start by saying exactly that, and we say that the system shall consist "of a Supreme Court, a Superior Court, a Commonwealth Court"—and that is new—"courts of common pleas, community courts, justices of the peace, and municipal traffic courts in the City of Philadelphia."

You will note, starting with Section 2, that we have made no substantial change in the Supreme Court. We have made no substantial change in the Superior Court; however, we have provided that the State Supreme Court shall remain the highest court in the land so that may be unchanged by anything except a change in the Constitution itself.

We have set up for the first time and mandated in the Constitution a Commonwealth Court to consist of that number of judges and to have such statewide jurisdiction as shall be provided by law. We would expect, in the absence of a change that may be made by this Convention, that the legislature will act to implement that provision.

The next section, which is Section 5, is one that has caused a good bit of furor around the State and should be particularly noted. It provides for a right of appeal—which is new—constitutionally mandated in the form in which we have it here. It says that there shall be a right of appeal in all cases in all the courts of statewide jurisdiction. I have no doubt that that will be discussed in considerable detail before the day is over.

In the case of Section 6 and following, the courts of common pleas of the various judicial districts are continued as they are today, except that we have included within the common pleas courts those various other sections such as orphans' courts, and so on, and, of course, in the case of Philadelphia, the family court also; in the case of Allegheny County, the same.

We have provided that in each judicial district there shall be one court of first impression, which is the court of common pleas. We have provided within that court that there shall be various divisions to take care of the specialized problems which come up in the areas, particularly in the large cities where you do have enough volume to justify specialized judges who have a special knowledge by reason of the frequency with which they treated these matters and the fact that they have occasion to concentrate on problems in individual areas, such as the orphans' court problems, the family court problems, and so on. We have set up throughout the State one court of common pleas for each judicial district and have broken it down, where needed, into divisions. That will appear in more detail, as you will see, in the schedule which we will come to later on in our consideration.

The next item, which is Section 7, is also new and it provides for community courts in those judicial districts other than the City of Philadelphia in which the majority of the electors voting thereon shall decide in favor of a community court. The question of whether such a community court shall be established in any judicial district is mandated and must be placed upon the ballot at a primary election at any time that a number of electors equal to five per cent of the total votes cast for all candidates for the office receiving the highest number of votes in such judicial district at the last preceding general or municipal election shall ask petitions for such an election. This question may be placed upon the ballot in any judicial district at not more than one election during any five-year period. This court, of course, will supersede—and you will see more detail on that—the justices of the peace in the areas where the community courts are approved by a majority of the electorate in any such election.

In the City of Philadelphia because of a special problem, it being the type of urban community that it is, we have not provided for a community court or an election, but we have actually mandated a municipal court and a traffic court with the number of the judges and the jurisdiction of both to be provided by law.

In the schedule, however, you will note that we have provided that the number of judges of the municipal court, when this takes effect in the Commonwealth or in the county of Philadelphia, will be 22 in number, and that 22 of the present 28 magistrates in the city of Philadelphia shall be appointed to that municipal court by the Governor.

We have also provided for a traffic court to handle matters involving traffic violations of all sorts, and we have provided that the six additional magistrates, coming up to the total of 28 that are provided for today in Philadelphia, shall go into the traffic court. Those, of course, will be the six out of the 28 who are not chosen for the municipal court. More about the magistrates later as we come to scheduled items.

We have provided, with regard to justices of the peace, that in judicial districts where a community court has not been approved by the electorate that there shall be one justice of the peace in each magisterial district as provided by law. We have also provided in Section 8(h), beginning at the bottom of page 3, "The General Assembly shall by general law establish classes of magisterial districts solely on the basis of population and population density and shall fix the salaries to be paid justices of the peace in each class."

However, for the purpose of mandating this system in the event that the legislature does not act promptly enough to take care of the needs of that system, we have set forth in the schedule criteria which are to apply until such time as the legislature does act. You will know

when we come to the schedule that the criteria are set up, as we indicate here, upon the basis of population and population density. We actually do fix the salaries of the various magistrates and the various types of districts, with a proviso, of course, that the legislature may at any time change both the classes and districts so long as they do it on the basis of population and population density, and the amount of salaries to be paid to the justices of the peace in each of these classes.

The number and boundaries, however, of magisterial districts of each class within the judicial districts is to be established by the Supreme Court or by the court of common pleas under the direction of the Supreme Court. All this you will note is intended to make more specific the control and the unity of the entire judicial system. The intent here, as it is throughout the system, is to be absolutely certain, from the very top to the very bottom, that the entire judicial system shall be within the control and subject to the responsibility of the Supreme Court.

We have also provided in Section 9 for other courts to the degree that the General Assembly may, with the advise and consent of the Supreme Court, establish. They may also establish divisions of existing courts to the extent that the exigencies of the situation may require in the years ahead.

However, here again, we have provided that the General Assembly shall act with the advise and consent of the Supreme Court, so that the responsibility for the entire judicial system and the administration of the entire judicial system, shall at all times be fixed within the Supreme Court. That, we feel, is the most important new element that has been added in the entire article.

At this point, I should like to refer you to Section 17, starting on page 14. This section, as you will see, provides for the general rules whereby "The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace of the Commonwealth, including the authority to make such temporary assignments of judges and justices of the peace from one court or district to another as it shall deem appropriate" and necessary to run an efficient judicial system.

We further provide, "The Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of the courts and justices of the peace," again fixing the authority in the Supreme Court.

"The Supreme Court," further, in subsection (c), "shall have the power to prescribe general rules governing practice, procedure, and the conduct of the courts and justices of the peace," so that the conduct of all the courts from the top to the bottom is within the rule-making power of the Supreme Court.

The Supreme Court also may make rules for the admission of persons to practice law, and for the administration of all the courts and officers of the various judicial branches.

We have a provision, however—and this begins on line 19 of page 14—"that such rules shall be consistent with this Constitution and shall neither abridge, enlarge nor modify the substantive rights of any litigant, nor alter the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose." This is intended to clearly indicate that the Supreme Court is not a legislative body, is not to make substantive rights, but is to be charged with full responsibility for the proper administration and supervision of the entire judicial administration in the Commonwealth.

You will also note in Section 18 that the number and boundaries of the districts of the various judicial districts may be changed by the General Assembly, but again only with the advise and consent of the Supreme Court. This sets forth in general, ladies and gentlemen of the Convention, our plan for the administration of justice in the Commonwealth of Pennsylvania. We have set forth in this schedule various time periods which we believe to be appropriate to the various changes which are being mandated.

We have also indicated in the schedule that in one case, for instance, in the case of the city of Philadelphia, that additional judges which, if we deem to be necessary to carry out expeditiously the work of the judiciary in that city and county, shall be increased by ten. Again we have provided, however, that the legislature shall have the ultimate responsibility for determining what the total number of judges shall be and shall have the normal legislative prerogatives with regard to the entire system.

We have provided simply for the interim period because we know the changes are being mandated in this new constitutional article with respect to the judiciary and we have tried to cover the interim period so that the courts will continue to function and do their business appropriately during this period until such time as the new administration of justice, new judicial system, shall be fully effective in the Commonwealth.

Mr. President, that completes a very short summary review of the work of the Judiciary Committee in connection with the administration of justice in the State, and we are open to questions on the part of any of the members.

I thank you, sir.

PRESIDENT BRODERICK. We are now ready for questions.

The Chair recognizes Secretary Michener.

DELEGATE MICHENER. Mr. President, I would like to direct my first set of questions to Delegate Scranton, if he will consent?

DELEGATE SCRANTON. Yes, sir.

DELEGATE MICHENER. Delegate Scranton, I am one of a majority of delegates to this Convention who is not a lawyer. When we hear of 100 amendments and when we hear of the complexity and when we see the size of your article, a little fear is stricken into our hearts. We would quite honestly like a little guidance from you at this point as to the complexities ahead.

I take it that the articles we are discussing now form part of a seamless web of a total concept of justice in Pennsylvania.

DELEGATE SCRANTON. I think that is very true, sir. At least it was our experience in trying to frame this article that it was like the domino theory concerning the Far East. I do not happen to agree with that theory in the Far East, but I do agree with it with regard to the judiciary article, namely, whatever you do to one part of it, although we have divided it, as you know, into five

parts here, will have a very great effect on each additional part in almost every instance. There are few exceptions to that rule.

As a general statement I would like to say this: So far I have not looked at all the amendments, but I gather that the great bulk of them, in fact almost all of them, revolve around two questions: One is this first section which we just outlined and not so much as to whether we should or should not have a unified judicial system—incidentally this was the overwhelming feeling of the committee and it apparently is of the Convention, from what I can find out about the amendments—but more about some technical matters therein.

Secondly, the matter of the selection of judges—the selection of the judiciary in general and what method should be used at what level. This is where the great bulk of the amendments occur, and these are the two areas in which we are given the most amount of time by the committee.

We are talking now about Sections 1 through 9 and 17 and 18. There is one exception to the statement that I have just made which is Section 5, as Delegate Amsterdam said. This was not discussed in subcommittees; it came out on the floor of the full committee and was discussed very seriously there. If you want a candid opinion from me—it may not be too important because I am not a lawyer either; though I passed the bar exams, I have never practiced to the degree that the other 67 lawyers in this Convention have—I would say this: This particular section, Section 5, could be a tremendous step forward in judicial and constitutional history in the United States if it is framed correctly. But I would also say that if it is not, it could be a tremendous step backward and it must be carried on, I think, by expert people of which I am not one.

DELEGATE MICHENER. Mr. President, we nonlawyers are going to have to vote, apparently, 100 times shortly.

DELEGATE SCRANTON. Well, I hope not. I hope they will have sense enough to realize that this would just be obliteration of any sense.

DELEGATE MICHENER. How should we look then at an amendment which comes up which cuts into this seamless web? We may not be wise enough to know what other parts of the judiciary article are affected by it.

DELEGATE SCRANTON. The only thing I can say is that at that juncture you will have to ask questions, and we will try our best to outline what effect it might have on some other part as well as what it has on the part that they are immediately attacking.

DELEGATE MICHENER. For example, we know that selection and election of judges—some method of choosing judges—will come up. We may think one way about that, if, for example, there were a provision here for the removal of inept judges; whereas, if there were a good procedure for the removal of inept judges, we might think some other way. And then on removal, we would think one way about it if there were provision for a good retirement system and a good pension plan. How should we pick our way through this maze?

DELEGATE SCRANTON. Well, in brief, I can only say this to you: In the committee, and I think this is a fair statement—and I have alerted all the committee members that whenever I make a statement that they think is unfair, I want them to get up and say so because we do not all remember everything that happened in committee—the parts of the article that have more relation to one another than to any other are the parts that you have indicated: the selection of judges, the removal, suspension and discipline thereof and retirement, and, frankly, there was almost no opposition within the committee to what is in here concerning removal, suspension, incompatible activities and retirement. There was, within the committee, considerable opposition to what the majority here—a bare majority—has selected for the selection of judges. I would say this to you: I can only guess, I cannot say, what the Convention is going to do, but my guess would be, from our committee experience, that the removal and retirement and that system would probably go through much the way it is here, possibly slightly changed.

DELEGATE MICHENER. Therefore, how is the committee going to present this material to us for amendment?

DELEGATE SCRANTON. The committee is presenting this first section now, asking for interrogation and amendment. Then we will do the part on the selection of judges, then on tenure, then on retirement.

DELEGATE MICHENER. I think one of the most profound speeches made in this hall so far was made by Delegate Croop the other day at the end of a long day when he asked us to get back to the main business and start to support our committees. Obviously, we saw yesterday and the day before, that the Convention was so inclined. Obviously, Delegate Scranton, you do not come here asking for a blanket approval of your committee report; you know it is going to be up for amendment. What is your advice to us nonlawyers on that very crucial point? What degree of amendment are you and Chairman Amsterdam willing to accept on these great vital areas?

DELEGATE SCRANTON. First of all, Chairman Amsterdam—and I do not want to speak for him and he had better listen to what I am saying—and I are very much of the opinion that whatever 82 members of this Convention want done, this is what should be done. They were elected by the people and they ought to have the say.

Number two, we, neither of us, intend, in any way whatsoever, to try to jam down the throats of this Convention anything that we personally happen to believe in or that necessarily the Judiciary Committee believes in in a majority item.

I would like to make this one piece of advice, and that is, I hope that this Convention will give deep credence to what the committee has suggested here. I, personally, do not agree with every single thing in it and I am sure no member of the Judiciary Committee does because it is a highly complicated and very difficult thing. But I would say, in no uncertain terms, that if you start ripping it to shreds, you literally will not have the kind of a Constitution that we ought to have in this State. I think the Judiciary Committee has done a very good job here despite what you may read in the newspapers about this tidbit or that tidbit of it and especially has opened up for the people of Pennsylvania a new day in judicial administration, which is terribly important in this modern era, and, likewise, a new option for them to look to new methods of handling justice for people. I candidly state there are many things in here that certain judges do not like and there are certain things in here that certain legal entities do not like, but I state also, unequivocally, that

this is not entirely on expertise, but sometimes for some selfish interest.

DELEGATE MICHENER. May I question Chairman Amsterdam for a moment, please?

Chairman Amsterdam, one of the areas which we nonlawyers and nonmembers of the Judiciary Committee find most difficult to piece together is the attitude of your committee toward the problem of justice in Philadelphia and Pittsburgh, and I would like to ask a few questions on this.

When Proposal No. 1204, the so-called Philadelphia plan, was brought to this floor, I found much in it that was admirable. I thought that it was a serious attempt on the part of the legal lights to bring relief to urban law. To what extent have the requests of 1204 been honored by your committee?

DELEGATE AMSTERDAM. I would say, Delegate Michener, 1204 has been very materially incorporated into the final product of the Judiciary Committee. I am speaking rather carefully because you may not find in Committee Proposal No. 7 a great many of the items that appeared in 1204, and the reason for that is, many of them were schedule items, and therefore although it does not appear in Committee Proposal No. 7 in the parts that are sectioned 1 through 19, I believe you will find that much of it does appear in the schedule of the proposed judiciary article, starting on page 15 of the proposal. If you would like, I would be glad to have Delegate Cortese, who I believe was the sponsor of 1204, make a statement as to what he considers the—

DELEGATE MICHENER. I would especially like to have this, and if Delegate Cortese would submit himself to questioning, I think it would help us greatly at this point.

DELEGATE AMSTERDAM. Well, it has helped us greatly, so I assume the Convention would be helped greatly by Delegate Cortese.

DELEGATE CORTESE. Thank you, very much. Delegate Michener, you may interrogate me without the benefit of subpoena.

DELEGATE MICHENER. Delegate Cortese, as a resident of Philadelphia and as a lawyer and as one I know who is greatly interested in the judiciary system in Philadelphia, were all of the problems posed in 1204 brought before your committee?

DELEGATE CORTESE. I would say that they were.

DELEGATE MICHENER. Was an honest attempt made to find an adjustment within the pattern for the problems which you faced in Philadelphia?

DELEGATE CORTESE. Well, I do not know, Delegate Michener, whether I can answer to what extent the personal consciences came to play, but I would say from my observation that the members of the committee applied themselves seriously and thinkingly to the pattern as presented in Proposal 1204.

DELEGATE MICHENER. Without committing you to a single thing, Delegate Cortese, did you feel that Proposal 1204 got a reasonably fair shake?

DELEGATE CORTESE. I think perhaps the best approach to that question is to suggest what substantially is in 1204 that is now incorporated in the proposal submitted by the Judiciary Committee.

DELEGATE MICHENER. Good.

DELEGATE CORTESE. Because of the problems that are unique in Philadelphia, 1204 has been organized. It is the composite thinking of the best legal minds, not only in Philadelphia but outside Philadelphia. The judicial structure as set forth in 1204 is incorporated in the judiciary proposal, and let me explain what that is. We have, under 1204 and the judiciary article abolished the magisterial system as such and in place of that system, at the minor judiciary level, we have or would have created two courts; one, a traffic court consisting of nonlawyers, and the other, a municipal court consisting in the long range of lawyers. But we have a "grandfather" provision that will continue in office for this term and one other term, magistrates now in office who are not lawyers. From the group of 28 magistrates in Philadelphia, the Governor, under the proposal, would appoint 22 to constitute the municipal court, and six to constitute the traffic court. The Governor would appoint the head of the traffic court.

The magistrates court now in Philadelphia has simple jurisdiction up to $100 plus interest and costs, and in criminal matters, the authority to conduct trials in so-called summary offenses and to hold preliminary hearings on indictable offenses.

In time, the municipal court would be made up of all lawyers. Now this, Delegate Michener, that I am going to say is a great step forward in our attempt to reduce the backlog. The president judge of the new court of common pleas has the right to assign the lawyer members of the municipal court to sit at the common pleas level. In order to reduce what Delegate Scranton likes to refer to as "minute" from the courts of common pleas, the municipal court in criminal matters has jurisdiction to dispose of crimes that carry a penalty up to and including two years.

The traffic court, I may say, is a step forward in another direction besides the judicial direction in that the traffic court is authorized to organize and implement and move forward programs calculated to reduce accidents in the Commonwealth. The traffic court's jurisdiction is limited to violations of the Motor Vehicle Code, so that this court, in addition to disposing of cases involving violations of that code, would move into the area of road safety. In that area, we believe a great contribution would be made.

Above the level of the traffic court and the municipal court, you have, under the proposal, the courts of common pleas. We abolish the current 10 courts of common pleas, each of which has three judges, and the senior in each is the president judge. These courts would be abolished. In addition to the common pleas court, we now have in Philadelphia the county court and the orphans' court. The new court of common pleas would have three divisions.

PRESIDENT BRODERICK. Would the gentleman yield?

The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I rise to a question of parliamentary procedure.

As much as I love the distinguished gentleman from Philadelphia, I must say that he is out of order. If we are going to have this thing continue in the manner we are going now, we will be here until doomsday.

Therefore, I believe the gentleman is out of order. He

has not answered the question, and I ask the Chair to rule on it.

PRESIDENT BRODERICK. The gentleman is answering the question, and what I would like Delegate Cortese to do would be to see if we can answer a little more succinctly because our problem here is going to be time. We will, therefore, appreciate keeping the questions and answers as short as possible.

The gentleman may proceed.

DELEGATE CORTESE. Mr. President, I am approaching very rapidly the last chapter of my answer.

The orphans court division in the common pleas court would be made up of the current incumbents of the orphans court. The trial division of the orphans court would be made up of the present incumbents plus 10 additional judges; the county court would become the family division and would be made up of the current county court judges.

Above the common pleas court, we would have a president judge. Each division would select its administrative judge. Above the court of common pleas, Delegate Michener, we would have, as was so aptly suggested by Delegate Amsterdam, to tie in with the Supreme Court which would have power over the judicial business of all the courts in Philadelphia including the traffic court. That would make up the very descriptive term used by Delegate Michener of the seamless judicial knit in Philadelphia.

DELEGATE MICHENER. Two final questions to Delegate Amsterdam, please. Would the courts of Philadelphia be brought within the organizational structure of the entire State?

DELEGATE AMSTERDAM. Completely, yes, sir.

DELEGATE MICHENER. Final question. We outside delegates have been quite confused by the matter that Pittsburgh was at one time in this system, again out, again in, again out. I would appreciate instruction on that, sir.

DELEGATE AMSTERDAM. I am having a little bit of difficulty in that regard and I shall, therefore, ask one of the delegates who has worked very assiduously on it to help us out.

DELEGATE MICHENER. I think this is a very vital question.

DELEGATE AMSTERDAM. This is a vital question, and you will see as we proceed why there are some problems.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. Michener and delegates, Pittsburgh and Allegheny County are an integral part of the unified judicial system. The only difference in Allegheny County is that the head of our family division shall now be the president judge of the old county court. This is a specific provision because there are six judges taken over from county court whose functions will be, in part, the new family division of the court. We have asked that the president judge of the county court be the head of this new family division.

In addition we have asked that the magistrates in the city of Pittsburgh be retained until the General Assembly figures out the proper way to place them within the framework of the new unified judicial system. There is in the city of Pittsburgh, of recent origin, a housing court which was created under city ordinances and not by statute, a court to handle complaints about discrimination in housing and housing failures. This is a very important thing for the administration of justice under city ordinances of the city of Pittsburgh. We do not want a magistrate justice of the peace, but we want this specific person trained for this job to continue until there are some steps taken to put him within the framework of the magisterial system that will apply to the whole State.

The same thing is true for the traffic court. It does not make sense in Pittsburgh to have each alderman or new magistrate have jurisdiction over traffic cases, but we have asked, until the General Assembly acts, to continue to have a separate traffic court under a city ordinance of the city of Pittsburgh. The same is true for the police magistrates and the city court magistrates through our committee magistrates under city ordinances that have citywide jurisdiction. We are not asking for anything peculiar to Pittsburgh, just that there be an interim period to see best how these things can be carried over into the unified judicial system.

DELEGATE MICHENER. Mr. President, I have rarely had such clear-cut answers to my questions. This committee is to be congratulated.

DELEGATE BARRY. Thank you, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I would like to direct a question to either the Chair or the chairman of the committee.

Up until 9 o'clock this morning, I had before me Committee Proposal No. 7, printer's No. 7. Last night I studied that particular proposal at great length for at least four to five hours. This morning I have before me Committee Proposal No. 7, printer's No. 20. I understand that about 70 amendments are already prepared and they were based upon printer's No. 7. They will have to be changed.

PRESIDENT BRODERICK. I just want you to know that this is unfortunate, but they are being changed and I understand that all the amendments will be changed to conform to printer's No. 20.

DELEGATE JIROLANIO. Mr. President, I do not know the contents of printer's No. 20. I have every reason to believe that it is the same in essence as printer's No. 7, but I had quite a number of amendments prepared and now, of course, I have to go through Proposal No. 7, printer's No. 20.

PRESIDENT BRODERICK. Delegate Jirolanio, may I answer you? I have not proofread it, but I am sure that the content is the same as the prior printer's number, the only change having been the schedule which is appended in the rear. Unfortunately, when the printer did it over, he put different numbers on the lines.

DELEGATE AMSTERDAM. One possible other change, Mr. President, some of the earlier drafts of Committee Proposal No. 7, printer's No. 7, did not contain anything on page 14. Somehow or another some of the copies were left blank; others had the proper page 14 with sections 17 and 18 on it. That correction was also made so that all of printer's No. 20 has the proper language on page 14. That was simply a printer's error.

PRESIDENT BRODERICK. The Chair wants to point out there has been no change in the language, as such.

DELEGATE JIROLANIO. I am willing to waive the provisions, of course, as we have been waiving them continuously for the purpose of expediency, but actually we are again in violation of the rules. This proposal should, under our rules, lay over for a whole day, this being a new proposal. Under the rules, Rule 26, I think, Section 2, it would have to stay over another day, but I am satisfied to take up the matter. I just wanted to point that out.

PRESIDENT BRODERICK. Very good. Thank you, Delegate Jirolanio.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I ask Delegate Jirolanio's indulgence for a moment while I raise a point of order.

Since this is a new printer's number which was presented to us this morning for the first time, I would like to inquire of the Chair by what vote the committee passed printer's No. 20?

PRESIDENT BRODERICK. Printer's No. 20 has not been passed. The new printer's number was necessitated by the fact that we had the schedule placed on the end of it. In the printing, the printer, unfortunately, did not follow the same line numbers as in the previous proposal. The substance of the proposal, I am assured, is identical; no wording has been changed. You have before you the same proposal, except the schedule has been added.

When the proposal was handed in, it was the understanding, pursuant to the request of the chairmen, that the committee did not have its schedule ready at that time, and as soon as the schedule was ready, the Chair would accept it. The Chair did accept it, and through reprinting, it got a new number.

DELEGATE RAPPAPORT. Mr. President, will the committee agree that if there are any changes, this proposal will be withdrawn and the committee will agree to have the proposal go back to its original printer's number?

PRESIDENT BRODERICK. The Chair understands there are no changes. If you know of any changes, we would be happy to have them called to our attention.

DELEGATE RAPPAPORT. I want to have a clear understanding that there are absolutely no changes at all, even so much as a comma, an and or an or.

PRESIDENT BRODERICK. I want you to know that the parliamentarian who took charge of sending it to the printer assures me that it was sent in its original form to be printed with only the schedule attached at the end. The unfortunate thing is that the line numbers were changed in the printing.

DELEGATE RAPPAPORT. Thank you, Mr. President.

PRESIDENT BRODERICK. As a matter of fact, I might add that we had to reprepare all the amendments this morning because of this printing change. Naturally, if we had it to do over again, we would have insisted that the line numbers remain the same, but this we neglected to do.

Are the delegates reasonably satisfied that they have the same proposal? I have not proofread it. I can only tell you that the original proposal which you had on your desks was sent to the printer to be copied.

The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. If it would make Delegate Rappaport feel any better, in addition to having proofread it, which I did, the entire committee had Proposal No. 7, printer's No. 20, in its hands this morning when a majority of the Judiciary Committee met and there was absolutely no objection whatever—in fact, I would say there was unanimity—to adopting Committee Proposal No. 7, printer's No. 20, as the report of the Judiciary Committee.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I have some questions here that I would like to have answered by either of the chairmen.

PRESIDENT BRODERICK. Chairman Scranton, Delegate Hook has some questions to ask you.

DELEGATE HOOK. I am confused as to the jurisdiction of the Supreme Courts.

DELEGATE SCRANTON. All I can say to you is that the Supreme Court is part of the unified judicial system. In Section 1, we point out that the judicial power of the entire Commonwealth will be vested in the unified judicial system and then say what it is, what courts it consists of. The Supreme Court's jurisdiction is the same as it presently stands. None of it has been taken away that it presently has and it shall have in the future as provided by law. Do you have a specific question that you are worried about?

DELEGATE HOOK. I am referring to Bell's appeal, which was the case of 1959 where the Supreme Court determined that the Supreme Court had the power of the King's Bench.

DELEGATE SCRANTON. It still has it because there is a specific statement here which says, "The jurisdiction and powers of the unified judicial system shall be as provided by law, except that the jurisdiction and powers presently vested in the courts of this Commonwealth shall be vested in the unified judicial system created hereby and the General Assembly shall not remove any of said jurisdiction or powers from said system or any part thereof without prior approval of the Supreme Court."

DELEGATE HOOK. One more question, Delegate Scranton, pertaining to whether or not, under original jurisdiction, you are removing this from your Section, that is, in the question of mandamus, habeas corpus, and so forth?

DELEGATE SCRANTON. I am sure that we are not, but I would be glad to have our expert answer you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. The Supreme Court today has an inherent jurisdiction which it, itself, pronounced as being its King's Bench powers. In addition to that, it has certain statutory jurisdictions which are divided between the Superior Court and the Supreme Court. It was the intent of the committee—and I think the language so carries out the intent—that all the powers, whether statutory, whether King's Bench powers, which, in effect, are the Commonwealth powers, and all other constitutional powers which they now have, be retained by them. Nobody can take any of these powers away from them without their consent. It seems to me that the Supreme Court powers are thus protected. I do not think there is much danger of their powers being taken away from them

without their consent unless they want to give up some of the jurisdiction which is given to them by statute. I think it is quite likely that they will want to do that, and to that they will consent.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I would like to follow this up. I have referred this question to some constitutional attorneys and this question was raised by them to me with the idea that if it is not spelled out in the Constitution that the Supreme Court will not have these powers.

DELEGATE WOODSIDE. I think if there were nothing said about it in the Constitution at all, it might possibly be true, although I doubt very much whether the Supreme Court would ever say that these powers were taken away from them. It was not the intent of this committee to say that these powers were taken away from them; in fact, it was the intent of the committee to say very definitely and specifically that they had all these powers. We have said in clear language, I think, that the Supreme Court shall be the highest court of this Commonwealth and shall possess all judicial powers possessed by it at the time of the adoption of this article. They certainly have the power of the King's Bench at this time. And inasmuch as they have the power of the King's Bench at this time, that is, a judicial power possessed by it at the time of the adoption of this article, and the Constitution, therefore, to my way of thinking, clearly and explicitly states that they have that power.

PRESIDENT BRODERICK. The Chair at this time would like to announce that we have a total of approximately 20 amendments in connection with this particular section. We have been discussing it now just a little over an hour. The amendments have been offered by the following delegates: Delegates Barron, Shoemaker, Levin, Bloom, Barry, Redick, Hook, Thornburgh and Rea.

We have established a committee, as you know, to organize our amendments. Our committee is composed of Vice President Casey and Vice President Orban, together with our solicitor, Tom Balaban, and the attorney for the committee, Carter Buller. I would appreciate it very much if they would come forward, along with the delegates who have submitted amendments. In some cases I think there are duplications and I think it would be a great help to the delegates and to the Convention if we could discuss and get together on which amendments should be and will be presented at this time. We are going to meet right here, if you will, please, before we go into the amendment section.

PRESIDENT BRODERICK. The Chair recognizes Delegate Mattioni.

DELEGATE MATTIONI. Delegate Scranton, in regard to the statutory powers that would, by this article, be vested with the Supreme Court, should the General Assembly determine that perhaps they should be altered, I understand by this provision it would have to get the prior approval of the Supreme Court?

DELEGATE SCRANTON. That is correct.

DELEGTE MATTIONI. If that prior approval is not given, the General Assembly cannot act in that area?

DELEGATE SCRANTON. Which they presently have.

DELEGATE MATTIONI. Now let us suppose that the General Assembly, recognizing this fact, goes one step further because they may be called upon by the constituency which they represent to initiate an amendatory process to the Constitution. Would it then be necessary for the General Assembly to seek the prior approval of the Supreme Court before so doing?

DELEGATE WOODSIDE. Certainly the people of Pennsylvania can amend their Constitution in any way they wish at any time by following the amendment provision. They could amend the Constitution to abolish the Supreme Court entirely if they wanted, or take any other constitutional action to have any effect that they would wish it to have upon the provisions that are contained in the present or proposed Constitution.

DELEGATE MATTIONI. But as I understand it, sir, what you are saying, if I hear it correctly, is that the General Assembly's powers to do just what you have mentioned are not abridged.

DELEGATE WOODSIDE. Under no circumstances, in my opinion, would this have anything to do with the power of the General Assembly to submit to the people an amendment to the Constitution which, if they would adopt, would make any changes on this they wished without any consent of the Supreme Court at all.

DELEGATE MATTIONI. Would this not then be, in and of itself, a constitutional provision? The constitutional provision would require, before any changes in the jurisdiction and the powers which would be lessened by adoption of this provision such as to require that before the General Assembly changed the same, it would have prior approval, whether the change would be initiating an amendatory process or through legislation?

DELEGATE WOODSIDE. I am not sure that I clearly understand that question. Let me say this: This does take away from the legislature the power to change the jurisdiction between the Supreme Court and the Superior Court without the consent of the Supreme Court. It does not, however, take away the power of the legislature to change that jurisdiction with the consent of the Supreme Court.

DELEGATE MATTIONI. All right, Judge, another question.

In regard to social legislation, as I understand some of the same, there are provisions which touch upon jurisdiction. In the event the General Assembly as called upon, perhaps, by the times would desire to change those aspects of social legislation which are now in being, they would have to go to the Supreme Court and get the prior approval of the Supreme Court before the change as far as any jurisdiction of powers that are now vested or would be vested by this article could be effectuated. Am I correct in that?

DELEGATE WOODSIDE. Do you mean on the question of whether or not the Supreme Court would have jurisdiction and the manner of jurisdiction which they would have in dealing with the substantive questions, that the legislature would have to go before the Supreme Court to get a change in the jurisdiction of the Supreme Court?

DELEGATE MATTIONI. Yes.

DELEGATE WOODSIDE. But it would have no effect on the substantive matter which would be considered. In other words, any legislation of any type which you referred to as social legislation or any other type could be passed or changed by the legislature in any respect with-

out any reference to the Supreme Court. It is only the matter of what the Supreme Court may hear and what they may deal with and the manner of their dealing with it that cannot be changed without their consent.

DELEGATE MATTIONI. Sir, does not this seem to come in conflict with Article II which states that the General Assembly shall have the legislative function? By requiring prior approval as far as the Supreme Court is concerned, you are, in effect, by this article, if it should be adopted as such, tying the hands of the General Assembly. I am sure you have considered this and I would like an explanation.

DELEGATE WOODSIDE. Yes, this has been carefully considered. The question of the jurisdiction of the court is believed by the committee to be a judicial matter. Whether it should be placed into the judiciary or whether it should be placed into the legislature is a matter which was very extensively and very forcefully debated over a long period of time in the committee. It was concluded that it should be left in the legislature. But in the matter of taking jurisdiction away from the court, and particularly the Supreme Court, and very much for the reason that was just expressed here concerning their King's Bench powers, it was felt that in jurisdictional matters the Supreme Court should have a right to determine whether or not they would approve of the removal.

DELEGATE MATTIONI. Specifically then, would this provision of 1(b) require that the General Assembly, before they can amend the Constitution, in particular pertaining to the jurisdiction and the powers that would be vested by the adoption of this provision, before any change could be made, that they would have to get the prior approval of the Supreme Court?

DELEGATE WOODSIDE. To amend the Constitution?

DELEGATE MATTIONI. Yes.

DELEGATE WOODSIDE. No.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I just want to pursue with the Judge, if I may, this one question that has been raised by Delegate Mattioni.

As I understand it, Delegate Mattioni's question was, that as to those items set forth in 1(b) and those items set forth in Section 9, which appear on page 4, both of which require the consent of the Supreme Court, does the consent of the Supreme Court have to be obtained to a legislative enactment that is a constitutional change before it is submitted to the people by a legislative enactment?

DELEGATE WOODSIDE. No, very definitely not, I would think.

DELEGATE FINEMAN. Is that an interpretation or is there clear-cut language in here that would assure us that is in fact the situation?

As I read this, it says, "The General Assembly may, with the advise and consent of the Supreme Court, establish such additional courts." Let us assume that this passes and the legislature wants to create another court and they want to go to the people with a constitutional amendment. Before we pass our piece of legislation to effect this, do we have to come back to the Supreme Court and get its consent for this?

DELEGATE WOODSIDE. My opinion is that it is extremely clear that it would not apply to a constitutional amendment. I do say that if the legislature would intend, by an act, to change the jurisdiction of the Supreme Court, then it would have to get the approval of the Supreme Court to do that thing.

DELEGATE FINEMAN. I think that is clear.

DELEGATE WOODSIDE. But certainly under the whole Constitution, the right to amend the Constitution in any respect remains forever in the legislature, as it now stands, and the people. The Supreme Court could not possibly be involved in that in any way.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. May I add, Mr. President, that it is certainly the intention of the Judiciary Committee that this be the case. If there is the slightest doubt about it, we would have no objection to clarifying language. We believe it is quite clear that there is no doubt, but if there is any doubt, we would not object at all to that being clarified.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I would be very grateful if Judge Woodside would respond to a few questions.

Sir, I happen to have a particular interest in zoning matters. At the present time, the Supreme Court has taken unto itself the power not to hear cases it does not want to hear in that field. Under this language, assuming the legislature passed a law requiring the Supreme Court to hear all zoning appeals, could it decline to hear such appeals in the face of such legislation?

DELEGATE WOODSIDE. I think that Section 5 speaks for itself to arrive at this question in that "There shall be a right of appeal in all cases to an appellate court of statewide jurisdiction." If that section is left in the Constitution, the answer, I think, would be that the Supreme Court would have to hear those cases whether the legislature provided that way or otherwise.

DELEGATE RAPPAPORT. In other words, the legislature could mandate jurisdiction on the Supreme Court.

DELEGATE WOODSIDE. I do not think it would make any difference under Section 5 what the legislature did. I think the Supreme Court would have to hear it any way.

DELEGATE RAPPAPORT. Even if it did not so wish?

DELEGATE WOODSIDE. Yes.

DELEGATE RAPPAPORT. Now, sir, I have another problem.

DELEGATE WOODSIDE. Admitting, of course, that there is no appeal from the Supreme Court on things that do not relate to the Federal Constitution.

DELEGATE SCRANTON. May I just say one thing?

This will come out clearly in the debate over Section 5, which is, I think, what you are talking about. When we get to that point, there are amendments to Section 5. When you get to Section 5, if there is something which is not clear to you at that time, do not hesitate to ask, but as it is presently written, there is no doubt that the Supreme Court would have to accept such an appeal.

DELEGATE RAPPAPORT. I would like to ask another question.

Under the United States Constitution, I believe traditionally in Pennsylvania, there is jurisdiction of the court limited to cases in controversy. In other words, the courts will not grant any advisory opinions whatsoever.

I am just curious as to how the consent of the Supreme Court is going to be obtained. Is the legislature going to have to send the majority and minority leaders up there to file a petition on bended knee to change the jurisdiction?

DELEGATE WOODSIDE. There is no machinery set up for that in the Constitution and we did not consider it to be necessary. I would assume that what would be done in that matter would be that the Supreme Court would certify, at the request of somebody, whoever was proposing the matter to the legislature, the approval of an act that was before the Governor for signature or at some other time. It would not be effective maybe until after it was signed. It would not be effective, I would take it, under the Constitution unless and until the Supreme Court approved of the jurisdiction.

As a matter of practice, there has been quite a number of amendments in the Superior Court jurisdictional act which really divide jurisdiction between the Superior Court and the Supreme Court. Over the years, those amendments have been almost uniformly with the agreement, the knowledge and the consent of both the Superior Court and the Supreme Court even before it was done. This really only makes that step an official and required step rather than a step which was generally taken and practiced anyway.

DELEGATE RAPPAPORT. Am I correct, sir, with respect to the United States Supreme Court, the only jurisdiction which cannot be taken away by Congress is its original jurisdiction, and all other cases can be deprived of all their jurisdiction by the United States Congress?

DELEGATE WOODSIDE. I am not an expert on the Federal system and I would prefer that to be answered by someone who is more of an expert on the Federal system than I am.

I think I know the Pennsylvania Constitution and its interpretation pretty well, but I do not propose to be an expert on the Federal Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Under Section 2—I am going to get back to the Supreme Court; this seems to be a bugaboo with me, but I want to stay with it for a couple of minutes—you say in paragraph (a) that the Supreme Court shall be the highest court and shall possess all judicial powers. Then in subsection (c), "The jurisdiction of the Supreme Court shall be as provided by law."

Does this mean that the General Assembly then can pull away from the Supreme Court certain inherent powers it now has?

DELEGATE WOODSIDE. It means that the legislature can take away some of the jurisdiction of the Supreme Court which the legislature gave to it, of course. As a matter of fact, I guess it could take away from it other jurisdiction, but it cannot do it without the advise and consent of the Supreme Court. We felt that was sufficient protection, because we thought that no Supreme Court of this Commonwealth would ever agree to the legislature taking away its King's Bench powers, which was the thing we wanted to preserve in the Supreme Court. If for some reason it became evident under the judicial system of this Commonwealth that it would be advisable to take away the jurisdiction of the King's Bench powers of the Supreme Court, and the Supreme Court itself felt it advisable to do it, then there is no reason why the legislature along with the Supreme Court should not agree to that and have it taken away from them. I cannot conceive of any such situation, but then there are a lot of things that happen in the period of a Constitutional Convention that the delegates at the time cannot conceive.

DELEGATE HOOK. Just one more question still on the Supreme Court.

Judge, you have stated here before that you are giving the Supreme Court all the powers and so forth that it has had in the past. But if you do not spell out in this Constitution that they shall have original jurisdiction in certain areas and I take a case to the Supreme Court, they can say to me, Mr. Hook, we are sorry that we cannot take that case and we can turn it down if we so desire. Therefore, I am in a debacle as to what I am to do with my client in that particular matter, because the Supreme Court has said they do not want the case. It is a question the same as mandamus and habeas corpus as now stated in the Constitution where I have that power now to do and they have to take it. But they now come back and say to me that it is not spelled out in this Constitution and they can refuse to accept it?

DELEGATE WOODSIDE. I do not think so. But, again, that full matter will be debated very extensively, I am sure, as has been said by Governor Scranton, on Section 5. However, it is my opinion that whatever powers they have now, whatever they be, are set forth in the Constitution as being the same.

DELEGATE HOOK. Judge, why do we not put the language in this Constitution so we can protect against that problem?

DELEGATE WOODSIDE. Well, for this reason: I do not think anybody in this room, and I doubt whether any justice of the Supreme Court or any lawyer in Pennsylvania could sit down and be sure that he has accurately spelled out in complete detail all of the powers of the King's Bench and all of the legislative powers and all of the old constitutional powers that now exist in the Supreme Court. We did not feel capable of doing it. I do not think anybody is capable of doing it, and that is why we did not do it.

DELEGATE HOOK. Judge, has the language in the 1873 Constitution given us any problems in the past?

DELEGATE WOODSIDE. Well, there are lots of jurisdictional problems that come up over the Constitutional provisions. Yes, it has.

DELEGATE SCRANTON. I think the answer is, clearly, yes. That is one reason we did this.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I have a question for the Judge if he will consent to interrogation.

PRESIDENT BRODERICK. The Chair again recognizes Judge Woodside.

Proceed, Delegate Irvis.

DELEGATE IRVIS. Mr. President, I believe in Section 12, page 7, it is the proposal of the committee that the Supreme Court members be appointed by the Governor. Is that true?

DELEGATE WOODSIDE. Yes, I suppose that is true. Are we back that far? You are on a section and subject matter that we are not discussing.

DELEGATE IRVIS. I recognize that, Delegate Woodside. I am leading up to a question and I simply want to prepare you for the answer.

DELEGATE WOODSIDE. All right, you tell me what it is and I will look at it.

DELEGATE IRVIS. It is a trick that I have learned in courts before.

DELEGATE WOODSIDE. I am sure you have done very ably.

DELEGATE IRVIS. This would mean, Delegate Woodside, as I read it, that the people who no longer elect the Supreme Court. That is true, is it not?

DELEGATE WOODSIDE. That is correct.

DELEGATE IRVIS. Then, reading in Section 9, it states, "The General Assembly may, with the advise and consent of the Supreme Court, establish such additional courts, or divisions of existing courts, as may be needed," and I do not read the rest of the section. Now is this not, Delegate Woodside, giving the veto power to a court which no longer is elected by the people over the elected representatives of the people, the General Assembly, specifically? Last year in this General Assembly, after long debate and long research, we established in Allegheny County a housing court. This court has the specific duty of reviewing all cases involving housing laws. This, in our opinion, was a real advance in societal legislation. Under the provisions as drawn here by this committee it would be impossible for us to establish such a court again unless we have the advise and consent of the Supreme Court. This would mean, in my humble opinion, that the Supreme Court would have to decide whether or not it thought such legislation as we proposed was sufficiently important to warrant such a court which in turn would give to the Supreme Court—no longer elected by the people—a right to veto in advance social legislation as proposed on the floor of this House. Is this not so, Delegate Woodside?

DELEGATE WOODSIDE. Well, it depends on to what you are referring as social legislation. The Supreme Court could not prevent in any way the legislature from passing an act providing for certain relief to the public, and it could not prevent the right of appeal to a court of record. In other words, there is no question under this provision that the legislature would pass any type of social legislation that it wished and could provide either for appeal or, depending on the provision of Section 5, of no appeal as far as that is concerned. The legislature could provide for the appeal and the Supreme Court could not veto that appeal in any way. The only question there is, whether the appeal would have to be taken to the unified court system of the court of common pleas or the municipal court or some other court or courts set forth in the Constitution, or whether it could be to a special court. Now you could not set up a special court to which an appeal could be taken without the consent of the Supreme Court, and to that extent you are right.

DELEGATE IRVIS. That is the very point at issue, Delegate Woodside.

DELEGATE SCRANTON. Delegate Irvis, may I say one thing here about it so that you will understand whether you think it is right or wrong, the philosophy here?

The very problem that we are presently having with the unification system in the city of Pittsburgh is a very good indication of just exactly why we did this. We are not trying in any way and have no intention of eliminating from the legislature the opportunity to establish new courts; in fact, we make it clear that this is their job if they wish to do it. But all we are anxious to do is to make sure that these courts are in the unified judicial system so that we do not have the litigant problem that we presently have in this State, where a man goes into a court and then he is told, this is not the jurisdiction of this court, you go somewhere else; or some other problem for the average litigant. This is the reason for many of the provisions that all of you are raising with regard to it, so that we can have a unified judicial system and so that the Supreme Court is responsible for the fact that we do have it and not for a lot of other little fiefdoms which do not have any component parts. We are trying to work out now and make sure that the special courts in Allegheny County do become part of this. So there is every reason in the world for the setup of the courts. Is that clear?

DELEGATE IRVIS. It is clear to me, Delegate Scranton, what you are attempting to reach, and it was clear before. I understand, I think, what the committee is trying to reach, but I am disturbed by the method. The method, it seems to me, would permit the Supreme Court, by using the word "consent"—I would not object if the word "consent" were not there, but with the word "consent" being inserted—it means, in effect, that if we wish to establish, let us say, a labor relations court, which may some day be very important, and we have seven conservative old men sitting on the Supreme Court—and I will not talk about the present Supreme Court; we will talk about the year 2000 so I am safe if I ever have to go up there—

DELEGATE SCRANTON. Remember, we have a retirement provision.

DELEGATE IRVIS. Oh, yes, I remember that too. That is the reason I put it at the year 2000.

Let us say we have seven conservative old men sitting in the Supreme Court of Pennsylvania in the year 2000 and the General Assembly says, we think that labor relations legislation has grown to the point where it needs a special court, and the elected officials of the people of Pennsylvania are the members of the General Assembly, they are their elected Representatives; the will of the people could be thwarted by those seven conservative old men who will simply say, we will not give our consent to the establishment of such a court.

In effect—and I will sit down after I make this point—what the committee is saying is, we give the General Assembly the right to create a beautiful motor car with the wheels, the seats, the driving apparatus and the engine, but we give the power to the Supreme Court to decide whether or not to put gasoline in it. I say at that point you have given the Supreme Court far too much control over the manufacture of that automobile. It makes no sense to manufacture the automobile if you cannot buy or procure the gas to make the motor vehicle move, and it is the same with the housing or the labor relations legislation.

DELEGATE SCRANTON. May I make two comments, sir?

First of all, you understand, by the method of selection of judges that the committee recommended here, that a Supreme Court justice would have to stand for reelec-

tion on a "yes" or "no" basis after 10 years; he does not now endure for his 21-year, practically lifetime, existence.

No. 2, I point out to you that you have raised the question, Delegate Irvis, which I would have great difficulty agreeing with you on, although I would have no objection to your bringing up the question of the word "consent." Let me tell you why.

The very thing that we are trying to avoid is the maljustice that is presently done in this State by the fact that we have so many different types of courts or even different "fiefdoms" in different courts at the present time with no administrative weaponry over them.

If the legislature determines that we should have a lot more, we will be right back where we were.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, for clarification, I desire to interrogate very briefly Delegate Woodside.

PRESIDENT BRODERICK. Delegate Woodside will stand for interrogation. Proceed.

DELEGATE STROUP. Delegate Woodside, is it not true that both the Supreme and Superior Courts today have certain statutory jurisdiction determined by past legislative acts?

DELEGATE WOODSIDE. That is correct.

DELEGATE STROUP. Then, Delegate Woodside, the main thrust of this section we are discussing has its concern primarily with the King's Bench jurisdiction. Is that correct?

DELEGATE WOODSIDE. I am sorry, I did not understand the question.

DELEGATE STROUP. The main thrust of the advise-and-consent jurisdiction, as I understand it, by the committee is to protect the King's Bench jurisdiction that is now vested in the Supreme Court?

DELEGATE WOODSIDE. Primarily, I would say, that is correct. I cannot speak for all the committee on that. They may also have had in mind that they did not want the jurisdiction between the Supreme and the Superior Courts to be changed without the Supreme Court's consent.

DELEGATE STROUP. Delegate Woodside, if our past tradition and experience has established statutory jurisdiction for both these higher courts, what is the basic reason for now removing the power of the General Assembly to change such statutory jurisdiction?

DELEGATE WOODSIDE. The feeling of the committee, generally, on that point was that we ought to preserve in the Supreme Court all of the jurisdiction whether statutory, King's Bench or whatever, that they now have and that inasmuch as they were made the head of a judicial system here and to be responsible for its operation to a very large degree and were given rather extensive judicial power over the lower courts, they should have the power to have at least something to say concerning their own jurisdiction.

That is, at least, the understanding that I have as to what the thinking of the majority of the committee was in this respect.

DELEGATE STROUP. Mr. President, I thank Delegate Woodside for his very concise explanation of the position of the committee. I doubt not that this matter will be brought up further by amendment process in the Convention.

Thank you, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, I would like to ask Judge Woodside one question, please.

PRESIDENT BRODERICK. The gentleman has indicated that he will stand for interrogation. You may proceed.

DELEGATE CAMARDELLA. Mr. President, if I understand this document here, this eliminates the magistrates of Philadelphia as they are today?

DELEGATE WOODSIDE. If it is a question relating solely to Philadelphia, I would like Delegate Cortese to answer this delegate, or Delegate Amsterdam.

DELEGATE AMSTERDAM. If the question is whether this does eliminate the magistracy of Philadelphia as it is presently constituted, the answer is, yes.

DELEGATE CAMARDELLA. Will the people of Philadelphia have an opportunity to vote on it, whether they want to or not?

DELEGATE AMSTERDAM. Yes, then they vote upon the entire Constitution.

DELEGATE CAMARDELLA. In other words, it is either take it or leave it, the whole thing. The one subject could not be put on the ballot as such?

DELEGATE AMSTERDAM. There is no provision made here. I do not know how the Committee on Arrangement, Submission and Address to the People may handle this thing, but we have made no provision to have this handled separately from the balance of the judiciary article, that is correct, sir.

DELEGATE CAMARDELLA. It seems to me that Philadelphia cannot fight it out here. It seems to me that Philadelphians will become second-class citizens since they will not have the prerogative of deciding whether they want the magistrate system or not. You have put this in a package as such of take it or leave it. I think it is wrong.

DELEGATE AMSTERDAM. You are not asking me any question I take it?

DELEGATE CAMARDELLA. No, I am giving you my opinion; whether you agree with it or not is beside the point. But I certainly think the magisterial system that we have in Philadelphia today should be decided by the people of Philadelphia since you have cited them out of this document.

PRESIDENT BRODERICK. May I say that our period of explanation and question and answer has gone on for about an hour and a half and I think we are about ready for amendments.

We have the first amendment here which is an amendment proposed by Delegate Amsterdam.

AMSTERDAM AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I read in place and present an amendment to Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE AMSTERDAM offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 8), page 3, line 29, by inserting after "law.": The jurisdiction of the justices of the peace shall be as provided by law.

Amend Sec. 1 (Sec. 11), page 5, line 8, by striking out "municipal or general" and inserting: primary

Amend Sec. 1 (Sec. 11), page 7, line 2, by striking out "present" and inserting: president

Amend Sec. 1 (Sec. 12), page 8, line 7, by inserting after "or": public

Amend Sec 1 (Sec. 13), page 8, line 23, by inserting after "judge": or justice of the peace

Amend Sec. 1 (Sec. 13), page 9, line 7, by inserting after "on": a

Amend Sec. 1 (Sec. 13), page 9, line 7, by striking out "ballots" and inserting: ballot

Amend Sec. 1 (Sec. 14), page 10, line 6, by striking out "6 of" and inserting: 16 of this article or

Amend Sec. 1 (Sec. 15), page 10, line 30, by striking out "the justices thereof" and inserting: them

On the question,

Will the Convention agree to the amendments?

COMMITTEE MEETING

PRESIDENT BRODERICK. Before recognizing Delegate Amsterdam, I am going to recognize Delegate Johnson.

DELEGATE JOHNSON. Mr. President, this is a matter of privilege to make an announcement. The entire Committee on Style and Drafting will meet in Room 500 for lunch and consideration today. It is a very important meeting and we hope you all will be there immediately after the recess announcement.

PRESIDENT BRODERICK. Thank you, Chairman Johnson.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, this amendment is proposed by both chairmen of the Judiciary Committee and both have signed it. It represents what we believe to be a majority view of the entire Judiciary Committee as ascertained this morning purely on matters of nonsubstance.

We believe, sir, that these amendments either cover misprints or words that were inadvertently omitted. In the case of the first of those various items, the committee had decided that jurisdiction of justices of peace should be as provided by law. We believe that would be the case anyway, but the inadvertence of not having stated those words was pointed out and that was, therefore, included.

I believe all the others are quite clear. If there are any questions on them, I will be prepared to give whatever information we have.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, ordinarily we might be ready for the question, but yesterday or the day before —I forget which day—we had some so-called correctional amendments passed in a hurry which later came back to haunt us.

I personally would like to have just a few minutes to be able to correlate this amendment with my printer's No. 20 to see whether I might have any questions.

PRESIDENT BRODERICK. The Chair will permit it. Please let us know when you are ready.

DELEGATE MATTIONI. Mr. President, during the interim, perhaps Delegate Amsterdam or someone else could explain the purpose of the amendment more fully.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. I will be glad to go down each one of the items, Mr. President, if that is desired.

PRESIDENT BRODERICK. I think it may expedite matters if you run through it quickly and it will enable everyone to understand the amendment and the purpose of it.

DELEGATE AMSTERDAM. The first amendment, on page 3, line 29, I have already referred to.

The next item is on page 5, line 8, where you will note that instead of "municipal or general," the word "primary" was inserted, because that same word appears on page 6, line 11, and by inadvertence, they are obviously the same. They both refer to exactly the same election, and by inadvertence, "municipal or general" was put in, whereas the committee had decided from the beginning that the word "primary" was right. We did get it in correctly on page 6, but we failed to get it on page 5. This correction, therefore, makes both of those pages the same, identical. They refer, of course, to the same election.

The third item appears on page 7, line 2, where we have the word "present" and we meant "president" judge. That is obviously a typographical error.

On the next one, which is on page 8, line 7, we have "public office or appointment", and it was obvious that the word "public" was intended to apply to both. Just to be sure there was no question about it, we added the word "public", so that it now reads, "public office or public appointment."

In the case of page 8, line 23, it was obvious that justice of the peace was intended to be covered in exactly the same way that the judges were intended to be covered. That had been the decision of the committee from the beginning, and it was simply a matter of having left out the words and they have now been inserted.

On page 9, there are two items on line 7. Just simply for clarification of language, we said "a declaration shall be submitted to the electors on separate judicial ballots." Of course, we mean on a separate judicial ballot, purely a language change. That takes care of six and seven.

Item eight, which is page 10, line 6, was simply an inadvertence again. We said Section 6 instead of 16. It is Section 16 of Article VI of the Constitution itself. It is simply clarifying language, one change from 6 to 16 so that we got the right section numbers.

The next item, also on page 10, rather than say "the judges and justices thereof," since we would have to have added the word "judges", we just made it "them", referring to judges and justices, since both of them are covered by that particular section.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Might I ask one or two further questions about the second proposed amendment here?

I understand that we are changing Section 11, on page 5, line 8, so that instead of this question being put before the public at a municipal or general election, it will be put at a primary election?

DELEGATE AMSTERDAM. That is correct. That corresponds with the language that is already on page 6, line 11, where we referred to the same Section 11(b) only here we referred to it correctly as being a primary election.

Actually in 11(b) itself, we had inadvertently referred to it as a municipal or general election. Is that clear, Delegate Tate?

DELEGATE TATE. It is clear, yes, and I have not really had a chance to analyze the full impact of this, but I do know that it can make a very important difference whether a controversial question is put in a primary election or a municipal or general election.

I think it is no secret that political organizations, traditionally, have found that it is easier to pass something they are in favor of at a primary election than at a municipal or general election, and vice versa.

I would request, Delegate Amsterdam, in order to separate this, which I think may be a major change for separate consideration, that you take this amendment out and have it separately considered.

DELEGATE AMSTERDAM. Mr. President, I certainly have no objection at all except that I do want to point out to Delegate Tate that unless we make some change either here or on the other page that I have referred to, we simply are going to have an inconsistency in the article.

DELEGATE TATE. I see that.

DELEGATE AMSTERDAM. I have no objection at all to having it taken out and being considered separately. That, however, would not represent the point of view of the committee. The committee's point of view is that "primary" is intended to be in both and, therefore, we wanted everyone to know that that was our decision in the committee, but I have no objection, of course, to it being treated in any way that the delegates wish.

PRESIDENT BRODERICK. The Chair's only comment is that this would be up to you, the sponsor of the amendment, to decide whether or not you wish to withdraw that portion and submit it separately.

DELEGATE AMSTERDAM. I will be perfectly willing to withdraw it and submit it separately. Delegate Barron has an excellent suggestion, if I may say so: Why do we not put this in and then waive the rule with regard to reconsideration so that it may be treated as a normal amendment if Delegate Tate or anybody else wishes to amend it? Then we would at least have the committee's language in it without prejudicing any delegate's right to make a change. I wonder if that would be a satisfactory way of handling it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. That, of course, creates a presumption in favor of the language that we would then have. I think I prefer the former method unless there is some good reason not to.

PRESIDENT BRODERICK. I just want you to know that it was an excellent suggestion.

QUESTION OF PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. May I make a parliamentary inquiry, Mr. President?

PRESIDENT BRODERICK. Yes, Delegate Rappaport.

DELEGATE RAPPAPORT. On the same point Delegate Tate is speaking to, I, too, am troubled by some of these amendments. I must confess I did not realize what was going on, I believe it was the day before yesterday, with Taxation and Finance on their so-called technical amendments. I would, therefore, ask whether the co-chairmen would agree to ask unanimous consent that these changes be made so that we may not be burdened with the problems of reopening the questions later on. I for one, although I may not agree with some of these, not having had time to study them, would not object if Chairman Amsterdam would ask unanimous consent that these changes be made and permit us to amend them in the ordinary course of events.

PRESIDENT BRODERICK. The Chair just wants to point out that if we do that, I certainly and sincerely hope we do it only in connection with this matter because we are opening everything up to the situation that when we adopt an amendment, we will be changing that amendment an hour later, which does not make for progress.

DELEGATE RAPPAPORT. I am referring only to technical amendments made by the chairmen of various standing committees, sir. I think, perhaps, it might be the best course.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam in connection with his amendments.

DELEGATE AMSTERDAM. Technically I am not qualified to know whether the suggestion is proper or not. Delegate Scranton and I would be perfectly agreeable and I am sure the committee would be, too, to treat these as part of the original proposal of the committee, so that if anybody wanted to amend it they would be subject to amendment like anything else in the material. Is that satisfactory? If that is what is being requested, we have no objection to it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. Mr. President, I would like to direct this question to Delegate Amsterdam. Should not there also be a change on page 6, subdivision (d), on line 5?

DELEGATE AMSTERDAM. No, that was intended by the committee to be a municipal or general election, not a primary election. In other words, we are not trying to change anything that is substantive. We are trying to reflect here what the committee intended to put before the Convention. You may not agree with it, and I am sure that if you do not and the majority of the delegates vote in favor of the amendment, it will be amended, and you do not want to affect your right to do that in the slightest degree.

DELEGATE RAPPAPORT. This is my problem, Delegate Amsterdam: I do not want to be bound by having to get a motion for reconsideration passed.

DELEGATE AMSTERDAM. May I ask the parliamentarian how we manage this so that everyone's rights are adequately protected?

PRESIDENT BRODERICK. The parliamentarian has indicated that if we have unanimous consent, we can agree that each one of these items on the Amsterdam amendment can be amended without a motion to reconsider and, in effect, would be treated as a part of the original proposal for that purpose.

The Chair recognizes Delegate Orban.

DELEGATE ORBAN. I again raise the question I raised with Delegate Amsterdam. I think he is in error on his answer.

DELEGATE AMSTERDAM. Let me say this: I have not had a chance to review it as carefully as I should like to and Delegate Orban may be entirely right on the merits. All I am saying is that the committee did not decide to make this change as a matter of language; therefore, it has not been taken care of by the committee. If we have made a mistake in language, that ought to be amended in the normal way by the delegate who points out our mistake. I see nothing wrong with that. This was not taken up by the committee as all the other items were and we got a majority vote of our committee for all these technical amendments. Am I clear? It may very well be that this ought to be changed in order to be consistent. I have no objection, if that is the case to an amendment being made for that purpose.

MOTION TO DISPENSE WITH RECONSIDERATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I would like to move that the amendments be listed as correctional amendments on behalf of the committee and not be subject to a motion for reconsideration.

DELEGATE AMSTERDAM. I would second that, Mr. President.

PRESIDENT BRODERICK. It has been moved by Delegated Pasquerilla and seconded by Delegate Amsterdam that these amendments be not subject to a motion for reconsideration.

DELEGATE AMSTERDAM. I am assuming, sir, that the motion means that any delegate may amend this without the necessity for reconsideration in the normal way that an amendment is made to the proposal?

PRESIDENT BRODERICK. That is right, and this just applies to this particular amendment.

The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, before we vote on this, I understand that this will place as part of the committee proposal all of these amendments even though they may be subject to further consideration. I have just checked around with a couple of members of the Judiciary Committee and as I understand it, Delegate Amsterdam is quite correct that, with respect to amendment No. 2, there was a recognized inconsistency which had to be clarified here. I see that. However, I am also advised that the committee did not discuss and decide whether that inconsistency should be resolved in favor of making it consistent for primary elections or making it consistent for municipal and general elections.

Mr. President, I think it could be a very important question and, therefore, I do not think the word "primary" should be written in here to create the presumption that this is the committee proposal.

PRESIDENT BRODERICK. Do I understand that you want to withdraw that part then?

The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, at the meeting of the Judiciary Committee this morning, it was explained to us that that was a scrivener's error. I do think that Delegate Amsterdam ought to move to have his amendment either passed or not passed now and we will get on with this business. Three of the scriveners have come up to me to indicate this was their error. I think that is what Delegate Amsterdam ought to state for the record and then we can go on from there.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, Delegate Solomon is absolutely right. This was a scrivener's error. I remember the day in the Finance Building that we had our meeting and the word "primary" was voted upon and approved. The reason that it now appears "municipal or general election" is only because of the scrivener's error. We as a committee are asking that these amendments be introduced as housekeeping amendments and I think that we ought to insist upon the question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro. We have a motion on the floor now and I hope we speak to the motion.

DELEGATE SHAPIRO. I do not know whether this goes to the motion or not, Mr. President. I only wanted to state that while it is true we did not discuss correcting 12(d) this morning, the fact is that the decision of the committee some time ago, as Delegate Curran has just said, was to hold these elections in a primary and it was only a scrivener's oversight not only as to (e)—I am calling off the wrong section—not only as to the one that Delegate Amsterdam wishes to correct, but also as to the one that Delegate Orban spoke about. It seems to me we ought to correct both of them at the same time.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, there is a motion on the floor and I think we have had adequate discussion on it. I move the question.

PRESIDENT BRODERICK. We have had the motion, and let the Chair state the motion. The motion is that we consider all of the amendments set forth on the Amsterdam amendments as part in effect of the original proposal so that at any time any one of these items on this amendment can be amended without a motion to reconsider the vote.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—135

Aberman	Croop	Kline	Richter
Allison	Curran	Krill	Ruth
Amsterdam	Dailey	Laputka	Sabli
Aurentz	Desmond	Leach	Scales
Bagenstose	Devlin	Lee, L.	Scarlett

Baldrige	Dumbauld	Leinbach	Scranton
Baldus	Erwin	Leonard	Sebastian
Baldwin	Fagan	Manderino	Shapiro
Banes	Fawcett	Mangery	Sharp
Barron	Fay	Markley	Shettig
Barry	Feather	Mattioni	Shively
Bashoff	Filson	McGeary	Shoemaker
Benedict	Fineman	Meyer	Shrager
Benfield	Fohl	Michael	Silverman
Bloom	Fortney	Michener	Solomon
Braham	Gabreski	Miller, D.	Sprogell
Brennan	Gehrlein	Miller, R.	Stout
Broderick	Gerber	Moorhead	Strickler
Brown	Goldstein	More	Stroup
Buck	Gouger	Morton	Swope
Bunting	Griffith	Murray	Thornburgh
Burkholder	Hannum	Nelson	Tomascik
Butera	Harding	O'Donnell	Tully
Cain	Hatter	Orban	Van Sant
Camardella	Henderson	Orbin	Waldron
Caputo	Himes	Otto	Warman
Caron	Horne	Pasquerilla	Welsh
Casey	Hostetler	Popil	Westerberg
Clark	Huggins	Pott	Whittum
Clinger	Irvis	Powell	Wilcox
Conley	Kauffman	Rappaport	Wilmarth
Corey	Keller, J.	Rea	Woodring
Cortese	Kelly	Redick	Woodside
Cosetti	King	Reynolds	

NAYS—3

Hocker	McGlynn	Tate

NOT VOTING—25

Cunningham	Heyburn	Lee, K.	Prendergast
Donaldson	Hook	Levin	Quiles
Donolow	Jirolanio	Musselman	Roberts
Fleming	Johnson	Pechan	Rovner
Forster	Keller, M.	Pelletier	Scott
Goldman	Lane	Percey	Thomson
Gray			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

BARRON AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. We are ready for the next amendment. The next amendment is the amendment being offered by Delegate Barron. The clerk will read the amendment, and the pages will distribute it.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BARRON offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 1), page 1, lines 13 to 16; page 2, lines 1 to 3, by striking out all of said lines and inserting: (b) The jurisdiction and powers of the unified judicial system shall be as provided by law. The jurisdiction and powers presently vested in the courts of this Commonwealth are hereby vested in the unified judicial system.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I thank you very much for the gracious opportunity after the distinguished presentation of our co-chairman to be the first to suggest an appeal.

Mr. President, I am well cognizant of the number of appeals that are involved here and I suggest and raise an issue for the Chair's entire interpretation and consideration. I know that Delegate Baldrige is very much concerned on this same subject. I know from the question-and-answer period that Delegates Irvis and Stroup are concerned on the very same subject. I feel, sir, that there may be common language so that the basic issue of whether the Supreme Court of Pennsylvania shall have the power of approval over any new courts created by the legislature is firmly, clearly and for one time only presented to this Convention. I am interested in having that issue resolved. My language simply does not concur in all points with the other gentleman's language and I am sure that given an opportunity we can frame something so that this issue is clearly put and put to the Convention once and determined once and, we hope, not subject to recall.

I hesitate to suggest at this anxious moment, when time is such a consideration, but I am wondering if some period of recess, while we get integrated with this new printer's number and while we get integrated with one another's ideas as to the areas wherein we feel there is drastic revision needed, would not be in the ultimate conducive to orderly consideration of all subjects subject to amendments.

PRESIDENT BRODERICK. The Chair thinks that is an excellent suggestion. Is there anybody who objects?

DELEGATE SCRANTON. I do not object to what they want to do. In fact, I think this would be a great facilitation, sir, but we know we have a tremendous number of amendments here. Would it not be possible to take up some of the others on this first section while they are negotiating on this particular issue?

PRESIDENT BRODERICK. Yes, indeed, we can do that if that is agreeable.

Pursuant to Delegate Barron's suggestion, copies of his amendment have been distributed, and it would be the recommendation of the Chair that any persons who are interested should get together with Delegate Barron here and see if they are agreeable to the language that he suggests; if not, he is apparently agreeable to accept something similar.

DELEGATE BARRON. Delegate Mattioni has indicated to me that he is concerned about this same subject. I do not think we are wasting the Convention's time, Mr. President.

PRESIDENT BRODERICK. Very good.

If there is no objection, while you are conferring we would like very much to take up the next amendment, because this morning we have not made as much progress as we would like to have made.

(Conference on Barron amendment)

WELSH AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, I read in place and present the following amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE WELSH offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 1), page 1, line 10, by inserting after "pleas,": orphans' courts,

Amend Sec. 1 (Sec. 1), page 2, line 22, by removing the period after "Pleas" and inserting: and Orphans' Courts.

Amend Sec. 1 (Sec. 6), page 2, by inserting between lines 28 and 29: (c) In any district in which a separate orphans' court presently exists there shall be a separate orphans' court which initially shall consist of the number of judges authorized to sit on the orphans' court of the district when this section becomes effective. The jurisdiction of the court shall continue to be the jurisdiction now exercised by the orphans' court of the district, unless modified by rule of the Supreme Court. In any other district there may be a separate orphans' court as the General Assembly may determine upon recommendation of the Supreme Court. One of its judges shall be President Judge.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, fellow delegates, I rise to offer this amendment for the retention of a separate orphans court, which, in effect, would be a continuation of the status quo under the terms of the existing Constitution. I came to this Convention determined not to go for the status quo and I think, perhaps, my record in all of the voting up to this point might indicate that my position has been just that. However, I feel that the continuation of a separate orphans court in counties of 150,000, as presently exists and called for in the Constitution, should be maintained, and if we want to call that a status quo, then I am for that particular section.

We have, if we erase orphans courts as such, erased almost 300 years of Pennsylvania legal history. These courts were created that long ago, and if we go for the status quo, I maintain that we will continue to submit the orphans court in the legal history of Pennsylvania. We have, I think, submitted in the legislative apportionment 203 and 50; we have also submitted and continue to imbed into Pennsylvania law, the Constitution, the utility exemption and also perpetuate the tax on utilities as presently existing. If we erase the orphans courts, we are erasing a specialty, I think, and I do not believe that that would be consistent with what the present-day world calls for. In light of my remarks of last week, I think the retention in this case of the status quo would be a modern thing to do because of the specialization which this State and the entire nation are presently going through.

The orphans courts of Allegheny County and Philadelphia and several other counties have full-time judges. We have four, for example, who spend all of their time caring for the management of moneys of estates. The matters of the orphans court for the most part are not matters which are put on a docket and, in a short period of time after the matters are heard, are dismissed. Many cases and trusts last for a period of years and, therefore, the items in dockets and papers are constantly on the judges' desks. Therefore, an orphans court judge could be concerned with various trusts and estates and wills for a period of one week and the following week have to go to criminal court or even try an equity case, which might take weeks, and then go back to the orphans court and pick up where he left off. All of the employes of the orphans court, for example, are specialists in the handling of administration of accounts and trustees' accounts.

I, therefore, rise in support of my amendment and request that if we have to term it so, keep the status quo with regard to the orphans court in the State of Pennsylvania.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I would like to join in the sentiments of my learned friend from Allegheny County. I have no objection, and I am sure under the unified court system which we are going to adopt in some form, that orphans court judges will sit in other courts, perhaps as visiting judges. However, I believe it is extremely important to keep a separate orphans court in those counties which have and want separate orphans courts. These judges have become experts in rather complicated and technical types of litigation and I think this expertise must be maintained. To my knowledge, I am not too familiar with western Pennsylvania but I am told that throughout the State the orphans courts are the only courts that are up to date completely. I know it is true in Philadelphia. I know that if I have a problem and have to see an orphans court judge, I can see him right away and I have no problems. I think it is extremely important that we keep a separate orphans court. Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, delegates, ladies and gentlemen, the committee went into this subject in great depth over a long period of time and you may notice that in the provisions of both the proposal itself and in the schedule, we provide for the unified court system which we think is of absolute, fundamental importance to the improvement of the judicial system in Pennsylvania. Then we provide that the orphans courts —and specify Philadelphia County and Allegheny County —shall become divisions of the common pleas court so that there will be no interruption whatsoever in the operations of the courts, so that the people who are presently judges there will be moved to these divisions, not bodily because they stay where they are, but for structural purposes. Likewise, it is in the schedule that the orphans courts that are now established in 28 other counties will likewise become divisions of the common pleas court, therefore not interrupted; and, likewise, if there are to be any further changes, that is up to the legislature, where it properly belongs.

Consequently, it is our opinion that all the advantages of specialization by these people who are specialized in this field are retained and that, indeed, the advantage of doing what we have done is to make sure that any of them who may have extra time, which frankly is the case in certain jurisdictions, may be used in other courts of common pleas, but not obviously excessively. It, for example, was flamboyantly brought to our attention that this might mean that some orphans court judge would be sitting on a homicide case. This is not intended, and let me assure you that the administration by the Supreme Court under the unified system does not want to venture with

that sort of thing. It might mean that some orphans court judges, when they had extra time, would be called upon to hear motions, or something of an elementary nature of that type, in other courts—this to facilitate justice in this State and to act to do something along the line of creating an administrative system that works, and so that we do not have individual "fiefdoms" in the State, and at the same time retain the specialization. May I say to you in no uncertain terms, that the overwhelming majority of the committee was for this change and we believe that it has these two advantages: It retains the specialization and yet makes it possible to have a unified court system.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I am going to speak on the same side of the issue as Governor Scranton has just spoken, so if there is someone on the other side, I would yield.

PRESIDENT BRODERICK. Do we have anybody on the other side?

DELEGATE TATE. I have a question on either side, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate. Who would you like to answer your question, Delegate Tate?

DELEGATE TATE. I would like to ask the question of either of the chairmen of the Judiciary Committee.

PRESIDENT BRODERICK. Chairman Scranton, will you?

Chairman Scranton will be interrogated.

DELEGATE TATE. I listened with interest to the statement just made by Delegate Scranton. I think that many of us here are extremely interested that the integrity, meaning the up-to-dateness, and the expertise of the present orphans court would be preserved in whatever new system comes out of this Convention and from the people. I would like to ask, Delegate Scranton, what assurance he can give us, personally and on behalf of his committee, that this integrity will be preserved under the unified system proposed by the committee with respect to the requirement that the orphans court work be done by persons, judges, who have experience and expertise in this area and in such a way that the work of the orphans court will continue where it has been in the past to be as effectively and efficiently done as we have known it in recent years?

DELEGATE SCRANTON. Obviously, Delegate Tate, I cannot give any personal guarantee, because I will not be involved in the administration of the judicial system. But it is perfectly clear, from what has been written in the proposal and the schedule, that they do maintain jurisdiction with regard to this subject and their operations with regard to it through the divisional system.

I think it would be obviously the better part of judgment on the part of the president judges of the common pleas and of the Supreme Court in their administrative powers to see to it that this is done. I cannot imagine anything that would interfere with it, except personal heat, which you might get in any kind of setup.

Frankly, after we had done this, after we had made it clear to those who were quite open in their criticism of changing the orphans court, when they found out what we did, they withdrew their objections. I, frankly, think this is a tremendous step forward without in any way hurting the present system.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I think it ought to be clear at this point that anyone who favors a separate orphans court cannot at the same time favor a unified judicial system. You are either for one or the other.

We have an enormous problem in Philadelphia and I do not think it is restricted to Philadelphia. We need judicial manpower moved around, and this proposal as submitted by the committee allows the president judge to move judicial manpower to the spot where it is most needed.

It also eliminates another problem which currently exists, and that is, having to try the same case possibly two or three times. The orphans court only has certain jurisdiction; the common pleas court only has certain jurisdiction. In some cases it is necessary to have some portion of the case determined by the orphans court and then go down to common pleas court and have other portions of the same matter tried there.

The committee proposal completely eliminates this necessity. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I will not speak for or against this amendment. It is pretty generally known that I have been rather closely associated with an orphans court judge for some 40 years, but I do wish that the delegates would carefully consider everything that has been said on this floor. If nothing is to be changed, as it has been indicated by the distinguished chairman of this committee, as far as the operations are concerned, then I want you to weigh that in coming to your conclusion.

I thank you very much.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, a further and important consideration in abolishing the orphans court is that it terminates many areas where there are conflicts about jurisdiction.

There have been over the years many conflicts between the orphans court and the common pleas as to who had jurisdiction. Then in many other courts there have been similar conflicts between jurisdiction. It is the present attempt to eliminate all of those conflicts.

I said this to my committee and they will bear hearing it again. When we consider the jurisdiction of the United States Supreme Court and the jurisdiction of Pennsylvania, there are obviously some conflicts of jurisdiction. That cannot be helped, because two sovereignties are involved.

However, if we in the court system set up little areas of jurisdiction within our own courts whereby litigants may fail because they get into the wrong courts where they may be halted and harassed by these differences, we are setting traps for our unwary citizens.

All those conflicts of jurisdiction are merely lawyers'

talk. The lawyers' talk does not add a dollar nor subtract a dollar from what is at stake.

Therefore, if for no other reason than to terminate these interminable conflicts in jurisdiction which have gone to the appellate courts many times, we ought to terminate this system.

Next, I notice a statement that the docket of the orphans court is free. That is because the volume of work ahead of the orphans court is much less. I used to sit from time to time in the courts of Pittsburgh and I found there that there were orphans court judges from certain jurisdictions who were there commonly every day of the week, except one which they saved for home. They would have stayed home if they had more work. Of course, they came out to do the Commonwealth's work elsewhere, but to allow this kind of separation of the court gives to some of the judges of the general court the option to take it easy or to go away and work somewhere else for the Commonwealth at an additional expense.

I do not like the idea that there is something sacred or sacrosanct about the jurisdiction of the orphans courts. Somebody said something that would indicate to consider the lamentable feature that a man would have to leave these trust papers of the trust that had been running for many years and go off to try just an ordinary common pleas case, like an adoption or a criminal case. I want to borrow some language that I have heard from time to time here. In the common pleas court, and I have been a judge in both, we are not dealing with the money of dead people. We are dealing with a real living article right down in front of us, and that is why the common pleas court is a more important court. I think, at all costs, the jurisdiction of the orphans court should be united with that of the general court of jurisdiction in the county, the common pleas court.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, coming from York County where we have had an orphans court as a separate court for some 30-plus years and having conferred with not only the other delegates from York county but the bench and the bar of our county, I must stand to support this amendment because, very frankly, if what Delegate Silverman said in opposing the amendment is true, that we either have to be one way or the other, then we certainly, from the areas where the orphans court is an established practice, have to be in favor of Delegate Welsh's status quo.

We have had a superior experience in York County with the separate orphans' court. We have always had a specialist run for the job and be elected, and we have had complete satisfaction with it. We can see no reason why—maybe I am incorrect in this—we should change this to a system where in the future someone would be selected or elected, depending on the outcome of this Convention and the people's vote, and placed in the position of having then to be assigned to one place or another. We have been fortunate to find that the people who ran for the president of the judges of the orphans court have been specialists by virtue of their training, their experience and their general temperament in dealing with their practice before they were on the bench. It is quite clear to us in York County who have a separate orphans court, no matter what label it carries, it is an important function of the judicial structure, and we are in favor of keeping it as it is. We believe that this amendment takes a step in that direction in opposition to the general plan outlined by Proposal No. 7 and, therefore, we are in favor of it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caputo.

DELEGATE CAPUTO. I rise in favor of the amendment, Mr. President. Much has been said, or at least something has been said, about the orphans court judges from different counties sitting in Allegheny County because they had no work. Apparently common pleas judges also sit in Allegheny County because they have no work at home.

The original submission to this delegation of the Pennsylvania Bar Association proposal—if I am incorrect, I stand to be corrected—contained a provision for separate orphans courts. I do not know what has happened to the people who proposed that proposal but now they have changed their minds and want to make the orphans court a part of the common pleas court.

I have no opposition to a unified system of courts in Pennsylvania; I believe that is the most important thing before this Convention, but I do believe that the orphans court in Pennsylvania should be maintained as a separate court because its functions are different from the common pleas court; its functions are different from trial by jury. Therefore, in adopting all the arguments made in favor of this amendment, I stand here in favor of the passage of the amendment and keeping the orphans court separate from the common pleas court.

PRESIDENT BRODERICK. The Chair recognizes Delegate Clinger.

DELEGATE CLINGER. Mr. President, I rise in opposition to the amendment. I want to make the delegates here understand that the purport of this amendment and its effect would be to create two courts on the same level of the judiciary. The whole thrust, and certainly the main objective of the judiciary article, is for a unified court system.

This is the very antithesis of a unified system if we have two courts on the same level and, therefore, separate administration, separate supervision for each court. Therefore, I would oppose the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, the thrust of the proposal of the committee is to have specialized judges, not specialized courts. The expertise that is exercised in the orphans court would be retained and I think it should be pointed out to the Convention that the orphans court judges, at least in Philadelphia, do now sit on criminal and civil cases. The only difference that this proposal would bring about is that they would not have to give their prior consent to sit on these cases; the administrative judge could assign them where they were needed.

If it is in order now, Mr. President, I would move the question.

PRESIDENT BRODERICK. Delegate Welsh, you have a right to close. Do you want to say something?

DELEGATE O'DONNELL. I would like to be recognized by the Chair, if I may.

DELEGATE WELSH. I would like to yield to Delegate O'Donnell.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I think it is only fair to bring to the attention of this assembly several items of information which may be of interest, one of which is that the Pennsylvania Bar Association which has been one of the foremost exponents and proponents, if you will, of a unified judicial system has, by referendum in the first instance, by vote at one of its annual meetings in the second instance, and by vote of its house of delegates in the third instance, voted in favor of the retention of the orphans court. I personally am a member of a bar in two counties in this Commonwealth, Montgomery County and Chester County, and I was a member of both of those bars, practicing before those courts before each of those two counties had a separate orphans court and after each of those counties had a separate orphans court. I have had an opportunity personally to observe the distinction in the manner in which estates' matters were handled in both. I can say to you, sir, that the handling of estates' matters in the two jurisdictions is not only improved 100 per cent but perhaps 100,000 per cent because handling estates and handling trial and negligence cases and the usual run-of-mine material that comes before a common pleas court is entirely different.

To the proponents of this proposal, I am going to say this: I believe that in the judicial article as framed today by the Judiciary Committee, admittedly, compromises were made. But as framed today, there is a separate orphans court division in the common pleas court. In the schedule it provides that the present president judge in each division shall continue to be the president judge of the orphans court division. The only difference is that now orphans court judges are made subject to possible assignment by order of the court administrator through the office of the Supreme Court.

I believe that the present judiciary article as it is now written meets both the objections and the praise that has been heaped upon the orphans court. I believe that the retention of the separate orphans court is not necessary inasmuch as this judiciary article treats the orphans court as a division of the common pleas court, a division which keeps its own judges, keeps its own books and records, makes the clerk of the orphans court continue to be the clerk of the orphans court and at the same time permits a great deal of unified judicial system.

I think that the judiciary article on this subject should be bought as is.

PRESIDENT BRODERICK. The Chair recognizes Delegate Filson.

DELEGATE FILSON. Mr. President, I rise very reluctantly against Delegate Welsh to say that I do not stand for the amendment. I oppose it. I come from a county where we have one judge; we have all of the various courts under the one judge. We find no great difficulty in handling all the cases that are there excepting once in a while, perhaps, you find yourself in the wrong court and you create for yourself a jurisdictional problem as has been referred to by Judge Braham.

I live for the day when I can go into common pleas court with a petition or a complaint with a head on the caption "In the Court of Common Pleas." If, unfortunately, there is any matter of jurisdiction which would put me out of court, I will not be kicked out of court for the reason that I am then in the unified judicial system and my client will have the advantage of it.

I should also like to submit to this delegation that in connection with the hearings which were held before the Judiciary Committee on the 27th day of December of 1967, I heard no orphans court plea excepting to tell us that the orphans court work was caught up to date. I submit to you that the amount of orphans court work that has to be done in relation to the number of orphans court judges is the reason that they are caught up to date. I see no reason why the public, why the client, should wait three years, in Allegheny County or thereabouts, to secure for himself justice, and negligence cases, in other areas, in as high as six and a half years as in the City of Philadelphia, while the orphans courts sit idly by and do not help to pick up the backlog.

I submit to you that the unified judicial system should be put into operation; it should be put into operation as it has been written by the judiciary article and I submit to you that the sooner we put it into effect, the better the judicial system will be in Pennsylvania and that the clients will be much better off.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gabreski.

DELEGATE GABRESKI. Mr. President, I wish to remind you that there is a question moved and seconded and it is before this Convention.

DELEGATE WELSH. That is, of course, subject to my summing up, I suppose.

PRESIDENT BRODERICK. You have the opportunity under the rules to sum up and then we shall vote on the question.

DELEGATE WELSH. Fellow delegates, we in Local Government have continued and kept the specific words of the county commissioners, district attorneys, auditors, treasurers and various other constitutional officers and, as a matter of fact, even yesterday we added one new constitutional officer, that of public defender.

It also seems to me that we retained the names of cities, boroughs and townships presently existing in the Constitution, and these will, after April 23, continue to be in the Constitution.

It also seems to me quite inconsistent with the judiciary if it advocates the taking out of a specific court, namely the orphans court, because they want a unified court system. Yet they still maintain the justice of the peace, for example, provisions for the justices of the peace and provisions for the justices of the peace who are not lawyers. It seems to me certainly to be inconsistent with a unified court system if you have judges and lawyers practicing in all the courts of Pennsylvania but you do not have judges at the justice of the peace level.

Thank you, Mr. President.

PRESIDENT BRODERICK. We are ready for the question.

On the question,

Will the Convention agree to the amendment offered by Delegate Welsh?

The roll was recorded as follows:

YEAS—50

Aberman	Curran	Keller, J.	Shettig
Aurentz	Desmond	Keller, M.	Shoemaker
Bagenstose	Dumbauld	Kline	Shrager
Baldrige	Fagan	Krill	Stout
Baldwin	Fawcett	Mattioni	Swope
Banes	Fineman	McGlynn	Van Sant
Barron	Griffith	Michael	Waldron
Barry	Harding	Miller, D.	Warman
Bashoff	Hatter	Prendergast	Welsh
Butera	Irvis	Rappaport	Westerberg
Caputo	Jirolanio	Richter	Whittum
Corey	Johnson	Ruth	Woodside
Cosetti	Kauffman		

NAYS—87

Amsterdam	Devlin	Lee, L.	Rovner
Baldus	Fay	Leinbach	Sahli
Benedict	Feather	Leonard	Scales
Benfield	Filson	Manderino	Scarlett
Bloom	Fohl	Mangery	Scranton
Braham	Forster	McGeary	Sebastian
Brennan	Fortney	Meyer	Shapiro
Broderick	Gabreski	Michener	Sharp
Brown	Gehrlein	Miller, R.	Shively
Buck	Gerber	Moorhead	Silverman
Bunting	Goldstein	More	Solomon
Burkholder	Gouger	Morton	Sprogell
Cain	Hannum	Murray	Strickler
Camardella	Himes	Nelson	Stroup
Caron	Hook	O'Donnell	Tate
Casey	Horne	Orban	Thornburgh
Clark	Hostetler	Orbin	Tomascik
Clinger	Huggins	Otto	Tully
Conley	Kelly	Pott	Wilcox
Cortese	Laputka	Powell	Wilmarth
Croop	Leach	Redick	Woodring
Dailey	Lee, K.	Reynolds	

NOT VOTING—26

Allison	Gray	Markley	Poptl
Cunningham	Henderson	Musselman	Quiles
Donaldson	Heyburn	Pasquerilla	Rea
Donolow	Hocker	Pechan	Roberts
Erwin	King	Pelletier	Scott
Fleming	Lane	Percey	Thomson
Goldman	Levin		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BLOOM AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. We are now ready for the next amendment, which is the amendment offered by Delegate Bloom.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BLOOM offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 2), page 2, line 8, by inserting after "of": not less than

Amend Sec. 1 (Sec. 2), page 2, line 8, by inserting after "seven": nor more than nine

Amend Sec. 1 (Sec. 2), page 2, line 9, by inserting after "Justice.": The General Assembly may add the eighth or ninth justice, but only upon prior certification of the necessity therefor by the Supreme Court.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bloom.

DELEGATE BLOOM. Mr. President, delegates, the only reason I am asking for this amendment to the Constitution is that I am trying to foresee the future. I know at the present time that the Supreme Court and the Superior Court have seven judges and they are doing a good job, but I do know this from experience over the 45 years which I have practiced, that the law is evolving; there is always new law. The Supreme Court is having more and more cases to decide and that is the amendment we are working on now.

I am not by this amendment asking that the court be increased; I am only trying to foresee the future, 25 to 50 or maybe 75 years from now. I do not think it is right to tie down the number seven to the Supreme Court and say that the Supreme Court can only be enlarged when it finds by expediency that it is not able to do the work, that it has too many cases to decide and it is not able to do all of it, and it must go to the people and the legislature for an amendment, which takes a period of two years. Whenever that necessity arises, I think it should get the relief and get it within the immediate future rather than have to wait for a two-year period.

PRESIDENT BRODERICK. Delegate Bloom, would you yield for a moment? I understand that the pages may have passed out the wrong amendment for you.

The amendment you are talking to now, I understand, is that the General Assembly may add the eighth or ninth justice but only upon prior certification of the necessity therefor by the Supreme Court.

This is the one you are speaking to now, is it not?

DELEGATE BLOOM. I am only on the Supreme Court.

PRESIDENT BRODERICK. Yes.

DELEGATE BLOOM. That is the one I am talking about.

PRESIDENT BRODERICK. Is that the amendment that you have?

DELEGATE BLOOM. They are both similar. They are both absolutely similar; the verbiage in both of them is the same, and you can consider it as the Supreme Court instead of the Superior Court because I do have a similar amendment in for the Superior Court.

PRESIDENT BRODERICK. Delegate Bloom, the Chair would have no objection if you wanted to consider both of your amendments at the same time and we would consider them consolidated. They seem to present the same question. It is up to you; they are your amendments.

DELEGATE BLOOM. They are my amendments. I do not know why they should not, but you never can tell how a delegate might feel about these matters. He may feel that the Superior Court should have the amendment passed and the Supreme Court should not, so therefore they both might fall or they both might go through all right, but I cannot judge the mental attitude of the Convention.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. I would request Delegate Bloom and the Chair to permit all three amendments to be decided separately because I think they present three separate questions and I think that we could get a sounder and more cogent vote from the delegates because I think the third amendment discusses—

PRESIDENT BRODERICK. I just want Delegate Gerber to know that the Chair knows about two amendments, but I do not know about the third.

DELEGATE GERBER. Maybe I misunderstand it.

PRESIDENT BRODERICK. The only amendments I have up here at the desk are one on the Supreme Court and one on the Superior Court, and as I understand it now Delegate Bloom prefers to present his amendments separately, and that is his privilege, so proceed.

The first one we are going to consider is the one on the Supreme Court.

DELEGATE BLOOM. The Supreme Court, that is right. I want to call the delegates' attention to this one fact that no one can deny, that is, the population will increase in the State of Pennsylvania—there is no doubt in my mind—and it will increase considerably. And I want to call one other fact to the delegates' attention, that there are going to be more lawyers and there are going to be more judges. Therefore, we are going to have more cases and the burden of the Supreme Court is going to be greater because we are going into new horizons and there will be new matters for the court to decide that have never come up before. The main thrust, the main reason why I am asking for this amendment, not for the present but for the future, is so that the Supreme Court will not be burdened by the fact that it will have to wait approximately two years to go through the process of amendment in order to get help that it might need at the time it needs that help.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, in my personal opinion, this is one of the most serious amendments that will be offered here today. The committee felt very strongly that the number of justices of the Supreme Court should be set forth in the Constitution as it has been in the past. We have had an exceptionally good appellate court system in Pennsylvania. I have frequently said that if the judiciary would have the publicity agents that the executive and the legislative branches have, our judicial system, particularly as it relates to appeals, would be advertised all over this nation as being the finest in the country. What we have done, we have been able to avoid the circuit court or panel court, intermediate courts. Now this will enter into some of the discussion which would come up on the next amendment, but I think it would be better if we would be allowed to argue the two somewhat together.

The Superior Court has been under our system a court which has had a jurisdiction almost on the level of the Supreme Court. We have avoided in Pennsylvania what has annoyed many other States and what has annoyed the Federal Government to a very great degree. As to the Supreme Court alone, because as I understand we are going to take these two amendments separately, we probably ought to argue the second one in relation to the Superior Court at that time. May I say in reference to the Supreme Court that to me it is terribly important to set forth in the Constitution the exact number on the Supreme Court because we have all seen that there can be court packing for a particular reason, and we have been able in the years to prevent that in Pennsylvania. It has happened; efforts have been made to do it nationally; efforts have been made to do it in some of the other States, but in Pennsylvania our Constitution has avoided that and has made it possible to carry on the work with seven judges without any thought of increasing the number.

Actually, when you have nine judges, you do lessen the work somewhat of the other judges, but they must still read the same number of opinions which are written and they still must hear the same number of cases, regardless of whether there are seven or nine judges. So that nine judges do not reduce substantially the amount of work of any particular judge.

The Supreme Court is rather busy. Let us look at what the record shows concerning the Supreme Court in 1936. It took, between argument and decisions in 1936, 63 days for them to hand down an opinion; ten years later, in 1946, 53 days; ten years later, in 1956, 56 days. In 1966, which was the last record then available when this was made out, it took 92 days. In 1966, they handled 337 cases. Way back in 1936, they handled 374 cases.

Now, what ought to be done? Very clearly, it seems to me on the appellate court system that some of the work which is now in the Supreme Court can and should be given to the Superior Court, because the Superior Court can still take some additional work away from the Supreme Court.

Another thing in the Supreme Court which we must remember is that fact that under the present law, one judge can allow an allocatur. That means that on appeals from the Superior Court or on request for a hearing by the Supreme Court from cases that have been decided by the Superior Court, one of the seven can require all seven to hear and listen to that case.

In the Supreme Court of the United States, there is a different rule. There four must agree to hear the case before it can be heard. It might well be that the law should be changed to have a provision whereby three of the justices of the Supreme Court of Pennsylvania would be required to allow or agree to the allowance of a petition to hear an appeal from the Superior Court to the Supreme Court.

The important thing to me is this: The work of the appellate court can be handled. Now if we create, as there is in the Constitution, at some future time a Commonwealth Court, that Commonwealth Court will take a lot of the work away from the Superior Court as well as from the Court of Common Pleas of Dauphin County, for example, unemployment compensation cases, workmen's compensation cases, public utility appeals, and many similar cases of that type.

This would enable the Superior Court to take even more work away from the Supreme Court. So that as a matter of fact I think that anyone familiar with this situation can say with absolute certainty within any reasonable time, at least, there is no problem of the ability of the Supreme Court to handle the work which will come before it. There are many ways in which its work can be lessened other than by the increase of two additional judges.

I say, you may not foresee. Delegate Bloom is arguing that we cannot foresee the future, and we cannot. But let me tell you one thing, we cannot perceive the reasons which may exist for the packing of that court by the addition of two more judges. When we have an opportunity to prevent that contingency in the future, we certainly should not change our present provision and permit it to happen.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tomascik.

DELEGATE TOMASCIK. Mr. President, ladies and gentlemen of the Convention, I would like to interrogate Delegate Bloom, please.

PRESIDENT BRODERICK. Yes. He will stand for interrogation.

DELEGATE TOMASCIK. Delegate Bloom, I note in your amendment that you provide that the Supreme Court must first certify the need for the additional judges.

DELEGATE BLOOM. That is right.

DELEGATE TOMASCIK. Therefore, the Assembly thereafter may add one or two judges. Is that mandatory upon the General Assembly?

DELEGATE BLOOM. No.

DELEGATE TOMASCIK. They do not have to give any—

DELEGATE BLOOM. The General Assembly always acts independently. It says they may, and they make their investigation to see whether or not there is a necessity there. May I ask to interrogate Delegate Woodside for just a minute?

PRESIDENT BRODERICK. You may proceed.

DELEGATE BLOOM. Delegate Woodside, you sat on the Superior Court and, of course, you know the working of the Supreme Court, do you not?

DELEGATE WOODSIDE. I think I know plenty about it, yes.

DELEGATE BLOOM. And you know, Delegate Woodside, that one judge writes the opinion after they have had a conference after listening to arguments. Is that not true?

DELEGATE WOODSIDE. If you are asking me what the procedure is, the procedure is that there is an argument.

DELEGATE BLOOM. Yes.

DELEGATE WOODSIDE. Then there is a vote and then it is assigned by the president judge and then there is an opinion written in the usual case. There are exceptions to that.

DELEGATE BLOOM. That is right; that is right.

DELEGATE WOODSIDE. Then there is an opinion written on that and that opinion is sent around to the other judges. Then they read and study that opinion, and then after that they have another conference and they discuss those opinions, then they decide whether or not they have a majority to hand it down. In the meantime other judges may write dissents. Of course, the more judges you have, the more dissents you have; the more dissents you have, the more work the individual judge has in reviewing the case.

DELEGATE BLOOM. And at the present time it takes approximately six months to get a decision down from the Supreme Court, is that not true?

DELEGATE WOODSIDE. In 1966 it took 92.3 days, on the average.

DELEGATE BLOOM. That is on the average, but there are times that they do not hand it down for six months. Is that not true?

DELEGATE WOODSIDE. That is true. Of course, that may well happen any time, as far as that is concerned, because quite frequently in the process of deciding a case when the process which I have just outlined is gone through, there is not a majority of the votes willing to go along at that time. One of the justices will write a dissent and then when the other judges review the cases and review the briefs and review the original opinion and review the dissent, they may come to the conclusion that they are going to vote along with what was the minority in the beginning. Therefore, somebody again has to sit down and write an opinion on it. There are delays which are caused for that reason, too, and there will be more of those kinds of delays with nine judges than there will be with seven judges.

DELEGATE BLOOM. Under the unified system as you have prescribed here, the chief justice is going to supervise the entire system, is he not?

DELEGATE WOODSIDE. He does now.

DELEGATE BLOOM. I am asking you if he will in the future.

DELEGATE WOODSIDE. Yes.

DELEGATE BLOOM. And he will have a lot more judges and a lot more courts to supervise under our system as it exists, even the justices of the peace. Is that not true?

DELEGATE WOODSIDE. Through his administrator and through his procedural rules committees and matters of that nature, yes. I do not think he will have a great deal more personal administrative responsibilities than he has now. He will have a lot more help through administrative offices. He directly administers the administrative office now. There is a court administrator now, but it is primarily in the chief justice, and he is the one who does the work in the supervising. I would imagine that under the present system when there is a constitutional officer as administrator, he would have a great deal more personal responsibility and the chief justice would have less personal responsibility. I think actually the chief justice has more responsibility now than he would under this provision.

DELEGATE BLOOM. That is your opinion?

DELEGATE WOODSIDE. That is my opinion.

DELEGATE BLOOM. I would like to make one statement.

PRESIDENT BRODERICK. The Chair would just remind Delegate Bloom that on these debates he can only speak twice. Of course, you can ask questions. You have a right to close, and the Chair would suggest that you save your statement for your closing.

The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, would the distinguished co-chairman of the subcommittee on court organization be willing to be interrogated, Judge Woodside?

DELEGATE WOODSIDE. Yes.

PRESIDENT BRODERICK. You may proceed.

DELEGATE O'DONNELL. Delegate Woodside, were not these very questions considered in your subcommittee?

DELEGATE WOODSIDE. Very thoroughly.

DELEGATE O'DONNELL. Was not the vote in your subcommittee unanimous to retain the Supreme Court at its seven-man court?

DELEGATE WOODSIDE. It was.

DELEGATE O'DONNELL. Was there any objection or disagreement on this subject by the full Judiciary Committee?

DELEGATE WOODSIDE. I have no recollection of any disagreement on that in the entire committee.

DELEGATE O'DONNELL. A few more questions, if I may. It is a fact, is it not, Delegate Woodside, that in the main the writing of legal opinions and handing down of court opinions is a matter of committee work? Is that not correct?

DELEGATE WOODSIDE. I am not sure I understand.

DELEGATE O'DONNELL. By that I mean that the court, of necessity, has to get together and decide what they are going to do?

DELEGATE WOODSIDE. Yes, they have two conferences. They have one before the case is assigned in which they vote, and then after the opinion is written by one of the judges who has been assigned to write it, by the chief justice, they have another conference and sometimes two or three after that, as far as that point is concerned.

DELEGATE O'DONNELL. Is it not a fact that part of the feeling of your subcommittee and of the Judiciary Committee as a whole was that a nine-man committee is certainly not more efficient automatically than a seven-man committee? Is that correct?

DELEGATE WOODSIDE. That is true, and I think if you would refer back to the old blue book that we received at the beginning of the session that was so ably prepared by the preliminary committee, you will find something in there that relates to the additional value of a large number, nine over seven, but it points out there that that does not mean that there is two-sevenths more work going to be done, by any means, and I attempted to say why.

DELEGATE O'DONNELL. My final question is this: Is it not a fact that under the judiciary article as proposed by the Judiciary Committee, the Supreme Court, first, can reduce its own workload to an extent by not granting as many allocaturs and rehearings, and, second, is it also not a fact that under the Judiciary Committee proposal, the amount of appellate work in the Commonwealth in the foreseeable future can be shared with a Commonwealth Court, for which provision is made in the judiciary article? Is that not so?

DELEGATE WOODSIDE. That is so. As a matter of fact, I think if there is a Commonwealth Court created, the Commonwealth Court and the Superior Court could handle practically all the appeals and the Supreme Court could become a certiorari court. For the layman, that is, there would not be any direct appeals to that court at all, but only petitions would be made to that court from the Superior Court and the Commonwealth Court, and the courts would decide whether they were going to allow an appeal at that point and hear it, very much as the Supreme Court of the United States does now in all cases.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Thank you, Mr. President.

Delegate O'Donnell, you are a member of Delegate Woodside's subcommittee, are you not?

DELEGATE O'DONNELL. Are you interrogating me?

DELEGATE HOOK. I am.

DELEGATE O'DONNELL. Yes.

DELEGATE HOOK. Thank you.

At this time I would like to rise in favor of Delegate Bloom's amendment, for one reason in particular. I discussed this earlier with Delegate Woodside and I feel very solidly in favor of it for one basic reason. There are 68 attorneys in this room. We all appeal cases to the Supreme and Superior Courts. For the past three or four years, the majority of the opinions handed down by these courts have been per curiam decisions.

I realize that my clients have spent a lot of money to get their cases to the Supreme Court or to the Superior Court and want written decisions on their cases. The Supreme and Superior Courts are now using this as a method to get around writing decisions. I do not know the reason this has occurred. I have had it explained to me by other people that the reason is that so many cases are similar, so they refer back to the original cases. But there may be one or two facts different that my clients wants explained and they spend a thousand dollars to appeal, to get their briefs and everything ready for the higher court.

I, therefore, think that with the Supreme Court and the Superior Court having flexibility as to numbers, this gives some answers that may come about in the future.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Warman.

DELEGATE WARMAN. Mr. President, for the moment, I shall yield to Delegate Michener.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, fellow delegates, I speak both as an "illegal" delegate and as a taxpayer. I see much in this marvelous article which is going to cost the taxpayers of Pennsylvania more money and I think it is money very well spent. We shall support this at every point if we can improve justice. But the mere adding of four new justices where the need is not clearly established seems to me an economic luxury in which we ought not to indulge. Let us save our tax dollars for those great parts of this proposal where they will be needed and where we shall get a great return for our money.

PRESIDENT BRODERICK. Delegate Warman, did you wish to be recognized?

DELEGATE WARMAN. No. I shall withdraw my request.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. Delegates, just two or three things:

First, with regard to the point about administration in the Supreme Court, I can only give what we know from fact and that is that where it has been in existence, in Illinois, for example, it has not added to the burden of the justices; it definitely has added to the burden of the administration and the administrators thereof, which they set up.

Second, two more judges or justices are not going to stop or decrease the per curiam results thereof.

Third, you will remember we said that the Judiciary Committee was attempting to create flexibility, and this is the thrust of Delegate Bloom's thought.

Now let me tell you how we created it here. It is the opinion—and I was one of those who felt otherwise originally—it was the opinion of the best people to whom we

could talk that in the fairly near future, if not in the far future, both of the present appellate courts, the Supreme Court and the Superior Court, will become courts of last jurisdiction in many instances. They already are, of course, with the Supreme Court, and with the Superior Court to a certain degree, courts of last resort. Therefore, if we wanted to have flexibility in the addition of more appellate work which may very well come, this is the precise reason that we have established the Commonwealth Court and left it open to the legislature to determine whether this court shall be, what it shall be, what it statutorily shall be, and whether it should be panelized, or how it should operate.

May I say to you that I think that is the way to have the flexibility, and not in the numbers on the Supreme and Superior Courts, although I openly admit that I came to this Convention with a different viewpoint.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bloom.

DELEGATE BLOOM. Fellow delegates, I did not propose this amendment for the present time, and I did not intend that we increase the number to nine at the present time. I can forsee the future, if no one else in this room can—and I know that future generations, after I have gone and maybe my children have gone—I can see in the future where there will be a necessity for nine. This is nothing novel; this is nothing new. There are four States that I know of that have nine justices on the Supreme Court and they are small States like Oklahoma and Washington.

We are not trying to pack any court. It is ridiculous to me to think that the Supreme Court of our State would certify to the legislature that it needs help. Is that packing the court, I ask each one of you? I have a higher regard for the Supreme Court. The Supreme Court is not going to ask for any additional help unless it needs it, and this amendment that I am asking for in the Constitution provides that if the occasion does arise, which might arise, that they do not have to wait two years for help.

I would like to have each of you delegates support this.

DELEGATE SPROGELL. Mr. President, may I just make a brief statement?

PRESIDENT BRODERICK. Yes.

DELEGATE SPROGELL. I would like to address a few sentences just to the nonlegal delegates at this Convention. I have discovered that when, for example, there are three attorneys gathered there are usually at least four opinions offered. I think since we have 68 attorneys here, it is sometimes very confusing. While I come from a family of lawyers, I still find it confusing.

I would like to suggest to these delegates who are not legal minds that in our subcommittee and later in the standing committee, we have gone over every single item that I think can be brought up today, but you can see the beginning of these amendments and how they are going and you have heard back and forwards some of the discussion that goes on. May I suggest to you nonlegal delegates that if you are confused in your mind, you will realize that we have in our proposal a good and viable document which I think you can honestly take back. If you are confused and do not know how to vote, go back to that.

I came here with only one idea in mind and that was to see that we had a good, fine, new judiciary article that would make improvements over the last. I think we have done this and I think it has been couched in good legal language, so I do not think you can fail if you vote for the proposal as it stands.

PRESIDENT BRODERICK. Delegate Bloom has a right to reply.

DELEGATE BLOOM. We know these delegates did a good job. I am not saying that they did not do a good job, but one thing that I tried to do at this Convention is, I am trying to look into the future. I want to look into 25 or 50 or 75 years from now. This amendment that I am offering will not be in derogation to what this committee has done, nor in derogation to what it has discussed. The only thing is that I want to provide some elasticity to the number.

PRESIDENT BRODERICK. Thank you.

The question is,

Will the Convention agree to the amendment offered by Delegate Bloom?

DELEGATE PASQUERILLA. Mr. President, a point of inquiry, please: Are we voting on the amendment with respect to the Supreme Court or the Superior Court?

PRESIDENT BRODERICK. We are voting on the amendment with respect to the Supreme Court.

DELEGATE PASQUERILLA. Thank you.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Bloom?

The roll was recorded as follows:

YEAS—27

Aberman	Braham	Fagan	Nelson
Allison	Brennan	Fineman	Shettig
Bagenstose	Brown	Fortney	Silverman
Baldrige	Butera	Gehrlein	Swope
Banes	Conley	Gerber	Warman
Bashoff	Croop	Hook	Welsh
Bloom	Dumbauld	Kauffman	

NAYS—106

Amsterdam	Feather	Leonard	Ruth
Aurentz	Filson	Levin	Sahli
Baldus	Fohl	Manderino	Scales
Baldwin	Forster	Mangery	Scarlett
Barron	Gabreski	Mattioni	Scranton
Barry	Goldstein	McGeary	Sebastian
Benfield	Gouger	McGlynn	Shapiro
Broderick	Griffith	Meyer	Sharp
Buck	Hannum	Michael	Shively
Bunting	Harding	Michener	Shoemaker
Burkholder	Hatter	Miller, D.	Solomon
Cain	Himes	Moorhead	Sprogell
Camardella	Horne	More	Stout
Caputo	Hostetter	Morton	Strickler
Caron	Huggins	O'Donnell	Stroup
Casey	Irvis	Orben	Tate
Clark	Jirolamio	Orbin	Thornburgh
Clinger	Johnson	Otto	Tully
Corey	Keller, J.	Pott	Van Sant
Cortese	Kelly	Powell	Waldron
Curran	King	Prendergast	Westerberg
Dailey	Krill	Rappaport	Whittum
Desmond	Laputka	Redick	Wilcox
Devlin	Leach	Reynolds	Wilmarth
Erwin	Lee, K.	Richter	Woodring
Fawcett	Lee, L.	Rovner	Woodside
Fay	Leinbach		

NOT VOTING—30

Benedict	Henderson	Murray	Quiles
Cosetti	Heyburn	Musselman	Rea

Cunningham	Hocker	Pasquerilla	Roberts
Donaldson	Keller, M.	Pechan	Scott
Donohue	Kline	Pelletier	Shrager
Fleming	Lane	Percey	Thomson
Goldman	Markley	Popil	Tomascik
Gray	Miller, R.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. If our fellow delegates think we had quite sufficient argument pro and con, perhaps we can take up quickly and dispose of the amendment in connection with the Superior Court.

DELEGATE BARRON. I would like to be heard, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. As you may have noticed on the board, I voted against the last amendment because I feel that there should be a sanctity and a permanency in the Supreme Court. I would urge you to consider, however, that the wisdom of Delegate Bloom's suggestions are most particularly applicable in the Superior Court.

In spite of my high and profound regard for Delegate Sprogell, I would suggest that the committee proposal is in many areas not an entirely sure guide for those of you who may have a legal turn of mind. I must suggest that many of the provisions that appear there were on razor thin votes. I do this in no way to subvert or to decry the efforts of the committee, not one bit. I do, however, suggest to you that many of these areas were subject to careful scrutiny and very close vote. Please do not accept the matter but consider it in your best judgment. Do the best that you can with it and do not hesitate to ask questions.

Thank you very much.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. The only remark I want to make is that the Superior Court is the work horse. It gets practically all the appeals' cases in the first instance, and there is such a thing as an allocatur where the Supreme Court can refuse and can hear a case again. It is the work horse, and, in my mind, if any court needs this amendment, the Superior Court does.

PRESIDENT BRODERICK. I am going to ask the clerk to read the amendment.

BLOOM AMENDMENT TO PROPOSAL No. 7

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BLOOM offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 3), page 2, line 13, by inserting after "of" where it appears the first time: not less than

Amend Sec. 1 (Sec. 3), page 2, line 13, by inserting after "seven": nor more than nine

Amend Sec. 1 (Sec. 3), page 2, line 14, by inserting after "law.": The General Assembly may add the eighth or ninth judge, but only upon prior certification of the necessity therefor by the Supreme Court.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. As a layman to this Convention, may I ask Delegate Woodside what the razor thin vote was in committee?

DELEGATE SCRANTON. May I make a statement about votes in committee?

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. I made a statement to our committee yesterday and I said that I, at least as a co-chairman, was never going to divulge the exact vote on any particular item so as to embarrass anyone as to how he may have voted by people going around and asking them. The only statement I would make would be that it was by a large majority, or by a narrow majority, or that it was a close vote. On this particular instance my best remembrance is that it was rather strongly in favor of the subcommittee's proposal, and the subcommittee is headed by Delegate Sprogell and Delegate Woodside. I repeat to you that here again we have a situation where the establishment of the Commonwealth Court was for the purpose of creating flexibility for appellate jurisdictions in the future.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, very briefly, but this is important.

The Superior Court is today one of the very few courts in the Commonwealth of Pennsylvania that is completely up to date with its work, it is completely up to date. They are willing, ready, and able to accept additional jurisdiction now. There is no need for any additional amendments. On top of that, if we do create or if the legislature, in accordance with the mandate of this Convention, at some future time finds the need to create a Commonwealth Court, that Commonwealth Court will take even more work away from the Superior Court and we will have an excellent appellate court system. There is no need or no requirement now or in the foreseeable future. We must remember that the appellate work of this Commonwealth has been carried on now for over 75 years by those two courts, and the Superior Court today is right up to date.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Bloom?

The roll was recorded as follows:

YEAS—31

Aberman	Butera	Gerber	Shrager
Banes	Conley	Hook	Silverman
Barron	Croop	Kauffman	Swope
Bashoff	Dumbauld	Mattioni	Warman
Bloom	Fineman	Morton	Welsh
Braham	Forster	Nelson	Whittum
Brennan	Fortney	Prendergast	Wilcox
Brown	Gehrlein	Shettig	

NAYS—102

Allison	Erwin	Lee, K.	Richter
Amsterdam	Fagan	Lee, L.	Rovner

Aurentz	Fawcett	Leinbach	Sahli
Bagenstose	Fay	Leonard	Scales
Baldrige	Feather	Levin	Scarlett
Baldus	Filson	Manderino	Scranton
Baldwin	Fohl	Mangery	Sebastian
Barry	Gabreski	McGeary	Shapiro
Benfield	Goldstein	McGlynn	Sharp
Broderick	Gouger	Meyer	Shively
Buck	Griffith	Michael	Shoemaker
Bunting	Hannum	Michener	Solomon
Burkholder	Harding	Miller, D.	Sprogell
Cain	Hatter	Moorhead	Stout
Camardella	Himes	More	Strickler
Caputo	Horne	Murray	Stroup
Caron	Hostetler	O'Donnell	Tate
Casey	Huggins	Orban	Thornburgh
Clark	Irvis	Orbin	Tomascik
Clinger	Jirolanio	Otto	Tully
Corey	Johnson	Pott	Waldron
Cortese	Keller, J.	Powell	Westerberg
Curran	Kelly	Rappaport	Wibnarth
Dailey	Krill	Redick	Woodring
Desmond	Laputka	Reynolds	Woodside
Devlin	Leach		

NOT VOTING—30

Benedict	Henderson	Miller, R.	Quiles
Cosetti	Heyburn	Musselman	Rea
Cunningham	Hocker	Pasquerilla	Roberts
Donaldson	Keller, M.	Pechan	Ruth
Donolow	King	Pelletier	Scott
Fleming	Kline	Percey	Thomson
Goldman	Lane	Popil	Van Sant
Gray	Markley		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

MOTION TO RECESS

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I move that we recess until 2 p.m.

STUDENT COUNCIL WELCOMED

PRESIDENT BRODERICK. Before we announce the recess, I have been requested by several of our delegates who have guests here to point out that we have with us today 35 members of the Student Council of the Rockwood Area Schools of Somerset County. They are the guests of Delegates Dumbauld and Orban of Somerset County and Delegate Nelson of Blair County. Would they kindly stand up so that we can give them a cordial welcome?

PINE GROVE AREA HIGH SCHOOL STUDENTS WELCOMED

PRESIDENT BRODERICK. We also have with us 103 students of the Pine Grove Area High School of Pine Grove in Schuylkill County, with their teachers, Mrs. Bruce Christ, Eugene Horn and Howard Mills. They are the guests of Delegates Allison and Hatter of Schuylkill County and Delegate Krill of Carbon County. Would they stand so that we can give them our cordial greetings?

MRS. JAMES L. DESMOND WELCOMED

PRESIDENT BRODERICK. Now we have a special guest here to welcome today, Mrs. James L. Desmond, wife of Delegate Desmond, and their guests, the Mayor and Mrs. Curtis Wood of Eddystone Borough, and Mrs. Florence DuBois.

The Convention is very happy to welcome you here today.

RECESS

PRESIDENT BRODERICK. Unless the Chair hears objection, we will now recess until 2:30 p.m., for the purpose of lunch and the consideration of these amendments for the afternoon session.

The Chair hears no objection, and the Convention is now in recess.

AFTER RECESS

The time of recess having expired, the Convention was called to order.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

FATHER ANTHONY MARA WELCOMED

PRESIDENT BRODERICK. The Chair notes that Delegate Fay has a guest with him, Father Anthony Mara.

Father Mara, we just want you to know we are happy to have you with us.

JUDGE AND MRS. ROBERT VAN DER VOORT WELCOMED

PRESIDENT BRODERICK. Before the call to order, the chair is very happy to call to the attention of the delegates, the presence of the guests of Delegate Banes and Delegate Barry. They have with them, Judge and Mrs. Robrt Van der Voort and also Attorney Charles Jarrett of Allegheny County.

Would they please stand so we can give them our warm and cordial welcome?

We are very happy to have you with us.

YESHIVA HEBREW ACADEMY WELCOMED

PRESIDENT BRODERICK. I just want you to know that we have also overlooked in the gallery a group from the Yeshiva Hebrew Academy in Lower Merion. They are the guests of Delegate Gerber, Delegate Shrager, Delegate Kauffman and Delegate Whittum.

If you will stand, we will give you our cordial welcome and greeting. We are happy to have you with us.

GERBER AMENDMENTS WITHDRAWN

PRESIDENT BRODERICK. The next amendment, I am advised, is being offered by Delegate Gerber.

DELEGATE GERBER. Mr. President, I withdraw my amendments.

PRESIDENT BRODERICK. Both of them?

DELEGATE GERBER. Yes, Mr. President.

PRESIDENT BRODERICK. Very good. I think those who withdraw should get a big hand.

BALDRIGE AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment is being offered by Delegate Baldrige.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BALDRIGE offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 1), page 1, lines 13 to 16, page 2, lines 1 to 3, by striking out all of said lines.

Amend Sec. 1 (Sec. 2), page 2, lines 5 to 7, by striking out "and shall possess all" in line 5, all of lines 6 and 7, and inserting: and in this court shall be reposed the supreme judicial power of the Commonwealth.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldrige.

DELEGATE BALDRIGE. Mr. President, this amendment is the result of five delegates, I believe, but Delegate Barron is going to speak on it. My name just got on it first.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, and my fellow delegates, in an effort to be concise in summary, but not without right of appeal, we have endeavored to look at two of the sections in part which at first glance may be confusing, but I hope that when we have finished with this brief introduction, you will see how the concept ties together.

I would like to say, before getting to the details that this amendment is in no way intended to create any breach in the seamless garment of the unified judicial system. It is, however, a very serious attempt to have this Constitutional Convention respect those ancient and well-defined lines of division between the judiciary and the legislature.

In prefacing my remarks, I would remind you that the statewide appellate court system and the salaries of all the judges are presently financed and paid for by the Commonwealth. In so doing, of course, the legislature is vitally involved in the grant of money both for capital needs and for ordinary expenditure of revenue. However, the local court situation, that problem of providing a building, a hall, and necessary subordinate staff beneath the judge, including the district attorney, the clerks, the tipstaff, the court crier, and so forth, is in the hands of the local county.

We are quite interested, the proponents of this amendment and myself, in preserving these historical and, if I may say, classic lines of demarcation between the legislative function and the judicial function.

With this brief background then, Mr. President, I will plunge into the concepts which we propose to change. It seems quite drastic that we rip out all of (b) by our proposal; however, I would like you to note that the elements in that are, first of all, the concept of a unified judicial system which is specifically covered, in my humble judgment, at least in Section 1 (a), where it is made clear that the judicial power is vested in the unified system. I consider it mere surplusage that this is again stated; however, having said so, I would like to point out that the General Assembly is then licked as far as the removal of any jurisdiction by the proviso in lines 2 and 3 at the top of page 2, that such shall be done only with prior approval of the Supreme Court.

I would like it noted very carefully that Section 2(a) again states that the Supreme Court shall be the highest court in the Commonwealth and shall possess all the judicial powers possessed by it at the time of the adoption of the article. This concept, again I am not quite positive in urging to you that it is mere surplusage, however, I do consider it an excess of language, if nothing more.

What we are endeavoring to do is, first of all, the simple matter of sharpening language. But I do not wish to urge this amendment to you on this sole basis, because I now come back to the real heart of this issue, which I believe by our recess this morning we have crystalized for you.

The concept as expressed in the committee's bill is very plainly that once created, the court system headed by the Supreme Court of this State shall become virtually a monolith, a stone not subject to being chipped at from any other direction. This, to me, is the antithesis of the concept of check and balance. As long as the legislature is obliged to fund and pay for the ordinary operating expenses of this system, the legislature must have some hand in controlling its jurisdictional requirements.

Accordingly, with this in mind, we have suggested to you that having once established in Section 1(a), the judicial power, vesting it in the Supreme Court and such other courts as are enumerated therein, that (b) be taken out as surplusage when considered with what we have added to Section 2(a), the point there being that we have clearly provided that the Supreme Court shall have its powers and that there shall be reposed therein the supreme judicial power of this Commonwealth.

As I view this language, it includes those inherent concepts of King's Bench powers for those of you who are familiar with that and any other which may have accreted as mud against the shores of the banks of a river in the course of time. But we are suggesting to you that it is within the province of the General Assembly to structure the jurisdiction, both to take care of changes in business volume, to take care of changes in administrative procedures which it may make in organic law, such as workmen's compensation, unemployment compensation, and the like, and since in the ultimate, the General Assembly is not only the progenitor of substantive rights but also is the designated organ for raising the money to finance the same, that these vital matters of jurisdiction be not subject to whatever conservative or liberal tenor, color, or flavor the Supreme Court of Pennsylvania may then have.

So I urge this amendment to you, in all respect to the efforts of the committee. I urge its firm consideration that it is historically sound, it is financially sound, and I believe, from a progressive administrative standpoint, it is sound for the reasons I have enumerated. Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President, Delegate Barron, may I interrogate you for a minute because I think we may be able to resolve this?

First of all, so that everyone in the Convention is just as aware as possible of what we are trying to do here, the language in Section 1(a), and (b) is primarily that

of Delegate Woodside and his Subcommittee on Administration. Frankly, we consider him to be our special expert in this field. I have just been talking with him.

The only part of what you want to do here that he objects to and that I object to is the elimination of lines 13 through 16, which have no relationship, incidentally, to the two main problems you just pointed out.

Now let me explain and then you and I can talk back and forth and maybe we can resolve this. I hope so, so that we do not have a lot more amendments to this section and can get it wound up.

We do not object to your taking out lines 1 through 3 which seem to bother you and some of the legislators about the abilities of the legislature shall be the abilities of the judiciary, which I think is a germane point. But we do insist that the first part of Section (b) is very important to the unified judicial system because of the fact that only there are the jurisdictions and powers presently vested in the courts of this Commonwealth spelled out as being in the system. We speak first in (a) of the judicial power of this Commonwealth, but the jurisdiction and the powers presently there are given to the unified judicial system by the first part of (b).

Furthermore, where you wish to change Section 2, again we have no material objection to that, because the wording that you wish to put in, it is our understanding—and this is what I want to interrogate you about—maintains the King's Bench powers in the Supreme Court, which is precisely what Delegate Woodside was trying to do by the first three lines on page 2.

DELEGATE BARRON. This now has a question mark at the end of it?

DELEGATE SCRANTON. Yes. Now what I want to know is, do you agree with what I am saying?

DELEGATE BARRON. I certainly am agreed in principle with what you say. May I say that this pregnancy has resulted in a single offspring, but it has multiple fatherhood.

DELEGATE SCRANTON. Well, the last thing I want is an illegitimate constitution.

DELEGATE BARRON. I am trying to avoid rule by fiat; I am trying to completely avoid rule by fiasco.

DELEGATE SCRANTON. Is there some problem in your mind? I think we can get at it this way: Is there some problem in your mind with lines 13 to 16?

DELEGATE BARRON. I have no great problem personally with this. However, I did not try to make a funny with the concept of multiple fatherhood. My amendment as submitted and first called by the President this morning did contain that language. I was persuaded by the group with whom I met that the retention of that language was surplusage. It was suggested here as a matter of specificity and clarity of the vesting of this power. I would rejoice if it goes back in. However I know we have a number of people around the hall here who would be happy to speak to that point.

DELEGATE SCRANTON. Let me make myself clear as to why Delegate Woodside and I think this is important. It does not pertain to the problem of the judiciary versus the legislature. There is no problem there. But it does make clear, which Section (a) does not, that the jurisdictions and the powers that are presently vested in the courts of this Commonwealth shall be vested in the unified judicial system. Now why is this important to us? It is because the committee feels very strongly that the major change we are making here is the establishment of the unified judicial system and we want that to be the express interest for the judiciary as a whole rather than the Supreme Court. Do you see what I am getting at?

DELEGATE BARRON. Let us say that I, sir, was persuaded to think that by the placing of repose of all of the judicial power in this Commonwealth since the King's Bench derives from ancient historical concepts—and let us not get into the history of the problem. As a matter of neatness I have no objection to your suggestion at all. As I say, I was persuaded that I would be prolexious in what I propose.

DELEGATE SCRANTON. Now may I make this suggestion, that if you accept, and your cosponsors accept, the return of lines 13 to 16, the committee is prepared to go along with you. Sir, I think this would take care of all the major problems. No, it does not? All right, go ahead. What is your problem?

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. I wanted to comment in answer, a helpful answer, to my colleague, Delegate Barron. The deletional language was intentional altogether. Contrary, Delegate Scranton, to what you suggested, this does clearly involve the matter of conflict between the judiciary and the legislature. Now let me just review, if I may.

In Section 1 (a) we clearly placed the judicial power of the State in the court system. That should certainly answer for all times the problem as to where is the judicial power. It is in the unified court system—no problem.

The second one, however, goes further and it says that the jurisdiction and powers of the system shall be—and then we play put and take. We first put it in the hands of the legislature by saying, as provided by law, and then we take it back out again and say, except that the jurisdiction and powers presently vested in the courts shall be vested in the system and may not be removed or changed, as it were—I am simply paraphrasing—without the prior approval of the Supreme Court. If you pull that language out, what you have done is to imitate the bar association's ringing peroration of beginning, the same peroration which is given in the American Bar Association's Model Code and in the Model Code of the American Judicature Society; you have vested all of your judicial power in a unified judicial system.

Now in (b), the only thing you have accomplished is either to state that again, or to say that the legislature shall be hobbled, that the legislature shall no longer have the authority to change jurisdiction of courts unless there is an incredible veto power handed into the hands of the Supreme Court. Now that is the thrust.

DELEGATE SCRANTON. No, absolutely not. That is precisely what we just got rid of. The problem, Delegate O'Donnell, and the main objection to this was the fact that on the second page at the top it says, "The General Assembly shall not remove any of said jurisdiction or powers from said system or any part thereof without prior approval of the Supreme Court." We are removing that and the only reason that Delegate Woodside and I believe that lines 13 through 16 should remain there is because —go ahead.

DELEGATE O'DONNELL. I am not certain that is true. It may well be, sir, that you speak primarily for yourself. I think, at least as I understand the thrust of what Judge Woodside has been teaching me for the last two months—and I have learned a great deal in that classroom—is this problem: Let me just say in (b) the powers shall be as provided by law. That is exactly what we do not want. We wish to say that the powers shall be in the system.

Secondly, we wish to say not that the powers shall be as provided by law, but that in the case of the Supreme Court, the supreme judicial powers shall be lodged there. That is an intentionally choice language and it is choice for this reason, what do you do with a case which a specific act of the Assembly has not anticipated? What do you do, for example, when the Supreme Court is called upon to reapportion the State because someone else has failed to do so? If you provide that the powers are only as provided by law, you would put into the hands of the Supreme Court judicial power, on one hand, and then take it out with the other.

DELEGATE SCRANTON. I do not agree with you, but maybe I can come to terms with you, too, sir. What we are trying to do is to make progress here. I frankly think that you are beating a dead horse when you talk this way, but I accept your thinking for the moment.

Would it be agreeable to you I think the thing that the committee is most concerned about is that the jurisdictions that are presently available will be in the unified judicial system. The problem at the top is that it says that the judicial power of this Commonwealth shall be vested in it, and the point of the second (b) section is to say that likewise the jurisdiction as provided by law, and if you prefer, instead of saying "except," you can say, and the jurisdiction presently vested in the courts of this Commonwealth shall be vested in the unified judicial system. That gives the opportunity to the legislature to change it any way it wishes.

DELEGATE O'DONNELL. I think that that can be done in a very facile manner with the agreement of the sponsors of this amendment by doing it in this fashion, if you would accept a suggestion. Why not in Section 1 simply say, the judicial power and jurisdiction of courts in this Commonwealth shall be vested, and leave (b) out altogether? Then you have accomplished everything you want and we have avoided the problems that the language in (b) presently puts into the case.

DELEGATE SCRANTON. Mr. President, may I make a suggestion?

PRESIDENT BRODERICK. Yes, indeed.

DELEGATE SCRANTON. I believe that without too much difficulty Judge Woodside, Delegate Barron and Delegate O'Donnell and I can resolve this problem along the lines that we have recently been communicating, namely, the judicial power and the jurisdiction that is presently available to the courts will be in the unified system; that, likewise, they will eliminate the first three lines of page 2; and, likewise, accept the change in the language of Section 2 about the Supreme Court, as suggested by Delegate Baldrige and Delegate Barron, that within this court shall be reposed the supreme judicial power of the Commonwealth that has to do with the retention of the King's Bench powers. If that is agreeable to nobody, I am sorry, but I hope it will work.

DELEGATE O'DONNELL. That is acceptable to me.

DELEGATE BALDRIGE. May I say, too, Mr. President, that I am one of the many fathers on this.

PRESIDENT BRODERICK. Let me just say this. We have an amendment on the floor which is the amendment of Delegate Barron and Delegate Baldrige, and may I ask, do you wish to withdraw your amendment at the present time in the hopes of reaching a negotiated peace?

DELEGATE SCRANTON. Why can we not table it so they do not have to withdraw it?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, since I also had a part in the paternity of this alleged illegitimate proposed amendment which, perhaps, we can legitimatize at this time by following this procedure and make it the first adoption under the new unified judicial system without an orphans court, I would be perfectly willing to table this until we can concur on the language.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, there is a simple concept much favored in the modern law that I would like to state, and that is, once the judicial power of the Commonwealth is set up in the courts, then the courts are supreme in that power. I can read this language with that concept in mind and everything is clear. The jurisdiction and powers of the unified judicial system shall be as provided by law. How do cases get into the courts? They get in as the legislature authorizes them. They only come to the courts when the legislature has said that there is this type of litigation and from this type of litigation there is an appeal to the courts.

Then the second part of this paragraph, once they are vested in the unified judicial system, the General Assembly shall not remove any of said jurisdiction or powers from the said system or any part thereof without prior approval of the Supreme Court. That is perfectly clear so far as the internal economy of the courts is concerned. That is why in modern times it is the courts which make the rules; that is why the courts have gone even so far as laying down the rules of evidence because that is within the jurisdiction of the judicial powers of the Commonwealth which is in the possession of the courts. The real cases come up when the legislature undertakes to make new laws, grant new rights, and say where they are to go within the fabric. Now there this would inhibit the legislature giving new appeals and saying where they should go within the fabric of the courts. There is a problem there that nobody can ever solve just as no one can ever solve the problem of a powerful legislature at one branch of the government and a powerful Supreme Court at the other. They have to respect one another at the top echelon or else all is lost anyway. The legislature, of course, can cut off all money from the courts, but it never does, it never thinks about it. Everyone knows they have to agree at that point.

AMENDMENT TABLED

PRESIDENT BRODERICK. Is there any objection to tabling the amendment which is on the floor right now, the Baldrige-Barron amendment, in the interest of making a compromise as has been suggested?

There is no objection, so the Chair will consider it tabled and recognize Delegate Scranton.

DELEGATE SCRANTON. May I make one more inquiry, sir? All I am trying to do is facilitate this thing. We are all perfectly well aware that there are now almost 90 amendments. Are there any other amendments to this theory or thesis that we have to deal with here? Let us get it all done up at once here.

PRESIDENT BRODERICK. We have had one or two others and they have all been contacted and they will take part in the negotiation.

DELEGATE SCRANTON. Thank you very kindly.

BARRY AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. While negotiations are proceeding, we shall take up another amendment. The Chair now takes up an amendment offered by Delegate Barry.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BARRY offered the following amendment, which was read by the clerk.

Amend Sec. 1 (Sec. 4), page 2, lines 15 to 18, by striking out all of said lines, and inserting: Section 4. Commonwealth Court.--Unless the General Assembly shall otherwise provide, the Commonwealth Court shall consist of seven judges, one of whom shall be President Judge. It shall have Statewide jurisdiction as shall be provided by law. It shall come into existence January 1, 1970.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry to speak to his amendment.

DELEGATE BARRY. Mr. President, fellow delegates, it was interesting to me this morning to hear so many briefs in favor of the Commonwealth Court. Apparently this is going to be the third appellate court which Delegate Woodside says will make our appellate court system in Pennsylvania the best in the country.

This is extremely interesting to me, because this was not an original proposal that came out of that committee. The subcommittee did not at first recommend at this time the establishment of a Commonwealth Court. When we got into committee discussions, the idea seemed to swell that there is an essential need for another appellate court in this Commonwealth, and, finally, it came out as part of our proposal, as you can see, being Section 4 in the Committee Proposal.

However, if you look at the present Section 4, there is no time-table set for the establishment of a Commonwealth Court. There is no designation as to how many judges there will be. This amendment is very simple in scope. It provides that the Commonwealth Court shall consist of seven judges, one of whom will be president judge. It still provides that its jurisdiction will be established by the legislature and furthermore it provides that it will come into existence January 1, 1970.

I realize that this will automatically go into the schedule, but the schedule provisions on other articles provide that they go into existence on January 1, 1969, and, therefore, this is expressly put in the amendment so that this would give the creation of the court an additional year before the legislature can determine its jurisdiction and the mechanics of putting it into effect.

As I say, you heard from the committee this morning. I think the committee has come to a realization of the fact that there has to be a Commonwealth Court. I am asking that there be seven judges, that there be a deadline set on its establishment and I think this fulfills a real need. The day is past when the Dauphin County Court will hear all matters relating to the Commonwealth. The Commonwealth now feels, I believe, that it need not sit solely in Dauphin County, but that this should be a statewide court provided for under another section as to its election or appointment in that it should come into existence representing all the people rather than just be based here. I believe, for example, that Delegate Woodside, who was at first against the immediate establishment of the Commonwealth Court has now promised to speak on it. He now believes that it should go into effect within a year as suggested by this amendment.

I believe that as the legislature sees fit, there will be additional jurisdiction given to this court in fields now handled by the Superior Court, perhaps even in criminal cases. This will be an adjunct to the appellate court division, a great help to the Superior and Supreme Courts and perhaps an expert in certain fields of the law, such as, workmen's compensation, unemployment compensation, public affairs, matters involving the Commonwealth and such other jurisdiction as the legislature sees fit to provide for this court. As I say, if you heard Judge Woodside and the other members of the committee this morning, I think when our judiciary article was put together that it contemplated that this would go into effect wihin a short length of time.

I earnestly ask you to adopt this amendment providing for the seven judges and for the existence of the Commonwealth Court by this deadline.

PRESIDENT BRODERICK. Do you wish to be heard, Delegate Amsterdam?

DELEGATE AMSTERDAM. Yes, Mr. President. I might follow Governor Scranton's lead. He has shown how you divide and conquer by getting half the dissidents off the floor in one corner I might suggest we get the other half off by considering this amendment in another corner. However, rather than do that, I might say that what Delegate Barry has talked about here is a matter that we went into at some length in the Judiciary Committee. We decided that in order to determine exactly what type of court you ought to have here as the need developed would require the kind of consideration that only a legislature could give because it would require a considerable amount of time in determining what the needs of the Commonwealth might be in order to determine the type of court, whether it ought to be panelized, whether it ought to sit in each one of the judicial districts of the State, whether it ought to be limited to Dauphin County in the site, and so on.

It was decided that these were all matters that could easily wait for the careful determination of the legislature, particularly, I might say, since there seemed to be no great demand at the present time for such a court. Nobody appeared before the committee who indicated that

there was a tremendous immediate need. We all felt that there was going to be a need for this type of court; that it was apparent that it would help the judicial system if we had a court of this nature, but we felt that it would take really much more consideration and time than the small amount of time that was available to this entire assembly in the three months in which we were to meet to really determine exactly the type of court and the type of matters that should be handled.

It was for that reason that we left all of those items to the legislature. We simply provided for the court to come into being at such time and in such form and having such jurisdiction as the legislature, after it had a period of time necessary to study the matter should determine.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, it seems to me that the need is here; the time is now. We have a system in our Commonwealth where certain issues of a judicial nature are being determined by bodies not manned by judges, in many cases not even manned by lawyers. We have the Board of Claims, the Board of Arbitration and Claims, the Board of Finance and Revenue and various other boards that make judicial decisions. It would seem to me that this would be the purport of the Commonwealth Court.

I know that Delegate Kauffman and I introduced a proposal spelling out these specific needs. I was never asked to speak before the Judiciary Committee on the subject; therefore, I thought that the matter had been rather deeply gone into in view of the fact that there had been a proposal on the subject and there had been people raising these questions. It seems to me that Delegate Barry's position is well thought out and is timely, particularly in view of the fact that the response to Delegate Bloom's request for a proposal for additional judges on the appellate courts today was made on the basis that we were going to have a Commonwealth Court. When? What was it going to do? Where was the responsibility going to be? It certainly seems to me that what we are doing here is saying that we are going to have a Commonwealth Court, but we really do not know how we are going to go about setting it up.

After reading Proposal No. 7, I think that there has been a deep degree of study in many areas that have brought forth much specific language. It seems that this is the only section that the committee has seen fit to put to the legislature. I think that Delegate Barry's position should be considered favorably and I urge the Convention here to vote "yes" on the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, inasmuch as I served for 10 years on the Commonwealth Court and an equal period of time on another appellate court of this Commonwealth, I feel it is my duty to express my personal opinions concerning this entire situation. I want it clearly understood that these are not the opinions of the committee or anybody else but are my own personal opinions concerning this matter.

In the first place, the Commonwealth Court, so-called, is nothing more or less than a common pleas court of Dauphin County with the orphans court judge being attached to it by special statute.

There really is no such thing as a separate Commonwealth Court. There are a great many functions, judicial functions, which have been given to the Commonwealth Court by statute over the years. There is also a very substantial number of things that might normally have gone to the so-called Commonwealth Court of Dauphin County, which over the years, by statute, have been made appealable to the Superior Court of Pennsylvania. Just as examples, I will refer to the appeals from the Public Utility Commission, appeals from the Unemployment Compensation Board and others of a similar nature.

As I expressed this morning, it is my feeling that sometimes before too long there ought to be and has to be established in the Commonwealth of Pennsylvania, a separate Commonwealth Court. Although originally in the commission, I opposed the creation of the Commonwealth Court as a part of the Constitution, the committee decided to put it in the Constitution itself that there should be a Commonwealth Court.

The question then came up as to whether or not it should be implemented immediately by the Constitution or whether it should be postponed and made effective at such time as the legislature felt it was necessary to do so. I, then, favored the postponement of that matter until the legislature felt it was proper to go ahead and do so.

I have given this a great deal of thought and I think there is a lot of argument on both sides. I foresee eventually the creation of a Commonwealth Court, a statewide court, which will be chosen in whatever manner statewide judges are chosen. That Commonwealth Court will have, probably, its headquarters in Harrisburg, but it will also sit in Philadelphia and in Pittsburgh and in other places where it itself, finds it necessary or advisable to sit for the convenience of the public.

When Delegate Barry talked to me about this matter, I told him that I saw no particular objections, if they would postpone the effective date of this until January 1, 1970 and provide for the size of the court, so that the legislature could have plenty of time to decide what jurisdiction it would want to give to the Commonwealth Court. As I have said, I think some of it should come from the Dauphin County Court and some of it from the Superior Court. In that way, we could relieve the Supreme Court to a greater extent. Whether it should be done now or whether it should be done later, within the next couple of years, or whether it should be left to the legislature who may decide to do it not for a number of years, not find the real necessity, it depends somewhat upon the burden being carried by the Superior Court and the Supreme Court.

I wanted to make my position clear on that and to state that I told Delegate Barry that postponement of this court until that time would receive no personal objections from me in any manner.

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, I would interrogate Delegate Amsterdam on this question.

PRESIDENT BRODERICK. Delegate Amsterdam will stand for interrogation. Proceed.

DELEGATE BANES. Delegate Amsterdam, you made certain statements about the need for time to study this subject. Are you aware that there is presently before the Senate and the House a bill to establish a Commonwealth Court?

DELEGATE AMSTERDAM. Yes.

DELEGATE BANES. Which establishes the structure and powers and jurisdiction of this particular court?

DELEGATE AMSTERDAM. Yes, sir.

DELEGATE BANES. Therefore, the legislative studies have been made, so that this court could be created in accordance with the provisions of this amendment and also in accordance with the structure already established in the bill before the Senate and the House at the present time?

DELEGATE AMSTERDAM. That is correct, sir.

DELEGATE BANES. Is it not also true that every session of the legislature for the past few years has had a bill before it which attempted to establish a Commonwealth Court and also set forth therein the proposed structure and jurisdiction of that court?

DELEGATE AMSTERDAM. I do not know that as a matter of fact, although it has been so stated on occasion before the full committee. You could probably enlighten us on that.

DELEGATE BANES. I do not happen to have all the facts and data. I did have a copy of the present bill but unfortunately I left it at the hotel.

Therefore, this court could be established in accordance with the amendment here immediately, because the studies have been made establishing the jurisdiction?

DELEGATE AMSTERDAM. It could be established without the amendment. That is exactly what we have proposed in the committee's proposal, that the Commonwealth Court be set up by the legislature as the result of the studies. It has made enough studies that it can do it now, if there is a need. If the legislature feels it needs more studies, it will have an opportunity to do so. We certainly felt that there should be no fixing of the number of judges, because it might very well be that this should be a panelized court in which you might very well want to have nine judges rather than seven.

We felt all those matters were matters for the legislature as the result of studies which it has already made and might hereafter make, yes, sir.

DELEGATE BANES. Would it not be appropriate then, if this section were amended, eliminating the number of judges, that the deadline fixed herein would be satisfactory to establish that?

DELEGATE AMSTERDAM. I think it would be better if that were done, but I still think that what we have provided will give the legislature the authority and, in addition to that, it will set forth what the delegates to this Convention feel is important.

DELEGATE BANES. But how can this Convention and the people of this Commonwealth be assured that the court will be established expeditiously unless a deadline is fixed as we have done in every other instance involving the judiciary article? There is a schedule fixing deadlines for many things which have to be done in this area.

DELEGATE AMSTERDAM. That is correct. But we felt that in this case there had not been a sufficient demonstration of immediate need, and the legislature is far better qualified than the delegates to this Convention to make that determination after it has had sufficient studies made. If it has already had that, apparently the legislature feels that there is not an immediate need and it, therefore, has not authorized such a court.

What we have done is indicated that there is a basis for such a court as soon as the legislature is convinced that there is a need and that the form should be in accordance with the legislative mandate.

DELEGATE BANES. But if the bill is before the House, is it not reasonable to assume that the need has been established?

DELEGATE AMSTERDAM. I have seen many bills before the House and have even suggested some myself that have lain for years without any action and the Commonwealth seems to go on reasonably well.

DELEGATE BANES. I have no further questions.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Braham who is next.

DELEGATE BRAHAM. Mr. President, I should like to interrogate Delegate Banes for a moment.

PRESIDENT BRODERICK. Yes, he will stand for interrogation. Proceed.

DELEGATE BRAHAM. Delegate Banes, can you tell us whether the court envisioned is a trial court or an appeal court?

DELEGATE BANES. Mr. President, unfortunately I do not have the bill here. I had picked it up and, as I say, we could probably get a copy of it in a few moments. We could table this particular amendment for a few minutes until we get a copy of the bill up here from the office downstairs.

DELEGATE BRAHAM. It might be useful if I state the thing which is troubling me. We have to know whether this is a trial court or an appeal court, and it is well for us to keep in mind where these cases began. Originally, they all began at the court of common pleas level and then, with the growth of these new departments and boards, they were sent down to them for trial by supposed experts. But the appeal which comes back now to the common pleas is an appeal to the court of common pleas with the right of trial by jury, and that is what the Commonwealth Court now has at Harrisburg.

But now when you talk about moving around the State, are you talking about going around to take testimony a second time? Does it go through the common pleas level or does it pass the common pleas level? Does it go through the common pleas level and then come to the Commonwealth Court as a trial court, or is the Commonwealth Court an appeal court?

My own feeling has been—and with this I shall close—that it ought to be retained at the common pleas level. I believe there are many of these cases that are of such slight importance that now they ought to be handled by the courts of common pleas all over the Commonwealth regularly, because the magic has gone out of them; everybody knows now that these cases have to be decided and they might as well be decided at the local level.

If it is found that the case is too heavy at the local level, by the invocation, by bringing in the modern doctrine of a form of nonconvenience, it can be sent to the appeal court if that is a technical trial court.

I say these things only because the matter is entirely

inchoate at the time and I do not believe we should do anything more than say to the legislature that we want this kind of court established; now you study it in all its aspects and then set about making it up.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, may I have a word of rebuttal to Delegate Braham's statement?

We are not concerned here with the nature of the jurisdiction of the court. We are concerned primarily with a deadline for the establishment of this court.

It was implied by Delegate Amsterdam that time was needed to study this problem, and in answer to that I stated that the legislature has studied this problem; there is a bill in the House and in the Senate to establish this court fully; and that there is no need for delay in this matter.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, the matter before us is not really a matter of what shall be the jurisdiction of a Commonwealth Court; the matter before us is an amendment which suggests that a set number of judges be appointed to the Commonwealth Court and that the Commonwealth Court shall come into existence at a set date. That is the matter before us. All the other matters are extraneous to this particular amendment, and I rise in opposition to the amendment for this reason.

I do not oppose the second part of the amendment which sets a deadline. I do not think it is necessary, but I do not oppose it actively. But I do oppose that part of the amendment and, therefore, the entire amendment which sets a definite figure for the Commonwealth Court.

No one here, no matter how learned he may be, can envision what a Commonwealth Court may some day have to be in this Commonwealth. We are wasting our time to try to state what its jurisdiction will be 30 years or 50 years from now.

I am pleading again for flexibility from the delegate body. Permit the General Assembly 35 or 50 years from now to meet the problem of 35 or 50 years from now. Seven judges may be adequate in 1970; you may need 17 in 1990. I would suggest that if 17 are needed in 1990 and we put this amendment into the Constitution, the citizens of the Commonwealth will then find themselves in the situation where, in order to change the number of judges in the Commonwealth Court, they will have to go through the laborious process of amending the entire Constitution.

We can prevent this for them simply by leaving it to the wisdom of the General Assembly, and I would again urge that you do so and vote in the negative on this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, most of what I intended to comment upon in relation to this particular issue has been expressed by my good friend, Delegate Irvis.

I would like to say this: We did work upon this particular question in the Senate of Pennsylvania; we passed a bill. I am not satisfied with that bill. I have restudied it and gone over it. I do not think it is correct the way it is drafted at the present time. We are still working on that problem because we felt there was a need and we had some requests for that need throughout the Commonwealth.

I, therefore, would support Delegate Irvis in his statement with relation to the size of the court and with relation to the specification of a particular time and ask the delegates to oppose the amendment which is being offered.

PRESIDENT BRODERICK. The Chair recognizes Delegate Filson.

DELEGATE FILSON. Mr. President and fellow delegates, I think it should be pointed out, in opposition to the amendment, that the amendment sets the number of seven judges, whereas the actual type of jurisdiction, as to whether this shall be jurisdiction of the first instance or whether it shall be appellate jurisdiction or whether it shall be all appellate or all original jurisdiction, has not been determined.

It would occur to me that now would not be the time to set the number of judges which should sit upon this bench.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, I would like to offer an amendment to the amendment to read as follows: "Unless the legislature shall otherwise provide, the Commonwealth Court shall consist of seven judges."

In other words, this will set a number at seven unless the General Assembly changes it.

AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. You may offer an amendment; the only problem is that in accordance with our rules and for accuracy, we would like you to set the amendment down and put in the language, so that if you want to withdraw your amendment—

DELEGATE BARRY. I will withdraw the amendment for the moment and come back on the floor with a new amendment.

PRESIDENT BRODERICK. I would suggest then that we table the amendment until you get the amending language or withdraw it. It would be better to withdraw it because you are going to submit a new amendment.

DELEGATE BARRY. I will withdraw it.

PRESIDENT BRODERICK. We can then go on and will not have to delay. I see Delegate Jirolanio at the microphone. The next amendment is being offered by Delegate Jirolanio; therefore, I am going to ask the clerk to read the amendment.

DELEGATE JIROLANIO. Mr. President, I believe I withdrew my amendment. I was standing at the microphone to add something in favor of the last amendment.

PRESIDENT BRODERICK. We are very happy then, if your amendment has been withdrawn. I think that deserves a hand.

The next amendment is being offered by Delegate Tate.

TATE AMENDMENT TO PROPOSAL No. 7

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, line 18 by inserting after "Judge.": The court shall sit in such locations within the Commonwealth as may be provided by law.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, this proposed amendment makes no changes in the committee proposal. It makes one addition to the end of Section 4, that would mandate the court to sit in at least two locations around the Commonwealth, or more, as may be provided by the General Assembly. It might be thought that this language is different for this court from the other statewide courts and, therefore, might better be left to the state legislature, the General Assembly.

It was brought to my attention, after the committee proposal was in its final form, in this respect, at least, by those who are involved in the Antipoverty Program in Philadelphia, that the present Commonwealth Court which, granted, may be somewhat different from the proposed Commonwealth Court, has achieved the reputation in its circle of being a difficult court to reach because it always sits in Dauphin County and that, therefore, it might be a good idea to mandate that the new Commonwealth Court, as has been the custom for the Supreme and Superior Courts in the past, sit in various locations around the State. I understand that this was the committee's intention, and that fact was confirmed only a few moments ago by Delegate Woodside. However, I think that it would be helpful to have it, for the reasons just stated, put into the Constitution.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. So that there be no misunderstanding on this point, I did not favor putting this into the Constitution and I do not favor putting it into a statute. As a matter of fact, that is an undue interference with the prerogatives of the judicial system. In 1895, when the Superior Court was established, the legislature, through the influence of the people from the particular areas, provided the Superior Court with sites in Williamsport, Scranton, and, I think, Erie, Philadelphia, Harrisburg, and Pittsburgh. It did not take the court long to realize that they would make a trip to some of these places once a year for two or three cases. As a result, the time between the taking of an appeal, by having the time only once a year, increased tremendously and delayed judicial processes, so the Superior Court, feeling that this was a judicial prerogative and not a legislative prerogative, never did pay attention to this provision in the law. As a matter of fact, I do not ever recall the court having sat at any time in Williamsport. It sat once in Erie as a matter of courtesy, to admit some members. But to say at this time and to say it in the Constitution where a court should sit seems to me to be a very unhappy and unfortunate requirement, and I certainly hope the delegates will vote down this requirement.

I do foresee that they will sit at many different places, depending upon the work, but they certainly should not be bound by a Constitution to sit at any particular place and they certainly should not be bound by legislation to sit at any particular place because nobody knows the problems as well as the judges themselves. This enters into what Judge Braham said, too. The Commonwealth Court, unquestionably, in my opinion, must be a combination of a court of first impression as well as a court of appeal. And it may well be that it will want to sit some times in Warren, or one of the judges will want to sit in Warren or in any remote place to carry out a particular case, but certainly they should not be pinned down by any legislation as to where they would be compelled to sit, and I hope that this delegation will vote down the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I have argued here at this microphone against what I have considered an undue encroachment on the part of the judiciary on the powers and the rights and the obligations of the legislative branch. I am here adhering to the same principle. I am opposed to this amendment because, in my opinion, the business of where shall a court sit, what justice shall be assigned is a housekeeping judicial function; it belongs with the judiciary and ought not to be encroached upon by the General Assembly. And although I dearly love the General Assembly, I would be false to principles if I were to stand here and say that this is all right, but to say that we may act with the advise and consent only of the Supreme Court is wrong; I would be contrary to principle. I, therefore, urge that this amendment be rejected because I feel this is a judicial function and is not a function for the General Assembly.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tomascik.

DELEGATE TOMASCIK. Mr. President, I wish to subscribe to the views enunciated by Delegate Woodside and Delegate Irvis respecting this proposed amendment. I think that we as delegates to this Convention should continually bear in mind that we are attempting to write a constitution, not to pass legislation.

I think that matter such as embodied in this amendment should be left out of the Constitution and I respectfully urge the amendment be voted down.

PRESIDENT BRODERICK. Are we ready for the question?

The question is,
Will the Convention agree to the amendment offered by Delegate Tate?

The roll was recorded as follows:

YEAS—7

Banes	Hook	Johnson	Thornburgh
Fineman	Michener	Tate	

NAYS—125

Aberman	Devlin	Lee, K.	Richter
Amsterdam	Dumbauld	Lee, L.	Rovner
Aurentz	Erwin	Leinbach	Ruth
Bagenstose	Fagan	Leonard	Sahli
Baldrige	Fawcett	Levin	Scales
Baldwin	Fay	Manderino	Scarlett
Barry	Feather	Mangery	Scranton

Benedict	Filson	Markley	Sebastian
Benfield	Fohl	Mattioni	Shapiro
Bloom	Forster	McGeary	Sharp
Braham	Gabreski	McGlynn	Shively
Brennan	Gehrlein	Meyer	Shoemaker
Broderick	Gerber	Michael	Shrager
Brown	Goldstein	Miller, D.	Silverman
Buck	Gouger	Moorhead	Solomon
Bunting	Hannum	More	Sprogell
Burkholder	Harding	Morton	Stout
Butera	Hatter	Murray	Strickler
Cain	Henderson	Nelson	Stroup
Camardella	Himes	O'Donnell	Swope
Caputo	Hocker	Orban	Tomascik
Caron	Horne	Orbin	Tully
Casey	Irvis	Otto	Van Sant
Clark	Jirolanio	Pasquerilla	Waldron
Clinger	Kauffman	Pelletier	Welsh
Conley	Keller, J.	Pott	Westerberg
Corey	Keller, M.	Powell	Whittum
Cortese	Kline	Prendergast	Wilcox
Croop	Krill	Rappaport	Wilmarth
Curran	Laputka	Redick	Woodring
Dailey	Leach	Reynolds	Woodside
Desmond			

NOT VOTING—31

Allison	Fleming	Kelly	Quiles
Baldus	Fortney	King	Rea
Barron	Goldman	Lane	Roberts
Bashoff	Gray	Miller, R.	Scott
Cosetti	Griffith	Musselman	Shettig
Cunningham	Heyburn	Pechan	Thomson
Donaldson	Hostetler	Percey	Warman
Donolow	Huggins	Popil	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. And now we are ready to take up the next amendment.

DELEGATE WILMARTH. Mr. President.

PRESIDENT BRODERICK. Yes. Does somebody want to be heard?

DELEGATE WILMARTH. I have a very quick suggestion, Mr. President. I would like to suggest that if all those connected with the legal profession will now retire, by 5 o'clock this evening the rest of the delegate body would come up with a judicial article that would be a model for the other forty-nine States.

PRESIDENT BRODERICK. Our next amendment is one offered by Delegate O'Donnell, and I believe this is one that had been tabled. I understand this is what was originally known as the Baldrige-Barron amendment.

DELEGATE O'DONNELL. Yes sir, that is correct.

PRESIDENT BRODERICK. The Chair understands that the compromise is still being negotiated on the Baldrige-Barron amendment, and we will go on to the next amendment.

THORNBURGH AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The amendment now being offered is Delegate Thornburgh's.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE THORNBURGH offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 5), page 2, lines 19 to 21 by striking out all of said lines and inserting: Section 5. Rights of Appeal.—There shall be such rights of appeal to courts of record and appellate courts as shall be provided by law.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, this amendment is offered—

PRESIDENT BRODERICK. Would you yield one second? They are still in the process of distributing your amendment and in order to have your full turn at bat, I think you should take advantage of the opportunity to put the amendment in their hands.

DELEGATE THORNBURGH. I did not know they had to see it; I thought they would take it on my word.

PRESIDENT BRODERICK. It may be much better if they did not, since this is the procedure.

Has everyone received a copy of Delegate Thornburgh's amendment?

The Chair now recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. This amendment is offered on behalf of myself and Delegates Butera and Fohl and relates to a somewhat troublesome section which has been previously referred to, probably, ad infinitum. Section 5 as it presently appears in Proposal No. 7 provides an absolute right of appeal in all cases to an appellate court of statewide jurisdiction.

It is the intent of the proposal to provide such rights of appeal to courts of record from courts not of record and from courts of record to an appellate court as the legislature shall provide.

The reason for the amendment is to deal, number one, with the concern expressed by many members of the Judiciary Committee, that an unlimited, absolute right of appeal built into the Constitution without any exception could possibly lead to a clogging of the appellate process. This, in effect, embodies the appellate right that exists under the present Article V. It establishes a right of appeal in principle, but leaves to the legislature the fashioning of the proper channels and the circumstances under which this right of appeal should be exercised.

I think that this meets the objections which were raised and the rather hasty consideration that was given this matter initially in the Judiciary Committee.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President and fellow delegates, particularly the people associated with this part of the judiciary article, I know of no part of this article on which we nonlegal delegates require more careful instruction than this one. I have seen three versions of this. I have seen the version which is in the judiciary article; I have seen Delegate Thornburgh's version; and I have seen another version not yet distributed to the delegates; and I understand there is a fourth.

Frankly, we are wallowing in a sea of ignorance here and we want some very clear answers. The questions are these: There is no right more valid in a democracy than the right of appeal. That is why we have the Supreme Court. That is why we have the courts we have in England and in other western nations.

This right of appeal should be available to all men with-

in reason. Those of us who are not lawyers, looking at this, have one immediate response, that if every case is going to be taken to appeal, we are obviously going to be swamped, and that could not be the intention of any sensible article on the judiciary. Therefore, we want some pretty careful instruction on this, if you will please provide it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I would like to ask Delegate Thornburgh if he will permit himself to be interrogated.

PRESIDENT BRODERICK. Yes, he will. You may proceed to interrogate Delegate Thornburgh.

DELEGATE JIROLANIO. Delegate Thornburgh, will you be kind enough to tell me and this Convention what the language gives to a litigant in your proposed amendment that he does not have now?

DELEGATE THORNBURGH. I think the point is very well taken. In many respects it gives nothing. It is proposed to replace what seemed to many of the members of the Judiciary Committee to be an unreasonably broad, absolute, if you will, right of appeal that was given to the present Section 5. I think the delegate is quite correct, that it provides nothing more than the present Article V and it is so intended not to do this.

DELEGATE JIROLANIO. Is not that a loss of time, words and paper even to propose such an amendment?

DELEGATE THORNBURGH. I am afraid the delegate does not understand.

DELEGATE JIROLANIO. No, I do not.

DELEGATE THORNBURGH. The amendment is offered to the present proposal, Section 5, which provides an extremely expanded right of appeal over the present Article V of the Constitution.

DELEGATE JIROLANIO. If you want to do that, why not delete the entire section and let the law remain as it is?

DELEGATE THORNBURGH. Proposal No. 7, Section 2, provides that the present Article V is repealed. We must have some language, it would seem to me, in here to replace the language in the present Article V, which deals with the right of appeal. This is intended to supply that.

DELEGATE JIROLANIO. Members of the Convention, I do not know what to do about this one. I have taken a lot of appeals in my time, but when I look at this language, I do not know whether I am for or against or in between.

DELEGATE THORNBURGH. Perhaps I have not made this clear, Delegate Jirolanio. The present Constitution contains, in two separate sections, reference to rights of appeal, one dealing with rights of appeal to appellate courts and one dealing with rights of appeal from courts not of record. The Proposal No. 7 which, among other things, repeals those provisions in the present Article V, contains a broad absolute right of appeal about which there has been considerable concern expressed.

My amendment is to the latter and would reinstate, in effect, the theory of the present Article V.

DELEGATE JIROLANIO. Delegate Thornburgh, do you not believe that a litigant should have a right of appeal?

DELEGATE THORNBURGH. Absolutely, but I think that it cannot be an absolute right of appeal. My concern is, as expressed by many of the members of the Judiciary Committee, that if an absolute right of appeal is mandated in every single case to a court of statewide appellate jurisdiction, it may very well be that we are clogging the appellate process to the point where it might break down, and this would give the legislature the right to adjust those channels of appeal to make sure that this would not happen.

PRESIDENT BRODERICK. Delegate Filson is now recognized.

DELEGATE FILSON. Mr. President and fellow delegates, in respect to this appeal provision, I would like you to note particularly that this is the right of an appeal. This does not, in any way, mean that every time there is some court action there will be an appeal that will necessarily clog the courts. The language of the present amendment as proposed by Delegate Thornburgh actually gives nothing more than is provided now, which in some instances, I might indicate, does not provide an appeal. In the event any of you people have not yet experienced it, perhaps when you get 11 points you will find that some administrative agency has determined whether or not you shall be able to drive a motor vehicle.

In the present confusion of the courts of the Commonwealth of Pennsylvania, in the courts of common pleas, the holdings that have been handed down by those various courts are an absolute mishmash. In some instances, they have been permitted to appeal and in some cases in some counties they have not been permitted to appeal. It is this particular thing to which I address myself.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I am not one for delay and I am disappointed that I have voted only once since I came here at 2:30, but I agree with Delegate Michener that this is an extremely important decision. It would seem to me that until we know the structure of the judicial system completely from top to bottom, perhaps we cannot make a determination on the right of appeal and whether or not it should be complete or whether the legislature should have some control over the types of appeal or manners of appeal. I am just wondering if this very serious and far-reaching question could not wait until we determine precisely what we are going to do in the other areas of the judiciary.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, it may take a little while, perhaps, to educate some of these nonlawyers, but it was the lawyers who raised this particular question. The chief abuse, and I spoke to it—I was not the proponent and I see my redheaded friend up there who will be speaking shortly on it—but it has been the experience of all of the lawyers who represent people who, when they were faced with an action before a court not of record, before the magistrates and the justices of the peace, that with the exception of those cases dealing with motor vehicle actions, which you can waive, you are required and bound to have your hearing before that squire, and the appeal is given to you only upon cause shown. Our Pennsylvania Superior Court has, for the past several years, indicated that appeals of that nature

should not be allowed because no cause has been shown. I do not again wish to divulge some of the awful stuff which was given to the subcommittee and the committee of the whole, but I had an action and this might explain it to you, Delegate Kline.

I represented a public utility, Delegate Amsterdam, Volant Water Company, 76 subscribers, who had violated a rule of the Department of Health. They were arrested. The case was taken from one end of the county to another, taken down to a squire in the lower end of the county. We could not possibly have appealed from that case because we could not show cause, so we paid the fine. This is the kind of thing that is happening all over the State to most of those who practice and are bound to come into this type of court not of record and the appeal is not granted. This does not ridicule the justice of the peace; this is the way the thing sits. In order to state to the court, we would have to set up a fictitious constitutional cause or absolutely berate the hearing squire. It was our feeling that in a free system the right of appeal should be absolute. These are real cases; these are very important; these belong to live and living people, and it is on this that so many of our practitioners and citizens of the Commonwealth do not know what it is to have their rights, perhaps, handled in this fashion. My understanding of a good government is one which guarantees to its citizens a right to an honest and fair hearing. I do not think our judges are that busy, but they have been able to lean on the Superior Court's opinion repeatedly given.

My lawyer in this instance comes from a smaller county than my own. He is in that type of court often and I think he is ready to speak, and that is Delegate Barron—with two r's.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I rise to oppose this amendment.

We have been struggling all during the course of this Convention with a determination as to whether or not we are unnecessarily encumbering the Constitution with language that is more properly the subject of legislative enactment. I think that one of the guideposts that we ought to hold out for ourselves in making a determination is whether or not we are dealing with a basic right of the people.

If we are dealing with a basic right of the people, I think this is something that should not be left to the determination of the legislature, but rather should be incorporated in the basic law of the land. I think the right to appeal, the right to pursue to the court of last resort, the right to go to the highest authority for ultimate disposition of a party's case is a basic fundamental right that should be spelled out in our basic law. I am not terribly concerned with the argument that this might result in the clogging of the work of our appellate courts. I am less concerned with the clogging of the appellate courts than I am concerned with curtailing the right of the people to go to a court of last resort. If, by chance, the work of the appellate court should become clogged, we will have to meet that contingency when it develops, but in the interim, we will have preserved what I consider to be a basic fundamental right by incorporating that right into the basic law of this land.

It is for these reasons that I would oppose this amendment, Mr. President.

PRESIDENT BRODERICK. The Chair would like to suggest, are we ready for the question?

The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President and fellow delegates, I am going to ask your kind indulgence because I sense the feeling of this House that you do not want to hear from anybody else. I hope when I am finished I am wrong.

Of all the things in this judiciary article in which I have some part of my heart as well as my mind, this particular concept of the right of appeal is a real and sincere one. To be quite frank with you, as a lawyer I have just sufficient conceit touched with a modicum of humility, to suggest that I can practice in any court system this Convention comes out with and that is approved by the people, but I do further suggest to you that if the rights, as were so carefully emphasized by Delegate Fineman, of my clients are not so protected by this Convention, I cannot hold my head up with that same pride.

Delegate Kline had an excellent suggestion which, frankly, if he will put in the form of a motion, I would be most willing to second, concerning the tabling of this affair, and I will explain at this point why.

I believe that I feel the sense of the house when I suggest that some form of the justice-of-the-peace system will be retained for our Commonwealth. How extensive this may be and under what limitations this may be none of us now know because the topic has not been touched nor analyzed, let alone voted upon. My feelings and my explanation as to what the right of appeal will mean will hinge largely, as suggested by Delegate Kline, on the form of the court structure that we ultimately produce. If I may say so, and with no criticism whatsoever leveled at the drafters, Section 5 was an inappropriate number to select and to put in the middle of concepts of form and organization of our unified court structure. I say again this is no criticism whatsoever. However, when the court structure and form is determined, the right of appeal can then be explained, relating present law to the proposed changes that this Convention may adopt and it can be discussed with a degree of intelligence and facts supplied to it for your worthy and earnest consideration.

MOTION TO TABLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. If we are in order, Mr. President, and if Delegate Kline would state his motion, I would be most happy to second it.

I will state it: I move that the matter of appeal in the present amendment as proposed be laid on the table until we complete the concepts of form and organization contained in this proposal.

DELEGATE AMSTERDAM. Mr. President, I would second that.

PRESIDENT BRODERICK. It has been moved by Delegate Barron and seconded by Delegate Amsterdam that the question presented by this amendment being offered by Delegate Thornburgh be placed on the table.

DELEGATE AMSTERDAM. Mr. President, there are two additional items covering this same matter which I

believe were to be brought up at this time. I wonder whether they might also be deferred so that the gentlemen who have these various amendments could confer together at the end and perhaps come back to us with a suggestion on this matter of appeal, which is of tremendous importance, as Delegate Scranton has pointed out. I believe there is some reason to hope there will be some change that will, perhaps, be better than what we have in Article V at the present time.

PRESIDENT BRODERICK. We have two amendments here, both of them by Delegate Barron, and I am advised that they both deal with appeal. With his permission, we will hold those amendments with the amendment already tabled and the amendment of Delegate Thornburgh.

DELEGATE BARRON. Agreed to, Mr. President.

On the question,
Will the Convention agree to the motion?
It was agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, I would like to caution the assembly against the error that the Harvard faculty fell into when I was a clerk there for a very important committee. They gave a degree which had eight courses that were required. This was a graduate school, and we assembled the faculty, and after long discussion we proved to everyone else's satisfaction that no student should take any single course until he had all the other seven courses.

BARRY AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment is being offered by Delegate Barry. I am going to ask the pages to distribute the Barry amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BARRY offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, lines 15 to 18, by striking out all of said lines, and inserting: Section 4. Commonwealth Court.—Unless the General Assembly shall otherwise provide, the Commonwealth Court shall consist of seven judges, one of whom shall be President Judge. It shall have Statewide jurisdiction as shall be provided by law. It shall come into existence January 1, 1970.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Delegate Barry, you may make your presentation as soon as you see the distribution has been completed.

DELEGATE BARRY. Mr. President, fellow delegates, this is the same amendment as the one that I withdrew a short while ago. It provides for the establishment of the Commonwealth Court on January 1, 1970 and provides that it consist of seven judges until and unless otherwise provided by the General Assembly.

We have heard about the right of appeal now; we can see that this is part of a seamless fabric called the judiciary article. Here is another change that is absolutely necessary to immediately provide for right of appeal in all cases for those who consider that an integral part of the judiciary article. As Delegate Amsterdam has pointed out, the legislature should set the tenure, composition and other incidental matters of this Commonwealth Court. There is no attempt here to legislate. The only thing that is provided, unless otherwise stated, is that it shall consist of seven judges and the General Assembly has two years to put it into effect. During that time, it will have a chance to figure out where it wants it to go and what its jurisdiction shall be.

I submit that the Commonwealth can no longer say that all Commonwealth cases should be heard in Dauphin County. It can no longer say that appeals through an administrative agency are not the responsibility of all the people of the Commonwealth and the judicial system, but only the responsibility of the electors of Dauphin County and the judges of Dauphin County. Now is the time to change this, and since we have so many other items that could be given to this court now, it should no longer be set aside and left to some future time to determine whether or when it should go into existence.

If there was an objection at one time about the number of judges, this will provide flexibility. This can provide that they be increased or decreased if the General Assembly sees fit, but it will set some figure and set some time and it will put it into effect within a reasonable time, during which the machinery of how it shall be done shall have plenty of time to figure it out.

Therefore, I urge you to adopt this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, the legislature was my first love in politics, and I still feel that way about it. I do feel, however, that the number of judges on the Commonwealth Court, which, in my opinion, is a court very much on the level of the Superior Court and just under the Supreme Court, should be set in the Constitution just as the Supreme Court and the Superior Court has it set.

I wanted to make that point clear. I do not want to enter into a long argument about it, because I think that most of the people here know the arguments on both sides of this case.

PRESIDENT BRODERICK. In accordance with what Delegate Woodside just stated, I was wondering if our fellow delegates would be ready for the question on this. We heard the debate earlier. Do you want to hear more discussion?

The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. I have a question for Delegate Barry.

PRESIDENT BRODERICK. Delegate Barry will stand for your question.

DELEGATE SILVERMAN. It seems to me that this belongs in the schedule, maybe not the number of judges, but everything else.

DELEGATE BARRY. They will go on the schedule automatically. Style and Drafting will put it there, but the schedule, if you will recall, sets a 1969 date for everything else in the judicial article.

This will give a year longer for the Commonwealth Court.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. It seems to me that I have to state what I conceive to be the committee's position again so that we know what it is the committee has determined for what that may be worth for this body.

We had felt that it was quite important to leave open the matter of the number of judges, the matter of where they should be sitting, and all these things the legislature normally takes care of.

For instance, I am quite concerned when I see that it shall have statewide jurisdiction. Some of the very things we are talking about may not be matters of statewide jurisdiction—an appeal in Philadelphia County to this kind of a court for which we might want to have initial jurisdiction rather than appellate jurisdiction—things of that sort, it seems to me, cannot be done if we are going to tie it into a straitjacket.

I am very much afraid that any of these words that we use are going to have that effect. It is just not the way, in my opinion; I think this is what the committee indicated by its votes should be done.

I see no objection to having a statement that this court should come into existence by January 1, 1970. Actually I am not sure it has too much meaning, because I do not know what would happen, for instance, if the legislature failed to set up any jurisdiction for this court, for you cannot have a court without jurisdiction.

I feel, however, if we set a date which is about as far as we have a right to do, of 1970, the legislature would feel constrained to fill in and put some fat on those bones so that we will have a court that will deal with what Delegate Barry and the rest of us want.

PRESIDENT BRODERICK. I see we have several delegates at the microphone. I ask again, are you ready for the question or do you want further discussion?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Barry?

The roll was recorded as follows:

YEAS—44

Aberman	Cortese	Gouger	Ruth
Baldwin	Curran	Himes	Scales
Banes	Dailey	Huggins	Sharp
Barron	Desmond	Jirolanio	Shively
Barry	Devlin	Johnson	Shoemaker
Bashoff	Erwin	Kauffman	Shrager
Bloom	Fagan	Keller, J.	Silverman
Brennan	Fawcett	Meyer	Waldron
Brown	Fohl	Pott	Welsh
Butera	Gerber	Reynolds	Whittum
Caputo	Goldstein	Richter	Wilcox

NAYS—87

Amsterdam	Forster	Manderino	Roberts
Aurentz	Gabreski	Markley	Rovner
Bagenstose	Gehrlein	Mattioni	Sahli
Baldrige	Goldman	McGeary	Scarlett
Benfield	Hannum	McGlynn	Scranton
Braham	Harding	Michael	Sebastian
Broderick	Hatter	Michener	Shapiro
Buck	Henderson	Miller, D.	Sprogell
Bunting	Hocker	Moorhead	Stout
Burkholder	Hook	More	Strickler
Camardella	Horne	Morton	Stroup
Caron	Hostetler	Nelson	Swope
Casey	Kelly	O'Donnell	Tate
Clark	Kline	Orban	Thornburgh
Clinger	Krill	Otto	Tomascik
Conley	Laputka	Pasquerilla	Tully
Croop	Leach	Pelletier	Warman
Dumbauld	Lee, K.	Popil	Westerberg
Fay	Lee, L.	Powell	Wilmarth
Feather	Leinbach	Prendergast	Woodring
Filson	Leonard	Rea	Woodside
Fineman	Levin	Redick	

NOT VOTING—32

Allison	Donolow	King	Percey
Baldus	Fleming	Lane	Quiles
Benedict	Fortney	Mangery	Rappaport
Cain	Gray	Miller, R.	Scott
Corey	Griffith	Murray	Sheltig
Cosetti	Heyburn	Musselman	Solomon
Cunningham	Irvis	Orbin	Thomson
Donaldson	Keller, M.	Pecham	Van Sant

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

AMENDMENT TAKEN FROM TABLE AND WITHDRAWN

PRESIDENT BRODERICK. The Chair would now like to recognize Delegate Baldridge and his cosponsor, Delegate Barron, and ask them if they would care to withdraw their amendment which is on the table, because we have a substitute which, I understand, is an agreed upon amendment and I at least want to take care of one.

DELEGATE BARRON. It is agreed here, Mr. President.

PRESIDENT BRODERICK. It is agreed, I understand, by Delegates Baldrige and Barron that their original amendment be withdrawn and is no longer on the table.

O'DONNELL-BARRON-BALDRIGE AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. We are now presenting a new amendment which will be called the O'Donnell-Barron-Baldrige amendment, and perhaps some others have pride of authorship.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE O'DONNELL offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 1), page 1, line 12, by removing the period after "law" and inserting: ; all of which courts and all jurisdiction of all courts shall be in this unified judicial system. Their jurisdiction shall be as provided by law.

Amend Sec. 1 (Sec. 1), page 1, lines 13 to 16; page 2, lines 1 to 3, by striking out all of said lines.

Amend Sec. 1 (Sec. 2), page 2, lines 5 to 7, by striking out "shall possess all" in line 6, all of lines 6 and 7, and inserting: in this court shall be reposed the supreme judicial power of the Commonwealth.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. And now the Chair recognizes the sponsor of this amendment. I shall proceed to name the sponsors: This is the O'Donnell-Barron-Baldrige-Scranton, et cetera, amendment.

DELEGATE SCRANTON. Mr. President, with no com-

ment about who drew this, may I say to you all that this is not the best language in the world, but here and now I say to everyone that I am sure Style and Drafting will make it more beautiful. This is a problem, frankly, and I think it is an important problem for the Convention to realize that in doing anything in the judiciary article it is awfully hard to redraw in a short period of time and get complete and meaningful language.

What it does is precisely what was outlined in that contretemps we had here about an hour ago and what it does is that it takes out the problem that was raised concerning what is properly the legislature's and what is properly the Supreme Court's. As indicated in the original lines 1, 2 and 3 of page 2, it takes out (b) on the bottom of page 1, but keeps in it the fact that the jurisidiction of all of these courts shall be in the unified judicial system, which is a very strong point with the committee. It feels very strongly that this is where it belongs and that the unified judicial system should not be tampered with.

Last, but not least, it gives the supreme judicial power of the Commonwealth to the Supreme Court which, in technical language, is a method of keeping the King's Bench powers in the Supreme Court.

Mr. President, I move the question.

PRESIDENT BRODERICK. The question has been moved and we are ready for the question. We shall now open up the voting machine.

Just a moment.

The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. I have not even seen the amendment yet. I would like to be able to get a look at it. It was just passed out. I would like a moment to look at it.

PRESIDENT BRODERICK. Yes, indeed. We want everybody to have that opportunity.

DELEGATE SCRANTON. I withdraw my motion. Let anybody talk who wants to talk about it.

PRESIDENT BRODERICK. Since Delegate Kauffman was standing over in the corner, the negotiating corner, I thought he was a member of the negotiating team.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, while we are at ease, as we seem to be, on the Barry amendment I find that I inadvertently voted "nay" when I intended to vote "yes." May the record so show?

PRESIDENT BRODERICK. We shall have your remarks spread upon the record.

The Chair now recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I would like to ask Delegate Scranton, if he is a proponent of this particular amendment, one question?

DELEGATE SCRANTON. You may describe me any way you wish; many people have.

DELEGATE RAPPAPORT. Delegate Scranton, I must say I did describe you during your campaign, but it was always in very complimentary terms. I did feel there was someone else who was better, but the voters did not agree with me.

DELEGATE SCRANTON. I am for you for Governor.

DELEGATE RAPPAPORT. I note the first paragraph says that jurisdiction shall be as provided by law. It would appear that the second paragraph, where you give the supreme judicial power of the Commonwealth—and I am very happy those words are being used—may very well be a contradiction. What you are giving in the second paragraph, you may be taking away with the first paragraph.

I want to make sure that it is on the record that you intend the Supreme Court shall have all powers enjoyed heretofore, the Commonwealth powers of our court system.

DELEGATE SCRANTON. That is exactly what is intended, sir. May I say that this language has been looked at by Judge Woodside and by everybody we can think of, to make sure that the King's Bench power of the Supreme Court and all the other things that you mentioned earlier are there.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Then why has the language "powers presently vested in the courts of this Commonwealth shall be vested in the unified judicial system created hereby" been deleted?

DELEGATE SCRANTON. It has been deleted because the language which is here now, "all of which courts and all jurisdiction of all courts shall be in this unified judicial system," in the opinion of the 97 people who looked at this, indicates the same thing. It not only indicates that the jurisdiction that is presently vested in them will be there, but indeed all jurisdiction.

DELEGATE KAUFFMAN. But is not that language immediately followed by the sentence, "Their jurisdiction shall be as provided by law"?

DELEGATE SCRANTON. Yes.

DELEGATE KAUFFMAN. And we nowhere now have the language which states expressly that all jurisdiction presently vested in the courts of this Commonwealth shall be vested in the unified judicial system. Therefore, if the legislature does not create the jurisdiction, it is not there.

DELEGATE SCRANTON. May I say to you, sir, that, in the opinion of the people who wrote this, it does precisely what I gather you want it to do. I mentioned at the very opening here that I do not think this is particularly beautiful literature and that I am sure that Style and Drafting, because we have literate people there, will practically rewrite it. But I must say to you that the reason to put in "Their jurisdiction shall be as provided by law" was so that those of the legislature who were very concerned about the fact of whether their powers were being imposed upon would make certain that they were not so doing. But that is clear; at least it is supposed to be clear; and if it is not, we will have to rewrite it in Style and Drafting. The intention clearly is that all jurisdiction, that which is presently vested in it and that which is in any court at the moment, of all courts, shall be in this unified judicial system.

DELEGATE KAUFFMAN. What substantive change is intended by this amendment?

DELEGATE SCRANTON. The substantive change that is intended by the amendment is the removal of the first three lines of the second page which, in the opinion of some people, was an interference with the legislative pow-

ers. Likewise, that is the only major substantive change; likewise, the introduction of the words "in this court"—the Supreme Court—"shall be reposed the supreme judicial power of the Commonwealth." That is supposed to and is intended and, I believe, does take the words that were previously up in here and make it clear that the King's Bench power is in the Supreme Court.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, may I add to that?

DELEGATE SCRANTON. If you do not confuse me.

DELEGATE O'DONNELL. I will not, I hope.

I would invite the attention of the Honorable Delegate from Montgomery County to two items. There has been deleted, just as Governor Scranton has pointed out, the necessity for prior certification by the Supreme Court for legislative acts fixing jurisdiction. That is item one.

Item two, which you may call a substantive or stylistic change, deletes the words "powers presently", because if you will turn to page 15, you will note that with each and every single court, for example, we say in the scheduling, "The Supreme Court shall exercise all the powers and jurisdiction now vested". Now we go to the Superior Court, "now vested", "presently vested", and so forth. In other words, that is a repeat.

DELEGATE SCRANTON. Mr. President, apparently I did not quite catch Mr. Kauffman's point. Mr. Buller, who is a much better lawyer, is now expressing to him the opinion that what he is worried about is in the schedule and that is where it properly belongs.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. I might make a contribution, Mr. President. Although frequently I dwell in the abysmally stagment pools of ignorance on some of these matters, nevertheless it does appear that the language, if the delegate from Montgomery will attend to me, that the "jurisdiction shall be as provided by law" keeps the present laws in full force and effect unless they are in direct conflict with the Constitution to be adopted and such laws in the future as may be adopted in full and complete harmony with the Constitution. I think, therefore, that would answer his question.

PRESIDENT BRODERICK. Delegate Kauffman, are you reasonably satisfied now?

DELEGATE KAUFFMAN. I am not at all satisfied, because this is a very great substantive change as I see it. The committee voted to vest all of the powers that are presently in the courts of this Commonwealth in a unified judicial system, and they further voted that none of these powers would be removed from the unified judicial system without the prior approval of the Supreme Court. I think that we ought to have expressed to us why Delegate O'Donnell and Delegate Scranton and several others have now seen fit to introduce an amendment which changes materially and substantively what I thought the committee had overwhelmingly voted for.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. First of all, may I say to the delegate that because Mr. O'Donnell and I are in agreement about this at the moment does not mean that we are trying to substitute our thinking for that of the committee. The committee can still take the position that it wants it back where it originally was by voting this amendment down. The point is, however, that if you were here for it—and I assume you were, earlier this afternoon—it was brought up by several people this morning and again at noon and again this afternoon that, in the opinion of many people, it was a mistake to infringe upon the powers or the prerogatives of the legislature and that the first three lines on the second page—not that you do not infringe upon the powers of the legislature from time to time, as you do on the powers of the executive, and as you do on the powers of the judiciary, when you have a three-way type of government—nevertheless it was the opinion of many people that this was too great an interference with the prerogatives of the legislature, and those people all met and have come to an agreement with this language.

Anybody who objects—and do not get me wrong; everybody has every right to object, because there is no doubt that the committee originally intended the first three lines of the second page. The great question is whether you still want that, and if you do not, you may most certainly vote this amendment down.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I am certainly not one of those who feel that any prerogatives should be taken from the legislature. It is my belief, however, that the courts have jurisdiction over some matters as a result of legislative action and over other matters as a result of the words of prior Constitutions. The question that I have for the framers of this language is, do they intend by this language to allow the legislature to take away from the courts, jurisdiction which they have as a result of prior Constitutions? It would appear to me that this is what they have done.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. It is not the intent of this provision to give the legislature the right to take away certain powers which were given by prior Constitutions. Let us consider what those specific powers were. There are very few of them indeed. One is the original jurisdiction in the Supreme Court of Pennsylvania in injunction cases wherein a corporation is a defendant. That has been taken away, not from the legislature; the legislature could still do it, but this Constitution has said that is an anachronism absolutely no longer necessary in any way whatsoever. The only power which remains specifically and constitutionally in the Supreme Court expressly by this Constitution is the duty to hear all cases of felonious homicide, and nothing else.

What does that mean? It means that the Supreme Court now has every single, solitary power which it in fact exercises because, as everybody knows, in the last 100 years the Supreme Court has never heard an injunction action solely because there was a corporate defendant. It has every power which the Superior Court now exercises and every power which inferior courts now exercise.

I had thought we were long past the problem in which we can continually in this Constitution infringe on the

rights of the legislature. The legislature when it writes remedial legislation, if it appoints an air pollution control board with authority to close down an industry, if you will, that same act of the legislature wants to pick the court to which an appeal can be made. That same legislature says that unemployment compensation appeals go to the Superior; a zoning appeal goes to the Supreme Court; a workman's compensation appeal goes to the common pleas court. The testing of jurisdiction is an integral part of an act of the legislature, and consequently it is absolutely essential that the Supreme Court not be given a veto power over such remedial legislation.

In this point of view, I am joined by Representative Fineman, Representative Irvis, Senator Stroup, Senator Keller, Blaine Hocker, a former Representative, and everybody else. I just do not understand what the objection is.

I move the question.

DELEGATE SHAPIRO. I am very much impressed with the caliber of Mr. O'Donnell's colleagues but I think he has convinced me that this is a bad amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. I recognize you with the hope that we can now have the question.

DELEGATE SHOEMAKER. I concur, Mr. President, that we should move on to the question. I merely want the delegation to be aware that the first three lines, which is the main thrust on page two of what we are trying to abolish by this amendment, is the veto power of a judicial body over a legislature, which is contrary to Federal history and all of our history. This is what we are trying to do and nothing more. I agree to move the question.

On the question,

Will the Convention agree to the amendment offered by Delegate O'Donnell?

The roll was recorded as follows:

YEAS—120

Aberman	Fay	Loinbach	Reynolds
Amsterdam	Feather	Leonard	Richter
Aurentz	Filson	Levin	Roberts
Bagenstose	Fineman	Manderino	Rovner
Baldrige	Fohl	Mangery	Ruth
Baldwin	Forster	Markley	Sahli
Banes	Gabreski	Mattioni	Scales
Barron	Gehrlein	McGeary	Scarlett
Barry	Gerber	McGlynn	Scranton
Bashoff	Goldman	Michael	Sebastian
Benfield	Goldstein	Michener	Shettig
Burkholder	Gouger	Miller, D.	Shively
Butera	Hannum	Moorhead	Shoemaker
Cain	Harding	More	Shrager
Camardella	Hatter	Morton	Silverman
Caputo	Henderson	Murray	Sprogell
Caron	Himes	Nelson	Stout
Clinger	Hocker	O'Donnell	Strickler
Conley	Hook	Orban	Stroup
Cortese	Horne	Orbin	Thomson
Cosetti	Hostetler	Otto	Thornburgh
Croop	Huggins	Pasquerilla	Tomaselk
Curran	Irvis	Pelletier	Tully
Dailey	Jirolanio	Popil	Van Sant
Desmond	Kelly	Pott	Waldron
Devlin	Kline	Powell	Welsh
Dumbauld	Laputka	Prendergast	Westerberg
Erwin	Leach	Rappaport	Wilmarth
Fagan	Lee, K.	Rea	Woodring
Fawcett	Lee, L.	Rediek	Woodside

NAYS—16

Baldus	Broderick	Johnson	Shapiro
Bloom	Brown	Kauffman	Sharp
Braham	Bunting	Keller, J.	Whittum
Brennan	Casey	Krill	Wilcox

NOT VOTING—27

Allison	Donolow	King	Quiles
Benedict	Fleming	Lane	Scott
Buck	Fortney	Meyer	Solomon
Clark	Gray	Miller, R.	Swope
Corey	Griffith	Musselman	Tate
Cunningham	Heyburn	Pechan	Warman
Donaldson	Keller, M.	Percey	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I did not quite make the voting machine in time. I would like the record to show me as voting "aye."

PRESIDENT BRODERICK. The gentleman's remarks will be spread upon the record.

DELEGATE TATE. Thank you.

REA AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment is the Rea amendment. The clerk will now read the amendment and the pages will please distribute it.

On the question recurring,

Will the Convention agree to the the proposal on second consideration?

DELEGATE REA offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 2, line 30, by inserting after "In": Allegheny County and in

Amend Sec. 1 (Sec. 8), page 3, line 26, by inserting after "than": in Allegheny County and

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Rea to speak in behalf of his amendment.

DELEGATE REA. Members of the Convention, the amendment which I have offered is for one specific purpose, and that is, to create a community court in Allegheny County; in no other county, merely in Allegheny County. The words of the amendment do nothing more than create a mandatory community court in Allegheny County. This amendment has bipartisan support from the delegates of Allegheny County, although it does not have unanimous support.

Attached to the amendment, just for your information so that I do not have to take too much time speaking, is a newspaper clipping on both sides. One is two years old, to show that this has been a problem for several years in our county, and one dated last week by our other newspaper showing it is still a problem in our county and that the newspapers are wholeheartedly behind this proposition.

If I may, I would like, very briefly, to tell you what this amendment will do for 1,650,000 people in Allegheny County. At the present time under the present judiciary article, Allegheny County will end up with 24 magistrates who will be justices of the peace. Under the community court we will have 20, so that for each either justice of

the peace or community court judge, they will represent in the area of 75,000 people. So that you will understand, in Allegheny County as differentiated from so many of our smaller counties, the justice of the peace has lost his function of being close to the people. When you have one justice of the peace representing 80,000 people, that is not the old-time function we had of the justice of the peace.

If you adopt this amendment you will have, under a community court, a courtroom with trained personnel and a judge learned in the law to whom the people can go and in whom the people can have faith. It will be a law court; whereas, if you let us retain the justice-of-the-peace system, we will have a court in a back room or above a candy store or somewhere else that has no more relationship to a court of law and justice than the man in the moon.

If you give us community courts in Allegheny County, we will have, at a minimum, people who have four years of college, three years of law school and have passed the bar examination. If you leave us with the justices of the peace, the most they will probably have is a three-month course at night in training, attempting to learn what lawyers have had to go to school seven years to learn. If you leave us with JPs, you are leaving us in Allegheny County with the people who are politicians, with the people whose major job is not the dispensing of justice and law, but who are dispensing political favor, and who are dispensing back-room justice, depending on who the litigant is. Whereas, if you give us community courts you will give us a judge whom the people can respect.

In both systems the judges will be elected by popular elections so that the people will still retain their right to select who is going to judge their cases. But if you give us a community court, may I state, you are going to help the people for the biggest reason, and that is, that you are going to make justice accessible to them at a reasonable cost. We have had statistics and information that clearly show that in a community court a citizen can file a law-suit for $3.50 and prosecute it to final judgment, whereas it costs $18, $20 or $30 to do it under the JP system, so that you are making justice accessible to the people without excessive cost.

One further thing, and I think this is probably the thing that is most important. In a JP's office, people have no real respect for law. If a criminal case is brought in, it is too easy in this day and age to have it fixed, to have a case taken care of. If a young boy gets in trouble his father can go down to the JP and get it taken care of, and all this shows the young man is that the law is not firm, that things can be changed, that little people can have no right, but that anybody who has money can get something fixed at that level; whereas if you give us in Allegheny County a community court, you are giving an image to the people that justice at any level is the same justice for everybody and that you must respect law and order no matter what court you are in.

There are several delegates from Allegheny County who would like to speak on this subject and I would like, Mr. President, to yield to Delegate Brennan from Allegheny County, and I would like to say one word—Delegate Brennan may not tell you this, but he is at present president of the Academy of Trial Lawyers in Allegheny County and has probably tried and been involved in more court proceedings than any delegate to this Convention. I have the most respect for him and would hope that you would give him and his thoughts your attention. Thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Brennan.

DELEGATE BRENNAN. Fellow delegates, I speak to this as a bipartisan thing for the county of Allegheny and the city of Pittsburgh. I originally was not disposed to do away with the magistrates and justices of the peace in Allegheny County when I came to this Convention. However, as I have seen things develop, as I read the proposal submitted by the committee, I believe that the magistrate and the justice-of-the-peace system is finished anyway. However, last Saturday a group of about 18 organizations from the League of Women Voters on down to the lowest neighborhood group in our poorer sections had a group of us delegates in the city council chambers, and the intensity of these people and these organizations to get rid of the justices of the peace in Allegheny County is beyond comprehension. I have read some of the things out of a book I read on the magistrate system in Philadelphia, but these people are much more intense even than that. It must be a vicious thing to the poor. I had not realized it because as we practice law and get older we get away from this part of the practice of law, and having represented plaintiffs all my life, and therefore the poor, I believe it is very important that the delegates from the rest of the State not interested in this come to the aid of Allegheny County.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I desire to interrogate Delegate Rea.

Delegate Rea, I am just a little bit mystified as to the necessity of establishing a community court for Allegheny County in the Constitution when the present clause in the proposal provides for the electorate to establish a community court if they see fit.

DELEGATE REA. In answer to your question, we have tried the JP system in Allegheny County all our lives. We do know, and the members of the Convention do not as yet, but Delegate Redick has a proposal and the members of the Judiciary Committee have agreed that there will be another proposal introduced to the effect that if the community court system does not work, the electorate can elect to return to the JP system. This is going to be introduced next, so I say to you the JP system has not worked yet in Allegheny County. Give us the community court that we believe, and every one says, will work and then if there is a dissatisfaction with that, the people can return to the JP system, but do not let us leave this Convention with what we have now. It has not worked in the past. We must have something that will work in the future, and this is what will work in our county.

DELEGATE STROUP. Mr. President, just one further question.

Of course, delegates, I recognize the very splendid plea that Delegate Rea has made in behalf of Allegheny County and that is: Do you and other delegates of Allegheny County in your amendment fail to rely upon the electorate to make the choice of community courts or not? Are you afraid they would not have a community court on the ballot?

DELEGATE REA. I believe that they would, but you must understand the practicality that to put this on the ballot in Allegheny County will take 27,000 signatures. As a practical matter, I am afraid both political parties will be opposed to putting this on the ballot, so you are making and mandating a most difficult process for us. That is the reason I feel that the people want this change, every organization, and it will be referred to in a few minutes; the poorest people want this because this is the salvation of the poor, the undertrod and the underprivileged.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Thank you, Mr. President.

First addressing myself to the good Senator, maybe Allegheny County wants to be treated in this Constitution the same as the city of Philadelphia whereby the Constitution is eliminating their magistrate system. I really think this is one issue where nonlawyers and lawyers can understand it.

First, let us look at the history of the JP system as it originated in England. At the time of its origin, the most respected and well-to-do citizen of the area was classified as a justice of the peace so that he could render a decision impartially without favoritism to anyone.

In today's system, even if we adopt the method proposed by this proposal of the fee system, we still have the popularly-elected doing what might be favors for the litigant.

All we are asking for is the same treatment as Philadelphia. A 400,000 difference in population we do not think makes any difference.

It was very enlightening yesterday to see delegates from the city of Pittsburgh make a proposal which was ruled out of order in which they were asking this Convention to say that henceforth the legislature would treat the city of Pittsburgh the same as it does the city of Philadelphia. Now we are asking here that this Convention treat the county of Allegheny the same as the city of Philadelphia.

Let us look at the jurisdiction of the JPs. It falls in two lines in Allegheny County, civil jurisdiction up to an amount of $500. Let us, by analogy, consider that in Allegheny County we have great hospitals. I have a family physician who takes me to a hospital. He says I am going to have an operation that costs $499, so we do not have a licensed medical doctor practicing on us. Go back to your locality and find who was elected as a medical JP and he operates on you. But if you have $501, you can have a licensed medical man. I say the same is true of the legal matters. If you have $500, you go before a non-trained person in the profession of law; if you have $501, then you are entitled to have a qualified, competent judge rule on your problem. To me, there is no distinction nor should there be any distinction as to whether a litigant has $300 or $800.

Unfortunately, our JP system is hurting the poor, because they are the ones who are generally involved in small claims of less than $500. They are the ones who are required to post bond for their appearance. They are the ones who are required to take the appeal and spend their money.

Now let us look at the other area, criminal jurisdiction. To me it was very enlightening yesterday to hear Delegate Irvis fight for the public defender. I say that in the large metropolitan areas we have only gone half of the road now.

What good is it to appear in a criminal matter where you have an assistant district attorney and a public defender or an assistant public defender and you are being heard initially by a justice of the peace who is elected without regard to his qualifications?

In today's courts, particularly in the large metropolitan areas where we have problems involving crime, I submit that when we start at the lowest level in the criminal procedure before a justice of the peace, we should have a man learned in the law who can make a decision so that we do not have people being impounded in jail or being held to post bail to take their cases before a criminal judge or a grand jury.

Yes, I feel strongly that in the large metropolitan areas there is a need for change. It is one of the things that was mandated for this Convention. I submit to you that if we are going to do this for Philadelphia, and Philadelphia wants it, then Allegheny County, merely because it has 400,000 less people, does not have any difference in its troubles in civil and criminal jurisdiction, and they should be treated alike by this Convention.

I sincerely hope that the delegates, lawyers and nonlawyers, will realize that in the large metropolitan areas when it is a civil suit, it is the poor who are being hurt by these. And in the criminal matter suits, I am sure, fortunately or unfortunately—we have more in the metropolitan areas going to our justices of the peace—these people are entitled initially to have a fair and equitable ruling by a qualified, trained judge.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. Mr. President, first I would like to correct a statement and, I believe, the record will show this statement. Approximately two weeks ago our delegate from the 37th District, Delegate Rea, had stated there were 6,000 bumper cases in Allegheny County. Just for the record I would like to correct this. There happened to be 2,150 civil cases appear before the court, and for the record, I also have this statement from the county court of Allegheny, signed by the deputy in charge, David M. Brinkley.

Secondly, I would like to state that, yes, Allegheny County would like to be treated as citizens and have this right to decide what they would like to do, whether they want to keep the JP system or abolish it.

I am sure that I know what they want to do. Let us give them this right. Also, I say the Judiciary Committee has gone on record as approving my recommendations and others that we retain the system but restrain it.

I also want to state for the record, yesterday I tried to present to each one of the delegates the statement I just read to you, but I was turned down. I see that Mr. Rea had the prerogative of sending out his statement pertaining to the Pittsburgh Post Gazette. I do not think this is fair.

Thirdly, some of these statements are coming from the Pittsburgh Post Gazette, and I do not think we are responsible for these statements. I want this delegation to

know that on Thursday, February 8, 1968, in the editorial section, it stated, this is "a do-nothing Convention." This is what they think of us down here. So how can we thank them for what they have to say in the newspapers?

Mr. President, it appeared to all of us, I am certain, prior to the convening of this Convention and during its preparatory phase and even before that, according to reports that we all must have read in the news media, that the minor judiciary would be the whipping boy of the Convention. It was said their function was not necessary, that it was as old-fashioned as the 1874 convention itself, that it should be eliminated, that it should be replaced by the so-called community courts.

During my stay as a delegate I have not read specifically many such references or suggestions. I have heard the testimony of the witnesses who appeared before the Judiciary Committee last December and very little change has been suggested. We might examine why.

First, the minor courts of Pennsylvania have preserved precisely what it is for, where it stands and why. All of these suggestions, it appears to me, are not selfish. They are in line with the thinking of most members of the Convention and should be taken into consideration before a final document is taken to the people.

Let me recount these points so that all delegates might know the democratic and constructive views of the group of public citizens and officials. First, the number of minor judiciaries shall be changed to magisterial districts to be determined by population standards, geographically perhaps by county classes and so forth.

Second, the members of the minor judiciary shall be elected by the vote of the people at the regular elections as they are now elected for a term of six years. There is no change suggested here.

In the matter of education, House bill No. 1507, mandated by the people of the Commonwealth, was presented to the Governor during the past month. The Governor has signed the bill. It is now Act 450 of the 1967 legislature, and it includes educational rules defined and most heartily approved by the members of the Pennsylvania minor courts. This group has suggested, I must point out, that those currently performing the duties should not be required to take such a test if they have had 12 years' experience in the post. Twelve years' experience certainly outweighs the knowledge to be gained in three months of study. Is it required of the judges to continue to take refresher courses? No. The minor judiciary has insisted that any candidate for office should have successfully completed this course and should have been certified according to specifics of the new law.

With the aid of experienced justices of the peace, aldermen and magistrates, much of the civil backlog in the courts could be speeded to conclusion. It is suggested that the judiciary shall include all jurisdiction now conferred by acts of Assembly, and that jurisdiction in criminal matters be extended to include taking of pleas and imposing sentences for certain misdemeanors under both the Vehicle Code and the Criminal Code. Jurisdiction in civil matters shall extend to all cases of assumpsit and all types of trespassing where the demand shall not exceed $2,000, and shall extend also to include domestic relations.

I have been told that the Philadelphia civil courts have a six-year backlog of civil cases before trial and have 17,000 criminal indictments waiting, and that the Pittsburgh backlog is almost as bad. One must admit that justice delayed is justice denied, and that justice delayed is contrary to the basic right which claims that man must have his day in court. To say he must have it as quickly as possible is justice itself. It is the highest court which causes delay and the addition of duties and jurisdictions to the minor judiciary could well speed the day when courts have all eliminated the backlog and the citizen is given speedy as well as just treatment by the courts.

The fifth suggestion is that members of the minor judiciary shall be governed by the canons of judicial ethics. One would have it no other way.

Sixth—and this is most important and has been stressed emphatically by the Pennsylvania minor judiciary groups—is that the fee system should be eliminated and that a salary shall be paid to the minor court staff by the county. Costs imposed and collected by members of the minor judiciary shall be returned to the counties. Pennsylvania members of the minor judiciary have suggested a salary.

It also has been suggested that the county provide suitable courtroom offices for the minor judiciary in public buildings and other places provided by the courts of common pleas. The Commonwealth and its halls of justice are ill represented when—

PRESIDENT BRODERICK. Delegate Redick, you have two minutes more.

DELEGATE REDICK. Mr. President, if you would not mind, I have been keeping tabs on several delegates here from the Convention and I assure you they went much over the 10-minute limit. As a matter of fact, I recall one instance where the delegate talked for 23 minutes. I think I would require at least another six minutes to continue, so I am pleading to you, could I continue?

PRESIDENT BRODERICK. I just want the delegate to know the Chair does not keep the time. We have timekeepers down here and they have advised me that you have two minutes under the rules to sum up.

DELEGATE REDICK. Thank you, Mr. President. Let me try to pick the best parts of this speech. I applaud the stand of the distinguished gentleman from Dauphin County, Judge Woodside, a former Superior Court Judge and learned chairman of the commission which was named for him, who has suggested that judges should be elected for a first term by the people prior to any appointment. They should be from the people. The people wish to be judged by their peers, by those neighbors they have known, who know them and their problems and who have been elected for the highest office—that of judgeship—which man can place upon the shoulders of another man. Similarly, those who must judge in the minor courts, who must perform this significant duty of citizenship, should be elected by the people. It is incomprehensible to me, as it may be to many, that a young attorney, schooled but not yet learned, not knowing the problems of the people in the neighborhood or political subdivision, could better perform the duties of a bread-and-butter court than any older minor judiciary justice who has the pulse of the people of the neighborhood or the street and has lived to know their problems.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair wishes to announce that it has been called to the Chair's attention that this piece of paper was attached to the amendment and I just want you to know that instructions have been given

that hereafter nothing shall be attached to the amendments. It is not in accordance with our rules, so we are going to see that it does not happen again.

The Chair will now recognize Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, fellow delegates, I think, initially, that many in this hall must realize that when we talk about the minor judiciary we are dealing with a major communications' gap. The minor judiciary in the metropolitan area is not the minor judiciary that so many of you know in the non-metropolitan areas. The folksy squire does not exist in the inner city portions of our large metropolitan areas.

There has been considerable uncertainty about the attitude of residents of Allegheny County toward their present minor judiciary system. In my opinion, that uncertainty prompted the present proposal provisions for Allegheny County, and I think that it is important to realize what the opinion of the persons who live and work in Allegheny County, and particularly in the inner-city's so-called "ghetto" areas, is of their minor judiciary.

The newspaper clipping which was attached to the proposal was intended only to save us reading to you the attitude of our two metropolitan dailies toward the minor judiciary stretching back over years.

I think it is important to refer to the groups that appeared at the meetings Delegate Brennan so eloquently described as "taking our breath away," when we realize the vehemence and the feelings of the members of these groups toward the minor judiciary. I might refer to some of them because they represent neighborhood poverty groups: the City-County Citizens Legal Committee, East Liberty Garfield Citizens' Advisory Committee, the Homewood-Brushton Citizens' Renewal Council, the Pittsburgh Area Religion and Race Council, United Negro Protest Committee, the Urbanry, the United Oakland Ministry, the Catholic Interracial Council. These were all attending and protesting against the present minor judiciary system.

Now what has this proposal done for the city of Pittsburgh and for Allegheny County? To be sure, there have been certain improvements worked in the minor judiciary system, but I submit to you that what you have really provided Allegheny County with is the very system that Philadelphia has been complaining to this Convention about for so long. In effect, you have put our JPs, reduced in number, on salary. I think that we can fairly say that you do Allegheny County no favor by providing it with a system that Philadelphia had and brought with great protest to this Convention.

It is axiomatic, I think, that the lowest court on the judicial ladder is the court where most people appear without a lawyer. It is in this court, because of the absence of legal advice, that persons need a man trained in the law more than in any other court in our system. This is what the community court would provide. The community court would be able to deal with those persons who are victimized most, the urban poor who suffer from collection agents, from slum lords, from loan sharks, and from the welfare bureaucracy that bears down on their life 24 hours a day.

I have been fortunate to have served as one of the incorporators and a member of the board of Neighborhood Legal Services Association, formed under the Antipoverty Program to provide legal services to those persons who cannot afford lawyers. I asked the lawyers who served in that program some months ago for their opinion of the minor judiciary in the areas that they served and the results were astonishing. All of them felt, without exception, that the system should be changed. They all felt that lawyers should be manning the post of the minor judiciary, and that the community court system, which is of the type proposed by Delegate Rea's amendment, was the answer to a great many of the problems of the poor which were being served. Let me remind you that these remarks did not come from newspaper editors, ivory-tower reformers, or even bar association officials. They came from case-hardened trial lawyers who on a day-to-day basis serve their indigent clients before the members of the minor judiciary.

I think we realize that this must be given great authority. We are asking daily for respect for law and order in our inner city ghettos, but we are offering them second-class justice encrusted with politics and so-called judges that are unlearned in the law.

The so-called reforms of the type contained in the present proposal are not enough for Allegheny County, and I would therefore strongly urge that this Convention provide Allegheny County with what its other metropolitan counterpart at the end of the State, Philadelphia, has been provided in Proposal No. 7.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Conley.

DELEGATE CONLEY. Mr. President, I will make one remark. About 12:30 last night Delegate Redick read his speech to me. I told him that although I was for it, if he forced me to hear that speech, I would probably vote against it.

But, seriously, I rise in opposition to the amendment. I, also, believe in sameness. I think the sameness should be that Allegheny County should be treated as the rest of the Commonwealth. I think there is a combination of the Allegheny and even Philadelphia County, and if I were in Philadelphia County, I would complain against this also, that in some manner the citizens of those two counties are not competent to decide this problem at home. Where the rest of the Commonwealth can decide this problem, they must have this Convention decide it for them.

I have nothing against this Convention deciding problems, but I feel if it is going to give this to the rest of the Commonwealth, then Allegheny County and Philadelphia County both should not be segregated from their right to select.

But, more important, I would like to get into the merit of the proposal. I would like to direct attention not to labels of community courts or justices of the peace, because these are labels which will get involved in some type of heat. I also would state that this is not a defense of the present JP system. If we were to argue between the JP system presently existing and the community court as proposed, I, myself, would vote for the community court. But what I would like the Convention to do is look at the elements and not just the label.

Under the present system there is a fee. This fee, I believe, is evil under both the community court and under the modified system. It has been changed to salaries. There is no difference there. Under the present system there is no supervision by the courts, but under the com-

munity court and under the modified system, there is supervision by the court. There is no difference there. Under both systems there will be a substantial reduction in the number of JPs.

There are some differences, mainly two, which I consider important. One I call geography; whether the justice shall be elected from the entire jurisdiction or from local districts. The second is whether he must be learned in the law. I shall address myself to the situation of being elected from the entire district.

I have been a lifelong member of the ghetto that Delegate Thornburgh talked about; I will die a member of it; I know it from the inside. With all systems, there is some good and there is some bad, and in the present system, the modified system throws out the bad, but the community court also brings in some bad. That bad is simply that when you elect the magistrate at-large it takes away any possibility of the people in the local jurisdiction having something to do, which I do consider important, and that is to have something in this system which says they may have a person who decides their case who understands their situation.

We are talking about Allegheny County. You can talk about justice in the abstract, but I would rather talk about problems and solutions of problems. The problems in Mount Lebanon, Allegheny County, are different from those in Homewood, the Hill district, or the north side. It would be good if a justice who was sitting there understood a little more than assault and battery when a husband and wife come in and if he also understood what provocation is and what provocation means to this couple. It is also good that when she comes in for surety of the peace to understand she really does not want surety of the peace. You can know this when you come out of that geographical area.

Another area is simply that an alderman or magistrate happens to be more than a justice or a judge. He is also a policeman; he is also a social worker. These are two terms which may not always be on the level with that of a judge, but a magistrate is these two.

I am not making any condemnation on any municipality in Allegheny County. I think many of us know that possibly one of these days in the future there may be rackets. It may be protected by a municipality. There is an opportunity for the local people, when election is made geographical, that they elect in there a man who can clean it up.

I ask that in the areas I come from that the machinery be left to elect our own man to clean it up. Otherwise, we are left to the mercy of the selection or election from the entire county.

It is very good and very gracious to me to be learned in the law. As a member of the bar, I am proud of that, but I do not carry that so far as to believe that in a system such as this, which would be the lowest level of the courts, the judges, who would probably be new and green or financially not able to do as well as others, that category of judge, that category of attorney, is superior to a layman who might be elected by the choice of the people.

One other area which was mentioned by Delegate Rea was how the delegates of the Convention from Allegheny County feel. We took a poll one night. There was mainly bipartisan support for this amendment and, as Delegate Rea said, it was not unanimous support for the amendment. What he did not say was that it was not even a majority.

Where were we in the polling of the Allegheny County delegates? They were for giving Allegheny County the option and not mandating the community court.

I myself was at the meeting mentioned in the city council chambers Saturday night. More than that I myself do work and will work with those groups of people who were there, the ones which Delegate Thornburgh listed. My feeling now is that those members, and many of them who feel much as I do, are looking at the elements and not just at the labels.

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, to date we have stricken out the word "surveyor" from our Constitution; we have also stricken out the word "coroner." We have inserted another constitutional office, as I said this morning, that is, the office of public defender. It guarantees the rights of defendants in criminal trials.

Would it be inconsistent of this Convention and of the delegates to vote "yes" on that question and to vote "no" on this question? Where do you draw the line in giving a defendant, whether he be guilty or not guilty, a guaranteed right to a public defender in a criminal case, and yet you would not give the same individual the same due right for justice in what we now know as a "squire's court," a man being a judge, acting as a judge, to decide civil rights, really, civil matters, contract matters, tort matters, criminal matters; at a lower level, yes, but how would it be consistent of this delegation to vote "no" on this question when even yesterday we voted for the public defender?

If you voted, for example, "no" on this question, it seems to me that you would advocate a person operating on someone's leg in a hospital; you would advocate a druggest pulling teeth; you would advocate a man wanting to get a golf lesson, for example, paying money to a plumber to give him a golf lesson. You would, in effect, be advocating that a person such as yourself, for example, pay money to me to give you a skiing lesson. All of this, to me, is most inconsistent. But I think it is quite natural that what we are asking for in Allegheny County is very reasonable.

It is not unreasonable. It is not that we are here advocating or asking for a license to practice medicine, for example. We are actually asking you to confer rights of justice on people who will be going before the lower civil and criminal courts. We ask you to give them justice. That is, in effect, exactly what we are asking.

Thank you very much.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pott.

DELEGATE POTT. Mr. President and fellow delegates, I am very happy that you are affording Allegheny County all this particular time because we have heard so much about the city of Philadelphia and maybe we are picking our time up this way.

However, I wish to remind all the delegates that there are 129 municipalities in the County of Allegheny of which the city of Pittsburgh is one. There are 32 wards in the city of Pittsburgh. Each one of them has an alderman,

and I would like to ask either Delegate Welsh or Delegate Rea if it is their intention by this to eliminate the aldermen also in the city of Pittsburgh, because, for the edification of the delegates, the aldermen in the city of Pittsburgh serve as the so-called JPs?

DELEGATE REA. Yes, it is the intention. In other words, we will create the community courts in our judicial district which is the whole county.

DELEGATE POTT. Thank you very much.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I shall be very brief.

I have been almost persuaded by the eloquence of the protagonists of the allegations that have been brought to our attention concerning the faults of the magisterial system in Allegheny County. But then on the other hand, Mr. President, I have been deeply impressed by the provisions in Sections 8, 9 and 10 in our proposal in relation to magistrates according to population, the number of them and their qualifications, and the correction that is thereby being placed into that system in the minor judiciary.

I am also impressed by the fact, and Delegate Pott's remark with relation to it, that there are many municipalities outside the city of Pittsburgh in Allegheny County while Philadelphia County is the city of Philadelphia. Sometimes I wonder whether or not we should write into the Constitution something which should be left to the disposition of the electorate as the committee has set forth in this particular proposal.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fawcett.

DELEGATE FAWCETT. The good Senator said very well what I was thinking. He said it much better than I.

Mr. President, I move the question.

PRESIDENT BRODERICK. Are we ready for the question?

Delegate Rea has an opportunity to sum up, if he wishes.

DELEGATE REA. I would say only one thing: This deals with Allegheny County. Some of you said to me, do what you want in Allegheny County; I do not live there. Please remember, if you vote "no," you are really saying you are going to have the JPs. If you are really neutral, you do not vote. Please don't vote "no" unless you really intend that Allegheny County should have the JPs from now on.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. Mr. President, I think it is no more than fair that my side at least gets one or two more to speak on the subject.

PRESIDENT BRODERICK. The delegates have indicated they are ready for the question.

Delegate Richter, did you have a statement?

DELEGATE RICHTER. Mr. President and fellow delegates, as a nonlawyer delegate from Allegheny County residing within the city of Pittsburgh, I ask you, our fellow delegates, to give us your help and to vote "yes" on this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins.

DELEGATE HUGGINS. Mr. President, you ended on a positive note. I still think the negative side has something to say. I would like to say one-half a sentence.

PRESIDENT BRODERICK. The machine, Delegate Huggins, has already been unlocked and we are now in the process of voting.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Rea?

The roll was recorded as follows:

YEAS—69

Aberman	Dumbauld	Laputka	Ruth
Amsterdam	Feather	Lee, L.	Scranton
Baldrige	Forster	Leinbach	Sebastian
Baldus	Fortney	Manderino	Shapiro
Barry	Gabreski	McGeary	Sharp
Bloom	Gehrlein	Michael	Shively
Braham	Goldman	Michener	Shoemaker
Brennan	Gouger	Moorhead	Shrager
Broderick	Hatter	More	Silverman
Brown	Henderson	Morton	Sprogell
Buck	Hocker	Murray	Stout
Bunting	Hook	Nelson	Tate
Burkholder	Horne	Otto	Thornburgh
Camardella	Johnson	Rappaport	Tomascik
Caputo	Kauffman	Rea	Welsh
Caron	Keller, J.	Richter	Wilcox
Casey	Kelly	Roberts	Woodring
Clark			

NAYS—64

Aurentz	Erwin	Levin	Reynolds
Bagenstose	Fagan	Mangery	Rovner
Baldwin	Fay	Markley	Sabli
Banes	Filson	Mattioni	Scales
Barron	Fohl	McGlynn	Scarlett
Bashoff	Gerber	Meyer	Shettig
Benedict	Goldstein	Miller, D.	Strickler
Benfield	Hannum	O'Donnell	Stroup
Conley	Harding	Orban	Swope
Cortese	Hostetler	Orbin	Thomson
Cosetti	Huggins	Pasquerilla	Tully
Croop	Irvis	Popil	Van Sant
Curran	Jirolanio	Pott	Waldron
Dalley	Kline	Powell	Warman
Desmond	Krill	Prendergast	Westerberg
Devlin	Leonard	Redick	Woodside

NOT VOTING—30

Allison	Fawcett	King	Pelletier
Butera	Fineman	Lane	Percey
Cain	Fleming	Leach	Quiles
Clinger	Gray	Lee, K.	Scott
Corey	Griffith	Miller, R.	Solomon
Cunningham	Heyburn	Musselman	Whittum
Donaldson	Himes	Pechan	Wilmarth
Donatow	Keller, M.		

The majority having voted in the affirmative, the question was determined in the affirmative, and the amendment was agreed to.

THORNBURGH AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, the amendment that is presently being distributed is an amendment of mine.

PRESIDENT BRODERICK. I understand that has been withdrawn, but let me check.

DELEGATE THORNBURGH. It should be disregarded; it has been withdrawn.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, would you mind taking up the resolution of mine for a minute for a very few good reasons, that some of the guests are going to leave?

Mr. President, I read in place and present to the Chair the following resolution and ask for its immediate adoption.

PRESIDENT BRODERICK. The clerk will read the resolution.

Does Delegate Pasquerilla wish to read the resolution to expedite it?

DELEGATE PASQUERILLA. I would like to first read the resolution. It was prepared at my request by the Secretary of the Convention. It is presented to the Convention by myself, Delegate Scranton, Delegate McGeary, and the Secretary of the Convention, Secretary Michener.

PRESIDENT BRODERICK. The clerk will read the resolution.

RESOLUTION CONGRATULATING DELEGATE MANDERINO

Harrisburg, Pa.
February 15, 1968

WHEREAS, The good reputation of this Constiutional Convention depends in part upon the regard with which its members are held by the general public and,

WHEREAS, one of our most distinguished Delegates has received a signal honor which brings credit upon us all and,

WHEREAS, the Law School of Duquesne University has seen fit to select as its new Dean of its Law School, Professor Louis L. Manderino of Monessen and more recently of the Local Government Committee of this Convention,

Now therefore,

BE IT RESOLVED, that this Convention do express its pleasure at the promotion which has come to Professor Manderino and be it further resolved that we congratulate Duquesne University upon its selection.

FRANK J. PASQUERILLA

On the question,
Will the Convention adopt the resolution?
It was unanimously adopted.

PRESIDENT BRODERICK. Delegate Manderino, I think the Chair expresses the feelings of each and every one of your fellow delegates when we say, we are very, very proud. We wish you every success, but there is one question: How are you going to be able to get along without Delegate Pasquerilla?

DELEGATE MANDERINO. Mr. President, it appears we may need a state treasurer and the school can use a treasurer.

I would just like to say, if my new position brings me as much enjoyment, pleasant company and privilege as being chairman of the Local Government Committee did and continues to do, I will be very happy.

Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, will Delegate Manderino stand for interrogation?

PRESIDENT BRODERICK. Everyone stands for interrogation here.

DELEGATE SCALES. Mr. President, the Local Government Committee wishes to make an inquiry. As a result of assuming his position as dean of the Duquesne Law School, we would like to know if Delegate Manderino must give up his position as the IBM of the Duquesne Law School.

DELEGATE MANDERINO. Mr. President, that is an inside joke to the committee and others may not know about, but I had the nickname at the law school of "Louie the Lung." I informed the students one day that this was not very dignified and they should find something a little more dignified.

I walked into class the next day and on the blackboard they had "IBM." I said to them, "What is that?" They said, "Your new nickname." I said, "That is very dignified, blue chip, American stock, top quality; thanks for the new name."

One of the boys in the back got up and said, "You have got it wrong; IBM means 'Italian Big Mouth.'"

REDICK AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The clerk will now read the next amendment, which is offered by Delegate Redick.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE REDICK offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 3, by inserting between lines 20 and 21: (c) When the qualified voters of any judicial district have adopted a community court in the manner provided in section 7 (b), the qualified electors of the district may thereafter, at a primary election in the same manner as specified in section 7 (b), by a majority vote of those voting on the question, elect to discontinue such community court and return to the justice of the peace system as provided in section 8. The question shall not be placed upon the ballot in a judicial district at more than one election during any five-year period.

Amend Sec. 1 (Sec. 7), page 3, line 21, by striking out "(c)" and inserting: (d)

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. Thank you, Mr. President.

Mr. President and delegates, this amendment has the approval of the Judiciary Committee but, unfortunately, it did not appear in the Committee Proposal No. 7, printer's No. 20, so I submit it to you for your approval.

The purpose of this amendment is this: If a commu-

nity court is established in a judicial district and in five or 10 years it appears to be a failure, which I am sure it is going to be, what alternative does the voter have in such judicial district?

This amendment provides for the provision to change back to the minor court in the same manner that has been approved in Section 7(b).

Thank you, Mr. President.

PRESIDENT BRODERICK. Are we ready for the question on this?

Delegate Braham, do you wish to be heard?

DELEGATE BRAHAM. I have an inquiry, whether the first words of this amendment would meet this situation when the qualified voters of any judicial district have adopted a community court? This might be said to have been voted upon by this Convention, and should not the language be amended to include this situation, together with the situation of any other municipalities which may vote to adopt community courts? I do not know what the thinking of the committee was but this occurred to me as a matter which might be of some importance.

PRESIDENT BRODERICK. Did Delegate Redick hear Delegate Braham's suggestion?

DELEGATE REDICK. Yes, I did, but I believe Section 7(b) answers the question.

PRESIDENT BRODERICK. In other words, you want to proceed to vote?

DELEGATE REDICK. I want to proceed with the vote, yes.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Redick?

The roll was recorded as follows:

YEAS—127

Aberman	Dailey	Lee, L.	Rovner
Amsterdam	Desmond	Leinbach	Ruth
Aurentz	Devlin	Leonard	Sahli
Bagenstose	Erwin	Levin	Scales
Baldrige	Fagan	Manderino	Scarlett
Baldus	Fawcett	Mangery	Scranton
Baldwin	Fay	Markley	Sebastian
Banes	Filson	Mattioni	Shapiro
Barron	Fineman	McGeary	Sharp
Bashoff	Fohl	McGlynn	Shettig
Benedict	Forster	Meyer	Shively
Benfield	Fortney	Miller, D.	Shoemaker
Bloom	Gabreski	Moorhead	Shrager
Braham	Gehrlein	More	Silverman
Brennan	Gerber	Morton	Sprogell
Broderick	Goldman	Murray	Stout
Brown	Goldstein	Nelson	Strickler
Buck	Gouger	O'Donnell	Swope
Bunting	Hannum	Orban	Tate
Burkholder	Harding	Orbin	Thomson
Butera	Hook	Otto	Tomascik
Cain	Horne	Pasquerilla	Tully
Camardella	Hostetler	Pelletier	Van Sant
Caron	Huggins	Popil	Waldron
Casey	Irvis	Pott	Warman
Clark	Jirolanio	Powell	Welsh
Conley	Johnson	Prendergast	Westerberg
Cortese	Keller, J.	Rea	Whittum
Cosetti	Kelly	Redick	Wilcox
Croop	Krill	Reynolds	Woodring
Cunningham	Laputka	Richter	Woodside
Curran	Leach	Roberts	

NAYS—8

Barry	Feather	Kauffman	Michener
Caputo	Henderson	Michael	Thornburgh

NOT VOTING—28

Allison	Gray	King	Percey
Clinger	Griffith	Kline	Quiles
Corey	Hatter	Lane	Rappaport
Donaldson	Heyburn	Lee, K.	Scott
Donolow	Himes	Miller, R.	Solomon
Dumbauld	Hocker	Musselman	Stroup
Fleming	Keller, M.	Pechan	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative, and the amendment was agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus.

DELEGATE BALDUS. Mr. President, may I raise a question as to the language of this proposal?

PRESIDENT BRODERICK. Would the delegate yield until we announce the result of the vote?

DELEGATE BALDUS. No, I would like to make this statement before the vote is announced, if I may.

PRESIDENT BRODERICK. The Parliamentarian tells me there is nothing in order but to announce the vote.

DELEGATE BALDUS. Very well.

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus.

DELEGATE BALDUS. I would like to ask the Chair, on behalf of Delegate Redick, whether in his view this proposal which was just adopted would apply to Allegheny County?

PRESIDENT BRODERICK. I do not think that is an opinion that the Chair can give right now, but I want to say this, we will refer it to counsel and also I believe that Delegate Braham had a suggestion along those lines. Is that what you were talking about? I think that this is a matter that should be taken up with counsel. I can tell you this, the Chair had a question about it and that was the reason the Chair asked the Delegate whether he was satisfied with the language.

We will have counsel look into it with the Delegate and discuss it.

The Chair recognizes Delegate Redick.

DELEGATE REDICK. When I asked for this proposal to be formed, your counsel informed me this would include Allegheny County.

PRESIDENT BRODERICK. Delegate Redick, you may come forward and discuss this with counsel for the committee as well as counsel for the Convention.

HOOK AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I believe the next proposal is mine.

PRESIDENT BRODERICK. Yes, the next amendment is the amendment of Delegate Hook, which will be distributed, and the clerk will read it.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE HOOK offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 3, line 7, by striking out "a primary election by" and inserting: the next primary election after the adoption of this article, and in the future by

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, lately we discussed this question, but the gist of my proposal at the present time is, in all other counties outside of Allegheny and Philadelphia, to put on at the next primary election after the adoption of this proposal by the public on April 23, the question of community courts in every county within the State.

Thanks to Delegate Redick's proposal, it took care of a second proposal that I was going to introduce later, which I strongly support and which I will call the ripper to the community courts. But as a delegate to this Convention, I believe the people throughout the State should vote on the subject of community courts at the same election. This would be the next primary election, which would be in 1969.

I feel very strongly toward this point because what the committee has done in here is only given to the counties which elect by petition, initiative or referendum. At the same time that this proposal is voted down—and I use the terms "and in the future"—it can come back and be placed upon the ballot by the people by the same procedure that this committee elected to use.

I feel that the question of community courts and justices of the peace are very vital questions to this Constitution. I believe this should be placed on the ballot and should be done as soon as possible, because I have had telephone calls and telegrams from friends of mine in my particular area saying, let us have the question. Then we can go to Section No. 8 and use the magisterial districts and in this way we will have it done.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I wonder how this section reads with the amendment in it because I am a little confused by the language.

DELEGATE HOOK. I am too, Delegate Amsterdam.

DELEGATE AMSTERDAM. It just seems not to mean what you say it means as I read it. Maybe I am wrong. Would you tell us what the amended section will look like?

DELEGATE HOOK. All I am saying is, the question of whether or not a community court shall be established in any judicial district shall be placed upon the ballot in the next primary election after the adoption of this article and in the future by petition which shall be in such form as shall be prescribed by the officer of the Commonwealth having supervision over elections.

My intention is, if it is defeated, it can be brought back again and handled the same way that it has been by your own committee. All I am doing is making it mandatory to put it on the ballot at the next primary election. I feel this is vital and I feel that so many people have expressed themselves on this throughout the State that this matter should be placed on the ballot and should be there at the next election in the primary. This way Philadelphia and Allegheny Counties can feel or know that the rest of the State is also going to consider this matter, and I would say in my own area it will pass.

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth.

DELEGATE RUTH. I have a question as to whether or not you would have this amendment apply to the counties that by Constitution would have a community court already established, such as, apparently Philadelphia and Allegheny Counties?

DELEGATE HOOK. My intentions, Delegate Ruth, are that Allegheny County is included now.

DELEGATE RUTH. My question is: If you put this on the ballot where it is constitutionally mandated and the people were to vote it down—

DELEGATE HOOK. It is not being included in Allegheny County and Philadelphia.

DELEGATE RUTH. All right, that is all.

PRESIDENT BRODERICK. The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. Mr. President, a point of clarification. I am not quite sure from reading this, if it is put on in the next primary after this coming primary, then does this five-year limit apply?

DELEGATE HOOK. It does.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President and members of the Convention, I rise in opposition to this particular amendment.

What this amendment is trying to do is to force down the throats of the people of various areas to do what they maybe do not want to do. As we have already provided, if they go out and get a certain number of names on petitions, they can have this accomplished. Certainly if they cannot go out and get five percent of the people in that area who are not interested in changing, then I do not think it is fair that the people then should be forced to vote on this particular matter. It is contrary to the words of the people and is forcing them to do what the proposer of this amendment would like to have them do.

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. Mr. President, I have a question of Delegate Hook.

Delegate Hook, you say it shall be placed on the ballot at the next primary election by petition in such form, and so forth?

DELEGATE HOOK. No, no, I do not mean by petition, Delegate Nelson.

DELEGATE NELSON. You do not?

DELEGATE HOOK. I do not.

DELEGATE NELSON. My thought was, if it is not possible to get a petition in that form, how can it be put mandatorily on the ballot of that election? Is that a problem?

DELEGATE HOOK. I believe that we have done many things here now that directs that this question be placed on the ballot and not be done by petition.

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka.

DELEGATE LAPUTKA. Mr. President, I rise in support of Delegate Hook's amendment. It seems to me I was the first one to talk about JPs on this floor and I hope

I am not going to be the last. I was misunderstood the first time I talked and I probably will be again because somehow they gave me the idea that I was lobbying for the Magistrate's Association when I was simply trying to get an issue which was very interesting to all to be considered in a separate committee. I think time has proved that it should have been, so we are here today.

There is one item I want to touch upon and that is, that provided in our article we have a very elaborate set-up for a magistrates' system and this is going to require, when it is put into effect setting up the various magisterial districts, et cetera, salaries and what not. It seems to me that before we get into that and we cause the General Assembly to get into that, we should have a determination of whether or not certain communities want the community court or the JPs. If they once decide this, then you can go into deciding which communities need magistrate districts and which ones do not, so it will save a lot of time, a lot of money, a lot of effort.

I have talked to quite a few delegates. It seems to me the consensus is that since this issue is such that so many people are interested in it, let us put it to the public, let us get it decided, and let us go from there.

I am very much in favor of Delegate Hook's amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, to the contrary, I feel that a lot of us came here in somewhat of a quandary as to what to do with the magistrate system as we know it in Pennsylvania today. By that I mean there was a lot of us who wanted to see some meaningful reforms in the present system but did not want to go the full way by making all the magistrates lawyers.

I think, in defense of the Judiciary Committee and Delegate O'Donnell personally, there was an ingenuous solution to this problem whereby we formulated magistrate districts by a population and population-density formula.

Now having settled upon that, it is only fair to the people to give a new system a chance to work, to try a new system and then at a subsequent time which, under our proposal, would be five years, to give the voters an intelligent choice at that time as to whether or not the meaningful reforms, the reforms that we in the Judiciary Committee think are meaningful, are satisfactory to the people.

I speak against this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I do not intend to speak at length, but I must endorse the observations just made by Delegate Curran from Delaware County.

A very complicated, perhaps described as ingenious by some, system for improving justice at the minor level, at the neighborhood level, if you will, has been tried by this Judiciary Committee. This Judiciary Committee has recommended it to this Convention, making an effort to see whether or not this situation cannot be improved.

The Judiciary Committee is acutely aware that the State of Pennsylvania has many and varied differences. For example, the city of Philadelphia has a population density of roughly 16,000 per square mile. The least densely populated judicial district in Pennsylvania, that which comprises Potter County, has a population density of not 16,000 persons per square mile, but 15 persons per square mile. We have municipalities in the Commonwealth of Pennsylvania which have as few as four people. We have in Pennsylvania two most recently incorporated boroughs, and I have been informed here that the two of them together comprise less than 50 people.

When you have a situation where the population of Pennsylvania is so unevenly distributed, you must attack the problem of seeing to it that justice is to be found where justice is needed. The people of our 1873 Constitutional Convention were not stupid when they came up with a plan; they attempted to solve the population and population-density problem in their own way as they saw it in their own light. They attempted to do it by prescribing that there would be an alderman in each ward and at least two justices of the peace in each township.

In 1873 it could never have been anticipated that in 1968 we would still find a township with four people. And, by the way, I have a list here of 20 of them with less than 50 people in them, and another township, and that is Upper Darby in Delaware County, which has more than 93,000 people in it. It has become apparent that it is necessary for this Convention to adopt a system which is more directly tied in to the needs of the people so that we can have a system of justice where it is needed—more sophisticated where greater sophistication is needed and less sophisticated where less sophistication is needed.

We have, in this judiciary article, recommended the abolition of the fee system, the establishment of magisterial districts, mandatory education for the minor magistrates, and have permitted, through our scheduling, those persons presently serving as magistrates and justices of the peace, agreeable to Article VI of the Constitution, to carry out and continue until the end of their present terms.

I think it is grossly unfair, not only to this Convention, but to the people of Pennsylvania—and we are here to serve them—that the system be abandoned and overlooked and shunted aside before any effort or any experiment is made to determine whether it will or it will not work, because, Mr. President, if it does not work, then the people have their option. By securing a sufficient number of signatures on a ballot they can obtain their community court.

Why should we mandate an election in a judicial district where, apparently, they are unable to secure a sufficient number of signatures, not only to carry the question but to even place it on the ballot. This is a matter which we have discussed thoroughly, not only in the subcommittee which had this matter in its hands but in the full Judiciary Committee as a whole. The feeling was very strong that not only with the local government provisions that have arisen out of Proposal No. 6, but by other provisions of this article, we are giving the people of Pennsylvania so many referendums, so many different kinds of optional choices by ballot that the people of Pennsylvania are likely to ask us, why did you not do anything in Harrisburg and send all of the problems home to us? I must speak against this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Mr. President, in deference to what a gentleman from Maryland said some time ago, I

would like to suggest that possibly tomorrow you invoke the rule of two minutes of talking for each delegate. If we cannot say what we want in two minutes, we do not know what we are talking about.

I would like to rise in support of this amendment. Basically, I would like to ask the Chairman, Mr. Scranton, what the opinion of the committee is at this moment on this particular amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. You have embarrassed me because I just asked Mrs. Sprogell and Mr. Amsterdam what their memory was on what the committee did about this. We sent a message up to Mr. O'Donnell, who is famous for his memory, but to the best of my knowledge, there was originally in our proposal at one time this mandate, and it was extricated. I do not remember on what vote or under what circumstances. If that is not correct, any member of the Judiciary Committee may speak up. Is that right, mental genius?

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. I do not necessarily accept the designation, but it was correct. It was affirmatively removed by majority vote of the whole committee.

DELEGATE SCRANTON. I accept that. I think he is right.

DELEGATE CARON. Is there any change in attitude by the committee since then?

DELEGATE SCRANTON. No, we have not discussed this since then.

DELEGATE CARON. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Benfield.

DELEGATE BENFIELD. Mr. President, the opposition that was given to the justices of the peace was that there were too many, and the fee system. There were approximately 5,500 elected; however, only about 4,100 lifted their commissions, this is true. However, under this proposal that we are submitting we have reduced the number considerably. We have reduced it to approximately 1,025 or in that neighborhood. We have gotten rid of the fee system; we are putting them on a salary.

Fellow delegates, at this Convention I have learned one thing more than I have ever known before, and that is, that there are two kinds of people on earth today, just two kinds, no more, I say. No, I do not mean the rich and the poor, for it is well understood that to rate a man's wealth you must first know the status of his conscience and his health. No, I do not mean the humble and the proud, for they who put on vain airs are not even counted as men. No, I do not mean the good and the bad, for it is well understood that the good are half bad and the bad are half good. No, there are two kinds and only two. The kinds that I mean are the lifters and the leaners, the ones who are willing to go out and help, those who are carrying their load, and the others who are always willing to have others participate in their share.

Under the justices of the peace, you have good ones and you have bad ones. You are going to have it under community courts. Just because we put an attorney in there will not answer any question; it will not solve any problems whatsoever. I am sure that the voters of Pennsylvania are definitely agreed that the justices of the peace in the counties of Pennsylvania are not as bad as some of you lawyers think we are. I know we are in a hurry, but I have not taken up much time on the floor, so if I do take up my ten minutes I hope I will be forgiven.

You know, if you cannot be the pine on the top of the hill, you can be a shrub in the valley, but be the best shrub on the side of the hill. Be a shrub if you cannot be a tree. If you cannot be a highway, then be a trail; if you cannot be the sun, be a star. It is not by size that you win or fail; be the best whatever you are. And I am sure that you have some JPs who are very worthy of their offices. I oppose this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bunting.

DELEGATE BUNTING. Thank you, Mr. President. Fellow delegates, Delegate Benfield, I do not stand up here to condemn all JPs, but I do stand up here and ask that this delegation give every voter in the Commonwealth the opportunity to vote for either the new JP system or the new community court system, and it seems that logic dictates that this is the time that choice should be made. Why should we let things slide? Why have a magisterial-type district in the process of being established and then miscellaneous efforts made to come in and establish community courts? This is the clean, clear-cut way, to put the issue to the people. Let them make their choice. The newspapers in the various localities will be giving the matter publicity. There will be greater education and more knowledgeable voting than if it is presented to counties on a piecemeal basis by specific-reform-good-government groups. I very much urge support of Delegate Hook's amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, I would like to ask Delegate Hook a couple of small questions.

PRESIDENT BRODERICK. Yes. Proceed.

DELEGATE MURRAY. Delegate Hook, how would this affect the city of Philadelphia?

DELEGATE HOOK. It would not affect the city of Philadelphia.

DELEGATE MURRAY. What do you mean by not affecting them? You mean this would not apply to the city of Philadelphia?

DELEGATE HOOK. That is correct.

DELEGATE MURRAY. You left this in a separate little package, is that the idea?

DELEGATE HOOK. I believe that the city of Philadelphia is taken care of by the first paragraph of Section 7(a), and that the county of Allegheny is now in the same position here as one having a community court system of its own if this proposal is approved.

DELEGATE MURRAY. Mr. President, we have heard a lot of talk today about uniformity and home-rule theories, but it just does not seem to apply to the two big cities in our Commonwealth. I do not particularly like the idea of having somebody from Erie, Pennsylvania, decide the type of court system which would be best for our city in the southeastern corner of the State. I am sure the people in the Pittsburgh area do not like people in Potter County deciding for them what would be the best type

system for them to live under. I think there are a lot of inequities in the entire package here when we talk of uniformity and make exceptions as to what is right for the two big cities, the two big so-called problem areas. Uniformity has just seemed to disappear in dealing with our big urban areas. I would not like to tell Greene County, for instance, what type of judicial system it should live under. There are a lot of things in the entire package that, as a Philadelphian, I resent. I think that our people should have a referendum right to reject or accept, the same as every other county in this State.

PRESIDENT BRODERICK. I just want to caution you, Delegate Hook, that you have twice to speak, and I think you may want to save this for your closing.

The Chair recognizes Delegate Sprogell.

DELEGATE SPROGELL. I would just like to say what I remember was the feeling of our committee on this. We felt we were writing it for the future and that there were many areas across the State which were not ready for community courts. We thought that by leaving them an option of this sort, they could have the community court when they were ready for it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, there may be times before this Constitutional Convention is finished when I shall rise to my feet to address myself to a subject on which I am not so certain as that upon which I now comment, because I have lived many years in the areas of this Commonwealth which are affected by the provisions insofar as the magisterial and justices-of-the-peace courts are concerned.

As a practicing attorney, I, too, have experienced some of the faults that are in it and often have taken very grave exception to them.

The minor judiciary in many of its areas has failed us insofar as dispensing justice to our people. But when I read what the committee has done, and I think that is advisably so, with the qualifications and the creation of changes in this particular minor court, then I believe it should at least have a chance to be tried before we mandate it at the next primary election, as this amendment calls upon us to do, without any chance whatsoever to correct it and to destroy that minor judiciary and impose, therefore, by necessity, a choice of a community court before our electorate has a chance to make such a determination.

I stand absolutely opposed to this amendment and ask you to stand with the committee report. I move for the question, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. In order to answer Mr. Murray's question—I will answer it very rapidly for him at this time.

Delegate Murray, my proposal has nothing to do with the city of Philadelphia or the county of Allegheny. I want you to be assured of that. I am only referring to the other 65 counties in the State of Pennsylvania. That is all.

As far as this, I want and I still feel very strongly and I would like to say this at this time: I am not going into Section 8 on magisterial districts and the costs of these districts. This will come later, but I think, very strongly, if I went into this, I could point out certain points as to what I am getting to, but I will have to save these questions until later.

Thank you.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Hook?

The roll was recorded as follows:

YEAS—29

Aberman	Casey	Gehrlein	Popil
Bloom	Conley	Hook	Rea
Braham	Cosetti	Laputka	Shoemaker
Brennan	Feather	Lee, K.	Tate
Brown	Forster	Michener	Thornburgh
Bunting	Fortney	Morton	Tomascik
Burkholder	Gabrosk	Pelletier	Welsh
Caron			

NAYS—102

Amsterdam	Filson	Mattioni	Scales
Aurentz	Fineman	McGeary	Scarletti
Bagenstose	Gerber	McGlynn	Scranton
Baldrige	Goldstein	Meyer	Sebastian
Baldwin	Gouger	Michael	Shapiro
Banes	Griffith	Miller, D.	Sharp
Barron	Hannum	Moorhead	Shettig
Barry	Harding	More	Shively
Bashoff	Henderson	Murray	Shrager
Benfield	Horne	Nelson	Solomon
Broderick	Hostetler	O'Donnell	Sprogell
Buck	Huggins	Orban	Stout
Butera	Irvis	Orbin	Strickler
Cain	Jirolanio	Otto	Stroup
Caputo	Johnson	Pasquerilla	Swope
Clark	Kauffman	Pott	Thomson
Cortese	Keller, J.	Powell	Tully
Croop	Kelly	Rappaport	Van Sant
Curran	Krill	Redick	Waldron
Dailey	Lee, L.	Reynolds	Warman
Desmond	Leinbach	Richter	Westerberg
Devlin	Leonard	Roberts	Whittum
Erwin	Levin	Rovner	Wilcox
Fagan	Manderino	Ruth	Woodring
Fawcett	Mangery	Sahli	Woodside
Fay	Markley		

NOT VOTING—32

Allison	Donolow	Himes	Musselman
Baldus	Dumbauld	Hocker	Pechan
Benedict	Fleming	Keller, M.	Percey
Camardella	Fohl	King	Prendergast
Clinger	Goldman	Kline	Quiles
Corey	Gray	Lane	Scott
Cunningham	Hatter	Lesch	Silverman
Donaldson	Heyburn	Miller, R.	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative, and the amendment was not agreed to.

JIROLANIO AMENDMENT TO PROPOSAL NO. 7

PRESIDENT BRODERICK. Next is an amendment offered by Delegate Jirolanio.

The clerk will read the amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE JIROLANIO offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, line 16, by striking out "Statewide"

Amend Sec. 1 (Sec. 4), page 2, line 18, by inserting

after "Judge.": The said court shall be established on or before the first day of January, 1970.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President and members of the Convention, I wish to state that I did introduce a proposal for the Commonwealth Court. I was certainly very gratified to learn that the Judiciary Committee did include it in its proposal.

The amendment that I am offering will do this: It will strike out the word "statewide" and, thereby, the General Assembly could give to the Commonwealth Court any type of jurisdiction that it would want. In addition to that, the amendment would provide that the court would be established on or before the first day of January, 1970.

May I say this, that the Commonwealth court, of course, which sits in the county of Dauphin, at the present time has five judges and they do sit four times a year. Last year in the 1967 docket, they had 186 appeals filed and were open. There were 61 miscellaneous cases and they were still open. They have had 80 cases closed, and there were 10 equity cases. Of the 61 cases open, five—Just a minute. I want to get my right figures because I want to quote the right figures for the Convention. All told there were 562 actions commenced in the Commonwealth court.

Many of those cases have not been decided. The Committee on Judiciary has seen fit to place in its proposal a Commonwealth Court. If we are going to have a Commonwealth Court, and we feel that we need a Commonwealth Court today, then I think we should set a date in our Constitution as to when it should take place.

There has been some talk here that the Senate of Pennsylvania and the House have before it, or did have before it, a proposal for the establishment of a Commonwealth Court. I talked with a sponsor of that particular bill, Senator Mahady, and, incidentally, when I was a member of the Senate, he and I both introduced a bill which had to do with Commonwealth Court. No less than a month and a half ago, Senator Mahady told me that they were waiting for us to move and that that is the reason why the Commonwealth Court did not pass in the House of Representatives. They wanted to know our feelings in the matter and, if we go on record as we are doing now that we do believe in a Commonwealth Court, then I am quite sure that the mechanics will be supplied by the General Assembly.

I ask support for this particular amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I just want to say several things about the Commonwealth Court to which my friend, Delegate Jirolanio, referred.

In the first place, they do have only four sessions a year in which there is a set argument date. On the other hand, hardly a day goes by that they are not dealing with some preliminary matter or some petition for a preliminary injunction or some other matter which is considered in chambers. The fact that they meet in set argument only four times a year does not give a clear picture of the type or amount of work which they are doing. They very, very frequently set special dates for argument the whole court as well as the many conferences which they have.

The Commonwealth Court judges do work very hard. Some of their opinions may not be handed down quite as promptly as they would like to have them, but they are keeping up pretty well with the work which is necessary to do.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barry.

DELEGATE BARRY. I would like to interrogate Delegate Amsterdam.

Delegate Amsterdam, will you now, on behalf of the committee, accept the amendments?

DELEGATE AMSTERDAM. I would say that this amendment is entirely in line with the committee policy with regard to it, if I understand what it means. I would just like to be sure that I do. I take it that there is no objection to this being, in fact, it is intended to be—a statewide court. It is not intended that it should be limited to statewide jurisdiction, because we have spoken in our committee of the fact that it may have trial sessions in various parts of the Commonwealth, which would mean that it would not have statewide jurisdiction with regard to those matters that it is hearing in Philadelphia County, let us say or somewhere else. It would still be, I take it, a statewide court, is that correct?

DELEGATE JIROLANIO. The answer to that is, yes. But the General Assembly, of course, would have the privilege and the prerogative of making it both a statewide court and a local court, or give to it any excess of work which any other court would have.

PRESIDENT BRODERICK. May the Chair suggest that under these circumstances, perhaps, we are ready for the question.

DELEGATE WOODSIDE. Mr. President, I would just like to say several things. First, a great deal has been said about the bill which is now pending in the House of Representatives and has not been passed by the Senate. I think the Senate, as well as the House of Representatives, realizes, and I think this delegation should realize, that that bill is in need of a great deal of correctional matter.

In the second place, this is a statewide court, and there is no reason under the sun why it should not be designated as such in the Constitution. I think that the only reason the effort is made to take the statewide out is in order to make those provisions of this Constitution which are relative to statewide judges not relative to the Commonwealth Court. By all means those provisions which are relevant to statewide courts and this Constitution ought to be relevant to the Commonwealth Court, which is certainly a statewide court under the contemplation of the committee and, I think, under the contemplation of this Convention.

Therefore, I think it would be advisable to separate the state provision and also the question of the statewide provision unless the sponsor would be willing to take out from his amendment the word "statewide."

DELEGATE AMSTERDAM. Delegate Woodside, may I say you may not have heard the sponsor. He indicated in response to a question that I asked that it was intended that this be a statewide court and have all the characteristics of an appellate statewide court, but also to have jurisdiction on the trial level wherever necessary

in the Commonwealth and it was for that reason that they took out the word "statewide" and put in the word "jurisdiction." They are statewide judges. It was based on that that I indicated this was entirely within the contemplation of the Judiciary Committee's proposal.

PRESIDENT BRODERICK. Let the Chair please ask Delegate Jirolanio, do you wish to—I do not know whether I have been following this closely enough or not. Do you wish to—strike out then this word "statewide" from your amendment or leave it in there?

DELEGATE JIROLANIO. Mr. President, I certainly would like to cooperate with you and I certainly would like to cooperate with my good friend, Judge Woodside, but, unfortunately, I did give my word to the distinguished gentleman from Philadelphia, Delegate Amsterdam. He said to me that he would go along if I would strike out the word "statewide." I am trying to accommodate everybody. Now I am in a dilemma. What should I do?

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam. Perhaps he has the answer.

DELEGATE AMSTERDAM. The question was raised by counsel and staff for the Judiciary Committee as to whether the words "statewide jurisdiction" might not in some way prevent this Commonwealth Court from sitting as a trial court in various parts of the Commonwealth, and it was for that reason that the word "statewide" was stricken so that there would be no question about the fact that this court could have not only appellate jurisdiction throughout the State, but also jurisdiction to hear matters in a particular community or judicial district.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I rise to oppose the exclusion of the word "statewide" from the proposal. I think it would be a grave error. In the first place it is very easy for the legislature, if that privilege would be given to the legislature, to set up the jurisdiction of the trial courts. I am sympathetic to that for the simple reason that many times when you take an appeal from the administrative agency you are limited entirely to matters of law and not to fact, and I think many of those facts should be presented de novo to a Commonwealth Court such as we are contemplating. If we eliminate "statewide" then we take all the benefits of that particular designation away from that court, and the question should not be confused with the retention of "statewide" insofar as jurisdiction is concerned.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Michael.

DELEGATE MICHAEL. Concerning the use of this word "statewide," may I ask if "statewide" is eliminated, which way will the judges be elected to the Commonwealth Court? Will they be elected on the merit system proposed for the statewide judges or will they be elected by the people? I think this is a question we have to consider if we are going to eliminate "statewide."

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton. He has the answer.

DELEGATE SCRANTON. Well, I have the answer if Delegate Jirolanio will go along with it. The only problem the Judiciary Committee has in this is just like everything else in this article, when you do something to one part of it, it affects it all. There are many references later on in the merit selection of judges elsewhere as to "statewide" judges. It is the understanding of the Judiciary Committee that even with the elimination of the word "statewide" here, these judges would be considered to be statewide judges in those references. Is that correct, sir?

DELEGATE JIROLANIO. I understand that that is so and I am willing to have it go into the schedule with that thought of the Convention in mind, and therefore that would eliminate that.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I was going to make the suggestion that perhaps the solution to this is to have the section read: "Such statewide jurisdiction and such other jurisdiction as may be prescribed by law." If you do that, I think you would then not disturb the selection and other provisions and would still leave open to the legislature to give whatever jurisdiction it might wish to this court.

DELEGATE JIROLANIO. I would accept that amendment—"statewide and local"—if he wants to make it.

JIROLANIO AMENDMENT TABLED

PRESIDENT BRODERICK. I understand that Delegate Jirolanio would be glad to accept that amendment and, in the interest of proceeding, may I ask that you table it. We will have it rewritten right here and we will have it back to you, I hope, within a few minutes.

Now I see still standing here at the microphone is Delegate O'Donnell and Delegate Stroup. Do they wish to be heard while we are tabling this amendment?

DELEGATE O'DONNELL. Mr. President, I was going to speak in favor of tabling it. I think it is a scheduling item. I think it can be worked out.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup and then Delegate Woodside.

DELEGATE STROUP. Mr. President, I have the temerity, as I have had sometimes in past years, to take issue with Governor Scranton. "Statewide jurisdiction" as specified in the Constitution is absolutely essential to the Commonwealth Court as such and I think it must be retained. However, Delegate Shapiro, has come up with a suggestion which I believe will correct the entire situation and I would, therefore, yield to him to have such an amendment prepared.

PRESIDENT BRODERICK. Thank you. And now the Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. There can be no local jurisdiction in the Commonwealth Court if the idea of a true Commonwealth Court is going to be carried out. It is absolutely ridiculous to have "local" in there, either in whole or in part or in any other way. It ought to be "statewide jurisdiction" and nothing else.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, we are here, I think, trying to create an animal which is neither fish nor fowl. I completely agree with His Honor when he states that we should decide here and now whether or not the Commonwealth Court is going to be statewide or not. If we say it has statewide jurisdiction and such other jurisdic-

tion as may be given, no one will know how the judges of the Commonwealth Court are to be placed on the bench. We will not know whether they are subject to the elective process or, assuming that we agree to this judicial-qualifications commission, whether or not the judicial-qualifications commission shall name the candidate for the Commonwealth Court. We ought to decide whether it is to be fish or fowl. That decision we must make.

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth.

DELEGATE RUTH. I just got approval from Delegate Woodside on an amendment he thinks will clear the situation.

PRESIDENT BRODERICK. Would Delegate Ruth bring it forward and we will work on the amendment with Delegate Shapiro and check it with the committee?

The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. May I make a suggestion? We have another committee Delegate Jirolanio, Delegate Amsterdam, Delegate Woodside, Delegate Ruth and Delegate Shapiro. Is that all right?

PRESIDENT BRODERICK. Delegate Scranton, I am in favor of that. I am losing a little confidence in these committees.

MOTION TO TABLE

DELEGATE SCRANTON. I move that we table it in the meantime.

On the question,
Will the Convention agree to the motion?
It was agreed to.

PRESIDENT BRODERICK. The amendment is tabled and we will proceed to the next amendment.

SHETTIG AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment is one offered by Delegate Shettig. I am going to ask the clerk to read the amendment and ask the pages to distribute the amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHETTIG offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 6), page 2, line 25, by removing the period after "law." and inserting: : Provided, however, That there shall be no less than one judge for each fifty thousand people in such district.

On the question,
Will the Convention agree to the amendment offered by Delegate Shettig?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shettig.

DELEGATE SHETTIG. Mr. President, at the risk of being shot—I am not starting the numbers game again which we played for several days last week—I assure the delegates that this is the only one and, should it be defeated, I am not coming back with another number to play with.

The purpose of this amendment is, basically, to fit in with Section 6, and it does not, in my opinion, change the unified court system which we are attempting to establish through this entire proposal. The present Constitution provides that in any county where there are 40,000 people, there should be at least one judge for each 40,000. The present section does not establish any standard by which we can determine how many judges there are in each district. This is an attempt to establish a criterion or a standard by which there can be fixed the number of judges and there would be one judge for each 50,000 people.

PRESIDENT BRODERICK. Does anyone else wish to be heard either pro or con on this amendment?

The Chair recognizes the chairman, Delegate Scranton.

DELEGATE SCRANTON. Mr. President, I must, in strong terms, say that this is just exactly the kind of thing that the committee does not want in the Constitution. Quite frankly, it limits what the legislature can do on the number of judges, which is, after all, their prerogative, just as if we were telling them how much to pay them. It also puts a number in the Constitution which we tried to avoid—in some instances we have—but we tried to avoid it because of the population changes that will take place in the Commonwealth over the next hundred years. I have the greatest admiration in the world for Delegate Shettig who is one of the best people we have on our committee, but I just wish he would think in terms of the next hundred years. This can be done by the legislature.

PRESIDENT BRODERICK. May the Chair ask whether we are ready for the question on this or do we want further debate?

The Chair recognizes Delegate Shettig.

DELEGATE SHETTIG. I just want to make one statement, Mr. President. As I pointed out, the present Constitution refers to 40,000. We heard testimony and it is in the recommendation from the American Judicature Society that it be 60,000 and I split the difference. That is all.

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—16

Baldus	Gouger	McGlynn	Solomon
Brennan	Hook	Otto	Warman
Gerber	Kauffman	Scales	Welsh
Goldman	Laputka	Shettig	Wilcox

NAYS—109

Aberman	Cunningham	Leach	Rovner
Amsterdam	Curran	Lee, K.	Ruth
Aurentz	Dailey	Lee, L.	Sahli
Bagenstose	Desmond	Leinbach	Scarlett
Baldrige	Devlin	Levin	Scranton
Baldwin	Erwin	Manderino	Sebastian
Banes	Fawcett	Mangery	Shapiro
Barron	Fay	Markley	Sharp
Barry	Feather	Mattioni	Shively
Bashoff	Filson	McGeary	Shoemaker
Benfield	Fohl	Meyer	Silverman
Bloom	Forster	Michener	Sprogell
Braham	Fortney	Miller, D.	Stout
Broderick	Gabreski	Moorhead	Strickler
Brown	Gehrlein	More	Stroup
Buck	Goldstein	Morton	Swope
Bunting	Hannum	Murray	Tate
Burkholder	Harding	Nelson	Thomson
Butera	Henderson	O'Donnell	Thornburgh

Cain	Horne	Orban	Tomasetik
Camardella	Hostetler	Orbin	Tully
Caputo	Huggins	Popil	Van Sant
Caron	Irvis	Pott	Waldron
Casey	Jirolanio	Powell	Westerberg
Clark	Johnson	Redick	Whittum
Conley	Keller, J.	Reynolds	Woodring
Cortese	Krill	Roberts	Woodside
Croop			

NOT VOTING—38

Allison	Fleming	Kline	Percey
Benedict	Gray	Lane	Prendergast
Clinger	Griffith	Leonard	Quiles
Corey	Hatter	Michael	Rappaport
Cosetti	Heyburn	Miller, R.	Rea
Donaldson	Himes	Musselman	Richter
Donolow	Hocker	Pasquerilla	Scott
Dumbauld	Keller, M.	Pechan	Shrager
Fagan	Kelly	Pelletier	Wilmarth
Fineman	King		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

CAMARDELLA AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. We will now take up the Camardella amendment and I will ask the clerk to read the amendment. I am going to ask the pages to distribute it, and while it is being distributed the Chair just wants to say, let us cooperate and see if we cannot move along a little faster. When we started this morning we had 15 amendments to this section; we worked all day and we still have 15 amendments left. I just want you to know that progress is slow.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE CAMARDELLA offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 2, line 30; page 3, line 1, by striking out "other than the" in line 30, page 2 and "City of Philadelphia" line 1, page 3

Amend Sec. 1 (Sec. 7), page 3, lines 21 and 22, by striking out "in lieu of a community court," and inserting: unless a community court is adopted,

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Camardella for a statement in connection with his amendment.

DELEGATE CAMARDELLA. Thank you, Mr. President. Let me congratulate you on your patience and on the fine job you are doing. Give me some help on this.

Mr. President, I rise in disgust. When I sit here, coming from the City of Brotherly Love and having people from other parts of this State tell us Philadelphians what is good for us, that the magistrate system is no good for Philadelphia, I wonder who are they to judge. I am not arguing here that the magistrate system in Philadelphia is all good or all bad. My point is this: I think the people of Philadelphia should have the right to say whether they want the magistrate system or not. I believe it should go on the ballot and let them decide for themselves. Let no delegate here from other parts of the State say what is good for Philadelphia. I think, once we take this power away from the people, we are going down the road to the ruin of this State. I came here with an open mind. I was sent here by the people I represent to let my conscience be my guide.

I could not in all sincerity let this proposal go by that the committee has given without challenge to their method or ideas. I am not for the magistrates, nor am I against them, but I do think the people of Philadelphia should have the right, and the sole right, to determine and decide whether they should have magistrates or community courts, or whatever method they want to have.

I rise here hoping that the Convention, the delegates here, will support my amendment and give the people of Philadelphia the right to decide for themselves what is good for Philadelphia.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I might say on behalf of the committee that this was one of the cases where there was what I would consider an overwhelming vote in the committee for the provision as it came out and as it appears in our Proposal No. 7. We had extensive hearings; we had extensive discussions and we had a vote. It was quite clear from the vote, and overwhelmingly so, that this was the desire of the committee and I think that it is important that the Convention know that.

Thank you, sir.

HUGGINS AMENDMENT TO CAMARDELLA AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair now recognizes Delegate Huggins.

DELEGATE HUGGINS. Mr. President, I have an amendment here similar to Delegate Camardella's and I would move to amend his amendment. It would amend the amendment because mine is a broader area than that with which Delegate Camardella dealt.

PRESIDENT BRODERICK. The Chair would ask the Delegate whether that amendment is prepared.

DELEGATE HUGGINS. Yes, sir, I have a copy. I do not know if it is printed by those in the backroom or not.

PRESIDENT BRODERICK. Is it prepared as an amendment to the amendment?

DELEGATE HUGGINS. Yes sir, I have copies here. Originally this was prepared as an amendment to the proposal, but because it deals with the same subject as Delegate Camardella's amendment, I would like to submit it as an amendment to his amendment.

PRESIDENT BRODERICK. If the Delegate will come down, we will see if we can get the amendment to the amendment prepared.

The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, I believe he is out of order.

PRESIDENT BRODERICK. No, Delegate Camardella, he has a right to offer an amendment to your amendment, and what we do under the procedure is, we will vote on the amendment to the amendment first and then we will come back to your amendment.

DELEGATE CAMARDELLA. Mr. President, I think I should have the right to see his amendment before he frames it to my proposal.

PRESIDENT BRODERICK. Delegate Camardella, we will recognize your amendment, but under the rules anybody has a right to offer an amendment to an amendment and we cannot deny them that right.

What we will do is vote on the amendment to the amendment and then we will vote on your amendment whether or not it is amended.

The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. I do not know why there is this confusion every time I get to this mike.

PRESIDENT BRODERICK. I think someone should advise Delegate Huggins that the amendment has been tabled.

CAMARDELLA AMENDMENT TABLED

DELEGATE CAMARDELLA. Mr. President, may I move to table this amendment until a later time?

PRESIDENT BRODERICK. You may make a motion to table your amendment, and if that motion carries, it can be tabled.

DELEGATE CAMARDELLA. I so move, Mr. President.

DELEGATE RAPPAPORT. I second the motion, Mr. President.

On the question,
Will the Convention agree to the motion?
It was agreed to.

TATE AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment is offered by Delegate Tate.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 3, line 7, by striking out "primary" and inserting: municipal or general

On the question,
Will the Convention agree to the amendment?

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, I ask a point of inquiry from the Chair.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE STRICKLER. Can Delegate Huggins' amendment to the amendment be now considered until the original amendment comes back from the table?

PRESIDENT BRODERICK. My understanding is that the amendment to the amendment cannot be considered until the original amendment comes back, but of course Delegate Huggins has the right to introduce his as a separate amendment.

DELEGATE STRICKLER. Thank you, Mr. President.

PRESIDENT BRODERICK. I have been advised that Delegate Huggins wants to introduce his amendment.

Will Delegates Camardella and Huggins please confer on this matter? We want to straighten out who goes first.

The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I wish to congratulate the Judiciary Committee on being almost as successful so far in resisting change as the Local Government Committee was yesterday.

However, hope springs eternal and I will briefly state the impact of this amendment with the hope that it may meet with the approval of some of the members, if not all of the members, of the Judiciary Committee.

Quite simply, in Section 7, particularly in Section 7(b), it transfers from the primary election to the municipal or general election the time when the question on the minor judiciary may be brought before the electorate of a particular judicial district.

As I stated earlier today, this can be an important political question. It is no political secret that—and it is generally accepted, I believe—political organizations, wherever they may exist, in the United States, generally, find it a great deal easier to pass or defeat a proposal at a primary election than in a municipal or general election.

In my opinion, if the voters are really to be given a choice here, as I understand this to be a sincere effort to do, the choice should be granted to the people at a municipal or general election in the fall rather than in the spring primaries.

Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, this was considered very carefully by the committee and we decided, for exactly the reason that Delegate Tate gave, namely, that it would be better in the primary instead of in the municipal or general election. It would get more attention.

I would like Delegate Barron to speak on that because he is quite familiar with the problem.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. In all deference to Delegate Huggins' political experience which is probably much greater than mine in that I know he has to deal with the board of sessions—I beg your pardon, was it Delegate Tate who raised the query?

The question is just this: It was the experience of most of us that the question of whether or not we should have this Constitutional Convention was very clearly brought out in the primary at which the voters selected or elected to have a Constitutional Convention such as this.

I know that in my own district, I must report, it very nearly failed. But in my own county, the bar association and many of us with our minds uncluttered about primary problems because we were not running or whatever—but we are very active when it comes to the general election—had he the time to give it, to put on radio shows, which we did, to go around and talk about it, which we did, and as a result, we felt that there was less pressure, less confusion or conflict of other important matters at a primary than anywhere else.

This, I suggest to you, was a matter of the committee's judgment. I do promise you it was very carefully thought out, and it reflects the committee's judgment. Of course, it is for you, the delegates to decide.

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, just a word. I rise to speak in favor of this amendment, being of the opinion that the voice of the people as expressed in a municipal or general election would be more representative of what the vast majority of people believe on a particular question than would be that opinion as expressed in a primary election.

For this reason, I rise in support of the amendment and ask the Convention to support it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. I would like to call to the attention of the delegates here that last year in the primary election of 1967, there was in excess of five million voters in the State of Pennsylvania, but yet there were only two million people who voted on the issue of this Convention. It carried by about 450,000. To me this did not represent a big vote. I say that the general election is when the voters get out and vote and this is the time when this should be placed on the ballot.

PRESIDENT BRODERICK. Let me ask the fellow delegates, are we ready for the question?

The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I would like to just make one observation. I am informed by my historian of Pennsylvania, the delegate from Chester County, that when the issue of the Constitutional Convention was defeated several years ago, I am informed it was at a general election, while this year when it was approved by the voters, it was at a primary election.

I would suggest that at many primary elections, perhaps those not held in the city of Philadelphia, there are seldom any real disputes and that the voters can concentrate on these issues, while at general elections, there is always the fighting between the two parties. I would, therefore, suggest that the voters could give more attention to issues like this at primaries than at general elections.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leach.

DELEGATE LEACH. Just for the record, Mr. President, in May of 1967, there were 5,228,000 people registered to vote in the Commonwealth. The total vote was 1.8 million. The question was decided by a majority of 431,000 or 8.4 per cent of the total registered people in the Commonwealth.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, I do not think you need this reminder but I would be remiss in my political history if I did not mention to you that in primaries we do not see the organizational efforts and fights that we encounter at general elections. I am sure that Delegate Casey would agree with me on this. This is a freer election so far as the individual voter is concerned and would be avoiding the party politics, if it is possible to do that, I think.

Therefore, I would be opposed to the amendment as offered.

PRESIDENT BRODERICK. Are we ready for the question or does Delegate Camardella wish to be heard on this?

CAMARDELLA AMENDMENT WITHDRAWN

DELEGATE CAMARDELLA. I would ask for a point of order on this one. After going to a two-man subcommittee meeting with Delegate Huggins, I now withdraw my amendment and let him put his in.

PRESIDENT BRODERICK. Very good, we will consider the Camardella amendment having been withdrawn, and as soon as we finish here we will take up the Huggins amendment.

Are we ready for the question on the Tate amendment?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Tate?

The roll was recorded as follows:

YEAS—27

Bagenstose	Clinger	Mattioni	Solomon
Baldus	Cosetti	McGeary	Swope
Banes	Dailey	McGlynn	Tate
Brennan	Fineman	Michael	Thomson
Buck	Hook	Michener	Thornburgh
Caputo	Hostetler	Orbin	Warman
Casey	Kelly	Popil	

NAYS—102

Aberman	Fagan	Levin	Sahli
Amsterdam	Fawcett	Manderino	Scales
Aurentz	Fay	Mangery	Scarlett
Baldrige	Feather	Markley	Scranton
Baldwin	Filson	Meyer	Sebastian
Barron	Fohl	Miller, D.	Shapiro
Barry	Forster	Moorhead	Sharp
Bashoff	Fortney	More	Shettig
Benfield	Gabreski	Morton	Shively
Bloom	Gehrlein	Murray	Shoemaker
Braham	Gerber	Nelson	Shrager
Broderick	Goldman	O'Donnell	Silverman
Brown	Goldstein	Orban	Sprogell
Bunting	Gouger	Otto	Stout
Burkholder	Hannum	Pasquerilla	Strickler
Butera	Harding	Pott	Stroup
Cain	Horne	Powell	Tomascik
Caron	Irvis	Prendergast	Tully
Clark	Jirolanio	Rappaport	Van Sant
Conley	Johnson	Redick	Waldron
Cortese	Kauffman	Reynolds	Welsh
Croop	Keller, J.	Richter	Westerberg
Curran	Krill	Roberts	Whittum
Desmond	Leach	Rovner	Wilcox
Devlin	Lee, L.	Ruth	Woodside
Erwin	Leinbach		

NOT VOTING—34

Allison	Gray	King	Pechan
Benedict	Griffith	Kline	Pelletier
Camardella	Hatter	Lane	Percey
Corey	Henderson	Laputka	Quiles
Cunningham	Heyburn	Lee, K.	Rea
Donaldson	Himes	Leonard	Scott
Donolow	Hocker	Miller, R.	Wilmarth
Dumbauld	Huggins	Musselman	Woodring
Fleming	Keller, M.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

JIROLANIO AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Dele-

gate Jirolanio and asks the clerk to read the Jirolanio, Ruth, Shapiro et al amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE JIROLANIO offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, line 16, by inserting after "shall": be a Statewide court and shall

Amend Sec. 1 (Sec. 4), page 2, line 16, by striking out "Statewide"

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I want to say that as far as I am concerned, I am in accord with this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I hate to be a carping critic, but I notice that the amendment as printed has nothing about the court being established by the date fixed in the original amendment.

PRESIDENT BRODERICK. I would just like to say that I would like you to take that up with the committee that drew that amendment.

The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the schedule which we have and which will have to be voted upon by this entire assembly provides that this court is to be started by January 1, 1969, I am told. Is that correct? It has an effective date for the article which also includes this; therefore, there would have to be put into the schedule, I suggest, a change of date along the lines indicated.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Jirolanio?

The roll was recorded as follows:

YEAS—123

Aberman	Curran	Krill	Rovner
Amsterdam	Dalley	Laputka	Ruth
Aurentz	Desmond	Leach	Sahli
Bagenstose	Devlin	Lee, L.	Scales
Baldrige	Erwin	Leinbach	Scarlett
Baldwin	Fagan	Levin	Scranton
Banes	Fawcett	Manderino	Sebastian
Barron	Fay	Mangery	Sharp
Barry	Feather	Markley	Shettig
Bashoff	Filson	Mattioni	Shively
Benfield	Fineman	McGeary	Shrager
Bloom	Fohl	Meyer	Silverman
Braham	Forster	Michael	Solomon
Brennan	Fortney	Michener	Sprogell
Broderick	Gabreski	Miller, D.	Stout
Brown	Gehrlein	More	Stroup
Buck	Gerber	Morton	Swope
Bunting	Goldman	Murray	Tate
Burkholder	Goldstein	Nelson	Thomson
Butera	Gouger	Orban	Thornburgh
Cain	Hannum	Orbin	Tomasetk
Camardella	Harding	Otto	Tully
Caputo	Hook	Pasquerilla	Van Sant
Caron	Horne	Pott	Waldron
Casey	Hostetler	Powell	Warman
Clark	Irvis	Prendergast	Welsh
Clinger	Jirolanio	Rea	Westerberg
Conley	Johnson	Redick	Whittum
Cortese	Kauffman	Reynolds	Wilcox
Croop	Keller, J.	Richter	Woodside
Cunningham	Kelly	Roberts	

NAYS—3

Cosetti	Moorhead	O'Donnell

NOT VOTING—37

Allison	Hatter	Lane	Popil
Baldus	Henderson	Lee, K.	Quiles
Benedict	Heyburn	Leonard	Rappaport
Corey	Himes	McGlynn	Scott
Donaldson	Hocker	Miller, R.	Shapiro
Donolow	Huggins	Musselman	Shoemaker
Dumbauld	Keller, M.	Peehan	Strickler
Fleming	King	Pelletier	Wilmarth
Gray	Kline	Percey	Woodring
Griffith			

The majority having voted in favor of the amendment, the question was determined in the affirmative, and the amendment was agreed to.

BANES AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment is one being offered by Delegates Banes and Thornburgh. I will ask the clerk to read the amendment and the pages to distribute it. Perhaps the clerk can read the first and last line and the delegates can read through it.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BANES offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 1), page 1, lines 10 and 11, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 8), page 3, line 25, by striking out "Justices of the Peace" and inserting: Magistrates

Amend Sec. 1 (Sec. 8), page 3, line 28, by striking out "justice of the peace" and inserting: magistrate

Amend Sec. 1 (Sec. 8), page 4, line 3, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 10), page 4, lines 14 and 15, by striking out "Justices of the Peace" and inserting: Magistrates

Amend Sec. 1 (Sec. 10), page 4, lines 15 and 16, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 10), page 4, line 22, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 10), page 4, line 25, by striking out "Justices of the peace" and inserting: Magistrates

Amend Sec. 1 (Sec. 11), page 5, line 1, by striking out "Justices of the Peace" and inserting: Magistrates

Amend Sec. 1 (Sec. 11), page 6, line 25, by striking out "Justices of the peace" and inserting: Magistrates

Amend Sec. 1 (Sec. 11), page 6, lines 27 and 28, by striking out "justice of the peace" and inserting: magistrate

Amend Sec. 1 (Sec. 13), page 8, lines 11 and 12, by striking out "Justices of the Peace" and inserting: Magistrates

Amend Sec. 1 (Sec. 13), page 9, lines 23 and 24, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 14), page 9, line 26, by striking out "Justices of the Peace" and inserting: Magistrates

Amend Sec. 1 (Sec. 14), page 9, lines 26 and 27, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 14), page 10, line 1, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 14), page 10, line 3, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 14), page 10, line 5, by striking out "justice of the peace" and inserting: magistrate

Amend Sec. 1 (Sec. 15), page 10, line 23, by striking out "justice of the peace" and inserting: magistrate

Amend Sec. 1 (Sec. 16), page 11, line 3, by striking out "Justices of the Peace" and inserting: Magistrates

Amend Sec. 1 (Sec. 16), page 13, line 14, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 16), page 13, line 16, by striking out "justice of the peace" and inserting: magistrate

Amend Sec. 1 (Sec. 16), page 13, lines 27 and 28, by striking out "justice of the peace" and inserting: magistrate

Amend Sec. 1 (Sec. 17), page 14, line 3, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 17), page 14, line 14, by striking out "justices of the peace" and inserting: magistrates

Amend Sec. 1 (Sec. 17), page 14, line 22, by striking out "justice of the peace" and inserting: magistrate

Amend Schedule (Sec. 6), page 16, lines 22 and 23, by striking out "justices of the peace" and inserting: magistrates

Amend Schedule, page 17, line 1, by striking out "Justices of the Peace" and inserting: Magistrates

Amend Schedule (Sec. 7), page 17, lines 3 and 4, by striking out "justices of the peace" and inserting: magistrates

Amend Schedule, page 18, line 3, by inserting after "Peace": (hereafter to be known as Magistrates)

Amend Schedule (Sec. 11), page 18, line 7, by removing the colon after "magistrates" and inserting: shall hereafter be known as magistrates;

Amend Schedule (Sec. 11), page 18, line 15, by striking out "justices of the peace" and inserting: magistrates

Amend Schedule (Sec. 12), page 18, lines 24 and 25, by striking out "justices of the peace" and inserting: magistrates

Amend Schedule (Sec. 12), page 19, lines 3 and 4, by striking out "justices of the peace" and inserting: magistrates

Amend Schedule (Sec. 12), page 19, line 5, by striking out "justices of the peace" and inserting: magistrates

Amend Schedule (Sec. 12), page 20, line 15, by striking out "justices of the peace" and inserting: magistrates

Amend Schedule (Sec. 12), page 20, lines 21 and 22, by striking out "justices of the peace" and inserting: magistrates

Amend Schedule (Sec. 19), page 29, line 24, by striking out "justices of the peace" and inserting: magistrates

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, the only purpose of this amendment is to eliminate the use of what really is an archaic name or terminology, justice of the peace, and substituting for the four words, the name and appellation calling them magistrates rather than justices of the peace. I do know that in a couple of the States they have changed this name from justice of the peace, for example, to peace justice.

In keeping with the article which was written pertaining to the justices of the peace, we now will call them magisterial districts. I believe that it would be reasonable to assume and follow that we should call them magistrates rather than justices of the peace. I think it is a matter of housekeeping and eliminating what will be archaic terminology in changing the name. It would not affect the jurisdiction in any way. I would like to have the closing speech, Mr. President.

PRESIDENT BRODERICK. Thank you, Delegate Banes.

The Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. I would like to say "amen." I think our people will have enough thrown at them after this Convention is over that if we are going to try to get them to figure out what the difference is between a justice of the peace and a magistrate, it is just going to be too bad for the people. I am opposed to it.

PRESIDENT BRODERICK. On the question recurring,

Will the Convention agree to the amendment offered by Delegate Banes?

The roll was recorded as follows:

YEAS—22

Aberman	Cosetti	Mattioni	Tate
Baldus	Cunningham	McGlynn	Thomson
Banes	Fagan	Michener	Thornburgh
Barry	Fineman	Rappaport	Tomascik
Braham	Laputka	Shrager	Welsh
Casey	Leinbach		

NAYS—108

Amsterdam	Devlin	Krill	Roberts
Aurentz	Erwin	Leach	Rovner
Bagenstose	Fawcett	Lee, L.	Ruth
Baldrige	Fay	Levin	Sahli
Baldwin	Feather	Manderino	Scales
Barron	Filson	Mangery	Scarlett
Bashoff	Fohl	Markley	Scranton
Benfield	Forster	McGeary	Sebastian
Bloom	Fortney	Meyer	Shapiro
Brennan	Gabreski	Michael	Sharp
Broderick	Gehrlein	Miller, D.	Shettig
Brown	Gerber	Moorhead	Shively
Buck	Goldman	More	Shoemaker
Bunting	Goldstein	Morton	Silverman
Burkholder	Gouger	Murray	Solomon
Butera	Hannum	Nelson	Sprogell
Cain	Harding	O'Donnell	Stout
Camardella	Hook	Orban	Strickler
Caputo	Horne	Orbin	Stroup
Caron	Hostetler	Otto	Swope
Clark	Huggins	Pasquerilla	Tully
Clinger	Irvis	Popil	Van Sant
Cortese	Jirolanio	Pott	Waldron
Croop	Johnson	Powell	Warman
Curran	Kauffman	Prendergast	Westerberg
Dailey	Keller, J.	Rea	Wilcox
Desmond	Kelly	Reynolds	Woodside

NOT VOTING—33

Allison	Griffith	Kline	Percey
Benedict	Hatter	Lane	Quiles
Conley	Henderson	Lee, K.	Redlick
Corey	Heyburn	Leonard	Richter
Donaldson	Hocker	Miller, R.	Scott
Donolow	Himes	Musselman	Whittum
Dumbauld	Keller, M.	Pechan	Wilmarth
Fleming	King	Pelletier	Woodring
Gray			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

REDICK AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment will be the Redick amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE REDICK offered the following amendment, which was read by the clerk:

Amend the lines added between lines 20 and 21, Sec. 1 (Sec. 7), page 3, as amended, by striking out "(c) When" and inserting: (c) In a judicial district where a community court has been established by this Article or

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. We should recognize Gideon v. Wainright and have somebody speak for Mr. Redick.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. I am merely speaking for Delegates et al whom you recognized a little while back.

This amendment almost in this same form passed on a rather high vote. So, I would urge you all, in Mr. Redick's name, to vote for it.

PRESIDENT BRODERICK. Could anybody please explain the amendment, because it did arise after a question was raised by Delegate Braham.

DELEGATE LAPUTKA. Mr. President, I hestitate to represent Delegate Redick because my batting average is not very good, particularly on the community courts. However, I think it was Delegate Redick's intention when he put his amendment in that in those districts where the community courts were in existence, whether it was by constitutional amendment or otherwise, the people would have a right by referendum vote to change it back to the JP system. He intended that. I think he said that on the floor. The amendment, as it came out, came out with those districts in which the referendum had applied and would be reversed. This amendment, as I look at it rapidly, says that in any district where there is a community court a referendum vote after five years could return it to a JP system.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. I believe this was the sense of the Judiciary Committee and it was omitted by either a scrivener's error or just an oversight on somebody's part.

PRESIDENT BRODERICK. Let us hear from Chairman Amsterdam.

DELEGATE AMSTERDAM. No, I am sorry to say that is not my understanding. My understanding was that where there was a vote which permitted a court of this type, then there might again be a vote to return to the justices of the peace. This goes further than that. This indicates that in Philadelphia and Allegheny County, where these courts are established, at least in Allegheny County where this court is established, a vote may be taken to return to the JPs. This was not ruled upon by the committee, and, therefore, is open house as far as I know.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, is the amendment intended to be worded as indicated at the top of the page or is it intended to be worded as indicated where the amendment and the prior amendment are repeated in full? I direct your attention to the word "when." It is stricken above and it is inserted below. The amendment should properly read, I think, or should properly have added to it after the word "or" the word "when" added back in again.

PRESIDENT BRODERICK. I am told by counsel that you are absolutely correct that the "when" should be in.

Now Delegate Redick is here. Do you want to make a statement? This is your amendment we are now considering and you have had some very good representatives speak on your behalf.

DELEGATE REDICK. Thank you, Mr. President. I would like to, at this time, move the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, I find this amendment a radical extension of the one we passed and I think the delegates should consider it very carefully. The other one was an amendment permitting people who had voted something in to vote it out. This permits people who have a community court already established, not voted in, to vote it out. It seems to me there is a vast difference between those two situations.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I must beg to differ with Delegate Michener. It appears that those of us who live in the more urban areas are second-class citizens. Not only do we not have the right to vote as to whether we want a community court or not, but we do not even have the right to vote if we do not want it after it has been forced on us. And I do not speak to the merits of whether or not we should have a community court; all I ask is that we have the right to govern our own affairs the same as everybody else in the Commonwealth. I do not think that I am less qualified to vote on whether we should have a community court in Philadelphia than some of my brethren are who happen to live in other counties. My father lives in Montgomery County and I think I am just as qualified to vote as he is—we are both members of the bar from the same county—as to whether we should have a community court where I live and where he lives. I will, therefore, ask the support of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. I would just like to ask a question of somebody and I hope they can answer it. This is the time of day when time and time again a great flotilla of amendments comes marching at us as they have every afternoon. We always make some mistake we then have to correct the next day. I would like to know, does this amendment apply to Philadelphia or does it not?

PRESIDENT BRODERICK. I would suggest that you first ask counsel.

The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. In the Judiciary Article

as it reads today, there is no community court in Philadelphia. Unless this body sees fit to change the two courts, to wit, municipal and traffic courts into a community court, this obviously cannot apply to it.

DELEGATE SCRANTON. This is my understanding. Now I would like to know from the sponsor whether he intended it to apply to Philadelphia.

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. Mr. President, I would have to agree and say I did not, due to the fact they are not a part of the judicial district.

DELEGATE SCRANTON. Very well.

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth.

DELEGATE RUTH. Mr. President, I would like to point out very seriously to this Convention to study this for this reason: As we are already aware—and this is not to be derogatory to Delegate Redick—we have passed an amendment whereby Allegheny County now can have constitutionally a community court. It is mandated, right. What Delegate Redick is proposing here is that in Allegheny County those people could vote against having a community court and thereby amend the Constitution which mandates it and give it an alternative method of amending the Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I am very deeply disturbed by some of the things which occurred here this afternoon concerning the community courts and the JP system. I have personally and privately stated my position but I have not stated it here at this microphone.

As far as this amendment is concerned, I think this is really a fair play amendment. What we have done this afternoon in this delegate body is to say, in effect, we know what is best for Allegheny County. We will make the decisions for Allegheny County's voters and Allegheny County's citizens because we know what is best for them. In 65 other counties, we will let those people decide what is best for themselves. We trust them to make their decisions but we do not trust the people of Allegheny to make their own.

I object to this and I object very strenuously to it. I am not going to say how I will vote personally or privately because I consider that my personal and private business if it comes to a ballot, but I submit that there is not one single person here in this delegate body, and I include myself, who can say what is best for Allegheny County or who can indeed say what the people of Allegheny County want in this matter. I can tell you, if I chose, what I would want; I can tell you what some of the other delegates who have been highly vocal want; I can tell you what some of the spokesmen for the League of Women Voters want; I can tell you what some of the editorial writers want; but I cannot honestly stand here and say what the people of Allegheny County want when it comes to the JP system.

I am not pleading for the JP system; I am not speaking to the merits of the system at this point. I am speaking in favor of the amendment which would say, if we are in error here today, if we have imposed today a system on the people of Allegheny which they themselves do not want, we are going to give them an opportunity to say so. That is all that I think we could ask you to do right now. I think this is the fair thing for this delegate body to do.

If those who advocate the community court are so certain that they are right and they draw their certainty from their belief that they voice the convictions of the majority of the people of Allegheny County, then they do not need to fear this amendment. If, on the other hand, they are in error and they do not voice the majority convictions of the people of Allegheny County, then if they believe in the democratic process, they will support this amendment and let the people speak for themselves.

I urge your support of this amendment for that reason.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, in all fairness to Delegate Redick, I think we have been somewhat unfair to him. He got trapped into this position because his original amendment was prepared and drafted prior to the time that the mandate of community court was applied to Allegheny County and it was presented to him and it was on the floor before he realized this. We, in effect, voted with him and I think we owe him the same vote that we gave him before. I also approve of what Delegate Irvis said and I move the question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I would like to make this one statement.

Without knowing anything about this matter before those amendments came around, I sensed from the fact that this long amendment was headed by the name of Delegate Redick, it was a part of an arrangement for the prior amendment and it seemed to me unfair to have the thing go through without it being called to his attention. That is why I did it.

As to what Delegate Irvis said concerning the right of the people of the Commonwealth whom we represent at this time to submit to regulation by the Commonwealth, I might say that all greatness carries with it its penalty. From the beginning of our country people have recognized that where there are enormous congregations of people, there is a certain danger attendant upon them. You have to take the bitter with the sweet.

PRESIDENT BRODERICK. The Chair recognizes Delegate More.

DELEGATE MORE. Mr. President, I am a little bit confused by this amendment. It seems to me that it has the effect of eliminating subsection (c) where it provides for municipal and traffic courts for the city of Philadelphia.

PRESIDENT BRODERICK. Delegate More, I believe counsel is here to explain whether you are right or wrong.

The Chair recognizes Delegate Rea.

DELEGATE REA. Mr. President, as one of the sponsors of the amendment for community courts in Allegheny County, I must state that we have no fear whatsoever that the people want them and that we have no objection whatsoever to this amendment. We would certainly urge its passage.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. May I ask a question, please? I just want to know how to vote. I do not know whether it is intended that this permit an election in five years or whether it would be an immediate election. I just do not understand the wording. I do not understand what is intended.

PRESIDENT BRODERICK. I can only tell you that there is a counsel sitting right there. Counsel would you explain it? The Chair does not know. The Chair did not prepare the amendment.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Redick?

The roll was recorded as follows:

YEAS—116

Aberman	Fagan	Lee, L.	Roberts
Aurentz	Fawcett	Leinbach	Rovner
Bagenstose	Fay	Levin	Sahli
Baldrige	Feather	Manderino	Scales
Baldus	Filson	Mangery	Scarlett
Baldwin	Fineman	Markley	Scranton
Banes	Fohl	Mattioni	Sebastian
Barron	Forster	McGeary	Shapiro
Bashoff	Fortney	McGlynn	Sharp
Benfield	Gabreski	Meyer	Shettig
Braham	Gehrlein	Michael	Shively
Brennan	Gerber	Michener	Shoemaker
Broderick	Goldman	Miller, D.	Shrager
Bunting	Goldstein	Moorhead	Silverman
Burkholder	Gouger	More	Solomon
Butera	Hannum	Morton	Sprogell
Cain	Harding	Murray	Stout
Camardella	Henderson	Nelson	Strickler
Casey	Hook	Orbin	Stroup
Clinger	Horne	Otto	Swope
Conley	Hostetler	Pasquerilla	Tate
Cortese	Huggins	Popil	Tomascik
Cosetti	Irvis	Pott	Tully
Croop	Jirolanio	Powell	Van Sant
Curran	Johnson	Prendergast	Waldron
Datley	Kauffman	Rappaport	Warman
Desmond	Keller, J.	Rea	Westerberg
Devlin	Laputka	Reynolds	Whittum
Erwin	Leach	Richter	Wilcox

NAYS—8

Amsterdam	Bloom	Kelly	Thornburgh
Barry	Caron	Krill	Welsh

NOT VOTING—39

Allison	Dumbauld	Kline	Percey
Benedict	Fleming	Lane	Quiles
Brown	Gray	Lee, K.	Redick
Buck	Griffith	Leonard	Ruth
Caputo	Hatter	Miller, R.	Scott
Clark	Heyburn	Musselman	Thomson
Corey	Himes	O'Donnell	Wilmarth
Cunningham	Hocker	Orban	Woodring
Donaldson	Keller, M.	Pechan	Woodside
Donolow	King	Pelletier	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. I rise to a question of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE ORBAN. I failed to press my button. I would like the record to show I voted "aye."

PRESIDENT BRODERICK. The words of the gentleman will be spread upon the record.

HUGGINS AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment will be the Huggins amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE HUGGINS offered the following amendment, which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 2, lines 29 and 30, by striking out "; Philadelphia Municipal Court and Traffic Court"

Amend Sec. 1 (Sec. 7), page 2, line 30, as amended by striking out "ALLEGHENY COUNTY AND IN"

Amend Sec. 1 (Sec. 7), page 2, line 30, by striking out "other than the"

Amend Sec. 1 (Sec. 7), page 3, line 1, by striking out "City of Philadelphia"

Amend Sec. 1 (Sec. 7), page 3, lines 21 to 24, by striking out all of said lines

Amend Sec. 1 (Sec. 8), page 3, line 26, as amended by striking out ", other than IN ALLEGHENY COUNTY AND the City of Philadelphia,"

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins in connection with his amendment.

DELEGATE HUGGINS. Thank you, Mr. President.

We just finished some debate, and it really makes me think back to the one statement which is rather famous in our history, "of the people, for the people and by the people," which is certainly a time-worn, cliche-ridden but a very powerful statement when we think about what we have been doing here this afternoon.

I could never really understand why any state constitution would burden itself with trying to mandate the law, the legalities and technicalities of law for any city of people, be it Philadelphia or Allegheny County. I could never really understand how any body selected from so diverse areas of Pennsylvania as we could really mandate for an urban area on one end of the State and on the other how they could go about their business of having law for the people. I could never really understand why we were doing all this with all of the great pomp and circumstance that has so marked some of the worst moments in history when a certain group of people would sit in high places making mandatory judgments with no concern for the people they were making those judgments for.

I believe what Mr. Rea said in his closing statement before this last vote about this amendment, that he had no fear for the election by the people for the community court. I have no fear that if the people want this kind of court, they will vote for this kind of court on a free referendum basis and not by a mandatory statement by a constitutional convention.

I do not think it is ever anybody's privilege to play legislator the way we are doing. I do not think it is even

our business to try to play God with law. I do not think it is our business—and I am certainly not a lawyer, and you know that—to try to featherbed one area in the name of justice.

The matter before us is this: Are we going to treat the city of Philadelphia and the county of Allegheny like prodigal children who have to be slapped on the hand by this Convention and told, this is the way you are going to do it, or, are we going to let them as a mandate of the people do what the people want?

I think the time has come, Mr. President, for us to quit trying to play some kind of a role here that so far has not been becoming to this Convention nor to anything that we talked about in the early days.

PRESIDENT BRODERICK. Would Delegate Huggins yield, please?

I am advised by the Parliamentarian that a part of your amendment is directly aimed at changing the language that we have already adopted by the Rea amendment. In connection with that part of the amendment, we are going to have to have a motion to reconsider.

DELEGATE HUGGINS. Mr. President, this is a different amendment.

QUESTION OF PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. A question of parliamentary inquiry, Mr. President. When the amendment submitted by Delegate Rea was adopted, did it not then become part and parcel to Proposal No. 7?

PRESIDENT BRODERICK. That is right.

DELEGATE STROUP. And is it not, therefore, quite in order for Delegate Huggins to submit his amendment after that amendment has been adopted to Proposal No. 7 as amended?

PRESIDENT BRODERICK. I am advised by the Parliamentarian, not if it strikes out something that we have already agreed to.

DELEGATE STROUP. Mr. President, I simply cannot agree with that parliamentary ruling. You have before you now Proposal No. 7 with amendments that have been adopted by this delegation. It, therefore, becomes a part, that amendment by Delegate Rea becomes a part, of Proposal No. 7. Delegate Huggins has now amended Proposal No. 7 as amended and, therefore, it certainly should be in order.

MOTION TO ADJOURN

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldrige.

DELEGATE BALDRIGE. Mr. President, in view of the fact that all of the time, in my opinion, that we have worked after 7 o'clock we usually came back and wasted more time undoing it, I move we adjourn until 9 o'clock tomorrow morning.

PRESIDENT BRODERICK. We are going to leave that up to the body.

There has been a motion that we adjourn until 9 a.m. tomorrow morning. The motion is seconded by Delegate Michael.

On the motion,

Will the Convention agree to the motion?

It was not agreed to.

PRESIDENT BRODERICK. Would we be at ease for just a minute and would Delegate Huggins come up so we can discuss this with the Parliamentarian? I would also appreciate it if Delegate Stroup would come up to the desk because I would like him to discuss it with the Parliamentarian.

(A conference was held at the desk.)

PRESIDENT BRODERICK. The Chair wishes the Convention to return to order so as to expedite its conclusion.

MOTION TO ADJOURN

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. At this time I would like to make a motion to adjourn. I do not think it is fair; I do not think it is right. I am tired; I am not a youngster anymore and it is not fair to wear us old fellows down. I was sent here by my people to be here as a delegate. I have hardly missed five minutes of this whole Convention and I do not think it is right to endanger the health of people our age. I do not think it is right to carry on a session for this long. Mentally and physically I am tired. I do not know how the rest of the delegates are, but I do not think we can think squarely and do things squarely at this late hour.

I move to adjourn.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. I am aware that a motion to adjourn is in order at any time, but I wonder whether or not under the rules of this delegate body, a motion to adjourn may succeed a motion to adjourn?

PRESIDENT BRODERICK. I am advised by the Parliamentarian that there must be intervening business.

DELEGATE IRVIS. Thank you, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I was informed informally that in order for us to consider the Huggins' amendment, there must be a motion to reconsider. Am I correct in that, sir?

PRESIDENT BRODERICK. The Chair has ruled in connection with a portion of the Huggins amendment specifically that portion which states, "amend Section 1, Section 7, page 2, line 20, as amended by striking out Allegheny County and in", and that specifically in regard to that that these were words adopted when we adopted the Rea amendment, and in connection with that there must be a motion to reconsider the vote by which the Rea amendment was adopted earlier this evening.

MOTION TO RECONSIDER VOTE ON REA AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I was among those who voted for the Rea amendment and I move to reconsider it.

PRESIDENT BRODERICK. It has been moved by Delegate Rappaport and seconded by Delegate Aberman that we reconsider the vote by which the Rea amendment was adopted.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope. For what purpose does the gentleman rise?

DELEGATE SWOPE. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SWOPE. If this motion goes through, is the Rea amendment part of the document or is it not?

PRESIDENT BRODERICK. If the Rappaport motion carries, we will then reconsider the vote by which the Rea amendment was adopted. We will be considering the Rea amendment.

DELEGATE SWOPE. You mean we will have another vote then as to whether we adopt the Rea amendment or not?

PRESIDENT BRODERICK. Yes, that is correct.

DELEGATE SWOPE. I think the Chair is entirely correct, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rea.

DELEGATE REA. It is my understanding that a motion to reconsider is debatable. I would just like to say one or two words on this.

PRESIDENT BRODERICK. The gentleman may proceed.

DELEGATE REA. The move here is a move to reconsider something that was discussed at great length two hours ago, and I can see the trend developing that when something goes through we then reconsider it and then we redebate the whole matter. A great deal of thought was given to the vote today. It may be that tomorrow we would want to reconsider it upon greater reflection, but I urge the delegates to not vote to reconsider something that we only did two hours ago, that we have not had time to really know what the effect of this motion to reconsider is. Just give us tonight so we can think about what good we have done. I do not want to stand here for an hour, but you have done a great, wonderful thing for Allegheny County. Please do not undo it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I respectfully disagree with the learned attorney from Allegheny County. The vote on his amendment was extremely close. The decision which was made was extremely important. I believe there is sufficient sentiment on the floor of this delegate body to reconsider its opinion on that vote. I suggest that, if, again, the delegate is so certain that we have done what is right for Allegheny County that he should have no fear of what we are here attempting to do.

I am interested, as I said before, in one thing only. If I were God and could say positively to you what the people of Allegheny County want, I would so speak, but I am not God, nor has God spoken to me recently about Allegheny County. I do not know what the people of Allegheny County want and I am anxious to find out and I am anxious that we give them an opportunity to state what they want.

I am perfectly willing to go along with what they want, but I do not know what they want and I, therefore, urge an affirmative vote on the motion to reconsider.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. I am speaking on this side of the House, because I am not speaking as the chairman or co-chairman of the Judiciary Committee; I am speaking on this motion as a delegate.

It seems to me that what Delegate Irvis has said now twice would mean that everything we do in this body must be left open to a change by the electorate. I cannot believe that is why we were sent to Harrisburg for three months.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, all afternoon I have been trying to point up this problem of mandating a certain type of court on the lower level in certain communities.

I was convinced that the work of the committee was the best thing that could be done because it left the choice to the people. I have never heard in this Convention a more eloquent plea made than that which was just made by Delegate Huggins. I think he put his heart into it, and I think he has convinced many of us that this is the type of work that we should do in this Convention. We are not here to mandate; we are not here to legislate; we are here to write a Constitution which will live for many, many years.

Therefore, we should leave such decisions up to the electorate. I am speaking now on the motion to reconsider and I urge the delegates of this Convention to vote to reconsider.

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. It is an old, old parliamentary trick to move something that is very important late in the day. I think that this delegation deserves an opportunity to think over whether we should reconsider. I would respectfully request that Mr. Rappaport withdraw his motion and reintroduce it tomorrow, and then we can vote on it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. As much as I hate to disappoint my good friend, Mr. Forster, I do not think that we have the luxury of that time. Today is the 15th; we have another 14 days. I think we can stay here another 15 minutes and dispose of this. I should like the privilege of closing if everybody else has spoken, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, I have just two points: One, when I get home on the weekends an awful lot of friends of mine, many of whom are lawyers and many of whom are not, say this to me, what are you doing in Harrisburg? It seems to me that every time I pick up the newspaper I see that you are leaving something for the voters to vote on. I understand that we sent you to Harrisburg, our elected delegates to Harrisburg, to write

a Constitution. It appears to us that you are not writing a Constitution at all. That is one item. Therefore, I do say that I certainly believe that there are some things that have to be mandated in this Constitution.

Two, with regard to the learned delegate from Allegheny County, Mr. Irvis, I take opposition to what he says because he indicates to me by what he says that for the past 10 years that he has been here, every time he has taken a vote, either "yea" or "nay," he has a plebiscite in his legislative district. I disagree. I do not think he has had. Therefore, I take opposition to what he says, that everything we do we have to check back home.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis. For what purpose does the gentleman rise?

DELEGATE IRVIS. I rise to a question of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE IRVIS. Mr. President, I do not mind being quoted, but I do object to being misquoted. Lawyers are known for this, and I will not permit it in the courtroom and I will not permit it here. I did not say nor have I ever said that everything that this delegate body proposes is subject to a plebiscite. I have on occasion been a fool, but I do not think that on this particular occasion I am acting as one.

I say this in answer to Delegate Amsterdam and Delegate Welsh, if you two gentlemen are talking about taking your courage in your hands, and writing a Constitution, then let us stay here tonight and write an article which affects all the people alike. Do not tell me how much courage it takes to write a Constitution which selects Philadelphia and discriminates there and selects Allegheny and discriminates there and then says, the next 65 counties we are afraid to touch.

If we are so courageous that we are going to stand here and say that we were sent to write a Constitution for the people of the Commonwealth of Pennsylvania, then let us stand here and write it. Do not discriminate against one segment of those people. That is the only thing that I am arguing for today and that is the thing I shall continue to argue for. And it will not make any difference to me who is to the contrary.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. All about us at this time beat the waves of public opinion. We came here on a great wave of public opinion. It was the settled conviction, apparently from all that we could learn, that in this Commonwealth there were great excesses and abuses and many of them arising out of the judicial system. In particular, the finger was pointed at the abuses in Philadelphia which the people have been unable to correct and at the abuses in Allegheny County which they were unable to remedy.

We have come here and after, I would say, very careful and painstaking labor we have produced what? We have produced, in the largest section in that schedule, three pages about the magisterial districts. There is more in that Constitution about justices of the peace. Now here we are, we are going home to the people with a little package of magisterial districts and we are telling them the people down there said it was the voice of the people, that everything is all right; they do not want you to do anything. Everything is okay, hunky-dory.

This magisterial district indicates the efficacy of the old proverb that sometimes the mountain labors and brings forth a mouse. In this day when people are wondering about new districts for sewage and for water, new ways of combatting the poisoning of the air and new districts by which people can get in and out of their big cities, we go home with this little package. Here, we brought you home a package of magisterial districts, and all the money was spent for that.

We have been afraid that we would be offending certain magistrates and justices of the peace, but has it ever occurred to you that they are all interested persons. Have we come to the status of France where DeGaulle, no matter what he may have done now, was the one who put a stop to the period when France could not do anything because the civil servants said no?

QUESTION OF PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I rise to a question of parliamentary inquiry.

PRESIDENT BRODERICK. Yes.

DELEGATE JIROLANIO. I do not think that the distinguished delegate is talking on the measure now before the Convention. The motion before us is a motion to reconsider. He is not devoting his conversation to that particular motion; therefore, he is out of order.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. I was following the argument of the distinguished delegate from Bedford County and the young minister from Pittsburgh, but I am glad to close. I think that for us to go back on this great issue and say, here is what we have, distinctly status quo, and less than the status quo, we will be derelict in our duties.

I move the question, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. I do not like to be presumptuous to one of our able delegates, but I feel we must point out, in answer to Delegate Irvis, that the legislature deals constantly with Pittsburgh and Philadelphia differently. The present Constitution deals with Pittsburgh and Philadelphia differently, and there is no reason why our new, proposed Constitution cannot deal with Pittsburgh and Philadelphia differently.

PRESIDENT BRODERICK. Are we ready for the question?

The question is,

Will the Convention reconsider the vote by which the Rea amendment was adopted?

The roll was recorded as follows:

YEAS—70

Aberman	Fawcett	Krill	Sahli
Aurentz	Fay	Levin	Scales
Bagenstose	Filson	Mangery	Scarlett
Baldrige	Fineman	Mattioni	Shapiro

Banes	Fohl	McGlynn	Shively
Barron	Gerber	Miller, D.	Shoemaker
Bashoff	Goldman	Murray	Shrager
Benfield	Hannum	Orban	Silverman
Brown	Harding	Orbin	Solomon
Caputo	Henderson	O'Donnell	Sprogell
Clark	Hook	Otto	Strickler
Conley	Horne	Popil	Stroup
Cosetti	Hostetler	Pott	Swope
Croop	Huggins	Rappaport	Tully
Curran	Irvis	Redick	Van Sant
Dailey	Jirolanio	Richter	Waldron
Desmond	Johnson	Roberts	Warman
Fagan	Kelly		

NAYS—58

Amsterdam	Casey	Leonard	Reynolds
Baldus	Cortese	Manderino	Rovner
Baldwin	Devlin	McGeary	Sebastian
Barry	Erwin	Meyer	Scranton
Bloom	Feather	Michael	Sharp
Braham	Forster	Michener	Stout
Brennan	Gabreski	Moorhead	Tate
Broderick	Gehrlein	More	Thornburgh
Buck	Goldstein	Morton	Welsh
Bunting	Gouger	Nelson	Westerberg
Burkholder	Kauffman	Pasquerilla	Whittum
Butera	Keller, J.	Pelletier	Wilcox
Cain	Leach	Powell	Woodring
Camardella	Lee, L.	Rea	Woodside
Caron	Leinbach		

NOT VOTING—35

Allison	Fortney	Kline	Prendergast
Benedict	Gray	Lane	Quiles
Clinger	Griffith	Laputka	Ruth
Corey	Hatter	Lee, K.	Scott
Cunningham	Heyburn	Markley	Shettig
Donaldson	Himes	Miller, R.	Thomson
Donolow	Hocker	Musselman	Tomascik
Dumbauld	Keller, M.	Pechan	Wilmarth
Fleming	King	Percey	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bloom.

DELEGATE BLOOM. I move we adjourn.

PRESIDENT BRODERICK. It has been moved by Delegate Bloom that we adjourn. Is there a second?

DELEGATE HARDING. I second it, Mr. President.

PRESIDENT BRODERICK. It has been seconded by Delegate Harding that we adjourn.

The motion is to adjourn. All those voting "yea" vote in favor of adjournment. Those voting "nay" vote against adjournment.

It is understood that we will meet Friday morning, February 16, 1968, at 9 a.m., e.s.t.

On the question,
Will the Convention agree to the motion to adjourn?

The roll was recorded as follows:

YEAS—69

Amsterdam	Croop	Kauffman	Pott
Aurentz	Curran	Krill	Powell
Baldrige	Dailey	Leach	Rea
Baldwin	Desmond	Lee, L.	Reynolds
Barry	Devlin	Leonard	Richter
Benfield	Erwin	Levin	Roberts
Bloom	Fawcett	Manderino	Rovner
Braham	Feather	Mangery	Scarlett
Brennan	Fohl	Meyer	Scranton
Broderick	Forster	Michael	Sebastian
Butera	Fortney	Miller, D.	Stout
Cain	Gabreski	Moorhead	Tate
Caron	Goldstein	More	Thornburgh
Casey	Gouger	Morton	Waldron
Clark	Hannum	Pasquerilla	Whittum
Clinger	Harding	Pelletier	Wilcox
Cortese	Horne	Popil	Woodring
Cosetti			

NAYS—61

Aberman	Fineman	McGlynn	Shettig
Bagenstose	Gerber	Michener	Shively
Baldus	Goldman	Murray	Shoemaker
Banes	Henderson	Nelson	Shrager
Barron	Hook	O'Donnell	Silverman
Bashoff	Hostetler	Orban	Solomon
Brown	Huggins	Orbin	Sprogell
Buck	Irvis	Otto	Strickler
Bunting	Jirolanio	Rappaport	Stroup
Burkholder	Johnson	Redick	Swope
Camardella	Keller, J.	Ruth	Tully
Caputo	Kelly	Sahli	Warman
Conley	Leinbach	Scales	Welsh
Fagan	Mattioni	Shapiro	Westerberg
Fay	McGeary	Sharp	Woodside
Filson			

NOT VOTING—33

Allison	Gray	Kline	Percey
Benedict	Griffith	Lane	Prendergast
Corey	Hatter	Laputka	Quiles
Cunningham	Heyburn	Lee, K.	Scott
Donaldson	Himes	Markley	Thomson
Donolow	Hocker	Miller, R.	Tomascik
Dumbauld	Keller, M.	Musselman	Van Sant
Fleming	King	Pechan	Wilmarth
Gehrlein			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

(The Convention was adjourned at 7:38 p.m., e.s.t.)

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 | Friday, February 16, 1968 | Number 45

The Convention was called to order at 9 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND JOHN CRAIG ROAK, Rector of All Swedes Church of Philadelphia, Pennsylvania, offered the following Prayer:

Almighty God, Glorious Judge Eternal, open our eyes to the vision of Thy wisdom, that the littleness of our knowledge may be lost in the greatness of Thy Love. Give us fresh insights for the task that is set before us today. May we build well upon the foundations our forefathers so nobly laid down for us. Make us grateful for the distinguished work in which we have been called to share so that our great Commonwealth will then follow Thy glory throughout these United States of America. We ask it in Thy Holy Name.

In the time of stress, give us patience and may we never fail to trust in Thy guidance, in the time of great achievement fill our hearts with thankfulness and praise, that our great Commonwealth may show forth Thy glory throughout these United States of America. We ask it in thy Holy Name. Amen.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. There are no Journals to be approved this morning.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

DELEGATE MICHENER. Mr. President, I want to submit the following requests for leaves of absence:

DELEGATE EX-OFFICIO DONALDSON for February 16th and 17th;

The delegate from the 49th District, DELEGATE GEHRLEIN for the 16th and 17th;

The delegate from the 49th District, DELEGATE SCALES for the 16th.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Dailey	Johnson	Reynolds
Amsterdam	Desmond	Kauffman	Richter
Aurentz	Devlin	Keller, J.	Roberts
Baldrige	Dumbauld	Krill	Rovner
Baldus	Erwin	Laputka	Sahli
Baldwin	Fagan	Leach	Scales
Banes	Fawcett	Lee, L.	Scarlett
Barron	Fay	Leinbach	Scranton
Barry	Feather	Leonard	Sebastian
Bashoff	Filson	Levin	Shettig
Benedict	Fineman	Mangery	Shively
Benfield	Fohl	Markley	Shoemaker
Bloom	Forster	Mattioni	Shrager
Braham	Gaboreski	McGeary	Silverman
Brennan	Gerber	Michener	Solomon
Broderick	Goldman	Miller, D.	Spregell
Brown	Goldstein	Moorhead	Stout
Buck	Gouger	Morton	Strickler
Bunting	Gray	Nelson	Stroup
Burkholder	Griffith	Orban	Swope
Cain	Hannum	Orbin	Tate
Caputo	Harding	Otto	Thomson
Caron	Hatter	Pasquerilla	Thornburgh
Casey	Henderson	Pelletier	Tully
Clark	Heyburn	Percey	Van Sant
Clinger	Himes	Popil	Waldron
Conley	Hocker	Pott	Warman
Corey	Hook	Powell	Welsh
Cortese	Horne	Prendergast	Westerberg
Cosetti	Hostetler	Rappaport	Whittum
Croop	Huggins	Rea	Wilcox
Cunningham	Irvis	Redick	Woodring
Curran	Jirolanio		

PRESIDENT BRODERICK. The electric roll call tabulator indicates there are 130 delegates present, which constitute a quorum.

The Chair also notes the presence of the following delegates:

Bagenstose	Lee, K.	Murray	Shapiro
Butera	Meyer	O'Donnell	Sharp
Fleming	Michael	Ruth	Woodside
Kelly	More		

POSSIBLE SATURDAY SESSION

PRESIDENT BRODERICK. Now, Fellow Delegates, before getting under way this morning, the Chair had indicated that we were going to try to complete the second consideration on the Judiciary Article this week and we talked about being in session tomorrow, Saturday.

I have had many delegates express to me their personal desires both pro and con with respect to a session tomorrow. It is not and never has been the purpose of the Chair to inflict its opinion upon you. I just say to you, we have to move a little faster than we moved yesterday and, if we do not, we are not going to get our job finished without working night and day next week, and you know what Delegate Bloom thinks about that. I just say that I think it should be up to this body to decide whether we have a session tomorrow, because if we call a session and delegates make a sacrifice to be here and then come and find that we do not have a quorum, it will be a very unfortunate situation.

Therefore, I am going to unlock the voting machine and I am going to ask you to vote on it. To those that vote yea, I will state that that vote will be an indication that you will be here tomorrow. If we have a sufficient number of yeas to constitute a quorum, we will have a session tomorrow.

If we do not, we will not have a session tomorrow. Is that fair?

So we will unlock the voting machine and those voting yea are voting to say that they will be here ready to work tomorrow.

We need 82 votes for a quorum.

On the question,
Will the Convention agree to the motion?
It was not agreed to.

RESOLUTION

PRESIDENT BRODERICK. The Chair now recognizes Delegate Cosetti.

DELEGATE COSETTI. Mr. President, I have a resolution to offer. This resolution was drawn by our Solicitor, Francis Berry and is offered on behalf of all the delegates from the City of Pittsburgh, County of Allegheny:

In the Constitutional Convention,

WHEREAS, Thomas L. Fagan is a delegate to this Convention from the City of Pittsburgh, County of Allegheny; and

WHEREAS, By the unanimous vote of the Mayor and the Council of the City of Pittsburgh, Thomas L. Fagan has been selected to take the post of City Councilman in the City of Pittsburgh; and

WHEREAS, Thomas L. Fagan shall succeed his father, Patrick T. Fagan, the former President of City Council, as a Councilman of the City; therefore be it

RESOLVED, That the Constitutional Convention hereby extends its sincere congratulations to Thomas L. Fagan on his appointment to the City Council of the City of Pittsburgh. The hope of the Convention is that Thomas L. Fagan will have a long, useful and happy tenure as a Councilman of the City of Pittsburgh, where he will be able to bring to the City the benefit of his experience, ingenuity and courage.

DELEGATE COSETTI. The hope of the Convention is that Thomas L. Fagan will have a long, useful and happy tenure as a Councilman of the City of Pittsburgh, where he will be able to bring to the city the benefit of his experience, ingenuity and courage.

On the question,
Will the Convention agree to the resolution?
It was agreed to.

PRESIDENT BRODERICK. The resolution is unanimously adopted. The chair is requesting that a copy of the resolution be sent to Thomas L. Fagan.

DELEGATE FAGAN. Mr. President, I would like to take this opportunity to thank you and all the delegates for your recognition here today.

I want to make it crystal clear, that I will not accept any position until our duties are finished at the Convention.

PRESIDENT BRODERICK. Councilman, I just want to say that I am sure I am expressing the feelings of your fellow delegates when I say that we are proud and happy, and we have enjoyed having you with us. You have done a wonderful job and deserve congratulations, and I think Pittsburgh has gained with having you as a councilman.

CALENDAR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 7, Printer's No. 20,** entitled:

A Proposal Repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

PRESIDENT BRODERICK. Now, we are ready to take up the calendar, and today we are going to continue with Proposal No. 7, Printer's No. 7, and I am going to ask the Chairman of the Judiciary Committee and his Co-Chairman to resume their positions of leadership up forward.

REA AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. I think you will all remember, except perhaps those that departed before we adjourned last night, that we had a motion to reconsider the Rea amendment and that motion carried, so we now have before the House this morning the Rea amendment.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport. For what purpose does the gentleman rise?

DELEGATE RAPPAPORT. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE RAPPAPORT. Mr. President, what are we voting on?

PRESIDENT BRODERICK. We are voting on the Rea amendment.

DELEGATE RAPPAPORT. It was my understanding on the motion to reconsider that it was as if the Rea amendment had never been passed and we are relegated back to the original proposal. If I am wrong, I am ready to vote on it.

PRESIDENT BRODERICK. What we voted on was to reconsider the vote by which the Rea amendment was adopted. The motion was carried and we are now going to reconsider.

DELEGATE RAPPAPORT. I think the Chair should give Mr. Huggins leave to change his amendment to be in line with what will happen as a result of this vote.

PRESIDENT BRODERICK. No question about that.

DELEGATE RAPPAPORT. Thank you, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, fellow Delegates:

There was something said last evening that was so fundamental that I think some observations are required. I shall not repeat what I said last night. We are here now examining residual powers in government. There has been a great deal of talk during this Convention about residual powers and we have given residual powers, to some extent, down to the lowest level.

However, in each case, we have reserved the fundamental residual power to the Commonwealth. I want to comment on that. I want to give a few illustrations of instances where the few must give way to the many.

After the First World War, it was believed that one of the main things we did was to break up the Austro-Hungarian Empire. This we did, only to discover in a few years that we made a great mistake, because the Austro-Hungarian Empire was fundamentally an economic unit and it was the shield of Europe against the hordes from Asia.

In the American Civil War the rights of the Southern States to decide their own local problems was at stake. Yet the North went to war to put down this minority view. "The Union must be preserved," said our President, "and we must operate on this cancer in the South." And we did.

We may in our lifetime and maybe not so far away have viewed hostile submarines with nuclear warheads off our eastern coast. The first of those weapons fired will bring a demand from the eastern coast that we make peace at all costs, and no one can blame us. Nevertheless, the interests of the country as a whole may require that we go into conflict.

Will you now go back in your minds to the great Convention of 1787? The two great firebrands of the agitation prior to the Convention were Samuel Adams and Patrick Henry. Nevertheless, neither Samuel Adams nor Patrick Henry had anything notable to do with the adoption of our Constitution. They opposed it because it was an infringement of those great, inalienable rights of the South, of the states. They could not be interfered with. So there is sense in which Samuel Adams and Patrick Henry—give me liberty or give me death and all—slunk off the stage and were not heard from any more. It was the practical men who stayed and made the great Constitution for us.

To apply this to our own situation, the bad situation of the minor judiciary in Philadelphia and Allegheny Counties has been known for many years. I do not know the facts in Philadelphia, I only know it from the newspapers. I have some slight knowledge of it in Allegheny County, but I take it from the newspapers. The newspapermen usually know the facts. They may not be as much on the historical and sentimental side as I am, but they are seldom deceived about their facts. They say this thing has been a notable fraud and a notable imposition on the public. We quickly moved in this Convention against them. The Philadephia magistrates section was adopted and other changes were made in the Philadelphia judicial system. The claim has been that the minor judiciary was beloved by all its neighbors, that they were the friendly, helpful people of the neighborhood. The only place where that has surfaced during this Convention has been in Allegheny County, and in Allegheny County there was a demonstration of the feeling of the neighbors about the minor judiciary, but, according to all reports in the paper and from those who were there, it was fundamentally hostile to the minor judiciary because they practiced impositions on them.

We finally succeeded in having the Allegheny and the Philadelphia minor judiciary under the same rule. Both were abolished. A technical error in the second amendment led to a wrangle. People began to go home. The motion to consider passed and here we are at this moment. Is all we have done to do nothing with the minor judiciary? If this passes, that will be the effect. Upon reconsideration, if this amendment is rejected, that will mean that the minor judiciary returns as heretofore in Philadelphia and in Allegheny Counties. I can see how the people in Philadelphia will feel better if they know that this rule of the majority over the minority has been exercised to the same degree against the people of Allegheny County.

I want to ask this: We are going to decide what may be the critical question in this Convention. I will ask this: What have the adroit and eloquent men who moved us into this situation in this broken field ever done to improve the status of the situation with respect to the minor judiciary in Philadelphia and Allegheny Counties? What have they done in relief of the people who have been defrauded by the justices of the peace? What has the young member, who spoke so scathingly and eloquently with words of Holy Writ, done to relieve those imposed upon by the minor judiciary in Allegheny County? What do any of these men propose to do in the future if this resolution is rejected? What do they propose to do about the minor judiciary in Philadelphia and Allegheny Counties? They say we may leave it to the people.

Nevertheless, this same group has knocked down and defeated a resolution authorizing an immediate vote on this resolution. They say wait until the people move. In other words, leave this situation in Philadelphia and Allegheny as it is, when they wonder if they prosper by this disturbed and bad situation.

What are we to do? I think, Mr. President, that the duty of this Convention is to support the action which we took on this Rea amendment. I think we ought to pass the Rea amendment. Then we will, alike, remove the minor judiciary in Philadelphia and Allegheny Counties and will have done first the things which the people expected us to do. If we do not do that, if we go home having turned back this meritorious attempt, people will say we, indeed, did nothing and, indeed, sought nothing except the status quo.

PRESIDENT BRODERICK. Now, before recognizing the next delegate, I just want to point out, so there will not be any misunderstanding, that when we have debate on amendments you can speak twice and no more than twice, and that applies to the proposers of the amendment. The total length of time that anyone may speak cannot exceed 10 minutes.

With that, I recognize Delegate Huggins.

DELEGATE HUGGINS. Mr. President, I want to point out to you and to the floor that the remarks just made are certainly appropriate, considering the source. However, I think it is mandatory for the Convention to realize that it was not but a five-vote margin between the two on the first vote for this Rea amendment, that only 10 of the 24 delegates from Allegheny County supported it. I think it is even more important to realize that the objectives raised against this minor judiciary were not raised

throughout the county, but only the City of Pittsburgh by Pittsburgh groups and organizations. We must realize there is a great deal more to Allegheny County than the City of Pittsburgh, and there are a great many more problems and solutions going on in local government through home rule within the county that are really being satisfied for many people who have been butchered by minor judiciary in the City of Pittsburgh.

The basic issue here is: Are we writing a Constitution for the City of Pittsburgh and Philadelphia, or are we going to offer an option to the people of the Commonwealth to select their own law, their own means to law enforcement?

Admittedly, some questions were raised to the solution. I am certainly no seer. I wish I were sometimes. I wish all of the answers and problems of life could be so easily solved. It would be nice to offer an amendment and stuff it down throats, let people do it and say, "Look, it is all solved." I am not too sure anything that is untried will really solve the problems we are talking about, because we are talking about problems beyond law in the area of moral apathy and ineptitude for people who become so accustomed to the status quo that they do not think the status quo can ever be improved upon, even in the least way.

I think the article in the continuation here presented by the Judiciary Committee is an honorable article. I think the solutions are there if truly enforced and followed and supported. But I do not think they are going to be truly enforced, and followed and supported by catering to two cities—pardon me, a city and a county.

In the name of justice, I dare say, Mr. President, that I do not think I would want to try to force a community court system on Potter County, and I doubt if it would go over big in Butler and Lawrence Counties. If we determine it this way in this Convention and specify paragraph—in the name of law—come now, we are here for something more than this, I hope, not a gigantic step backward in the name of forward direction.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Mr. President, I think today we have two basic issues. One, is there a difference between the rest of the Commonwealth and the City of Philadelphia and the county of Allegheny, and two, should we mandate something for the people?

On issue No. 1, it is quite obvious that in 1874 the delegates to the Convention recognized the difference because they voted a different magistrate court for the City of Philadelphia. And for the City of Pittsburgh, which was in excess of 50,000, they voted a different system of JPs. Everyone else had two JPs per municipality, but not a city in excess of 50,000. Only one alderman. In 1874 they recognized the difference. Already this Convention has recognized the difference in these municipalities.

You remember, in Local Government we spent days carving out Philadelphia's tax exemption, putting the school district in and then at the request of Philadelphia taking it out. We also devoted hours on how to preserve Philadelphia's status of giving money to certain groups. But the most enlightening one we have, we spent, to me, innumerable hours debating on the public utility exemption as to words that were put in by technical amendment and taken out, and the sole import of those was to preserve that the City of Philadelphia and the City of Pittsburgh can tax railroads, because they are the only ones who can do it today.

Yes, there are differences. The Reverend Huggins says maybe the difference is the City of Pittsburgh instead of the City of Philadelphia, but I would like to point out to you and show you how many differences there are.

There is a justice of the peace outside the City of Pittsburgh and in the county who as of November of this year had handled 3,556 criminal cases. I think this is probably more than are handled in many of the counties throughout the Commonwealth. That was one justice of the peace outside of the City of Pittsburgh. But for you people who are not familiar with it, let us face the problem.

Like Delegate Fineman, let us start calling a spade a spade. I will tell you what we are talking about. We are talking about 32 aldermen in the City of Pittsburgh who are 32 political bosses. That is what we are talking about now.

Read in the Post Gazette where one of the aldermen coming down here is a Senator who gave up his county job and got his pension. This is the real issue, ladies and gentlemen. As Brother Conley said yesterday—and he will speak against this today—these people help the area and their community, but they are not helping them only for help. They are dispensers of patronage, not dispensers of justice.

I say that we have to remove them from the political system, and the present proposal does not go far enough in that respect because it says that judges and justices cannot hold political office. But it says nothing about justices of the peace or aldermen. This is why I say that there is a vast difference in the City of Pittsburgh and the City of Philadelphia compared to the rest of the county.

You may not be aware of what are the abuses used here. It is typical in Allegheny County that when you have a suit you frame it as a criminal action so the person has to post bond, even though he lived there all his life, to appear at the hearing. It is held over for court and he posts another bond to appear in court, even though he may be a property owner and may have lived here all his life. He has to pay for two bonds to get it before a court where it can be heard by someone learned in the law.

In fact, let me just relate to you two personal experiences. It rather shocked me. In the enforcement of a borough ordinance outside of the City of Pittsburgh by a justice of the peace in the county at 5:00 o'clock Saturday afternoon, he wanted to put one of the residents of his community in jail, someone who lived there about 12 years, because he had committed a violation of a borough ordinance, and he sent a constable over. Unless he posted bond he was jailed. These are the abuses we have, which I am sure you do not have in your outlying communities, because we have such complicated and such a volume of problems that the JPs normal reaction is to bring a criminal action to enforce a civil remedy.

As to item No. 2, should we mandate something for anyone? I have found it is a very philosophical thing that if you are for something, this is good, and if you are against something, you are mandating it. Let us look at what we have mandated so far for the people without giving them the right to vote on it themselves.

We have mandated a reapportionment committee of five people, we have mandated stronger tax exemptions and we have mandated looser tax exemptions to be provided for industrial growth, for residential and commercial growth.

On the PUC we have mandidated that the State Legislature and the State must return $20 million to the local communities. Yes, we mandated that. We did not go and ask the Governor or the State Legislature. We told them to do that.

On local government, what have we mandated? We mandated the Legislature to pass uniform laws. We have mandated they must provide home rule for everyone. We have mandated they must pass uniform laws on boundary changes and we have mandated that there must be a new arrangement on tax debt limitation, adoption of a sliding scale program.

No matter what you call them, these are mandates and you cannot say that we had to go back to the people to find out what they wanted on this.

But I think the greatest thing we have mandated—and I say mandated—we have mandated in the Constitution that there be a public defender, not elected by the people, but to be determined by the Legislature how he will be appointed.

Delegate Irvis, who, by the way, was a law school classmate of mine, who has the greatest powers of debate and who, in a sense, to me has epitomized why the Legislative leaders, if they were active in this Convention, could accomplish so much. It is because they can be so effective at these microphones and because they are here day after day, while novices like me stand here and shudder and are unaccustomed to it. They take their side of the floor for a public defender and they lose. Now it is not a mandate for the people. Delegate Irvis then waxes eloquently, and we become like puppets and we vote for a public defender for the good of the people. We do not even let them be elected by the people, he will be chosen as the Legislature determines.

But this is not a mandate, this is what the people want. I say to you: Is there any difference in mandating a public defender? Let us go all the way and give that public defender a trial court in Allegheny where he can start. I think that yesterday probably was the top of what we were looking at when Reverend Huggins said a government of the people, by the people and for the people. I agree 100 per cent and I can only say this: Thank God that Abraham Lincoln did not go to a referendum of the people before he issued the Emancipation Proclamation.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Conley.

DELEGATE CONLEY. Mr. President and fellow delegates, I rise in opposition to this Rea amendment. I will state that I am not here to defend 32 aldermen in the City of Pittsburgh, I am not here to defend any of the aldermen in the City of Pittsburgh. I think there is an issue which should be made clear.

There is before this Convention three possible alternatives which are being confused. Let us look at what they are and not be affected by the label. There is the community court. There is the present system, and there is the system of JPs as modified by the Committee.

I, myself, can entertain this group with stories about abuses from aldermen. I think I have been before the alderman's court as often as anyone here, or as often as many of you here, anyway, but the issue is not the present system.

If I were to rank these three alternatives, I would put the present system for the JPs last. Then, next to last I would put the community court, and first I would put the JPs as modified.

The committee has decided they will give in their proposal the other counties in the Commonwealth the option to take that alternative, which I think is best, and, if it does not work, they can take the second alternative. They have that privilege.

All I am asking is that the same privilege be given to Allegheny County, that is, that they take the first alternative which is the JPs as modified and, if they do not like that, they can move to the second alternative.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Horne.

DELEGATE HORNE. I respectfully move the question.

PRESIDENT BRODERICK. Are we ready for the question?

The proposer of the amendment should have an opportunity to speak, that has been our procedure. If you sum up, we will then vote.

DELEGATE O'DONNELL. May I have the floor for a moment?

PRESIDENT BRODERICK. I will recognize Delegate O'Donnell.

DELEGATE O'DONNELL. The issue has been highly confused and so is this conversation. The issue before us now is simple and it is clear cut. Do we wish to adopt the Judiciary Committee proposal for a brand-new, wholly revised system of minor judiciary in Pennsylvania, including Allegheny County, or do we wish to mandate a wholly untried, absolutely untested community court experiment in Allegheny County.

I urge you to support the Judiciary Committee proposal and vote no.

DELEGATE BUTERA. Mr. President, I know the other gentlemen were at the microphone first, but I wonder if one of them would answer one brief question. I am a bit confused as to what we are voting upon. I shall direct my question to Delegate Rea.

Are we voting exclusively on Allegheny County, or are we also voting on the Philadelphia magistrates?

DELEGATE REA. This amendment has nothing to do with Philadelphia, this is solely Allegheny County. It rises and falls solely on Allegheny County.

DELEGATE BUTERA. The amendment to the amendment which was distributed last night has not be offered.

DELEGATE REA. It has not been offered. Just Allegheny County's.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I only have this to say, I resent being called a puppet by the learned gentleman, Mr. Morton. However, I do not desire to have an apology, just so he does not get that message back home, that is all I ask.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I have been at the microphone for many long years now, and I have never before been paid such a high compliment as my law schoolmate, Jim Morton, paid me here a few moments ago. If I am a puppetmaster, that makes all the rest of you puppets. I think maybe I ought to be proud, but you ought to be resentful. I have never been able to mesmerize anybody, including myself, into believing anything that he did not want to believe in the first place.

I have operated always in the hall of the House, and I have operated here, on one basic assumption, that most individuals if you will appeal to their sense of right or wrong, eventually will make a balanced judgment. It may not agree with yours, but it will be a balanced judgment.

I stand here in an unenviable position. I wish I could stand here as the pure-blooded crusader, out to defend the rights of the people in Allegheny County, crying all over the place about the imposition of unequal justice on the backs of the poor of Allegheny County. That would sound wonderful. That is a very simple position, but it is not a position I can here take.

I defy anyone here in the hall of this House, or anyone visiting it, to challenge my right to this position which I now assume, and it is a very simple one at that.

I am unalterably opposed to the system of the JP courts as it now exists, and I was opposed to it before some of these "spokesmen" even knew it existed, and I will continue to be so opposed.

I think it has become corrupt and corrupting.

I think if some of the noble sentiment that we have had at this microphone were to be followed out by action, these same men would be on their feet urging that we get rid of this corrupt and corrupting system across this entire Commonwealth, but these men are compromisers. These men, while they can cry the politicians are, are themselves politicians. These men have been influenced by editorial writers, and they think they see a cause. If they are sincere in this cause, then let them speak for the cause of the people of the entire Commonwealth, for what I say here today is what I said here yesterday.

I am absolutely ready to discuss and to vote on a proposition which would eliminate the JP system across the entire Commonwealth and, if that proposition is put before this House, I will vote for it, but I am absolutely and irrevocably committed to the position of opposing the treatment of the people of Allegheny County in any way, shape or form differently than the way the people are treated across the rest of the Commonwealth.

I am going to try to keep my temper, because I have been known for losing it, and I do not like to, as I always feel ashamed afterwards, but I am getting very irritated with people who come to me and tell me they know what is best for the people. There is one phrase which irritates me beyond all measure and that is talking about the "common man," because the person who uses it is always meaning somebody different from me. I am uncommon and all the others may be common. There is not any such animal as a common man. Every single man is a different individual.

There is not anyone in this House who can say with absolute certainty today what is good for the people of Allegheny County or what the people of Allegheny County want.

I do not know what they want, but I do have an abiding faith in their ability to speak. I know what I want, and I think I know what some of these men here who have spoken want, but I do not know what the people of Allegheny County want, and there are over two million of them. All I am asking is that they be given a chance, if this is a chance we are going to offer to the rest of the State, to state their wishes.

I have said this before and I have had this answered. "Oh, we don't dare put this on the ballot because those aldermen and JPs will take the poor people and march them to the polls."

That is an arrogance that I will not stand for.

On one hand, we have these people who claim to be the leaders of the people, they have great faith in the people, they believe in the democratic principles, but, on the other hand, they say the people are so stupid, they are sheep. They do not know what is best for them, and the aldermen and the JPs will march them to the polls and control their votes. I do not subscribe to that sort of identification of people.

I want the people in my constituency to be able to go and say, "Lee Irvis, you are wrong as hell." Or "Lee Irvis, you are right." I do not know which they will say as I stand here, and I live in a ghetto area. Some of you have not even seen a ghetto area, unless you have driven through it in your Lincoln Continentals. I live there and I have lived there for the last quarter of a century of my life, and I say to you that I cannot speak for what these people want, but I do know that they have enough integrity and enough interest in their own future to decide for themselves what they want.

I am willing to gamble if the rest of you are willing to gamble. As Mr. Morton talks about mandating, I am willing to mandate that we get rid of the JP system across the State. Are the rest of you willing to gamble with me? If you are, let us sit down and do it now. But I am not willing to compromise and say we will get rid of it in Allegheny, and we will change it slightly in Philadelphia, and we will let it stay almost the way it is in those beautiful counties in between. I do not think the people in those beautiful counties in between are one bit different from the people of Allegheny and the people of Philadelphia. I think they were conceived the same way, I think they live the same way. They die and have the same diseases, and they end up the same way.

Now, in the last two minutes let me say something to Delegate Morton. I do not know what you meant by the remark about Abraham Lincoln and the Emancipation Proclamation. I will not venture a guess at this microphone of what you may have meant, but I will say this to you, Jim, the Emancipation Proclamation was issued in 1863, and this is 1968, and there are a lot of white people in this Commonwealth who have not heard of it yet, and not until they hear of it will the Emancipation Proclamation really be an emancipation, and you better believe it. If you do not know that, come and live with me for a month and we will prove it to you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President and fellow delegates, I would like to go on record as saying that I do think that I know what the citizens of Allegheny County want. They want us to take the system that we are talk-

ing about and adopt the Rea amendment for community courts.

I have been at this Convention now for two and a half months. I have received lots of telephone calls, telegrams, and letters. There has not been one that advocated the retention of the JP system in Allegheny County, not one.

So I make this prediction, I was sent here as a delegate and I am taking this responsibility in my own hands. I have maintained this position ever since I started practicing law, that the justice of the peace system—not because it is corrupt, I am not talking about corruption, I am talking about cases decided by men who are not judges.

Would you vote, for example, to have a judge on the Pennsylvania Supreme Court who was not learned in the law?

Would you vote to have a judge sit on the Superior Court of this State, listening to your case, who was not learned in the law?

Would you vote or would you stand for a mandated thing that we did yesterday in this commonwealth court?

Would you stand to have seven JPs on that court?

I would not, and I do not subscribe to a pharmacist operating on people. I do not subscribe to having non-judges decide legal issues.

I do not care whether we are talking about a $2.00 case, or a $200 case, or a $25,000 case. It is all the same, and I think we have to be consistent about it, and I am going to vote in support of the Rea amendment, which I subscribed to, and I am glad to be a part of it.

PRESIDENT BRODERICK. Now, for summing up, the Chair recognizes Delegate Rea.

DELEGATE REA. Mr. President, I am probably a little shaky right now because I finally went to bed at 4:30, but at 1:30 this morning I stood in my apartment talking on the phone and it is the first time in years that tears ran down my eyes, so if I get a little emotional, please forgive me, because I am emotional.

When I got home last night my phone began to ring with calls from Pittsburgh, and it was the people in the ghetto areas that live where Mr. Irvis lives, and they spoke to me for four hours, until 2:00 o'clock, this morning, and they told me why the optional system will not work. They told me why there is not a chance of ever getting 27,000 votes on a petition. This is not going to the polls where you pull a curtain and you can vote the way you want. You are giving to Allegheny County a system where they must go out and get on a piece of paper in public 27,000 signatures.

In the ghetto area you cannot do it, because they say, "My father works for the Sanitation Department of the City and, if I put my name down there, he will lose his job." You know what that Sanitation Department is.

Another one calls up and says, "The aldermen are in charge of the food stamps, they run housing in the ghetto areas and, if we would ever sign a petition like this, we would be thrown out in the street."

Are you giving the people in these ghetto areas a chance by saying, "Yes, you can put your name down if you are brave enough, if you want to lose your job, if your brother is going to be thrown out of a city job." Yes. If they are brave enough, they can do that, but you are talking about 27,000 names for the City of Pittsburgh.

The last woman that called me last night said her son has been in jail and, if she ever signed this, the aldermen would put him back in jail. She did not, I do not believe, realize that that was not true, but this is the control that the aldermen have.

If you do not live in the city, as I do, you may not understand the control that the alderman has, but he has this control over the people, and I can guarantee you, as sure as I am standing here, there is no way that the ghetto areas can get 27,000 names in public. It is one thing to vote in a closed booth, and it is another thing to put your name down where the aldermen can review it and know who did it.

Mr. Irvis and Mr. Huggins say give the people a choice. We will give the people a choice. The Redick amendment gave them the choice.

Mr. Conley said the JPs are terrible in Pittsburgh. Mr. Irvis said the JPs are terrible in Pittsburgh. Believe him, they are. But the police can be there because they can go back from the community court to the JP system if they want. This is the choice you can give them. This is the true choice.

If the system is bad—and everybody admits it—not one person has ever gotten up in this Convention, not one, and said that the JPs are good in Allegheny County. If they all admit they are bad, why do we not change the system, still giving the people the right to go back in the community courts under the Redick amendment? Is that not the fair thing to do? If we know it is wrong, let us not vote to keep it wrong. Let us vote to make it right, with the option to go back.

Let me tell you what you are going to give if you vote "no" on this. Let me tell you what you are going to give Allegheny County. You are going to give them exactly what Philadelphia got 15 or 20 years ago when they got their 28 magistrates on salary. Under the present plan that is before this Committee, you are going to create 26 magistrates in Allegheny County on a salary of $12,000 a year, which is almost comparable to the 28 magistrates on salary in Philadelphia and, if any of you know what happened in Philadelphia with those 28 magistrates on salary, you know that they had corruption that forced a State investigation.

This, my fellow delegates, is exactly what you are voting to give to Pittsburgh, 28 magistrates on salary. It did not work in Philadelphia, and it will not work in Pittsburgh. So when you say we do not want this amendment, you are saying we want to give to Allegheny County the same corruption, the same basis for corruption that has existed in Philadelphia for years.

Pittsburgh needs more than justice on Monday, Wednesday and Friday from 7:00 to 9:00 o'clock at night, and that is the JP system. We are mature in Pittsburgh. We need a mature system, but if you vote "no" on this amendment, you are not giving the people a choice. Do not delude yourself into thinking that 27,000 names are easy to get when the politicans say "no." You have a chance, and I urge you to take it.

PRESIDENT BRODERICK. Is the Convention agreed to vote on the amendment?

DELEGATE HUGGINS. Mr. President—

PRESIDENT BRODERICK. Delegate Huggins, I want to say that it was understood that this was a closing, and

it would not be fair to let you speak, because that would just continue the debate.

Are you ready for the question?

The question is: Will the Convention agree to the Rea amendment? We will unlock the voting machine and proceed to vote.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Rea?

The roll was recorded as follows:

YEAS—46

Amsterdam	Clark	Laputka	Rea
Baldus	Curran	Lee, L.	Ruth
Bloom	Dumbauld	Leinbach	Scranton
Braham	Feather	McGeary	Shoemaker
Brennan	Fohl	Michael	Sprogell
Broderick	Forster	Michener	Tate
Brown	Gabreski	Moorhead	Thornburgh
Buck	Gouger	Morton	Welsh
Bunting	Himes	Nelson	Whittum
Burkholder	Hocker	Otto	Wilcox
Caron	Johnson	Pelletier	Woodring
Casey	Keller, J.		

NAYS—93

Aberman	Fawcett	Leonard	Rovner
Aurentz	Fay	Levin	Sahli
Bagenstose	Filson	Mangery	Scales
Baldrige	Fineman	Markley	Scarlett
Baldwin	Goldstein	Mattioni	Sebastian
Banes	Gray	Meyer	Shapiro
Barron	Griffith	Miller, D.	Sharp
Barry	Hannum	More	Shettig
Bashoff	Harding	Murray	Shively
Benedict	Hatter	O'Donnell	Shrager
Benfield	Henderson	Orban	Silverman
Butera	Heyburn	Orbin	Solomon
Cain	Hook	Pasquerilla	Stout
Caputo	Horne	Percey	Strickler
Clinger	Hostetler	Popil	Stroup
Conley	Huggins	Pott	Swope
Corey	Irvis	Powell	Thomson
Cortese	Jirolanio	Prendergast	Tully
Croop	Kauffman	Rappaport	Van Sant
Dailey	Kelly	Redick	Waldron
Desmond	Krill	Reynolds	Warman
Devlin	Leach	Richter	Westerberg
Erwin	Lee, K.	Roberts	Woodside
Fagan			

NOT VOTING—24

Allison	Fleming	King	Musselman
Camardella	Fortney	Kline	Pechan
Cosetti	Gehrlein	Lane	Quiles
Cunningham	Gerber	Manderino	Scott
Donaldson	Goldman	McGlynn	Tomascik
Donatow	Keller, M.	Miller, R.	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

THORNBURGH AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE THORNBURGH offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 2, line 30, by inserting after "than": the City of Pittsburgh and

Amend Sec. 1 (Sec. 8), page 3, line 26, by inserting after "than": in the City of Pittsburgh and

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, the effect of the amendment which I am offering here would overcome some of the objections to the similarity between the City of Philadelphia and the County of Allegheny. I think a great many people here are troubled by the fact that, in addition to the City of Pittsburgh, Allegheny County contains 128 other separate municipalities, boroughs, townships and third class cities. I think this amendment, which speaks only of the City of Pittsburgh and would provide a community court for the City of Pittsburgh, would restore an absolute parity in the treatment of the City of Philadelphia and the City of Pittsburgh.

The effect of this amendment would be to mandate a community court for the City of Pittsburgh, leaving to the other municipalities, the balance of the judicial district, the local option referendum, and I would urge very much that the remarks that have been made during the course of the debate on this entire question, most of which I submit apply to the conditions within the City of Pittsburgh, be very carefully considered, because this, it seems to me, while overcoming the objections which some may feel about the surburban or rural areas of Allegheny County, goes to the heart of the matter by speaking to the heart of the problem, which is in the heart of the City of Pittsburgh.

PRESIDENT BRODERICK. Are we ready for the question?

The Chair now recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President and members of the Convention, I have sat in my seat and I have heard words come out of the mouths of delegates condemning the magistrate or JP system in the City of Pittsburgh. I have heard this before and I have talked to some lawyers in this room and I have asked them whether or not any prosecution has taken place in the last five years because of the acts that these men are supposed to have committed, and I have been definitely told, "no."

There are on our books statutes, of course, which say that a public officer who is guilty of a misdemeanor in office or a malfeasance in office can be prosecuted. If they are so bad and if they have done so many wrong things, where has the district attorney of Allegheny County been and where has the courts of Allegheny County been when these things are going on? Is this nothing else but a sham? Can you come up with the goods and show and prove to the people that these magistrates or all the justices of the peace in Allegheny County have been crooked and are a disgrace to the people of that particular county, or is just this a bunch of words?

Where I come from, we have no trouble. In my neighboring county of Lehigh, we have no trouble. I remember when I was in the Senate of the Commonwealth of Pennsylvania, the same matter came up and at that

time I said if it was a local problem, then that particular area should take care of its own housekeeping.

What has Allegheny County done in cleaning up this situation if it does exist? What has the district attorney done? If it exists as you say it does on this floor, then I say serve notice upon the DA of Allegheny County to immediately start an investigation of that condition which does exist.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. Mr. President, I usually try to approach the microphone a little better prepared. I have to speak on this particular amendment.

I, too, attended that meeting last Saturday in the city council chambers where many of our people, especially those representing some of the people who are particularly oppressed by the present JP system, were well represented. I think most of our hearts went out to them. One of the problems they mentioned, and which was particularly described to us, was this problem of venue.

It seems in our county, and I suppose in all the other counties in the State, when you particularly want to harass someone, you bring the charge before a JP in some distant corner of the county. This is particularly difficult for some of our poor who do not own automobiles and who find it extremely difficult to travel to these distant places in the county. I think most of them were not willing to say that the aldermen in the city alone were causing the problem. As a matter of fact, I think the consensus of their objections was that they were brought before a magistrate in various places in the county, quite often a distance from their own homes and quite often without advice of counsel, and this is part of the problem.

I do not see that mandating a community court in the City of Pittsburgh without a statement as to the venue of this court is going to solve the problem. I also would like to say that I do not think the problem is alone the problem of the aldermen in the City of Pittsburgh.

If there are any vices which exist in the JP System in Allegheny County, I think it is throughout the county and, therefore, oppose this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President and fellow delegates, as I promised Delegate Amsterdam when this debate first came up, I would be a friend of the court and keep my mouth shut. But, as a delegate from Allegheny County and as a person who was born in the City of Pittsburgh and who has lived there a good part of my life, I feel it would be very inappropriate and disastrous to a unified court system and to the courts of Allegheny County if we had one system in the City of Pittsburgh and another in the boroughs and townships surrounding Pittsburgh. Philadelphia is one city and one county. Pittsburgh is a city, but it is only part of a county, only about half of the population of Allegheny County.

I think it would be unfortunate if we had a community court in Pittsburgh and a record court and a non-record court of a different nature outside of the City of Pittsburgh and, therefore, I say briefly that I think as a lawyer, practicing in Allegheny County with experience, I must speak against this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I would like to interrogate the sponsor of this amendment.

PRESIDENT BRODERICK. I think that Delegate Thornburgh will answer any questions.

DELEGATE SHAPIRO. Mr. President, is it the intention of this amendment to mandate a community court for the City of Pittsburgh?

DELEGATE THORNBURGH. Yes.

DELEGATE SHAPIRO. May I ask the gentleman to explain how it does that?

DELEGATE THORNBURGH. I refer to page 2, line 30, the introductory clause to Section 7 (a).

"In judicial districts other than the City of Philadelphia in which a majority of the electors voting thereon have adopted a community court, there shall be one community court."

7 (a) as it is now written "excepts" the City of Philadelphia.

DELEGATE SHAPIRO. Would you read the language as it will be with the amendment?

DELEGATE THORNBURGH. "In judicial districts other than the City of Pittsburgh and the City of Philadelphia in which a majority of the electors voting thereon have adopted a community court, there shall be one community court, the divisions, number of judges, and jurisdiction of which shall be provided by law."

In other words, in the City of Pittsburgh, there shall be one community court in the City of Pittsburgh and there shall be one community court in judicial districts other than the City of Philadelphia in which the majority of the electors voting thereon have adopted it. Those two categories are where the community court will be.

DELEGATE SHAPIRO. I suggest you read it again because I do not think it has the effect which you indicate. I would like to point out that the City of Pittsburgh is not, in my opinion, a judicial district.

DELEGATE THORNBURGH. No, it is part of a judicial district.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, to back up my distinguished colleague, Mr. Barry, I would like to state that the population of Allegheny County is greater than 1.6 million people. The population of Pittsburgh is only 600,000 people, or 6/16ths of the population of Allegheny County.

The area of Pittsburgh is only 55 square miles. The area of Allegheny County is 730 square miles or, therefore, about 7 per cent of the total area of Allegheny County. If there is one thing on which the subcommittee which considered this was absolutely certain, it was the undesirability of trying to run a bifurcated system in one judicial district, that is to say, a system in which you have one kind of court in one part of the judicial district and another kind of court in another part of the judicial district. It is just impossible, and I urge the defeat of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. Chairman, I think you know that I have never tried to cut off debate. Heaven knows, we never tried to cut it off in the Judiciary Com-

mittee and some of you are beginning to understand what we have been doing every day for 10 weeks.

May I just make this comment? We have gone all through this in Pittsburgh, Allegheny County, and all parts of the United States of America in the sub-committee, in the full committee, and now you are doing it in the Convention.

May I kindly move the question?

PRESIDENT BRODERICK. Will the Convention agree to the amendment offered by Delegate Thornburgh? We will unlock the voting machine. Those voting "yea" will vote to support the amendment and those voting "no" will vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Thornburgh?

The roll was recorded as follows:

YEAS—30

Bloom	Feather	Pelletier	Tate
Braham	Himes	Popil	Thomson
Buck	Hocker	Pott	Thornburgh
Bunting	Michael	Rea	Tomascik
Burkholder	Michener	Ruth	Welsh
Caron	Moorhead	Scranton	Wilcox
Casey	Morton	Stout	Woodring
Dumbauld	Otto		

NAYS—100

Aberman	Devlin	Kauffman	Redick
Amsterdam	Erwin	Kelly	Reynolds
Aurentz	Fagan	Krill	Richter
Bagenstose	Fawcett	Leach	Roberts
Baldrige	Fay	Lee, K.	Rovner
Baldus	Filson	Lee, L.	Sahli
Baldwin	Fineman	Leinbach	Scales
Banes	Fleming	Leonard	Scarlett
Barron	Forster	Mangery	Sebastian
Barry	Gabreski	Markley	Shapiro
Bashoff	Goldstein	Mattioni	Sharp
Benedict	Gouger	McGeary	Shettig
Benfield	Gray	Meyer	Shively
Broderick	Griffith	Miller, D.	Shrager
Brown	Hannum	More	Silverman
Butera	Harding	Murray	Solomon
Cain	Hatter	Nelson	Strickler
Clinger	Henderson	O'Donnell	Stroup
Conley	Heyburn	Orban	Swope
Corey	Hook	Orbin	Tully
Cortese	Horne	Pasquerilla	Van Sant
Croop	Huggins	Percey	Waldron
Curran	Irvis	Powell	Warman
Dailey	Jirolanio	Prendergast	Westerberg
Desmond	Johnson	Rappaport	Woodside

NOT VOTING—33

Allison	Fohl	King	Musselman
Brennan	Fortney	Kline	Pechan
Camardella	Gehrlein	Lane	Quiles
Caputo	Gerber	Laputka	Scott
Clark	Goldman	Levin	Shoemaker
Cosetti	Hostetler	Manderino	Sprogell
Cunningham	Keller, J.	McGlynn	Whittum
Donaldson	Keller, M.	Miller, R.	Wilmarth
Donolow			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

HUGGINS AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins.

DELEGATE HUGGINS. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE HUGGINS offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 2, lines 29 and 30, by striking out "; Philadephia Municipal Court and Traffic Court"

Amend Sec. 1 (Sec. 7), page 2, line 30, by striking out "other than the"

Amend Sec. 1 (Sec. 7), page 3, line 1, by striking out "City of Philadelphia"

Amend Sec. 1 (Sec. 7), page 3, lines 21 to 24, by striking out all of said lines

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins to speak on his amendment.

DELEGATE HUGGINS. I think, Mr. President, a great deal has already been said about having an effective government run by the people in a local situation and, at the same time, much has been said about maintaining and mandating an equality of law throughout the Commonwealth without signifying any particular city or county as a prodigal child who needs to be corrected by a particular mandate within an amendment within a Constitution for all people. It is for this reason I offer this amendment, and that certainly goes hand in hand with the one that this body has just supported by eliminating the City of Pittsburgh from the prodigal son category. I feel strongly about this. I think the two largest cities in the Commonwealth should be free enough to correct their own abuses. I certainly think they should be free enough to mandate whether or not they want a community court, and I think what is good for one is good for all.

I do not think one necessarily needs to be singled out to bear the brunt of what the entire Commonwealth is suffering from, a tremendous apoplexy in regard to the minor judiciary. I urge the delegates to walk tall, as tall as you have on the two amendments we just passed. I think we need to support and encourage support from all of you from throughout the Commonwealth to support this which will better all of the Commonwealth.

I urge your support on this amendment.

PRESIDENT BRODERICK. The Chair will recognize Chairman Scranton.

DELEGATE SCRANTON. Mr. President, in conformity with your request to the leadership of the Judiciary Committee, I will simply speak one or two sentences about this.

The Judiciary Committee went into this at interminable length and great detail and overwhelmingly subscribed to the present article as we have presented it to you, and are overwhelmingly opposed to this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, many things come in here under the guise of reform. I would like to point out what the Judiciary Committee provided the City of Philadelphia. They come here in the guise of reformers and are going to clean up the magistrates in Philadelphia. I say to you, the magistrates in Philadelphia need

cleaning up. The magistrates in Philadelphia must be abolished. There is no question about it in my mind, and I shall campaign in Philadelphia that they be abolished at the proper time.

I will call your attention to an editorial which appeared in the Philadelphia Inquirer: "The magistrate system should be abolished completely." What they are further talking about is the enshrinement of the traffic court in this constitution. By this proposal that has come out of the Judiciary Committee, six of these magistrates, six of the men that you have been hearing about, received constitutional office in perpetuity in this traffic court. In other words, it is going to be retained by this so-called reform.

The Inquirer said, "The one sure means of eradicating the defects in that system lies in the complete abolition, certainly not in its extension or preservation in any modified form. The traffic court happens to be the one with which hundreds of thousands of our citizens come in contact throughout the year. It is surely in the public interest to have this court reflect high standards of judicial excellence."

Occasionally being as all other mortal men, I have had to appear in the traffic court in Philadelphia. It is a disgrace, it is a travesty. If you have a parking ticket, you show up and you are discharged because the police are never there on parking tickets. It is in chaos. It is the worst example of how not to run a court. Yet the so called reformers want to maintain that, and this is despicable.

In a few moments a proposal is going to come to this floor mandating community courts for the whole State and I shall support that, but I ask you, do not enshrine this cancer of Philadelphia in this Constitution. The proposal of Delegate Huggins would eliminate this from the present proposal of the Committee and it would permit us in Philadelphia to vote and get rid of the whole system once and for all.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Devlin.

DELEGATE DEVLIN. Mr. President and fellow delegates, I ask to stand here, because I find it very uneasy to turn my back to my friends.

About six weeks ago I came before you and I presented a proposition or a proposal to construct a modern Judicial system for the City of Philadelphia. I asked for your help on this floor and I spelled it out in detail for you, and we had committee hearings, subcommittee hearings and full committee hearings, and now we are before the committee as a whole, and you are my friends. We were able to move this particular proposal 1204 as it was known, with a great deal of effort and work on behalf of many people, we moved it to a position where we can really say we have something to be proud of.

Someone from Philadelphia mentioned yesterday that he does not like to have people from another county tell Philadelphia how to run its business. I do, you know it.

I can look through this audience right here and point out to each and every one of you that I spoke to personally, Philadelphia is our city, Pennsylvania's city, it is not my town. The concern of the people in any town is our business when we are meeting in a Convention like this or where the legislative body meets. I need your help as I needed it six weeks ago. I need your help to defeat this amendment that was presented by a delegate from Pittsburgh.

To make the record perfectly clear, I did not vote for the Rea amendment, nor would I. I think it was a shotgun approach to a problem that is very delicate. I think, perhaps, if first they had given a little more thought to their problems in Allegheny County and came to this Convention, some work would have been done.

I do not think you should attack the judicial system with a shotgun or guessing approach. I came to this Convention to do something constructive for the people of Philadelphia, and we have not in this proposal. What would happen if this particular amendment would go through would be simply this, that the judicial backlog that we have in Philadelphia would become more enormous and, instead of needing perhaps 24 judges, as the Bar Association says we need, we would need 44.

To answer another question, we are not abolishing the magisterial system in Philadelphia per se and we are not writing, as some people say, writing the courts in the Constitution. These courts were written into the Constitution. What we have done is extended their jurisdiction to take care of all the minor offenses that clog up the common pleas court, that they can be tried on this municipal court level and disposed of.

The magistrate's authority is still vested in this municipal court, sitting as committing magistrates and performing all the functions that magistrates now perform. The biggest difference that we have in this particular court is that in the future it will be manned by lawyers and the present magistrates that are now serving. Thanks to the graciousness of the subcommittee and the committee, the Judiciary Committee, they will allow these lay magistrates to serve out their present term, plus one more six-year term, and you are being very gracious and I thank you for it.

The problem that we have with some individuals is that they do not want to see the lay magistrates leave the judicial bench. I feel sorry for them, too. As the Chairman of the Republican Party of Philadelphia, I have a few responsibilities. I have a responsibility to do what is right for my party as my conscience guides me. I have 13 Republicans who will be ushered out of the judicial system eventually and there will be 14 Democrats who will be ushered out. You might say that this might be a Democratic and Republican problem. Well, it is not.

I had the good fortune yesterday of sitting down with five Democratic magistrates in the back room and explaining what we are doing for them. I need not mention their names because it will not mean anything to most of you outside of those from Philadelphia. They said when they were finished, Bill, I did not know you did this for us. They were perfectly happy and satisfied with taking care of their tenure, and there was no opposition as to them being ushered out of the judicial system.

If this amendment goes through, you will take the building block that we have in the unified judicial system of this State and pull it from under the entire structure. The backlog of cases will continue. The uniformity of the common pleas courts, as we now see it embodied in this Proposal No. 7, will not be able to carry out its duties. We will not be able to feed into the backlog of cases. We will not have judicial administration of the courts which will

give us flexibility of court rooms and judges. We will not have an opportunity to continue to put more men learned in the law in the municipal court to serve the people.

May I say this, if this particular amendment goes through, you will never have a unified court system in Philadelphia for many, many years. I will tell you why. Last year we put through the House of Representatives, with help from our friends on the Democratic side, a magistrates reform bill which is doing almost exactly what we are doing in the municipal bill, in this Proposal No. 7, and it died in the Senate.

We had a bill in the House of Representatives to consolidate our county court with our common pleas court and it died, too.

We have been trying to make tremendous strides to serve the people of Philadelphia in the judicial system and we have done it in this article. You did it for me. You people from Schuylkill, Lackawanna, Wayne and Beaver Counties, you who were strangers to me, did it for me.

I am going to count on that continued friendship that we can do something constructive for our State and for my city and for our towns in this Commonwealth.

I ask you to continue to support this judiciary article as written and vote this amendment down.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I dislike disagreeing with the gentleman from Philadelphia. He is in politics in Philadelphia. He is a very decent human being. I learned that about him since he has been here. He certainly knows more about Philadelphia than I ever shall. But I, perforce, must disagree with him as I have disagreed with those who spoke for the people of Allegheny County. I do not think he knows what is best for Philadelphia any more than those of us from Allegheny know what is best for Allegheny.

I speak again in defense of the proposition that the people know what is best for themselves and, given an opportunity to choose, they will choose what is best for themselves. I submit that this is a basic proposition of the form of government to which we are dedicated and the philosophy of government upon which it is structured.

I do have a great deal of faith in the people of Philadelphia. I have been told of the corruption in the magisterial system in the City of Philadelphia. I do not know it first hand, but I have heard of it. If it exists, as it very well may, then it must be gotten rid of, but, unlike the last speaker, I believe the people of Philadelphia are aware of this corruption, as aware of it as he is, and I believe that, if given the choice, they will get rid of it. I support again the proposition that they shall be given that choice, that they shall be treated precisely the same as the rest of the citizens of the Commonwealth, in no way different from the rest of the citizens of the Commonwealth. I do not subscribe to the proposition that corruption is so rampant in the City of Philadelphia that the people cannot eradicate it, that it must be done for them.

I do not subscribe to that proposition any place in the continental United States, or beyond. That is part of the problem that we are facing in the Far East, that many of us do not now recognize that the people of the world have decided that they will make decisions for themselves, and there are people in high government positions who do not yet know that.

I say here that we should recognize that proposition and be governed by it. It is very easy for those of us who have had the advantage of training, and education, and position, and status, and money, to stand here and say we know what is best for these poor people, these poor beleaguered, these poor bedeviled individuals, who cannot decide for themselves. We betray our own belief in democracy if we have this philosophy.

This is the theory of kingship, not democracy. This is a theory of dictatorship, not democracy. Of course, the people may decide differently from what we believe is right for them, but, if you believe in the democratic principle, you believe in giving the people the right to make this choice. I firmly believe the people of this Commonwealth are sufficiently intelligent and well-informed to make this choice and I do not think the people of Philadelphia are less intelligent, or less informed, or less interested in their own welfare, than the people across the rest of the State. Therefore, I rise in support of the amendment.

Let us treat all the citizens of this Commonwealth alike. Let us give the people of Philadelphia the same choice as we give the rest of the citizens of the Commonwealth of Pennsylvania.

Let us support this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, all I will say at the moment, in view of what has happened, is that I have been ready ever since this Convention opened to vote to abolish the justice of the peace system throughout the Commonwealth, but, as a member of the committee of the judiciary article, I believe half a loaf is better than no bread, and we have been ready to take improvement all down the line where we could get it.

The strange thing to me is that this has not come up earlier. I would be inclined to condemn Mr. Irvis. If he had these views, why has he not presented them earlier? The same with Mr. Rappaport.

However, when I apply that logic, I must apply it to myself. Why did I not do it earlier? Oh, maybe because we are all too timid to approach a difficult subject. I am reminded, as I think of the justice of the peace system, of the childhood rhyme, "Half a dozen tailors went to fight a snail, The best man among them dare not touch its tail."

We have been much more frightened about the justices of the peace then we have a right to be. Here they are, only one of four of them going to be retained, and yet they are the group that have, more than any other, controlled the course of events in this Commonwealth.

I will not say anything more, except I am going to oppose this amendment because I take half a loaf instead of no bread. I would vote for abolishing it all over the State, we may not get it, so I will take the half loaf right here and now.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, I think Delegate Jirolanio made a very excellent point when he rose to speak a few minutes ago. He pointed out there had been no prosecutions, no scandal in Allegheny County. I think the same point is equally applicable here.

There has been a dreadful scandal in Philadelphia. This last and most recent uproar was certainly not the first. This is something that the people of Philadelphia have been living with, and why, I do not know. I am not from Philadelphia nor Allegheny County, but I say there must be a growing cancer in the City of Philadelphia's judicial system.

Therefore, I will oppose this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I rise in support of this amendment.

I speak as a delegate from Philadelphia and I was sent here as a delegate from Philadelphia, but I sit in this room as a delegate prepared to write a constitution for all of Pennsylvania and not just for Philadelphia.

Let there be no mistake that this vote we are about to take is an important vote. It will establish the principle, in my opinion, as to whether we are prepared to write a constitution here today, and next week, and the next week, which is for all of Pennsylvania or just for parts of Pennsylvania.

I am in favor of reform of the minor judiciary in Philadelphia, but I believe that if we are given the system that the rest of the State is given, we can do so in Philadelphia. I do not think we need special justice, whether it be better justice or worse justice, in Philadelphia. I think we are entitled to the same justice in Philadelphia that the rest of the State is entitled to.

Therefore, I think this very important principle upon which we are now about to vote is quite simply: Are we to deal across the State in a like manner, or are we to have specialized constitutional provisions for special parts of the State?

I support this amendment and urge your vote in behalf of it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Reynolds.

DELEGATE REYNOLDS. Mr. President, I rise to oppose this amendment.

I am a living example of what the magistrates should be and have been in Philadelphia because I served six years as a magistrate. I do not subscribe to some of the theory that all good is in lawyers and all bad is in laymen, whether it be in the courts or out of the courts. I believe that the people of Philadelphia have given us a mandate to come here to change the minor judiciary in the City of Philadelphia. I do not think they sent us here to send them word back what they should do in a vote in the county.

If that were true, we would not need to spend all the State's money and all the time we have been here just to tell Philadelphia, and Allegheny and all the other counties what they should do back home. I believe we are here to legislate for the whole State. Mr. Irvis says that he does not know what is best for Allegheny County. I believe that the City of Philadelphia has told us what they think is best for Philadelphia, and we have come here to get the help of the entire State to eradicate something that we know has been bad.

I do not think it is because of non-lawyers. I want to make that simple and clear. I think a bad lawyer-judge is just as bad as a bad non-lawyer-judge, and I do not think that you can get Christianity or righteousness because you have a legal degree. I think an educated and bad lawyer is worse than an ignorant layman, because he knows more about how to circumvent the law.

I heard this morning something about favors being asked of magistrates and JPs. In the six years that I was a magistrate I had more lawyers come and ask me not to do the right thing than I did laymen. Every morning the lawyers lined up to see me before I got in, and I told them this is not the way we dispense justice. I said "Come in and try your case and get it right." He would say, "Well, I will see somebody." I said "Go see them, then come back and see me because I will be gone."

I say to you that we in Philadelphia are here trying to eradicate a wrong. We come here with clean intentions to help to make Pennsylvania what it ought to be, and I can say to you, that if we send this back to the City of Philadelphia to vote on, we are going to lose this part of it when it comes to a vote.

In Philadelphia they expect us to give them something out of this Convention. They could have gone to the Legislature and asked for special privileges, or something. I subscribe to the theory that we ought to stand up and be men and women here and be counted, let us vote this amendment down and do what we have been talking about in this Judiciary Committee for the last two months. We have talked about it, we have come up with it, we have done the best we could, and I will stand on the merits of it.

Let us vote this down and go and tell the people of Pennsylvania that this has been a real Convention.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bashoff.

DELEGATE BASHOFF. Mr. President, Delegate Julian King has a similar amendment to that of Delegate Huggins and he has asked me to make a statement on this.

Mr. President, the purpose of this amendment is to allow the City and County of Philadelphia to do that which the remainder of the Commonwealth has been given the opportunity to do by this committee proposal, that is, to exercise a choice concerning whether or not the people of Philadelphia wish to have community courts or retain the present system as it presently exists.

I cannot believe that I, as an elected delegate, can say or sanction any proposal which implies that the people of Philadelphia cannot determine whether they want magistrates or justices of the peace to be lay people or learned in the law. It would be arrogance to say that they are not equipped mentally to make a choice. If the system needs changing, let the people say so by local option.

Moreover, the question of abolishing magistrates in Philadelphia County was not formally dealt with in committee and comes in the proposal as a non-debated item. I might add, Mr. President, that Delegate King is a member, as am I, of the Judiciary Committee.

I understand further, Mr. President, that there are seven amendments pending of a similar nature and that a vote of "yes" on this amendment will eliminate four of those amendments.

PRESIDENT BRODERICK. The Chair recognizes Delegate Roberts.

DELEGATE ROBERTS. I feel this has been adequately discussed and I move the question.

PRESIDENT BRODERICK. Are we ready for the question?

You will have an opportunity to close.

All right, Delegate Cain, he will yield to you.

DELEGATE CAIN. It is difficult for me to believe after all of the meetings that the Judiciary Committee held—and I understand that Delegate Scranton kept this Committee in too many nights and many early mornings—that this matter was not fully discussed in the Committee itself.

I cannot believe it was not given a thorough study and I think the people who come in with this proposal at this time should have been there, should have expressed themselves at that particular time, so we would not have this continuous debate on the floor.

I am in opposition to this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. In reference to the remarks of the last speaker, I want it clearly understood there was testimony in front of the subcommittee on Proposal 1204 which spoke in favor of a unified court system for the entire Commonwealth of Pennsylvania without an exception for Philadelphia. That position has been made clear from as late as the latter part of December.

PRESIDENT BRODERICK. I will now recognize Delegate Huggins. As heretofore, when we have the closing speaker sum up, who is the proposer of the amendment, the question comes automatically and the Chair cannot permit anyone else to speak.

DELEGATE HUGGINS. Mr. President, some of our young people today have a saying which they use quite a lot. They use it everywhere. They look at life like it is, and life like it is, is not always as pretty as we paint it in our mind's eye or even from our experience.

I feel that this amendment must be passed for the basic reason that people still have the right to change life like it is.

I have great respect for political people, I have great respect for those in the Legislature, I have great respect for any man who demands authority and support from his people in a local area, but I do not feel and I have never believed that any phase of governmental life, be it the courts or that which we find in Harrisburg, is to be controlled by a couple, or one, or two, at the expedience of other people. I do not care how secure it is, and this is like it is, is it not?

What we are voting on right now is what we talked about in Pittsburgh and Allegheny County. What we are talking about here is the way it is in Philadelphia. Are we going to demand a housecleaning, and a unification and a solidity in our court system, or are we going to maintain individual little things all over the place and say this is the way it is. If they cannot clean house, we better do it for them. If that is the way it is, we really cheated this Convention, my friends.

Let us vote.

PRESIDENT BRODERICK. The question is—I will now unlock the voting machine—will the Convention agree to the Huggins Amendment?

Those voting "yea" vote to support the amendment, those voting "nay" vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Huggins?

The roll was recorded as follows:

YEAS—57

Aberman	Gerber	Murray	Scarlett
Aurentz	Gouger	O'Donnell	Shapiro
Baldus	Henderson	Orbin	Sharp
Bashoff	Hocker	Pelletier	Shettig
Benfield	Hook	Percey	Shrager
Brown	Hostetler	Popil	Silverman
Caputo	Huggins	Prendergast	Solomon
Conley	Irvis	Rappaport	Sprogell
Cosetti	Kelly	Rea	Stout
Dumbauld	Laputka	Redick	Swope
Fay	Mattioni	Roberts	Tate
Feather	Michael	Ruth	Thornburgh
Filson	Michener	Sahli	Tully
Fineman	Miller, D.	Scales	Welch
Gabreski			

NAYS—84

Allison	Clinger	Hirnes	Otto
Amsterdam	Corey	Horne	Pasquerilla
Bagenstose	Cortese	Jirolanio	Pott
Baldrige	Croop	Johnson	Powell
Baldwin	Curran	Kauffman	Reynolds
Banes	Dailey	Keller, J.	Richter
Barron	Desmond	Krill	Rovner
Barry	Devlin	Leach	Scranton
Benedict	Erwin	Lee, L.	Sebastian
Bloom	Fagan	Leinbach	Shively
Braham	Fawcett	Leonard	Strickler
Brennan	Fleming	Levin	Stroup
Broderick	Fohl	Mangery	Thomson
Buck	Forster	Markley	Tomascik
Bunting	Goldstein	McGeary	Waldron
Burkholder	Gray	Meyer	Warman
Butera	Griffith	Moorhead	Westerberg
Cain	Hannum	More	Whittum
Caron	Harding	Morton	Wilcox
Casey	Hatter	Nelson	Woodring
Clark	Heyburn	Orban	Woodside

NOT VOTING—22

Camardella	Goldman	Manderino	Quiles
Cunningham	Keller, M.	McGlynn	Scott
Donaldson	King	Miller, R.	Shoemaker
Donolow	Kline	Musselman	Van Sant
Fortney	Lane	Pechan	Wilmarth
Gehrlein	Lee, K.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

MIFFLIN COUNTY HIGH SCHOOL STUDENTS WELCOMED

DELEGATE BARRON. I am pleased to advise the Convention, if I have the privilege, Mr. President, that we have with us today 50 selected senior high school students from the four high schools of Mifflin County who are here as my guests and guests of the Convention today.

PRESIDENT BRODERICK. If they will stand, I am sure we will be happy to give them our usual cordial greeting and welcome.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Fleming.

DELEGATE FLEMING. Mr. President, I, too, rise to a point of personal privilege.

I would like the record to show that I am in attendance. I did not get here until 10:00 o'clock, but I am here.

Also, if I am in order, I would like to ask for a leave of absence for Delegate Donaldson from Allegheny County, who is ill at his home. He was scheduled to fly in with me this morning and he couldn't leave his house.

PRESIDENT BRODERICK. I am happy to advise Delegate Fleming that he has been marked present and that the leave of absence for Delegate Donaldson has been approved.

Be at ease until we get amendment process taken care of.

REMARKS BY DELEGATE SCRANTON

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. If the delegates would sit down, I would like to give them about two minutes of encouragement.

PRESIDENT BRODERICK. Very good. We need some encouragement. I do not know whether two minutes will be sufficient.

DELEGATE SCRANTON. Mr. President, may I just speak to you briefly about where you are and where you are going.

All of us who have for the last two and a half months been on the Judiciary Committee have seen this happen once. We went all through almost exactly what you people are going through in kaleidoscopic time. You will not believe that, but it is true. You are doing in a couple of days what happened for at least 10 days in the Judiciary Committee, every day and almost every night.

Now, in this whole article there are three main things:

One is the unified judicial system;

The second is the problem of the minor judiciary;

The third is the selection of judges.

These are the three hurdles, these are the three problem children, these are the kernels of the whole article. Despite the fact that you now have an obnoxious number of amendments—and I sincerely hope that some of you will think before you keep putting them in—you have already passed the unified judicial system. The overwhelming majority of you, time and time again, have spoken in favor of it on amendment, after amendment, after amendment. You are now in the process of going over the second hurdle, which is the matter of what you do about the minor judiciary, and you are almost at the end of that. You discussed it in many various ways having to do with various judicial districts, and parts of the State, and all the rest of it. We did all this, too.

Now, the third major hurdle is not yet before you. It is the next one. It is the most contentious and the most difficult of all.

After that you are home. So far we have only five amendments on the rest of the thing. I am sure some of you will think of some more, but at the moment there are only five. All I am trying to say to you is that if you will be as patient as the 42 members of the Judiciary Committee were who went through all of this, you are now over hurdle one; you are almost over hurdle two; and you have one big one yet to go. When that is through, you can raise a red, white and blue flag.

TATE AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1), page 1, lines 11 and 12 by striking out "municipal and traffic courts in the City of Philadelphia,"

Amend Sec. 1 (Sec. 7), page 2, lines 29 and 30 by striking out "; Philadelphia Municipal Court and Traffic Court"

Amend Sec. 1 (Sec. 7), page 3, lines 21 to 24 by striking out all of said lines and inserting: (c) In the City of Philadelphia, there shall be a community court. The divisions, number of judges and jurisdiction of which shall be as provided by law.

Amend Sec. 1 (Sec. 8), page 3, line 26 by striking out ", other than the City of Philadelphia,"

Amend Sec. 1 (Sec. 10), page 4, lines 18 and 19 by striking out "except the judges of the traffic court in Philadelphia." and inserting a period

Amend Sec. 1 (Sec. 11), page 7, lines 2 to 4 by striking out "except that the present judge of the traffic" in line 2, all of line 3 and "Governor." in line 4 and inserting a period

Amend Sec. 1 (Sec. 13), page 9, lines 22 and 23 by striking out "municipal court and traffic court judges in the City of Philadelphia and of"

Amend Schedule, page 15, lines 11 and 12 by striking out "the City of Philadelphia and"

Amend Schedule (Sec. 4), page 16, lines 7 and 8 by striking out ", except as hereinafter provided for the City of Philadelphia,"

Amend Schedule (Sec. 14), page 21, line 27 by striking out "Twenty-two" and inserting: twenty-eight

Amend Schedule (Sec. 14), page 21, line 28 by striking out "municipal" and inserting: community

Amend Schedule (Sec. 14), page 21, lines 29 and 30 by striking out all of line 29 and "shall become judges of the traffic court, and" in line 30

Amend Schedule (Sec. 14), page 22, lines 21 to 30; page 23, lines 1 to 13 by striking out all of said lines

Amend Schedule (Sec. 14), page 23, line 14 by striking out "(j)" and inserting: (h)

Amend Schedule (Sec. 14), page 23, line 17 by striking out "(k)" and inserting: (i)

Amend Schedule (Sec. 14), page 23, line 20 by striking out "(l)" and inserting: (j)

Amend Schedule (Sec. 14), page 23, line 23 by striking out "(m)" and inserting: (k)

Amend Schedule (Sec. 14), page 23, line 25 by striking out "(n)" and inserting: (l)

Amend Schedule (Sec. 14), page 23, lines 26 and 27 by striking out "except those cases assigned by this schedule to the municipal court and to the traffic court." and inserting a period

Amend Schedule (Sec. 14), page 24, line 9 by striking out "(o)" and inserting: (m)

Amend Schedule (Sec. 14), page 24, line 14 by striking out "(p)" and inserting: (n)

Amend Schedule (Sec. 14), page 24, lines 27 to 30; page 25, lines 1 to 30; page 26, lines 1 to 5 by striking out all of said lines

Amend Schedule (Sec. 14), page 26, line 6 by striking out "(s)" and inserting: (o)

Amend Schedule (Sec. 14), page 26, line 12 by striking out "(t)" and inserting: (p)

Amend Schedule (Sec. 14), page 26, lines 14 to 18 by striking out all of said lines

Amend Schedule (Sec. 14), page 26, line 19 by striking out "(v)" and inserting: (q)

Amend Schedule (Sec. 14), page 26, line 26 by striking out "(w)" and inserting: (r)

Amend Schedule (Sec. 14), page 27, line 1 by striking out "(x)" and inserting: (s)

Amend Schedule (Sec. 14), page 27, line 6 by striking out "(y)" and inserting: (t)

On the question,

Will the Convention agree to the amendment?

AMENDMENT LAID ON TABLE

DELEGATE TATE. Mr. President, I move that the Tate amendment be laid on the table.

The motion was agreed to.

TATE SECOND AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I submit a second amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 2, lines 29 and 30, by striking out "; Philadelphia Municipal Court and Traffic Court. —(a) In" and inserting: .—In all

Amend Sec. 1 (Sec. 7), page 2, line 30; page 3, lines 1 and 2, by striking out "other than the" in line 30, page 2; all of line 1 and "thereon have adopted a community court," in line 2, page 3

Amend Sec. 1 (Sec. 7), page 3, lines 5 to 24, by striking out all of said lines

Amend Sec. 1 (Sec. 8), page 3, lines 25 to 30; page 4, lines 1 to 8, by striking out all of said lines

Amend Sec. 1 (Sec. 10), page 4, line 15, by striking out "(a)"

Amend Sec. 1 (Sec. 10), page 4, lines 15 and 16, by striking out "justices, judges, and justices of the peace" and inserting: justices and judges

Amend Sec. 1 (Sec. 10), page 4, lines 18 and 19, by striking out "except the judges of the traffic court in Philadelphia"

Amend Sec. 1 (Sec. 10), page 4, line 22, by striking out "and justices of the peace"

Amend Sec. 1 (Sec. 10), page 4, lines 25 to 29, by striking out all of said lines

Amend Sec. 1 (Sec. 11), page 4, line 30, by removing the comma after "Justices" and inserting: and

Amend Sec. 1 (Sec. 11), page 4, line 30; page 5, line 1, by striking out "and" in line 30, page 4 and "Justices of the Peace" in line 1, page 5

Amend Sec. 1 (Sec. 11), page 6, lines 25 to 30, by striking out all of lines 25 to 29 and "(g)" in line 30 and inserting: (f)

Amend Sec. 1 (Sec. 11), page 7, lines 2 to 4, by striking out "except that the present judge of the traffic" in line 2, all of line 3 and "Governor" in line 4

Amend Sec. 1 (Sec. 13), page 8, line 11, by removing the comma after "Justices" and inserting: and

Amend Sec. 1 (Sec. 13), page 8, lines 11 and 12, by striking out "and Justices of the Peace"

Amend Sec. 1 (Sec. 13), page 9, lines 22 to 24, by striking out all of said lines

Amend Sec. 1 (Sec. 14), page 9, line 25, by removing the comma after "Justices" and inserting: and

Amend Sec. 1 (Sec. 14), page 9, lines 26 and 27, by striking out all of line 26 and "of the peace" in line 27 and inserting: .—(a) Justices and judges

Amend Sec. 1 (Sec. 14), page 10, line 1, by removing the comma after "Justices" and inserting: and

Amend Sec. 1 (Sec. 14), page 10, line 1 by striking out "and justices of the peace"

Amend Sec. 1 (Sec. 14), page 10, line 2, by removing the comma after "justices" and inserting: and

Amend Sec. 1 (Sec. 14), page 10, line 3, by striking out "and justices of the peace"

Amend Sec. 1 (Sec. 14), page 10, line 5, by removing the comma after "justice" and inserting: or

Amend Sec. 1 (Sec. 14), page 10, line 5, by striking out "or justice of the peace"

Amend Sec. 1 (Sec. 14), page 10, line 23, by striking out "justice, judge or justice of the peace" and inserting: justice or judge

Amend Sec. 1 (Sec. 16), page 11, line 3, by striking out "Justices, Judges and Justices of Peace" and inserting: Justices and Judges

Amend Sec. 1 (Sec. 16), page 13, lines 13 to 15, by striking out all of said lines

Amend Sec. 1 (Sec. 16), page 13, line 16, by striking out all of said line and inserting: (d) Any justice or judge who shall

Amend Sec. 1 (Sec. 16), page 13, line 22, by striking out "(f)" and inserting: (e)

Amend Sec. 1 (Sec. 16), page 13, line 25, by striking out "(g)" and inserting: (f)

Amend Sec. 1 (Sec. 16), page 13, lines 27 and 28, by striking out "justice, judge or justice of the peace" and inserting: justice or judge

Amend Sec. 1 (Sec. 17), page 14, line 3, by striking out "and justices of the peace"

Amend Sec. 1 (Sec. 17), page 14, line 5, by striking out "and justices of the peace"

Amend Sec. 1 (Sec. 17), page 14, line 14, by striking out "and justices of the peace"

Amend Sec. 1 (Sec. 17), page 14, line 22, by striking out "or justice of the peace"

Amend Schedule, (Sec. 6), page 16, line 21, by inserting after "In": all

Amend Schedule (Sec. 6), page 16, lines 21 and 22, by striking out "which establish community courts"

Amend Schedule (Sec. 11), page 18, line 17, by striking out "no" and inserting: the

Amend Schedule (Sec. 11), page 18, lines 19 to 21, by striking out "any officer" in line 19, all of lines 20 and 21 and inserting: the community court.

Amend Schedule (Sec. 12), page 18, lines 22 to 30; page 19, lines 1 to 30; page 20, lines 1 to 22 by striking out all of said lines

Amend Schedule (Sec. 14), page 21, lines 27 to 30; page 22, line 1, by striking out all of said lines

Amend Schedule (Sec. 14), page 22, lines 21 to 30; page 23, lines 1 to 13, by striking out all of said lines

Amend Schedule (Sec. 14), page 23, line 16, by striking out "municipal court," and inserting: community court.

Amend Schedule (Sec. 14), page 23, line 19, by striking out "municipal court." and inserting: community court.

Amend Schedule (Sec. 14), page 23, line 27, by striking out "schedule to the municipal court and to the traffic court." and inserting: Constitution to community courts.

Amend Schedule (Sec. 14), page 24, lines 27 to 30; page 25, lines 1 to 30; page 26, lines 1 to 5, by striking out all of said lines

Amend Schedule (Sec. 14), page 26, lines 14 to 18, by striking out all of said lines

Amend Schedule (Sec. 19), page 29, lines 17 to 24, by striking out all of said lines

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate for a statement in connection with his amendment.

DELEGATE TATE. Mr. President, let all the delegates be sure that the amendment we are now talking about is the four-page Tate amendment. It was the three-page amendment that we just tabled.

This amendment, Mr. President, is co-sponsored by a number of fellow delegates and because of the time pressures under which we are operating the distributed copies were not able to have on them the signatures of the co-sponsors, so, with your indulgence, I will read the last names of the delegates co-sponsoring this amendment. They are Delegates Irvis, Solomon, Thornburgh, Huggins, O'Donnell, Rea, Laputka, Rappaport, Casey, Buck, Pelletier, Aberman, Michener, Percey, Gabreski, Clinger, Braham, Welsh, Silverman, Shrager, Hook, Bunting and Swope. Delegate Fineman is indicating he would like to also be a co-sponsor of this. I am sure there are many others. I hope those who wish to associate themselves with this will do so from the floor.

Mr. President, quite simply, this amendment would mandate community courts as set forth in the committee proposal across the State.

I think it is time we separate the mice from the men. I am not sure which are the mice and which are the men. Those who came here prepared to accept the responsibility to decide how some of the basic essentials of Pennsylvania's Constitution should be set forth, I think, are now given the opportunity to say that the minor judiciary needs radical change and that we should so state that radical change for the entire State across the State without any difference between Philadelphia, Pittsburgh, Dauphin, or any of the other 64 counties. Excuse me, I did not mean to elevate Pittsburgh to a county, I should have said Allegheny.

Quite simply, this gives all delegates an opportunity to vote for a mandated community court just as set forth in the committee proposal as to the operation of the community courts across the State. I think we have heard a great deal about what the community courts are all about and the pros and cons of the present minor judiciary as it exists in various parts of the State.

I do not wish to belabor the point, except to urge your support for this amendment.

PRESIDENT BRODERICK. Does anyone else wish to be heard on this?

Delegate Shoemaker.

DELEGATE SHOEMAKER. I would be pleased, Mr. President, if I could interrogate the sponsor.

PRESIDENT BRODERICK. He will stand for interrogation. You may proceed with your question.

DELEGATE SHOEMAKER. Mr. President, this is rather a voluminous amendment and I am a little bit confused, as I suppose some others may be. I would like to know what effect this amendment has on those sections of the committee proposal which outline the present or, rather, the revised JP system, that is, these districts and so forth. What effect would this amendment have on this revised system?

DELEGATE TATE. That revised system would no longer be in the committee proposal.

DELEGATE SHOEMAKER. Would the option to go backwards to the JP system still be in the proposal?

DELEGATE TATE. I will have to ask the advice of counsel on that. This is a complicated amendment in its technicalities and I would like to ask counsel to answer that. My impression is that that opportunity would not be in the proposal, but I would like the opinion of counsel.

DELEGATE SHOEMAKER. I am happy to wait until we get that answer if it is forthcoming.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. In the meantime, several delegates have asked me what the committee position on this is. I think the committee position is quite clear from the documents that the committee brought in. They felt that the magistrate system should be handled on an optional basis. The majority of them did, except in the City of Philadelphia, where they thought they should be eliminated and replaced by the municipal court and the traffic court.

PRESIDENT BRODERICK. Would Delegate Shoemaker yield until we have had an answer to the question supplied to Delegate Tate, and then we will recognize both of you again.

So we will not have to hold up the proceedings, would you mind yielding?

DELEGATE SHOEMAKER. Not at all.

PRESIDENT BRODERICK. The Chair will recognize Delegate Clinger.

DELEGATE CLINGER. Mr. President, I would like to interrogate the sponsor of this amendment.

Mr. President I am very attracted to this amendment, but, coming from a rural area, I do have some problems with the mechanics of this and how it will work particularly in the rural areas. The problem, of course, is one

of geography, that is, we have large areas which would have to be serviced by this community court system. Would it be the gentleman's thought that there would be one community court in each judicial district?

DELEGATE TATE. I believe, Mr. President, that is the impact of the committee proposal, insofar as it is now proposed. It is an optional system, yes, sir.

DELEGATE CLINGER. Would it also be the delegate's feeling that this could be, in the old-time fashion, a circuit riding court? In other words, would the courts sit in various parts of the judicial district?

DELEGATE TATE. I think this would be a very important aspect of this, and it is important not only in the rural areas, but in some of the metropolitan areas, too.

My understanding is that the community courts as established in the committee proposal would be able to do this, and in all probability would do this.

DELEGATE CLINGER. My final question is, one of the arguments in favor of the maintenance of the JP system, particularly in rural areas, is their closeness, their proximity to the people whom they are serving in a number of ways, advice and handling their various minor matters. As I understand it, would this proposal include the proposal which was included in Proposal No. 1,000, providing for commissioners to carry out these functions which JPs are now performing, in addition to their judicial functions?

DELEGATE TATE. Mr. President, the actual work of the commissioners is something with which I am personally not too familiar and that question was raised informally with me about five minutes ago. I have not had an opportunity to get an answer to it. I wonder if Mr. Thornburgh might speak with regard to that.

I yield to Mr. Thornburgh.

DELEGATE THORNBURGH. Would Delegate Clinger repeat the question?

DELEGATE CLINGER. Yes, Mr. President. I am interested in whether or not this amendment would include the concept of commissioners as a part of the community court in the judicial district who would be able to perform many of the functions which the JPs are now performing of a non-judicial nature in servicing the people in their localities.

DELEGATE THORNBURGH. Mr. President, I can speak only to the concept of Proposal No. 1,000, which I introduced and which covered this problem. Whether or not the language here needs to be adjusted is one thing.

The concept of Proposal No. 1,000 was the following, that there should be a community court within each judicial district, that it should operate two divisions, so that it would not be a centralized court within the district in which everyone would have to travel, but instead would be geographically located so that it would be acceptable through our modern means of highways and transportation, so that persons would not have to travel farther, in fact, than they do to the present minor judiciary. These divisions could be located in the office of the existing municipal building and in other structures throughout the particular judicial district.

In addition, Proposal No. 1,000 spoke of the concepts of commissioners who would be an adjunct to the community court judges. They would, in effect and quite possibly in action, be performing the functions, the non-judicial functions, if you will, that the present aldermen, justices of the peace and magistrates perform. The thought was that there are, indeed, many non-judicial functions, salutary functions, performed by the present aldermen, justices of the peace and magistrates. We have heard them described in detail by those people who believe fervently in the present minor judiciary system. No one quarrels with the advocacies of these functions. It is needed at the community level, such things as straightening out domestic quarrels, the idea of being able to avoid litigation, but the idea of the community court is to deal with the consideration of judicial problems, of cases, matters of law, to give the community court judges trained in the law, that function. The commissioners the adjunct would be in all probability for an extended period of time be those persons who now perform the homey, if you will, functions that have been described to us.

Does that answer your question, Delegate Clinger?

DELEGATE CLINGER. Yes, Mr. President.

So, as I understand it, then, all we would be removing, in effect, would be the judicial functions. The other functions that a JP very probably performs in services to his area would still be continued to be performed by the commissioners and only the judicial functions would be removed from him, is that correct?

DELEGATE THORNBURGH. That would be the concept which I would support and would urge the delegates to support.

DELEGATE CLINGER. Certainly I would rise in favor of this amendment, because I feel that it would have a very beneficial effect on the administration of justice throughout the State, and I can see that many of the fears that I had in terms of how the system would work in a rural area will be answered. If we have this two-prong attack, we maintain the advantages of the JP on the local level, and yet remove the judicial functions from him.

MOTION TO TABLE SECOND TATE AMENDMENT

PRESIDENT BRODERICK. The Chair now recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, you have before you an amendment which appears to be what we would call a group of bills. We have heard a lot of arguments pro and con on the justices of the peace. I would say that 99 per cent of us here have made up our minds as to just exactly how we are going to vote, so, in order to save time, and so the work can proceed smoothly, I now move to lay this amendment on the table.

DELEGATE BARRON. I second that.

PRESIDENT BRODERICK. It has been moved by Delegate Jirolanio, seconded by Delegate Barron, that the Tate amendment now under discussion be laid on the table.

DELEVATE IRVIS. Mr. President—

PRESIDENT BRODERICK. Delegate Irvis.

DELEGATE IRVIS. Mr. President, I am opposed to the motion to table.

DELEGATE JIROLANIO. I ask that I be recognized.

This motion is not debatable, and I am sure that the learned gentleman at the microphone knows that rule.

PRESIDENT BRODERICK. Would you be at ease for one second while the Parliamentarian gives the Chair a ruling?

Pursuant to our rules, Rule 20, a motion to lay on a table is not debatable, cannot be amended and requires a majority of the vote of the delegates present, so I would say that it is not debatable.

DELEGATE IRVIS. Mr. President, may I point out to the President that I sought the floor before the second of the motion was made, and that was the precise reason for my calling the attention of the President to me.

My intention was to speak before there was a seconding of the motion, therefore, before there was a motion on the floor.

PRESIDENT BRODERICK. The Chair can only say he regrets he did not see you, but he looked for the seconder, and the seconder was Delegate Barron. The Chair has difficulty recalling Delegate Barron's name. It was seconded practically immediately.

DELEGATE IRVIS. I do not think I have to say any more. I think the Convention knows what is behind this move, anyway.

PRESIDENT BRODERICK. This is not debatable. We are going to have to put it to a vote.

DELEGATE FINEMAN. Mr. President, I did not rise to debate this motion. I came down here because this is a spot I am accustomed to being in, and I wanted to see how it felt. I just want to add my voice to Mr. Irvis' in urging the defeat of the motion to table.

PRESIDENT BRODERICK. This is out of order.

We are going to open up the machine and vote on the motion.

DELEGATE FINEMAN. Mr. President, I think we are entitled to an explanation of what is involved in laying the motion on the table. I understand that practically kills it for this Convention. Will the Parliamentarian tell us what is the significance of laying the motion on the table?

PRESIDENT BRODERICK. I am advised that it stays on the table until it is called up.

Now we will unlock the voting machines, and the question is on the motion placed by Delegate Jirolanio and seconded by Delegate Barron, that the Tate amendment be placed on the table.

All those voting "yea" will vote to put the Tate amendment on the table. Those voting "nay" will vote to reject the motion.

DELEGATE IRVIS. Mr. President, when you anounce the vote, I should like to be recognized.

On the question,

Will the Convention agree to the motion to table the second Tate amendment?

The roll was recorded as follows:

YEAS—61

Allison	Dumbauld	Keller, J.	Powell
Baldwin	Erwin	Krill	Reynolds
Barron	Fagan	Leach	Richter
Bashoff	Filson	Lee, K.	Rovner
Benedict	Fleming	Lee, L.	Sahli
Burkholder	Fohl	Leonard	Scales
Butera	Forster	Mangery	Scarlett
Cain	Goldstein	Markley	Shoemaker
Conley	Gouger	Meyer	Stroup
Corey	Hatter	More	Thomson
Cortese	Heyburn	Nelson	Tully
Croop	Himes	Orban	Van Sant
Cunningham	Horne	Orbin	Westerberg
Curran	Jirolanio	Pasquerilla	Whittum
Desmond	Kauffman	Pott	Wilcox
Devlin			

NAYS—74

Aberman	Casetti	Mattioni	Sebastian
Amsterdam	Dailey	McGeary	Shapiro
Aurentz	Fawcett	Michael	Sharp
Bagenstose	Feather	Michener	Shettig
Baldrige	Fineman	Miller, D.	Shively
Baldus	Gabreski	Moorhead	Shrager
Barry	Gerber	Morton	Silverman
Benfield	Griffith	Murray	Solomon
Bloom	Harding	O'Donnell	Sprogell
Braham	Henderson	Otto	Stout
Brennan	Hocker	Pelletier	Strickler
Broderick	Hook	Percey	Swope
Brown	Hostetler	Pupti	Tate
Bunting	Huggins	Prendergast	Thornburgh
Caputo	Irvis	Rappaport	Warman
Caron	Johnson	Rea	Welsh
Casey	Kelly	Roberts	Woodring
Clark	Laputka	Ruth	Woodside
Clinger	Leinbach		

NOT VOTING—28

Banes	Gehrlein	Lane	Quiles
Buck	Goldman	Levin	Redick
Camardella	Gray	Manderino	Scott
Donaldson	Hannum	McGlynn	Scranton
Donolow	Keller, M.	Miller, R.	Tomascik
Fay	King	Musselman	Waldron
Fortney	Kline	Pechan	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion to table the second Tate Amendment was not agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I now rise to speak in favor of the Tate amendment.

There are times, Mr. President, at this Convention, and I am sure you agree with me, when a man must take his courage in his hands, and this is one of the times. There is not any cave, there is not any hiding place and there is not any parliamentary defense. Those of us who have said we are here elected to represent the people and to draft a basic document for the benefit of the people must here and now this morning face that challenge. Those of us who say they are opposed to the JP system, that it is inherently wrong, that it is corrupt and corrupting, that it must be changed, must here and now put their money where their mouth is.

Those of us that say that community courts should be established in this Commonwealth now have the opportunity to say yes. Let us establish them. Those of us, like this speaker at the microphone, who have been yelling for fair and equitable treatment of all the people of the Commonwealth, must now put our votes where our voices were.

I am prepared to do that. I think from the results of the motion to lay on the table, perhaps the majority of you are also prepared to do it.

I say here before the vote, I do not castigate anyone who votes in the negative. I do not challenge anyone's motive who is against it. Honest men may disagree about whether or not the JP system is inherently wrong and ought to be revised or eliminated. Honest men may disagree as to whether the community courts system is good, or bad, or ought to be instigated at all, but at least here and now honest men and women will say what they believe and will vote what they believe.

This motion purely and simply says that the community court is a good idea, then let us have it for all the people

of the Commonwealth of Pennsylvania, and let us say "yea" now to it or "nay" now to it, and let that be the end of it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. President, I must apologize, possibly for interjecting the opinion of a layman into what seems to be a lawyer's province. I am not a barrister, I am not an attorney, I am not even a lawyer, but I do have some opinions on this particular subject, and I have spent considerable time on this subject as a member of the Scranton Commission on constitutional amendments.

At that time this particular subject was studied and discussed for at least two full days and I might say at that time one of the rather interesting developments was after the testimony of the gentleman from Ohio—I do not recall his name—who gave us the statistics from the community courts system of Ohio. Projecting that into the Pennsylvania picture, we very definitely arrived at the figure that the community court system in the State of Pennsylvania would cost the Commonwealth of Pennsylvania an additional $32 million a year. This, I think, should be given due consideration by this Convention. There is no desire, there is no agitation, outside of Philadelphia for the establishment of community courts.

I personally cannot see any God-given authority, any God-given superiority to the attorney over the intelligent layman and the administration of justice at the local level. I think the office of the justice of the peace in rural Pennsylvania has justified itself for its continuation, and I believe that this Convention can and should safeguard the entire future of these convention proceedings, because, believe me, my friends, knowing the sentiments of rural Pennsylvania on this subject, I will predict that should community courts be inflicted upon all of Pennsylvania by this Convention, this Convention is automatically putting 150,000 to 200,000 votes down against the entire proceedings of this Convention. I say we should not run that risk.

I say right now, gentlemen, support your committee on their recommendations which have been clearly discussed and, to my knowledge, approved practically for all of Pennsylvania. I think it is a safe thing to do, and I think this particular amendment should be overwhelmingly defeated.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I perceive there is a cloud of inconsistency pervading the atmosphere of this assembly. On one hand we contend that the voice of the people shall be heard; on the other hand, we now attempt to mandate a community court throughout the entire Commonwealth. This I cannot subscribe to.

Already this delegation has spoken with relation to the City of Pittsburgh and Allegheny County, with relation to Philadelphia County, and that matter should now be settled and determined, but apparently it is not, for now we face an amendment which establishes community courts willy-nilly throughout the entire Commonwealth.

I call your attention, ladies and gentlemen of this Convention, to the excellent work of the Judiciary Committee, to the procedure by which eventually and possibly, if the electorate in the judicial districts so determines, they might have community courts. This is their choice.

In the interim time we now have in this marvelous work of our Judiciary Committee a method whereby the falls and evils which are the instruments of errors on their face will and can be corrected, and I maintain that opportunity should be given to the minor judiciary, particularly in the 65 counties of Pennsylvania to which this amendment now primarily applies.

I ask you, ladies and gentlemen, for consistency, for the right of the people to speak eventually one way or the other, to vote down this amendment.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton. For what purpose does the gentleman rise?

DELEGATE SCRANTON. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SCRANTON. In the course of the Judiciary Committee work, we always found that when something new came up we had to figure out precisely where we were.

I would like to know the following three things:

If this amendment passes, first of all, does the Redick amendment still stand, which is that the people can at some later date in any given five-year period determine in their judicial district that they will not have the community court?

Secondly, what does it do to Allegheny County after the actions that have been so far taken there?

Three, what does it do to Philadelphia County and the propositions in the judicial article concerning the municipal courts, the traffic court and the other scheduled items?

PRESIDENT BRODERICK. You have asked three questions of the Chair. Those three questions, I think, the Chair would have to refer to counsel and would have to rely on counsel for the Judiciary Committee and counsel for the Convention. I can say that we will be happy to have counsel give you an answer to those three questions.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leach.

DELEGATE LEACH. While the learned counsel is producing the answers to the three questions proposed by Delegate Scranton, may I speak on the subject?

PRESIDENT BRODERICK. You may. I think it would be in the interest of saving time.

DELEGATE LEACH. Mr. President, there may or may may not have been some reason for the names of the sponsors of this bill not appearing on it when it came out, but as I listen to them being read off, and my memory may be faulty, I have reason to believe that they are all members of the bar. Earlier today one of those members set up a classification, and I believe that was, are we men or are we mice? I do not know about the rest of you, but us country boys do not like to be called mice. Rats.

In the action of this Convention today we have substantially supported the recommendations of the other three committees, and I say to you and the other delegates that if the other country folks resent as much as I do being placed in the mouse category, we forget the subject and go back and follow the advice of our committee, sir.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I am informed that at least three or four of the sponsors are not lawyers, and perhaps we do know what the problems are in the administration of justice. I do not pretend to be as expertise as some of the country lawyers here as to what goes on in the country. Three or four of my friends and neighbors from Philadelphia got up on this floor about 10 minutes ago and cried for reform. Of course, they want to keep the 600 jobs in the traffic court. We will not talk about that, but they cried for reform. They want to get rid of this bad system.

Well, I challenge them now. Let us get rid of it for the whole State.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sharp.

DELEGATE SHARP. Mr. President, I along with Delegate Leach represent, perhaps, a parochial view, but I am not so young or so naive that I recognize that matters of principle are not governed by parochialism. Mr. President, I have a feeling here in what I have heard this morning that some Machiavellian force has been at work in this group.

I have been a member of the Judiciary Committee these many weeks and many days and have heard this subject discussed completely and fully. I have deliberately not inserted myself as any portion of the prey here between the two titans, the tiger of Philadelphia and the lion of Pittsburgh, feeling that their knowledge of their individual problems would contribute more wisdom than my poor ability to do so.

However, in this Convention in the hearings and in the deliberations in the Judiciary Committee, we of the parochial areas were given to believe, particularly by the City of Philadelphia, that Philadelphia was an area apart to itself because of its problems. We heard the report of the esteemed District Attorney of Philadelphia, and that there were evils in Philadelphia to be eradicated and, therefore, Philadelphia deserves special treatment.

As occurred yesterday, the County of Allegheny, through the Rea amendment, stated that they, too, in common with Philadelphia have problems that require change.

So, consequently, we have now come almost to a full circle, where we have heard delegates from the Philadelphia area state that Philadelphians were not to be considered second class citizens and that they should have the right to vote on their own destinies. We heard the spirit vehemently expressed of the right of the people to decide their own destinies insofar as their intimate contact with justice should not be bargained away by a mandate, and yet I am surprised that those very persons, Mr. President, who so loudly espoused this principle, now wish to impose a mandate upon the rural areas. Mr. President, may I assure you, as the people of Philadelphia are not second class citizens, we of the rural areas are not second class citizens, and we deserve the right to determine our destinies likewise insofar as our judiciary system is concerned.

Mr. President, to be factual, I wonder how much of the present amendment that is on this floor has been conceived out of good thinking and how much out of anger. This deliberate body in a very few minutes is going to decide a very important question, and yet in the interrogations I heard on this floor, I am not satisfied that, No. 1, the Redick amendment will apply, nor, likewise, have I heard the slightest indication on this floor as to what the cost of this mandated system might be or how it will work, or even if it is necessary or good for the people of Potter County, or Forest County, or my own beloved Centre County. I have not heard any details from this floor as to how this will be implemented, as to how it shall be funded, and I have not heard the slightest indication of what the total cost might be.

It would seem to me, Mr. President, that mandating is a word that is easily said, but with dire and consequential implications. It is so easy to state that we cannot be ominiscent and mandate what is best, but I dare say as my good friend, Delegate Irvis has said, we are now placing ourselves in the position of deciding what is best for the entire State of Pennsylvania, not just what is best for the people of Pennsylvania.

We have just completed work on a local government article in which section after section we were content to entrust to the people of Pennsylvania the right to govern themselves, that we were content to entrust the form of government and their choice of government, and yet now we will deny the same people that we entrusted the right to govern to decide those who shall administer their justice on the local and most personal level.

It would seem to me that we are being false to principle here if we support this amendment. It would seem to me that we are acting in haste if we support this amendment. It would seem to me, Mr. President, that we are not searching our souls to decide what is best for the people of Pennsylvania if we blindly vote aye for this amendment.

I, therefore, Mr. President, rise in opposition to it.

COUNSEL OPINION No. 32

Question: Is there an inconsistency in the provisions of Section 17(c) of Committee Proposal No. 7, Printer's No. 20 (Judiciary Article) which confer upon the Supreme Court the power "to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require"; but prohibit the court from altering "the jurisdiction of any court"?

Answer: Yes.

Discussion: The jurisdiction of a court has two connotations; jurisdiction over the parties and, more importantly, jurisdiction over the subject matter, or the classes of actions which the court can adjudicate. Strank v. Mercy Hospital of Johnstown, 376 Pa. 305 (1954); Greensburg School District Appeal, 403 Pa. 243 (1961); Simpson v. Simpson, 404 Pa. 247 (1961); McWilliams v. McCabe, 406 Pa. 644 (1962). The power to assign or reassign classes of actions among the several courts, therefore, must include the power to alter the subject matter jurisdiction of the courts.

Similarly, the jurisdiction of an appellate court refers to its jurisdiction over classes of appeals, Weinbach's Appeal, 316 Pa. 333 (1934); Kungsgaten, Inc. v. Philadelphia, 416 Pa. 352 (1965);

Jackson Appeal, 191 Pa. Super 455 (1960); Rowswell Appeal, 191 Pa. Super 473 (1960); and the power to assign and reassign classes of appeals also includes the power to alter the jurisdiction of appellate courts.

It is our opinion therefore that the grant of such power of assignment and reassignment on the one hand and prohibition thereof in the same paragraph are inconsistent.

MARVIN COMISKY
Counsel for the Constitutional Convention

PRESIDENT BRODERICK. Before the Chair recognizes the next delegate, there were three questions that were posed to the counsel for the Convention by Chairman Scranton, I believe, and I will read off the counsel's opinions.

The first question was in connection with the Redick Amendment, and the answer of counsel is the Redick Amendment will stand, but will be ineffective because the procedure for voting will have been deleted.

No. 2, as to Allegheny County, the community court would be mandatory.

No. 3, as to Philadelphia County, the community court would be mandatory and there would be no municipal or police court.

This is the opinion of counsel in connection with the questions that were asked by Chairman Scranton, which I would like counsel to give to the Judiciary Committee, since those answers were formulated by counsel for the Convention and counsel for the Judiciary Committee, and they are just directory in response to the questions.

The Chair is happy to recognize Delegate Powell.

DELEGATE POWELL. Mr. President, I am from Bucks County, and in Bucks County I happen to know, in general, that this proposal will cost the voters, if the county commissioners have to pay for it or in any way they have to pay for their county government or local government, over $1 million, which is two mills.

During the campaign while I was running for election I researched this, and I found out that this type of expense should be weighed against the type of courts we wanted, and was willing to come up here and take the referendum point of view in giving the people of local governments the opportunity to vote whether they wanted a community court or to maintain the JP system. One of the factors in determining this, in any vote, is to find out what the cost is. Is it going to cost more than we can expend?

In Bucks County it is going to cost more than $1 million, and, furthermore, my final point is that in this amendment produced by Delegate Tate it has not been determined what it will do. In the interrogation of Delegate Tate and Delegate Thornburgh, questions were asked Delegate Tate and Delegate Tate was unable to answer a number of them, and Delegate Thornburgh referred to a bill he put in, a proposal he put in, over two months ago.

For those reasons, No. 1, I do not think they know what this is going to do, and, No. 2, the cost is atrociously high. I oppose this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scarlett, who has been standing for a long time.

DELEGATE SCARLETT. Mr. President, you may know this is the first time I have been on my feet to either favor or oppose an amendment. My fellow delegates; Delegate Sharp has said more eloquently than I can say my feeling as far as this amendment is concerned. I feel, coming from the northwest section of Pennsylvania, many times referred to as the forgotten section of Pennsylvania, that I have a clear mandate from the people of Erie County that they want to be able to vote on the kind of a court system that they should have in that community. Therefore, I would like to oppose this amendment and ask for the question.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I desire to clarify my position on this whole series of amendments. Much has been said about our great national leaders of the past believing in the wisdom of the people to decide the questions for themselves. It was because of my own belief, conforming to the beliefs of the great leaders of the past, that the people are able to decide their own questions, that I have voted to permit the people of Pittsburgh, or Allegheny County, and of Philadelphia to decide for themselves. A great deal has been said here that we have a mandate to change, but it appears that the mandate to change was peculiarly held to mean only Philadelphia and Allegheny County. If it is good to have this system in those cities, it is good to have it in other cities.

I know the cities of Central Pennsylvania, and I assure you, Mr. President, that the discrepancies and the evils that have been painted here as attaching to the modern judiciary in the two greatest population centers of this State will attach to the modern judiciary in the smaller cities of this State in time, if not in degree.

Therefore, I hope that I am going to vote consistently on my position by supporting this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilcox.

DELEGATE WILCOX. Mr. President, I think it is time Potter County is heard from. I represent Potter County, in fact, I represent five counties. More than 40,000 voters sent me here to represent them. Three of the counties I represent are larger in area than the State of Rhode Island, each of those three. I do not think the people in downtown Philadelphia understand what this means in the country areas. I think you should give us the local option as everybody else.

I move the question.

PRESIDENT BRODERICK. There have been delegates standing and I know we are anxious for the question. Let us try to keep it short.

The Chair recognizes Delegate Benfield.

DELEGATE BENFIELD. Mr. President, since December 1st I have been on the floor opposed by attorneys. I am getting to the point that I am much like your President was last evening. I hope, Mr. President, you will forgive me for using your words. When he left last night, he said, "I don't think I am the pine on the top of the hill. I may be a shrub, but I know I'm bushed."

Well, that is just what I am, I am bushed.

I have received, and I am not exaggerating, several hundred letters. I have received petitions from people re-

questing that the magistrates be left as they are. Mr. President, I knew this was impossible, so we made changes, we reduced the number, we abolished the fee system. We have come and we have tried to reform, but I assure you that if we mandate this bill the vote on April 23rd will be "no."

You know, it all depends how we look at things. That is what makes the difference. We attorneys look at it, it may be a selfish way, anyway, getting back to looking at things differently is like a certain fellow who passed an antique shop. On the outside of the antique shop he saw a chair on which there was a price tag of $11. He grabs the chair, takes off the tag, carries it into the antique shop and says to the proprietor, "What is this chair worth?" The proprietor looked at it and he said, "Well, the seat is cracked, the legs are bad, $3.00." The fellow says, "I thought there was something wrong, you had it sitting on the outside marked $11."

Fellow delegates, let us look at this the way most of the people do in Pennsylvania. I am sure that all of you will want to oppose this amendment. I know just the simple reason of making changes is not the answer. If you think making changes, installing community courts is going to solve the problem, I ask you to think of one thing, and, if you never tried it before, do it right away before you vote. Go to a public restroom and try to dry your face in one of those warm air things, but that is the modern thing.

I am sure that after due consideration, you will all agree that we should oppose this bill.

PRESIDENT BRODERICK. The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. Mr. President, I would like to make just a brief statement of bipartisanship.

One delegate has already spoken from Centre County and I think everybody agrees it was very eloquent, although we happen to be of different parties but I would like to endorse him 100 per cent. I felt that the JPs needed improvement. I think the committee has given them very definite improvement and, therefore, I oppose the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, we have heard from the country boys and heard from the city boys. We of the suburbs of southeastern Pennsylvania have gone into this matter in great detail. I think it is rather interesting to note that in the 17th Senatorial District, when four delegates ran for this office, one had an open mind because he was not an attorney and he stated he was going to come here and hear the debate and make his decision as a gentleman. There were three attorneys, two stated that they were for the type of reform the Proposal No. 3 has produced. The fourth was for ripping out the justice of the peace system, a system that he did not know anything about. He was defeated. He was defeated because he did not know what he was talking about. He did not have the experience that those of us who practice law in the counties before the squires have, which is, that we know there are honest men and we know many of them work hard.

We also were aware that there were certain evils such as the fee system and Proposal No. 7 abrogated that. We also knew in certain areas there were too many, and Proposal No. 7 helps resolve that problem. We also knew many were insufficiently trained and Proposal No. 7 has made every effort to solve that problem.

To impose upon us, in our area, a system of justice which we do not want because we voted against the individual who said he wanted a community court, would be to defy the will of the people.

Proposal No. 7 goes one step further. It gives the people of each judicial district the opportunity to select their own system of justice in the minor court. If we here are to be consistent and follow the splendid lead of the Committee on Local Government which has given each municipality an opportunity to select how it should govern itself, then I think it is incumbent upon us to be fair and consistent here and permit each judicial district to determine what form of minor judiciary they want to administer justice in their area.

Finally, I would like to add one thing. Who is going to man the community courts? Certainly not a successful lawyer; he could not afford it. What you are going to find is either some young lad fresh out of law school who would like to be called judge for a while. Without the experiences of life and without the knowledge of the people in his community, his decisions may be legally correct, but they are certainly not going to be tempered with the humanity, kindness, compassion and understanding that our squires in our counties give today. What are you going to have on the other hand, an older lawyer who could not cut the mustard in the competitive field of the practice of law.

If you are going to turn out a system of justice that is tried and is true and is not evil and is not corrupt, for something that you do not know anything about, I submit, Mr. President, this is a mistake. This is not reform. Delegate Tate's and Delegate Thornburgh's amendments are certainly not reform. It is interesting to note from whence they come. They come from big cities, big law firms who do not know how we practice law out in the counties. Just as Philadelphia and Allegheny, and as Delegate Irvis said, should be able to select their own destiny, certainly we in the suburbs and we in the country should be able to select our own destiny. I think if we vote for this amendment, we are telling the people we do not trust them.

The people's courts have been successful. They have been manned by ladies and gentlemen. To abolish them for a system we do not know anything about is to throw asunder and do violence to a splended proposal conceived in the Committee. Let us give it an opportunity to work. I think it can work and I think most of you think it can work, so let us give the people a chance.

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I will be brief.

I just want to say as a matter of record, the day before yesterday after I sat down someone physically removed the microphone that was next to my desk. I think someone was trying to tell me something, but I think that is going a little bit too far. I hope when I sit down today they do not remove the one I am speaking from right now.

This is an extremely difficult and personal issue for all of us. It would be far easier for each of us as individuals to let this one pass, to say nothing about it, and I am sure many of us here have been waiting for the day since the 1st of December when this issue would confront us, but I do not believe that this issue will go away. In some respects, it is the central issue of the Convention. It is the issue which is most on the minds of people from one end of the Commonwealth of Pennsylvania to the other and, believe me, my fellow delegates, I do not rise to try to impose my will or my views upon any of you or even to suggest how you should vote on this issue.

I rise merely to make my own views a matter of record. I rise because on this issue I do not think I can enjoy the luxury of silence, and I rise on this issue because I think it transcends the rural versus urban interests that are so ably represented in this Convention. I think it goes to the central issue of the type of judicial system we are to have in Pennsylvania in the years ahead.

It seems to me to be one of the most fundamental tenets of a democracy that the people have confidence in their judicial system. Speaking from my own experience, and I can only speak from that vantage point, I think there are many people in Pennsylvania who do not have confidence in the minor judiciary system as it exists now in Pennsylvania. I want to make it very clear when I make that statement that I am not speaking of any individuals or personalities. There are many fine upstanding individuals in the minor judicial system in this State. I rise to address myself to the system itself.

It is a system with which, in my opinion, based upon my experience in political life, as a lawyer and as a citizen of a community which lies neither in Philadelphia or Pittsburgh, I think we can do better in Pennsylvania than the system we now have.

I think a system of community courts, while not guaranteeing progress—no one can do that—in the long run I think gives us a better chance to fashion a system of justice from one end of the Commonwealth to the other, than does the present system and, while each of us here are representing a sectional viewpoint and a sectional interest, we meet as a group which speaks for all of Pennsylvania.

I want to see the day when we have in Pennsylvania, not a good judicial system, but the best judicial system that we can find, because I suggest to each of you that confidence in the integrity of the judicial process is essential.

To those young people who are now seated in the balcony of this chamber and the countless thousands like them across this Commonwealth who perhaps are tempted to be cynical about politics, and political life and government generally, say this amendment, in my view, gives us an opportunity to restore the faith of the people in the judicial system of Pennsylvania. I believe this very deeply and I respect the viewpoint of those who feel differently, but I expect them also to respect my viewpoint, because I feel it just as deeply and just as strongly as they feel theirs. I submit to you that we should not be intimidated by those who tell us if we vote one way or the other this Convention will not be a success. I think it is time the lines were drawn on this issue, and no one is mandating anything, I might remind you. Every person in this Commonwealth registered to vote will have an opportunity to vote on the 23rd of April. We will have a referendum on this issue. It will be a gigantic referendum on which each person in all the counties of Pennsylvania will be given an opportunity to speak.

I say to each of you, search your own conscience. To me, the choice is clear. I intend to vote in favor of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Orbin.

DELEGATE ORBIN. Mr. President, it is rarely that I get up on this floor and it will be rare when I do get up, but I feel rather deeply on this amendment, and I would suggest to Delegate Benfield that he not criticize all of the lawyers. He has friends in this Convention. By the same token, I and his friends do no criticize all of the JPs.

I am satisfied we need reform. I want to make one thing clear, in my county in my senatorial district, we do not have corruption, and I cannot see why the Pennsylvania Bar Association wants to force this onto our county.

I want to counsel those who are not lawyers. I am satisfied in my own mind this is the Pennsylvania Bar plan, Delegate Thornburgh told you it was. I ask you this: Who is the Pennsylvania Bar to tell us that this is the thing for the people of this Commonwealth. Who are they to tell us that we are the ones that should put this through for them? Let me point out one other thing to you. The Pennsylvania Bar Association does not represent all of the lawyers. If you pass this amendment, you will lose the right to vote which is in the judiciary article at the present time on the optional basis.

I would like to ask the lawyers who presented this amendment, as complex and complicated as it is, whether they would pass upon their own clients' business in such a short time, in such a complicated manuscript. I would not. Yet they ask you to do this. Frankly, I do not understand it.

I would also point out to you one other matter. Later on, you will have in the judiciary article, the "yes" and "no" vote. If my memory serves me well, it was not too many years ago that the news media and the public condemned the fact that in the communistic countries and in Germany there was one name on the ballot, which is the equivalent of a "yes" and "no" vote. If that goes through and this part goes through, you will have not only the Pennsylvania Bar plan on the community court, but you will also have the Russian ballot. I say to the Pennsylvania Bar Association, if this amendment goes through, if it contains the Russian ballot, this will kill the judiciary article before the voting public. If they want to kill it, let them put it through. If they kill it, what will you have? Nothing. You will be without the unified court system. You will be without the reform which are in the proposal of the Judiciary Committee.

I, therefore, say to you that you should vote against this amendment at this time.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Will the Chair yield to me on the point of personal privilege for about three seconds?

PRESIDENT BRODERICK. The Chair will yield for three seconds.

DELEGATE CROOP. I do not think Delegate Orbin meant to say that I was spokesman for the Pennsylvania Bar Association. If he meant that, boy, is he wrong.

DELEGATE IRVIS. I would like to yield to Mr. Barron.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Thank you, Mr. President, and thank you fellow delegates for being sufficiently patient to hear me. I will not be lengthy. I would like to say that most of what Senator Casey said, I agree with his thinking. However, I came directly to the opposite conclusion as to what should be done here.

I am one of I am sure a number who came to this Convention feeling we were going to sit down and write a constitution. I was in Committee disappointed that the best effort we could do was to provide this optional system. I am satisfied, in considering the wishes that were expressed in the committee, that these are most wise and I support them fully. I would like to point out, however, the major fallacy that those who have indulged in the concept of community courts have put themselves in, and, it is briefly this.

Look at our schedule that came along with this proposal. Look particularly at magisterial districts. Look very carefully that we provided an opening arrangement as to what the salary was going to be, an opening arrangement as to what the population concepts were going to be, all subject to change by the legislature, but carefully worked out. A full and complete plan for the continuation of the justice of the peace system has been given to this Convention. No full, no complete, no decent, understandable, workable plan in connection with community courts has been proposed to this Convention, either in the Proposal No. 1,000 or in the present effort for the community court system. I am for reform and for improvement. As Shakespeare put into the language for Hamlet, "I do not care to fly into a land from whose boar no traveler returns."

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, I am afraid too many who think they know the respectability, the authority and the help that a good JP can do in any community have not observed them for a long enough period of time, because I feel certain, if they had at a close distance, they would not speak against them.

The old story of one rotten apple in a barrel does not spoil the whole barrel. Certainly, when we are dealing with humanity, we are not dealing with all perfect human beings. I trust we are all self-conscious enough and truthful enough to acknowledge this.

I know there have been bad justices of the peace. For every bad one, there have been a lot of good ones. I made a survey of 44 justices of the peace in a little five county area that I represent in my senatorial district. The costs to the taxpayer of those 44 JPs was approximately $100 a year, or $4,400.

I do not even know where we would get a community judge, to be frank with you. As recent as the recent Pennsylvania Bar Association's Convention in this city, I sat down at the table with my President Judge, and we only have one judge, who represents the counties of Columbia and Montour. He wants to retire. This might sound peculiar to you. The reason he cannot retire is that he does not know where to find a replacement.

If we cannot find a replacement—and, remember, this judge that I speak of has been nominated for three successive terms on both tickets, so it is not politics. This was his expression to me. He said, "Where are you going to find any? I cannot. I have looked up and down the list of the few practicing attorneys that we have in my jurisdiction," and he says the ones who should take it will not take it, and the others we would not care to have. This might be your condition with a community judge. My county is 55,000. Montour County is 22,000. He represents that this is a Judicial District. What would we do? How would we get a community judge? How would we use him? This is one problem which we have to face and another is the cost of one.

For many, many years, and I have to give it away, the baldness of my head to tell you that it was many, many years, that I had two different justices of the peace in an adjoining office to mine where the door was normally open all the time. I heard a great deal of the work that went on there in the idle moments I was not working at my own vocation. It is unbelievable the good these two justices of the peace administered. Many were family and domestic problems and many things of this nature which did not get into the courts and which did not bring in the police.

I remember an old saying that my domestic relations professor at Dickinson taught me. He said, "If you have a domestic relations problem, never take sides because in ten minutes they will both be against you."

Here is the justice of the peace sitting in the middle, settling these problems which go to the structure of our Commonwealth, the family. This is the man whom they look to. Maybe the husband works at hours that he cannot get in when the judge would be sitting. They go in at 8:00 or 9:00 o'clock, at night or maybe it is 7:30 or 8:00 in the morning. The JP will meet them. This might sound like long hours, something like we are spending here. This is a fact. I have seen so many of these cases, so many examples of them were families, that if they landed in court and the publicity reached the newspapers, and their neighbors and friends, the family might be torn asunder and no longer be permitted to be a family because of the neighbors' reactions. These matters have often been settled.

May I say to the members of the Bar Association for whom I have the greatest respect, I do not think the Bar Association's recommendation represented 100 per cent or, possibly, even 50 per cent. You know how these things are obtained. They send questionnaires out. The fellow who is busy throws it away in the waste paper basket and the fellow who does not have too much to do, maybe he fills it out and sends it back. I found lawyer after lawyer in this Convention who did not endorse that, and I think there are many here. I think it narrows itself down to a case of reality, what you know, what your community wants, and what the families in your community want.

I think the JP has to be upgraded. I do not argue this, and they do not argue it if you please. They know they need a little training in legal work, they admit that. But the vast majority of the duties they discharge is not legal work, it is just ordinary common sense, if you please. This

is the thing they use in the discharge of their office and of the many billions of little things that the families can go into, cannot afford from the stand-point of legal fees to retain an attorney and go into court with these things. Certainly, this would be the pattern if we had community judges.

I say to you, in my opinion, by the vast majority every dollar that a JP gets he fully earns and these are not any of the rural JPs, I cannot speak of the city because I do not know about that, but I assure you there are none of the rural JPs retiring on any vast amount of money they ever made in office. They are lucky, if you please, if they can pay their overhead and many of them have to have some other job on the side in order to support their families and live a very normal way of life. I say to you, to take these people away from the family, from the public, is something that you will regret for many, many years.

I have to stand here and defend them from my personal knowledge, and I have to end up because I do not want to talk a long time, but my great great grandfather was appointed a JP by the great and honorable William Penn and, to his memory and credit, he served his lifetime, an admirable job. I think the majority of your JPs today are doing that same job and will continue to do so with a little supervision. I would have liked to see this supervision under a committee of the Bar Association of these local counties. I thought that here we would give the discipline that was needed for these chaps. I would have been for that 100 per cent. But may I say to you, do not pass this, do not knock all those dozens and dozens of people that the families of the State of Pennsylvania want. Keep them in.

PRESIDENT BRODERICK. The Chair recognizes Delegate Dailey. I see that we have some additional delegates that have gotten up.

DELEGATE DAILEY. This is my maiden voyage. I have sat here and listened to a lot of this. I will not say what it sounded like sometimes. I am not a lawyer, but I have a pretty fair education and I like the men of the law profession.

I think the saddest thing I have to say is that I disagree with my friend Bob Casey, but I was man enough to tell Bob and I know he will not get me thrown out of the Democratic Party, because I expect to split my vote this fall, so, you Republicans, maybe I made a couple of more friends here. I hope so.

I was fortunate to be on the Local Government Committee. There has been enough said on that matter. I will not dare build a fellow up too big. I hope he wins with about 20,000 and Bob wins by about 250. I feel that the justices of the peace in my county and in our surrounding counties have been a credit to us. There has been no scandal. They have never had to arrest any of them. Their accounts are many times audited, I think at least three times a year. I would be amiss if I did not get up and say a few words in their favor.

I represent five counties and I do not want Delegate Wilcox to go back and tell all those good Democrats and good Republicans that he stuck up for them and I did not. I feel the justices of the peace in the small areas are doing a good job.

I met Governor Scranton for the first time here, and I have learned to like him and respect him. It is the first time I met Mr. Amsterdam. I have enough faith in their judgment to listen to them as far as this part goes, feeling we will do all right.

PRESIDENT BRODERICK. The Chair recognizes Delegate Filson.

DELEGATE FILSON. Mr. President, I think at this point I have heard enough to make some sort of a determination and I certainly do not want to bore you by standing before this microphone. However, I should like to say that the proposal which came out of the Judiciary Committee, I submit to you is sound and workable.

Let us have what ever court system we have in Pennsylvania a matter of evolution rather than revolution.

There is nobdy in this august body who can say whether or not the community court system will work throughout the Commonwealth of Pennsylvania. I submit to you, I believe there are areas which will vote for a community court system, and if this be the will of the people, be that as it may. Let us accept the article which came out of the Judiciary Committee. Let us do it by a process of evolution, and I submit to you, if the community courts in any area are established, let us profit from their experience without diving into this thing head first, not knowing whence we go. Give it an opportunity to work and if it is a workable system, it will be developed and adopted throughout the rest of the Commonwealth.

If it is superior to the system, it should have an opportunity to work in the justice of the peace system with the corrections which have been made in that system. If it turns out to be superior to that, let it be adopted, but I submit to you the proposal which came from the Judiciary Committee is sound, it is workable and it presents an opportunity for the courts of the minor judiciary of the Commonwealth of Pennsylvania to evolve to the satisfaction and the benefit of all the pepole in this Commonwealth.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, as a practicing trial lawyer, I am so anxious to vote against this amendment, I cannot wait any longer, and I move for the question.

PRESIDENT BRODERICK. In conformity with our custom, we recognize Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I am one of the co-sponsors of this amendment and I am voting against it. I co-sponsored it solely for the purpose of having it brought to this body's attention. Let us vote now and dispose of this question once and for all.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate. No one will be heard after Delegate Tate's summation.

DELEGATE TATE. Let me try briefly to answer some of the points. First, as to cost. It has been said the cost would be excessive. There is reliable evidence before the Judiciary Committee, which was ignored by those making these statements, that the cost of the system would be approximately $45,000 per court, or a total of $6,255,000 for the State, and that the total of fees which would be coming in, and are now received, as a result of the operations of the minor judiciary are $6,170,000, so the additional statewide cost would be about $75,000 or $85,000. That, however, while it is a small sum, is not the final answer as to cost.

The cost here must be measured in terms of human misery which is imposed on those who suffered from the present system, wherever there is such misery, and I think there is a great deal of it in many quarters. Secondly, this is not the plan solely of the Pennsylvania Bar Association. Such eminent authorities and commissions as the Scranton Commission, a few years ago, and the President's Commission on Law Enforcement just last year, proposed exactly what this amendment proposes.

Thirdly, it has been said that we ought not to mandate something like this. Why are we afraid to mandate something if we think it is right? Are we afraid to mandate that there should be a Supreme Court in Pennsylvania? Are we afraid to mandate that there should be a unified court system in Pennsylvania? I think our clear answer to that has been "no." Likewise, we are not afraid to mandate a system of state debt, and on down the line. There comes a time when we have to realize we must be ready to say some things must be mandated.

Let me draw the attention of the Convention to the fact one of the principal reasons, if not the principal reason, for the calling of the Convention last year was because there was widespread movement for wide reform of the minor judiciary throughout the State. I think we must keep this in mind, and I think as to the fear which has been spoken of here this morning that if we vote in this amendment the voters will disapprove of our efforts on April 23rd, the answer is that I believe the voters will vote "yes" on this if we vote for it and the experience of Illinois and Colorado, where this exact question has been passed upon in recent years by the voters, is that approximately 70 per cent of the voters voted for this.

Finally, if we believe as a body that this question is so controversial, it could be stated separately on the ballot so the voters would have an individual choice on this question, as opposed to the other questions which we will be posing.

In my opening report I made a remark about mice and men. Let me make clear what I meant by that.

There will be men in this Convention right now who will be voting on both sides of this question. Before you put your finger on that switch, I ask each one of you to ask yourselves, are you voting because you think it may affect your personal interests? Are you voting because you think it may affect the personal interests of your clients? Are you voting because you think it may affect the personal interests of your political colleagues or your friends? Or are you voting because you think your vote is what is best for all of the people in Pennsylvania? The men will be in the last category, regardless of which side of the question they are on.

I ask this body to accept the responsibility which has been placed upon it to face this question clearly and I urge a "yes" vote on this amendment.

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to the amendment offered by Delegate Tate. We will unlock the voting machines. Those voting "yea", vote to support the amendment and those voting "nay" will vote against the amendment.

On the question recurring,

Will the Convention agree to the second amendment offered by Delegate Tate?

The roll was recorded as follows:

YEAS—39

Aberman	Clinger	Mattioni	Rappaport
Amsterdam	Cosetti	McGlynn	Rea
Baldus	Feather	Michael	Shapiro
Banes	Fineman	Michener	Shrager
Bloom	Gabreski	Mortun	Silverman
Braham	Huggins	Murray	Swope
Brennan	Irvis	Otto	Tate
Bunting	Johnson	Pelletier	Thornburgh
Caron	Kelly	Percey	Welsh
Casey	Laputka	Popil	

NAYS—104

Allison	Dumbauld	Krill	Rovner
Aurentz	Erwin	Leach	Ruth
Bagenstose	Fagan	Lee, K.	Sahli
Baldrige	Fawcett	Lee, L.	Scales
Baldwin	Fay	Leinbach	Scarlett
Barron	Filson	Leonard	Scranton
Barry	Fleming	Levin	Sebastian
Bashoff	Fohl	Mangery	Sharp
Benedict	Forster	Markley	Shettig
Benfield	Gerber	McGeary	Shively
Broderick	Goldstein	Meyer	Shoemaker
Brown	Gouger	Miller, D.	Sprogell
Buck	Griffith	Moorhead	Stout
Burkholder	Hannum	More	Strickler
Butera	Harding	Nelson	Stroup
Cain	Hatter	O'Donnell	Thomson
Caputo	Henderson	Orban	Tomascik
Clark	Heyburn	Orbin	Tully
Conley	Himes	Pasquerilla	Van Sant
Corey	Hocker	Pott	Waldron
Cortese	Hook	Powell	Warman
Croop	Horne	Prendergast	Westerberg
Curran	Hostetter	Redick	Whittum
Dailey	Jirolanio	Reynolds	Wilcox
Desmond	Kauffman	Richter	Woodring
Devlin	Keller, J.	Roberts	Woodside

NOT VOTING—20

Camardella	Gehrlein	Kline	Pechan
Cunningham	Goldman	Lane	Quiles
Donaldson	Gray	Manderino	Scott
Donolow	Keller, M.	Miller, R.	Solomon
Fortney	King	Musselman	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

QUESTION OF PERSONAL PRIVILEGE

DELEGATE ORBIN. Point of personal privilege.

PRESIDENT BRODERICK. State your point of personal privilege.

DELEGATE ORBIN. I would like to assure Delegate Irvis that I did not include him and still do not include him as a spokesman for the Pennsylvania Bar Association. I would also like to say that Delegates Dumbauld and Nelson join in the remarks that I made on the issue.

BIRTHDAY GREETINGS EXTENDED TO DELEGATE CAPUTO

DELEGATE CARON. I would like to raise a point of personal privilege.

PRESIDENT BRODERICK. What is your point of privilege?

DELEGATE CARON. In the last few weeks I have had the pleasure of sitting next to the youngest old man in this group and I would like to share with you a very happy occasion. Tomorrow is Mr. Caputo's birthday, he will be 69, and you will never realize how young he is until you sit next to him. May I suggest we congratulate him on his birthday.

DELEGATE CAPUTO. It surprises me to have someone present the delegation with my birth date, but I want to make one correction: I am 38 going on 69 tomorrow.

MEETING OF JUDICIARY COMMITTEE

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President—I have the authorization of the President to make this statement—according to the best calculation, we worked two days on these particular sections of the judiciary article and we started out with 15 amendments, we now have 14. They are sponsored by Delegates O'Donnell, Rea, Irvis, Shoemaker, Bagenstose, Barron, Bloom, Jirolanio, Tate, Baldrige, and Levin.

The Judiciary Committee and its Co-Chairman, Mr. Amsterdam, is inviting—indeed, if we could, we would demand—your presence at a luncheon on the Judiciary Committee—on the Chairman—in Room 615, which is on the fifth floor of this building, that is, O'Donnell, Rea, Irvis, Shoemaker, Bagenstose, Barron, Bloom, Jirolanio, Tate, Baldrige and Levin. We want you to go over with them the amendments.

We will recess now. We will then come back, all of us, at 2:00 o'clock. We will finish these 14 amendments, we will finish this session today and then we will go home. Is that clear?

STUDENTS FROM MALVERN PREP WELCOMED

PRESIDENT BRODERICK. Before we disband for the luncheon recess, the Chair would like to call your attention to the fact that we have six students here today from Malvern Prep and one of them is the son of our delegate, Delegate Caron, his son, Richard. He is here with his teacher, Mr. Sullivan. They are the guests of Delegates Hannum, Thomson and O'Donnell. Let us have them stand.

WIFE AND FAMILY OF DELEGATE SHOEMAKER WELCOMED

DELEGATE SHOEMAKER. Mr. President, I would like to also say that I have a delegation of my two sons with their mother.

My sons, Daniel and William.

PRESIDENT BRODERICK. Yes, indeed. If they will stand up I am sure we will be happy to give them our warm greetings and say we are very happy to have you and proud to have your dad with us.

RECESS

PRESIDENT BRODERICK. It is now 12:30 and, unless there is objection, we will recess until 2:00 o'clock. The Chair is willing to hear objections to that, if there are any.

The Chair hears none, and the Convention is now in recess until 2 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

MOTION TO TAKE TATE AMENDMENT FROM THE TABLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I move that the Tate Amendment be taken from the table. Mr. President, this amendment is the amendment which had previously been distributed, and is composed of three pages, and which was laid on the table this morning. I am not certain this requires a great deal of discussion and I certainly do not plan to spend much time discussing it, except to explain briefly what it is.

This amendment would, instead of a municipal and traffic court in Philadelphia, provide Philadelphia with a community court. This Convention has made it clear, as the result of its last vote, that it wishes to deal differently with Philadelphia than with the rest of the State. So be it, but if we are going to be dealt with differently, I see no logical reason why we should have two courts, a municipal and traffic court, which is completely different from anything else anywhere else in the State. If we are going to have a different minor judiciary, let us have a community court just like those other judicial districts which may opt to have such a court.

I am sure that our judicial business at the minor judiciary level can be handled well by such a court if we are to have a mandated court.

PRESIDENT BRODERICK. Is there anyone else who wishes to speak on this amendment, or are you ready for the question?

Ready for the question?

The Chair now recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, there has been so much confusion and noise on the floor, and as this is the opening piece of business since our recessing for lunch, I frankly did not have an opportunity to fully hear the explanation by Delegate Tate and I think, perhaps there are other delegates similarly situated. I would like him to, if he would, once again explain the intent and effect of the purpose of this amendment.

PRESIDENT BRODERICK. Delegate Tate?

DELEGATE TATE. Mr. President, I will be happy to. Quite simply, this amendment provides for Philadelphia a community court just like the community courts that will exist in any other judicial district of the Commonwealth where the option is taken under the committee proposal, instead of the municipal and traffic Court. It is the desire, obviously, as a result of the last vote we took in this Convention, that Philadelphia be treated differently at the minor judicial level. If that be the will of this Convention, then so be it.

I ask, quite simply, that we not proliferate the different types of courts we have, that we not provide something for Philadelphia which is so alien and foreign to the rest of the judicial system that we have to provide a municipal and traffic court which will not be found anywhere else anywhere in the Commonwealth of Pennsylvania.

PRESIDENT BRODERICK. Do you wish to be recognized, Delegate Fineman?

DELEGATE FINEMAN. I do, Mr. President.

I rise in support of this amendment. Earlier in the course of this year, I would like the delegates to this

Convention to know, there was a Legislative proposal that came before the General Assembly for its consideration dealing with magisterial reform. During the course of the debate on that proposal, I labeled that proposal to be exactly what I thought it to be, viz., not reform, but rather the pretense of reform. The proposal was offered not because there was sincere intent to bring reform to the minor judiciary in Philadelphia County, but rather to serve as the ploy for an individual then seeking public office in Philadelphia County.

Those who advocated its passage dressed themselves in the gown of reform, but, in fact, were doing nothing more than perpetuating those evils that do exist in the minor judiciary system. For instance, that proposal provided, among other things, that although magistrates had to be learned in the law, this change did not become effective until after the expiration of the then current term of those men holding office, plus two more additional six-year terms, or a total average of about 17 more years before the requirement was put into effect that those who hold office in the magisterial system be learned in the law.

We offered an amendment on the floor of this House, the essence of which was to bring about the reform forthwith and to say that magistrates must be learned in the law and that this provision would become effective at the expiration of the then current terms of the magistrates. If there was such a crying need for reform, why defer the so-called panacea? The bill also provided that the chief magistrates, under no circumstances and without time limits, did not have to be learned in the law. The very chief legal officer of this body that eventually was to be comprised of only lawyers, he, himself, did not have to be a lawyer.

The bill, in essence, was nothing but a patronage grab. We offered an amendment, for instance, to put all employees of the magisterial system under the civil service system. This was rejected. The bill even went so far to say that the chief magistrate, who did not have to be a lawyer and who would be appointed by the Governor of the State, could even appoint the personal assistant of each magistrate just to insure that politics and patronage would be the order of the day, even though great fanfare was being made on the seeming reform of this bill.

I am afraid much of this seeming reform is here present in the proposal that is advocated for Philadelphia. The maintenance of the traffic court system is nothing but a patronage grab. I have got to call these shots as I see them. If there is going to be reform, let us not provide that magistrates who are not learned in the law can continue not only until the expiration of their present terms, but for another six years, so that there will be an average of nine years before we have men learned in the law. I want to say I subscribe to the view that magistrates should be learned in the law. Not because an attorney is posessed of any more integrity than any other person, to so say is ridiculous, but because the decisions of our Supreme Court today on the rights of individuals and the decisions of long standing dealing with the property rights of persons are indeed complex, so complex that it takes an attorney four years of schooling and four years of college work to become educated to the point where the common law and the community considers them able to deal with these problems.

I think that magistrates should be attorneys, but the present proposal does not so provide, except in futura. I say that if there is genuine concern for the quest for reform, as I have heard so much of this morning, I believe there is among the preponderant number of delegates to the Convention a sincere concern to bring reform to the minor judiciary, because this is the one court where the greatest number of persons have their first exposure to our system of jurisprudence. If we are so concerned about reform, then let us talk and act reform.

This proposal is not reform. There is no need to phase them out over an average nine-year period. There is no need to perpetuate the spoils system or to leave any traces of the evils that everyone is crying about.

It is for these reasons, Mr. President, I would hope that this body would bring itself, in the interest of reform, to vote for this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Although I propose personally to vote in favor of the amendment, I must point out to this group that the Judiciary Committee voted against it by a rather substantial plurality, both in the case of the municipal court and the traffic court.

PRESIDENT BRODERICK. Are we ready for the question?

The Chair recognizes Delegate Devlin.

DELEGATE DEVLIN. Mr. President, the distinguished minority leader, my good friend Herbert Fineman, spoke so eloquently on patronage grab, and he spoke about the continuation of the nine laymen, or the laymen we have in the magistrate court, for nine years. In truth, it will be 12 years.

He talks about the bill that the Republican delegation in the House of Representatives presented to this assemblage, as they did in another patronage grab. We were doing nothing whatsoever to improve our judicial system in Philadelphia, it was only for political purposes, a patronage grab.

Certainly you all know that in our judicial system of Pennsylvania there is patronage. Mr. Fineman knows how the patronage in the traffic court operates. Under two Democratic Governors, the patronage went with the Democratic chief magistrate, who was appointed by the Governor. It is true today. I never denied that, sir, and I don't think it is bad or wrong. I am not against patronage. I am not too much in favor of a strong civil service, either, for personal reasons we will not go into.

The blemish that he has placed upon the judiciary article as not being a movement towards a unified judicial system in Pennsylvania is a false statement. Read the article in its full context. Where were these opponents who were running around the floor today and saying do not let us have a municipal court in Philadelphia? Where were they when the Judiciary Committee was having its hearings?

I appeared before them. I talked to you, my friends, and asked you for help. I knew what I was going to run into. This becomes no great mystery to me, but I know this, that I cannot and will not say to the law magistrates in Philadelphia, you are corrupt. I will not say that about any judicial person, and I said it to you when I spoke on No. 1204.

Those lay people who have come into public life, who

are in their middle age, or above, like the five Democratic magistrates whom I spoke to yesterday. Their concern was their tenure, their pension. If it would mean, my friends, that if you would say to me, Bill, cut off the magistrates right now and we will pass that entire package, the judiciary package, we will give it to you, that I would say, I gave my word to those magistrates that I would protect their tenure, and I will not go back on my word come hell or high water.

The municipal court that we are creating with an evolution, as Mr. Caron said today, an evolution of men trained in the law to take over, not because they are better than lay people, but because we extended the jurisdiction. There is more work to be done. You have to have trained lawyers. It is a way in which we are going to cut down on our backlog in the common pleas court in Philadelphia, besides the use of the county court judges, who are now in those courts and will be in the CP court, and the fact that we will have an administrative judge who can order people around and use court rooms heretofore denied us.

The municipal court is the heart and the soul of a unified system, judicial system, in Philadelphia. That system is going to depend on a sound community court, if you want to call it that, we are calling it the municipal court. It is going to dispose of cases immediately. It is going to allow the civil cases that are being backlogged in our CP court to be heard. It is going to provide an avenue where people can go before a trained lawyer and have their cases adjudicated, the lawyer being the judge now.

Patronage, patronage, traffic court, that is all I heard all morning. Sure they train lawyers to sit in traffic court and be paid $15,000, $18,000 a year to make a determination on a $2.50 parking ticket or a left-hand turn. The truth of the matter is that there is politics involved in this decision, I am sorry to say.

Do you want the traffic court and its patronage? I will give it to you. It is a commitment. Give me my unified judicial system.

Mr. Fineman, you have that commitment. They are yours.

Do not let it be destroyed because someone is trying to motivate political insecurity in this Convention. I feel so deeply concerned about our Philadelphia judicial system that I would be willing to do anything to straighten it out, and Mr. Tate's amendment is doing nothing more than taking us 15 steps backwards. This I do not want and you do not want. I am asking you, my friends, to defeat this amendment, and I am asking you to support me, so that I can say that we did something constructive for this City.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I want to say that prior to coming to this Constitutional Convention I never had the pleasure of personally saying hello to Bill Devlin. I have had that pleasure since, and I have a very fond regard for the gentleman and a very high respect for him, but I think he is totally wrong.

Most assuredly, because of my involvement in partisan politics I can be accused of partisan politics in the expression of my views at this microphone, even though they may not be so motivated. Certainly no one can accuse Mercer Tate of being motivated by partisan politics in offering this amendment, and it so happens that I subscribe and equate my views to those expressed by Mr. Tate.

If we are talking in terms of a unified court system, heavens to betsy, providing a community court like you are providing in all other jurisdictions certainly makes for a unified court system, not the kind of hodge-podge that this proposal seeks to set up, a traffic court, a municipal court, and elsewhere we have community courts.

I must point out that the question of the magisterial system has not a thing in the world to do with the backlog in our courts, because very few, very few, if any cases, are appealed to our higher courts from the magisterial system, at least, not in the number that would account for the making of any backlog.

I want this clearly understood, too, that my position cannot be equated to a statement that I believe magistrates are corrupt. Nothing could be farther from the truth. You are either corrupt or not corrupt, not because you are or are not a magistrate, but because of the man you are, because of the rearing you have had, because of the things you have been exposed to in your lifetime, because of the weaknesses in your character, not because you are or are not a magistrate.

There are many splendid, fine men sitting on our magisterial system in Philadelphia who are not corrupt, whose integrity is beyond reproach, but I say that when you are dealing with the property rights of people, when you have to make a determination as to whether or not a prima facie case of a conviction of a commission of a crime has been made out. This calls for some expertise by people who are learned in the law. This is why I move Mr. Tate's proposal.

It is unbecoming, Mr. Devlin, to suggest that I hold my viewpoint because I have taken the position the magistrates are corrupt. Nothing could be farther from the truth. As a matter of fact, I think in all honesty there is more room for improvement in the JP system, than there is in the magistrate system, simply because under existing law the justices of the peace are entitled to participate in politics, which magistrates are not. Justices of the peace have to deal with matters that go up to $500. Magistrates of the City of Philadelphia are limited to $100, and the greater you increase the amount of jurisdiction the more complex becomes the matter of property rights.

PRESIDENT BRODERICK. Are we ready for the question?

The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. I had not planned to say anything about this subject, because I think all of you know where the Committee stands on it.

Personally, however, I would like to say the following, I know nothing about a political commitment and I personally have made no political commitment to anyone concerning this Constitutional Convention, and I shall not, but I do think you ought to know about the Committee with regard to this.

The No. 1204 plan was looked into very thoroughly by the Committee, and I may add, on a very non-partisan basis and it was very thoroughly discussed, and you know what the Committee has recommended.

I happen to be a firm believer in civil service, as my record as Governor indicates. I may add that there is

an important thing here which may be out of focus with what has been said. It has been indicated on the floor, for example, that it might not be wise to allow the magistrates of Philadelphia to remain in being for another full term. That is not, in my opinion, a matter in any connotation to this particular amendment. It can be taken care of when you get to the schedule, which is where this is, and if you wish to change that, then, you have every right to and may. It is important, however, when you are putting in a whole new system of courts that you have a period of transition and that this period of transition is handled carefully and well, and that was the Committee's opinion.

I say again, in the Committee, at least, in the hearings that were held and in the various deliberations we had, there was no sign of partisanship with regard to this.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Devlin.

DELEGATE DEVLIN. Mr. President, the reason we have a separate traffic court outside of the municipal court is for this reason: If we should put the traffic court in the municipal court, those judges, instead of handling judicial matters which are clogging our common pleas court up to date, because their jurisdiction was extended, would be sitting and wasting a tremendous amount of their judicial time handling almost clerical type jobs.

So, we took the traffic court out completely and we kept in our 20 municipal court judges.

Mr. Fineman says that the magistrate system does not cause the backlog. It did cause the backlog, sir, because the present magistrate system does not have the jurisdiction to go beyond what you mentioned, and what we are trying to do is create a court that they will not have that jurisdiction and, instead of the CP court now being backed up with a number of cases, liquor violations, simple assaults, these would be handled in the municipal court. So the magistrate system, as it is today, is archaic and does not meet the needs of the modern judicial system.

If we put the traffic court in there, we are fouling up the judicial time of those municipal court judges. That is why we are separate. But most important of all, wreck this municipal court and the whole unified system of justice in Philadelphia is no better off with the orphans' court in there and the county court in there than they are today. The key to this is, how do you stop cases going into the common pleas court? This is fouled up, and Mr. Tate's proposal wants to foul it up, we go back to the old sad story of an archaic antiquated system commonly known as the magistrate system.

PRESIDENT BRODERICK. I recognize Delegate Tate for summing up before we put the question.

DELEGATE TATE. Mr. President, lest there be any doubt, let me first say I am not in the patronage game and I am not interested in patronage.

Furthermore, lest there be any doubt, this is my own proposal. No one suggested to me or requested me to have this proposal prepared and presented.

Thirdly, Governor Scranton mentioned transition. I recognize the importance of transition and I subscribe to his views on transition. It is of small consequence to me whether the community court proposed by this amendment comes into being next year, or several years from now, or maybe even nine years, as has been suggested here. The point is that we are working on a constitution that will last a lot longer than that and I am looking a lot further ahead. Whatever transitional period may exist here, the transitional period will be established, as I understand it, by the schedule which is yet to be adopted by this Convention and we can deal with that problem in due course.

Finally, I would just like to read a single paragraph from a letter which I believe every delegate received. It was a letter dated February 13th, to the Chairman of the Judiciary Committee from the Committee of 70 in Philadelphia. Parenthetically, let me say I overheard one of our distinguished delegates the other day say that the Committee of 70 was just a bunch of ADA people in Philadelphia. Nothing could be further from the truth. They are, by and large, a well respected cross section of the community and not aligned at all with any other group.

They say, as you may recall, "The traffic court is the one court that hundreds of thousands of our citizens come in contact with each year and it is imperative that this court reflect the highest standards of judicial excellence and integrity."

The committee proposal providing for a municipal court and a traffic court gives to Philadelphia not only a minor judiciary but a minor minor judiciary. It is my opinion that we do not need this. We will be perfectly well served and satisfied with a single minor judiciary and by my amendment it will be established in the form of the community court, which I think will be a great, great step forward for Philadelphia.

I urge your support of this amendment.

PRESIDENT BRODERICK. Now the Chair will unlock the voting machine. The question is: Will the Convention agree to the amendment being offered by Delegate Tate? Those voting "yea" will support the amendment. Those voting "nay" will vote to reject it.

On the question recurring,

Will the convention agree to the amendment offered by Delegate Tate?

The roll was recorded as follows:

YEAS—56

Amsterdam	Cosetti	Johnson	Redick
Aurentz	Dumbauld	Kelly	Ruth
Bagenstose	Fay	Mattioni	Scales
Baldus	Feather	McGeary	Shapiro
Banes	Filson	McGlynn	Sharp
Barry	Fineman	Michael	Shettig
Benfield	Gabreski	Michener	Shrager
Brown	Gerber	Miller, D.	Sprogell
Bunting	Gouger	Murray	Stout
Burkholder	Harding	O'Donnell	Swope
Caputo	Hook	Orbin	Tate
Casey	Hostetler	Percey	Thornburgh
Clark	Huggins	Prendergast	Tomasclk
Clinger	Irvis	Rea	Welsh

NAYS—69

Baldrige	Devlin	Leach	Rovner
Baldwin	Erwin	Lee, K.	Scranton
Barron	Fagan	Lee, L.	Sebastian
Benedict	Fawcett	Leinbach	Shively
Bloom	Fleming	Leonard	Shoemaker
Braham	Fohl	Mangery	Silverman
Broderick	Forster	Meyer	Strickler
Buck	Goldstein	Moorhead	Stroup
Butera	Griffith	More	Thomson
Cain	Hannum	Morton	Tully
Caron	Hatter	Nelson	Van Sant
Conley	Heyburn	Orban	Warman
Corey	Horne	Otto	Westerberg
Cortese	Kauffman	Pott	Whittum

Croop	Keller, J.	Powell	Wilcox
Curran	Krill	Reynolds	Woodring
Dailey	Laputka	Richter	Woodside
Desmond			

NOT VOTING—38

Aberman	Goldman	Levin	Quiles
Allison	Gray	Manderino	Rappaport
Bashoff	Henderson	Markley	Roberts
Brennan	Himes	Miller, R.	Sahli
Camardella	Hocker	Musselman	Scarlett
Cunningham	Jirolamo	Pasquerilla	Scott
Donaldson	Keller, M.	Pechan	Solomon
Donolow	King	Pelletier	Waldron
Fortney	Kline	Popil	Wilmarth
Gehrlein	Lane		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

REA AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Rea.

DELEGATE REA. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE REA offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 3, line 5 by striking out "(b) The" and inserting: (b) At the primary election held in the year 1969, a referendum shall be held in every judicial district except the judicial district comprising the City of Philadelphia, on the question of whether a community court shall be established in said judicial district. Thereafter the

On the question,

Will the Convention agree to the amendment?

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate McGlynn.

DELEGATE McGLYNN. I came in after the Huggins amendment was voted on this morning. I would like the record to show I was in favor of that.

PRESIDENT BRODERICK. Yes, we will have that spread on the record.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. As a parliamentary inquiry, is this amendment not, in fact, the same or similar to the Hook amendment of yesterday?

PRESIDENT BRODERICK. I can only say that it is not the same. Whether it is similar, or not, I will have the Parliamentarian and the attorneys look at it.

May we see Delegate Hook a minute, please?

DELEGATE IRVIS. Mr. President, the amendment being offered is essentially the same as the Hook amendment, but the question which has been disturbing some of the delegates is: May you offer such an amendment twice? The answer I think the Parliamentarian will be prepared to give us. The Hook amendment went down. Therefore, there is no need for a motion to reconsider anything. If the Hook amendment had been entered and we sought to re-amend in that fashion, there would have to be a motion to reconsider. But this is not a question of a motion to reconsider, because the Hook amendment failed yesterday.

PRESIDENT BRODERICK. Delegate Irvis, we are going to query the Parliamentarian. I want to ask Delegate Rea if he will come forward, please.

ANNOUNCEMENT BY THE CHAIR

PRESIDENT BRODERICK. The Chair would like to make an announcement first, please.

A question was raised, fellow delegates, concerning whether or not a motion to reconsider would have been necessary in connection with this amendment. The Chair does not think a motion to reconsider is necessary, because the Chair considers this amendment, the Rea amendment, to be different than the Hook amendment. I want to point out that there are three differences:

One, it pertains to a different place in the proposal;

Two, it has different language; and

Three, it does not affect Allegheny County—the Hook amendment did not affect Allegheny County because it came after the Rea amendment yesterday.

The Chair will recognize Delegate Curran.

DELEGATE CURRAN. Mr. President, I raised this question originally because, to me, although the language may well be different, the substantial effect in both cases, is exactly the same and the difference in language is as follows:

In the Rea amendment the primary election for the option is mandated to the year 1969, in the Hook amendment it was at the next primary election, which, in point of time, are exactly the same.

I think if we are now down to the point where each time an amendment fails we then go to the Convention Bureau and draft the same substantive amendment in different language and we must take up our time not only speaking but voting on these exact same similar amendments, we are well heading for danger.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rea who has presented this amendment.

DELEGATE REA. Mr. President, I think the amendment is self-explanatory.

I would yield to Delegate Cosetti to explain and give the reasons behind the introduction of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. Mr. President, I think the issues by this time, on this issue particularly, are clearly drawn. I do not think we have to spend much time in debating it.

This would merely put the issue on the ballot at the next primary election. Much has been expressed that we should give the people a choice, and this is in line with that sentiment. It will give the people a choice at the next primary election if they adopt this constitution.

DELEGATE BARRON. Mr. President, was the propos-

ed referendum drawn with the idea that the referendum would be held prior to the effective date of the constitution so that the election would be decided by the time the changes in the magistrate system would be put into effect?

PRESIDENT BRODERICK. That is a question I think can be answered by Delegate Rea, who offered the amendment.

DELEGATE REA. Delegate Barron, this will be effective after the change had been made. In other words, under the Constitution all changes in the judiciary will be effective January 1, 1969. This vote will be taken in May of 1969.

DELEGATE BARRON. Then the import would be that we would have a change from the 1st of January of 1969, we would then have an election at the primary of 1969, which might work a second change within a period of but one year, is that the thrust of this? Is that your intent?

DELEGATE REA. The intent is to give the people the choice because they know what the JP system is. You are not changing it really by the judiciary article. They will then have a clearcut decision.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gouger.

DELEGATE GOUGER. Mr. President, I rise in support of this amendment. I feel somewhat timid in intruding into what our illustrious Delegate Scranton yesterday called a lawyer's love feast, although I have not seen a great deal of love being scattered around. I am hesitant, too, because I am not a lawyer and the phrase "the thrust of this" is a little new to me. The only vest I own is an old, red thing I wear at Christmastime, so I am at a great disadvantage to start with.

Specifically, I rise in support of this amendment. Yesterday and this morning I stoutly supported the rights of the communities to determine whether or not they should have a community court. I stand stoutly by that now. I do feel there are three reasons why this should go on an early ballot.

These three reasons are:

The need for participation by the people in vital matters of this sort. The apathy that exists in the country today that has been spoken of most eloquently here is there and this, indeed, would get them to participate in something which is vital to their interest and welfare;

Secondly, the very practical reason which Delegate Rea pointed out, that there is a great fear on the part of many people to signing their names to a petition. This makes it comfortable for them so to do;

Three, the physical job, the awkwardness of trying to get in some cases 26,000 to 30,000 signatures to simply get a matter on the ballot does not promote good voter participation, which is the essence of democracy.

I, therefore, urge you to vote for this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Mr. Barron.

DELEGATE BARRON. I would call Mr. Rea's attention to page 19 of Proposal No. 7, Printer's No. 20, which, of course, is led into from page 18 wherein it says that the Supreme Court shall fix the number and boundaries of magisterial districts of each class within each judicial district by January 1, 1969, and these magisterial districts, except where a community court has been adopted, shall come into existence on January 1, 1970.

This, I believe, creates a problem. I appreciate everyone wants to get to the main issue, which may not be here, but what I am really interested in knowing is whether or not the delegate's proposed amendment will give the revised magistrates a chance to operate, or whether it is planned deliberately to foreclose it before it ever has a chance.

PRESIDENT BRODERICK. Is that a question to Delegate Rea?

DELEGATE BARRON. Yes, it is. It was stated in the alternative, sir.

PRESIDENT BRODERICK. Delegate Rea.

DELEGATE REA. This is planned to give the people at the earliest opportunity the choice of what they want. They will know what this Convention decides when they pass on it in April of this year and they will have one full year to know the system they are to operate under, or the community court system, so that they will have a year to study, think about and be prepared to intelligently vote on the choice that they want.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. I do not think the gentleman has answered the question, Mr. President. I think what Delegate Barron is indicating is that as of January 1, 1969, the new magistrate system will come into effect if this constitution passes. If, in this constitution, is mandated an option for the community court system in the spring of 1969, in effect, we would have the chaotic situation of the new JP system being in effect for one year and, if the option passes on the ballot, in January of 1970 the community court system would come into effect.

Is that or is that not Mr. Barron's point, and are you or are you not going to answer it?

DELEGATE REA. Yes, I will answer him and you, the people now only know on paper what a community court is. They will know on paper, if they pass this in April of this year what the new magisterial system is and they will have a choice between the two. They can see, and read, and study, and learn about the two choices. The fact that neither of them has ever been in operation does not mean the people are so foolish, and so unintelligent, and unlearned that they cannot understand and make an intelligent decision.

PRESIDENT BRODERICK. Are we ready for the question?

Delegate Michener, I recognize you.

DELEGATE MICHENER. Mr. President, this morning we heard a tremendous flood of oratory from the brilliant country lawyers who are in our midst. It is hard for me sometimes to realize that these extremely polished gentlemen have marvelous command of the English language—much better than my command of it, I say—with their thrust and their parry are the country bumpkins that they insist they are, so I shall take them at their word.

They plead with us to give them and their people the right of choice. I think we have here something of a moral problem. Either they meant that their people should have the right of choice, or they did not mean that. I would hold that all who spoke this morning are more or less obligated to vote in favor of this amendment.

The second point is this:

This is not only good philosophy, but it is good politics.

I think, if we are going to offer this as a choice to the people, it is an empty promise unless at some point we do so offer it. If there are numerous ways by which the choice can be deferred, or frustrated, or truncated, then it is not really a choice and we are really using only words.

I would suggest, therefore, that there are two reasons why this amendment should be supported. All the good reasons that we heard this morning in favor of giving everyone in this State, except the people of Philadelphia, a right to choose their own courts, and, secondly, if we are in this document offering a choice, let us indeed do offer a choice.

PRESIDENT BRODERICK. Are you ready for the question? Do we want to go on? All right. We open the voting machines and the question is:

Will the Convention agree to the amendment offered by Delegate Rea?

Those voting "yea" will agree to support the amendment, those voting "nay" will agree to reject it.

The question recurs,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—63

Amsterdam	Clark	Irvis	Ruth
Bagenstose	Clinger	Laputka	Sebastian
Baldus	Cosetti	Levin	Shapiro
Baldwin	Dumbauld	Mattioni	Shettig
Banes	Feather	McGeary	Shively
Barron	Filson	McGlynn	Shoemaker
Barry	Fineman	Michael	Shrager
Bloom	Gabreski	Michener	Silverman
Braham	Gerber	Moorhead	Sprogell
Brennan	Gouger	Murray	Stout
Brown	Henderson	Orbin	Swope
Buck	Himes	Otto	Tate
Bunting	Hocker	Percey	Thornburgh
Burkholder	Hook	Popil	Tomascik
Caputo	Hostetler	Rea	Welsh
Casey	Huggins	Roberts	

NAYS—63

Aurentz	Erwin	Krill	Reynolds
Baldrige	Fagan	Leach	Richter
Benedict	Fawcett	Lee, K.	Rovner
Benfield	Fleming	Lee, L.	Scales
Broderick	Fohl	Leinbach	Scranton
Butera	Forster	Leonard	Sharp
Cain	Goldstein	Mangery	Strickler
Caron	Griffith	Meyer	Stroup
Conley	Hannum	Miller, D.	Thomson
Corey	Harding	More	Tully
Cortese	Hatter	Nelson	Warman
Croop	Heyburn	Orban	Whittum
Curran	Horne	O'Donnell	Wilcox
Dailey	Jirolanio	Pott	Woodring
Desmond	Kauffman	Powell	Woodside
Devlin	Keller, J.	Redick	

NOT VOTING—37

Aberman	Goldman	Markley	Rappaport
Allison	Gray	Miller, R.	Sahli
Bashoff	Johnson	Morton	Scarlett
Camardella	Keller, M.	Musselman	Scott
Cunningham	Kelly	Pasquerilla	Solomon
Donaldson	King	Pechan	Van Sant
Donolow	Kline	Pelletier	Waldron
Fay	Lane	Prendergast	Westerberg
Fortney	Manderino	Quiles	Wilmarth
Gehrlein			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHAPIRO AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 2, line 30 by striking out "other than the"

Amend Sec. 1 (Sec. 7), page 3, line 1 by striking out "City of Philadelphia"

Amend Sec. 1 (Sec. 7), page 3, line 21 by striking out "in lieu of" and inserting: unless and until a majority of the electors of the City of Philadelphia voting thereon have adopted

On the question,
Will the Convention agree to the Amendment?

PRESIDENT BRODERICK. We will recognize Delegate Shapiro, sponsor of the amendment.

DELEGATE SHAPIRO. Mr. Chairman, I have heard a lot of amendments presented here. I want all of you to know that this is the first amendment that has no thrust. This amendment is not intended to thrust anybody, shove anybody, or push anybody out of office. This amendment is intended solely to give the voters of Philadelphia a choice which is exactly the same choice that the voters of every other community, every other judicial district, in this State will have under the committee's proposal.

I would also like to suggest to the Chairman and the members of the committee, if they will think back, they will not recall a single vote on this issue in the committee. I suggest this was not voted on in the committee and, therefore, it does not do violence to the committee's report.

The committee's proposal as it presently reads provides in Section 7(a):

"In judicial districts other than the City of Philadelphia in which a majority of the electors voting thereon have adopted a community court, there shall be one community court, the divisions, number of judges and jurisdiction of which shall be as provided by law."

The proposal as it presently reads in section 7(c) reads:

"In the City of Philadelphia, in lieu of a community court, there shall be a municipal court and a traffic court. The number of judges and the jurisdiction of both shall be as provided by law."

Section 7(b) presently provides that in all communities other than in Philadelphia there may be a referendum on the question of whether or not the justices of the peace, the existing minor judiciary, shall be supplanted by a community court.

If my amendment is adopted, these same sections will read as follows, Section 7(a) will read:

"In judicial districts in which a majority of the electors voting thereon have adopted a community court, there shall be one community court, the divisions, number of

judges and jurisdiction of which shall be as provided by law."

Section 7(c), as amended, if my amendment is adopted, will read as follows: "In the City of Philadelphia, unless and until a majority of the electors of the City of Philadelphia voting thereon have adopted community courts, there shall be a municipal court and a traffic court. The number of judges and jurisdiction of both shall be as provided by law."

I emphasize that I am not changing the municipal court, I am not changing the traffic court, I am simply endeavoring to provide for the voters of Philadelphia, if they find that Mr. Devlin is wrong, if they find that they are not satisfied with the municipal court and the traffic court, an opportunity to do something about it at that time and without waiting for another Convention to be convened or the tedious and difficult process of amendment of the Constitution by passage in the General Assembly twice and a referendum. This simply eliminates the need for passage in the Assembly twice, and the four-year delay that is inherent in that if the voters of Philadelphia wish to have a vote on this subject than the change in method Mr. Devlin has suggested for them.

There is no matter of patronage involved here. I was told today a quote by one of the members of the Judiciary Committee to the effect, in explaining the actions of the Judiciary Committee, that there is a majority, there is a minority and then there is Shapiro. This is the Shapiro amendment, it is not the Fineman amendment, it is not the Devlin amendment, it is not anyone's amendment but mine, but I do suggest that the voters of Philadelphia should be given the same choice that the voters of the rest of the State are given.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. I shall speak with extreme briefness and I am sure that you will appreciate that, because I am as tired listening to me as you must be at this time.

I speak in favor of the amendment for precisely the same reason as I have spoken in favor of every other similar amendment. I believe I respect Mr. Devlin's opinion, he is knowledgeable about Philadelphia, I am sure. As I said before, he knows far more about it than I ever shall, but I do not think Mr. Devlin or anyone else on the floor can really speak the minds of the people of Philadelphia and I can see no objection to giving the people of Philadelphia the right to make their own decision on such an important point as this.

I, therefore, urge you again not to do what we did the last time with that 63-63 business. Let us give this amendment a majority vote and let the people of Philadelphia pass on their own system of minor judicial courts.

PRESIDENT BRODERICK. The Chair recognizes Delegate Devlin.

DELEGATE DEVLIN. I have several questions I would like to ask Delegate Pelletier, Mr. Scranton or Mr. Amsterdam through the Chair.

PRESIDENT BRODERICK. I am sure they will stand for interrogation. I see Chairman Amsterdam at the microphone.

DELEGATE DEVLIN. Does the judicial article as presented to the Convention to date provide that in the future, the court structure of Pennsylvania and in particular this municipal court, the common pleas court of Philadelphia comprised of three divisions, can be changed or altered by the Legislature with the advice of the Supreme Court or consent of the Supreme Court? Do we have that machinery available to satisfy the needs of the future?

DELEGATE AMSTERDAM. I will ask the Chairman of the sub-committee, but my recollection is that it does. It is Section 9.

DELEGATE SCRANTON. That is correct.

DELEGATE AMSTERDAM. May I ask Bill O'Donnell who was the draftsman in this area?

DELEGATE SHAPIRO. May I be heard?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro. I want to inform Delegate Shapiro that you have been up once and you can only speak twice, and I am sure you want a closing. I do not want to deprive the delegate of a closing.

DELEGATE AMSTERDAM. The difficulty, Mr. President, is there have been some amendments which affect this question. Therefore, we would like a minute or two to check what effect the amendments have had on the judiciary article.

PRESIDENT BRODERICK. While they are checking on that, perhaps any other delegate who wanted to speak can have this opportunity, because we want to move along. We only have ten more to go.

DELEGATE AMSTERDAM. The proposal as it stands provides the Legislature, with the Supreme Court's approval, may change jurisdiction and matters of that kind as among the courts, but it may not eliminate either the municipal court or the traffic court.

Does that answer the question, Delegate Devlin?

DELEGATE DEVLIN. Yes. That leads me to the second question:

Since the Legislature cannot eliminate the municipal court, or the traffic court, or the common pleas court, sir, what would the people be voting on at that particular time that Mr. Shapiro is suggesting? What is the need to vote if you cannot change something by the vote?

PRESIDENT BRODERICK. Is this question directed to Delegate Shapiro?

DELEGATE DEVLIN. It is directed to Mr. Amsterdam through the Chair.

PRESIDENT BRODERICK. Mr. Amsterdam has delegated Vice Chairman O'Donnell to answer that question.

DELEGATE O'DONNELL. Mr. President, the constitution as drafted here in this article, absolutely mandates the listed courts, whether that be Supreme, Superior, Commonwealth or common pleas. In addition, in the City of Philadelphia it mandates the existence of a municipal court and of a traffice court. The jurisdiction of those courts may be changed by the Legislature.

If I understand Mr. Shapiro's proposal correctly, he says in the case of the municipal and traffic courts in the City of Philadelphia he would like the opportunity to have that placed on the ballot and have the citizens of Philadelphia take those courts out of existence and replace them with a community court. Am I correct, Mr. President?

PRESIDENT BRODERICK. You may answer the question without being charged with a time up.

DELEGATE SHAPIRO. That is correct.

DELEGATE DEVLIN. My question to you, Mr. President, is:

The statement that Mr. O'Donnell gave to me seems in-

consistent with the Constitution and I raise the question again. Once our courts in Philadelphia are established, or community courts or other courts in some other district, can the people by vote alter the Constitution? He has not answered that. They cannot change it unless you have a referendum, etc., etc. I say the provision that Mr. Shapiro is offering is isometric in nature and it will be an appendage on this Constitution that cannot be fully exercised, and I raise these constitutional questions:

Can the people of Philadelphia change their courts?

Can the people of any other judicial district change their courts?

Is the Redick amendment really an amendment that will meet the test of constitutional consistency?

PRESIDENT BRODERICK. I assume you addressed the question to the Chair and that is a question of constitutional law that the Chair can only refer to counsel. I will be happy to have counsel look that up and have them give you an answer through the counsel of the Judiciary Committee, if they will just join together. The Chair does not assume the prerogative of being the constitutional arbiter and my Parliamentarian tells me I cannot rule on constitutional questions. I am glad to hear that. Where were you a couple of minutes ago?

DELEGATE DEVLIN. Is the proposal in order if it is inconsistent with the Constitution?

PRESIDENT BRODERICK. I have asked the attorney to confer with the attorney for the Judiciary Committee and through them I think they will endeavor to answer your question. The Chair itself is not ruling on it.

Does anyone else wish to be heard?

DELEGATE KAUFFMAN. I would like to interrogate Delegate Shapiro.

PRESIDENT BRODERICK. I am sure he will stand for interrogation. Proceed.

DELEGATE KAUFFMAN. How would this matter be determined by the electorate; how would it get on the ballot?

DELEGATE SHAPIRO. It would get on the ballot in exactly the same manner as the question of elimination or replacement of JPs in other judicial districts, by a community court would get on the ballot in those districts.

DELEGATE KAUFFMAN. Do you say that in this amendment?

DELEGATE SHAPIRO. What I am trying to do by this amendment is put Philadelphia in the same position with respect to Section 7(b) as is every other judicial district in this State. I should like to point out in answer to what has been raised here if there is a question as to the constitutionality or propriety under Act 2 of this amendment, there is an equal question with respect to the referendum for replacement of JPs by community courts in other districts, because under the committee's proposal JPs have apparently the same standing in Section 1(a) of the proposal as has the municipal and traffic courts, and the replacement of those courts with a community court by way of a referendum, it seems to me, would stand on the same footing as the replacement of the municipal and traffic courts in Philadelphia by community courts—as the result of a referendum.

DELEGATE KAUFFMAN. So the record is clear, you would expect 5 per cent of the voters voting for the office receiving the highest number of votes in the last general election would be required on a petition?

DELEGATE SHAPIRO. The last general or municipal election under 7(b).

DELEGATE KAUFFMAN. That is what you intend?

DELEGATE SHAPIRO. Yes.

DELEGATE KAUFFMAN. You intend the question shall then be raised only one time in any five-year period?

DELEGATE SHAPIRO. Exactly.

PRESIDENT BRODERICK. The Chair inquires, does anyone else wish to be heard before we have this summed up?

The Chair recognizes Delegate Ruth.

DELEGATE RUTH. I would like to interrogate Mr. Shapiro.

PRESIDENT BRODERICK. He will stand for interrogation. You may proceed.

DELEGATE RUTH. Mr. Shapiro, it is my understanding that yesterday Mr. Redick's proposal took care of all other judicial districts as far as the option to remove an existing court system such as the community court system and the understanding, also, was that this did not affect Philadelphia. Is it your intention with your proposal to bring Philadelphia in along with Redick's amendment?

DELEGATE SHAPIRO. Yes, it would be my intention. I have not bothered to do it because Mr. Redick's amendment is not in print and will have to be altered in any event. We made a change with respect to Allegheny County. We passed Mr. Redick's amendment after we had voted in favor of the community court for Allegheny. Mr. Redick then offered a second amendment to take care of the fact that he had not mentioned Allegheny in the first amendment.

Now, we have defeated the community court for Allegheny and we are going to have to again alter Section (c), as amended, that was injected by the two amendments offered by Mr. Redick and, when we do that, I propose to offer an appropriate amendment to take care of Philadelphia, if we adopt this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. Chairman, I would like to speak in favor of Mr. Shapiro's proposed amendment. I believe if you gentlemen and ladies from the Philadelphia area will give this serious thought you are going to realize that this suggestion is not only practical but vital. I am going to tell you two reasons why I think that is so.

If you freeze into Philadelphia a municipal court and freeze for all time into Philadelphia a traffic court, I wager to say that within five years the citizens of Philadelphia will be back here in Harrisburg asking for a two-year referendum to change the Constitution to take those courts back out and make a change in them because they are building an inflexibility into the scheme of jurisprudence in the City of Philadelphia.

Let me give two examples. Right now under the Federal Highways Act of 1966, which gives 90 per cent contribution for the interstate highway system, there are as Deputy Attorney General Bolla pointed out, presently on the books, proposed regulations under that act which would require a uniform system of traffic enforcement and a uniform system of traffic courts throughout the State.

If our Federal funds, 90 per cent highway funds, are going to become contingent upon a statewide, uniform traffic court, the City of Philadelphia is going to be cooked and the State of Pennsylvania is going to be cooked right with it until we can two years later amend the Constitution of Pennsylvania to bring the traffic court in Philadelphia into conformity with the Federal requirements.

A second reason, of course, is this, I read Arlen Specter's report which he prepared for former Attorney General Alessandroni, which, in turn, was submitted to the governor. I read the report very carefully and I recommend that report to everyone. That report indicates that the Legislature year, after year, after year, has been writing tighter and tighter restrictions on the office of magistrate in the City of Philadelphia to give them less, and less, and less, discretion, particularly in the areas of numbers cases, racket cases, bootlegging, liquor and bookmaking. In those areas, this present proposal would permit the municipal court to handle those cases in their totality.

The municipal court, for example, instead of the situation now where a magistrate can discharge a numbers writer and the district attorney of Philadelphia can move to rearrest that numbers writer, instead of that system, now the magistrate who is now going to be called a judge of the municipal court will be entitled to try that numbers writer, acquit him. He, therefore, becomes entitled to the double jeopardy provisions of the Pennsylvania and Federal Constitutions, as a result of which he is acquitted for all time and the district attorney's office is paralyzed. I suggest Mr. Shapiro has a marvelous way of eliminating a potential roadblock.

If those officers behave themselves while in office, they will have no problems. If they do not, or if the City of Philadelphia finds that its system is not in conformity with the uniform traffic court system throughout the State, then the City of Philadelphia by the action of its own electors can change that system to some other. I think there is a lot of merit in that proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Devlin.

DELEGATE DEVLIN. Mr. President, I was satisfied by the opinion of able counsel that Mr. Shapiro's amendment indeed will stand the test of law. I am so certain, so positive, of the people of Philadelphia not wishing to change these courts in the foreseeable future and so happy to allow this flexibility to change them as time passes on, that I would like to see all the green lights go up in support of Mr. Shapiro's amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I want to thank Delegate Devlin for making my closing speech.

PRESIDENT BRODERICK. We are ready for the question.

We will unlock the voting machines. All those voting "yea" will vote to support the Shapiro amendment, those voting "no" will vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Shapiro?

The roll was recorded as follows:

YEAS—119

Amsterdam	Dailey	Keller, J.	Richter
Aurentz	Desmond	Krill	Rovner
Bagenstose	Devlin	Laputka	Ruth
Baldrige	Erwin	Leach	Scales
Baldus	Fagan	Lee, L.	Scranton
Baldwin	Fawcett	Leinbach	Sebastian
Barron	Feather	Leonard	Shapiro
Barry	Filson	Levin	Sharp
Benedict	Fineman	Mattioni	Shetlig
Benfield	Fohl	McGeary	Shively
Bloom	Forster	McGlynn	Shoemaker
Braham	Gabreski	Meyer	Shrager
Broderick	Gerber	Michael	Silverman
Brown	Goldstein	Michener	Solomon
Buck	Gougler	Miller, D.	Sprogell
Bunting	Hannum	Moorhead	Stout
Burkholder	Harding	More	Strickler
Butera	Hatter	Murray	Swope
Cain	Henderson	Nelson	Tate
Caputo	Heyburn	O'Donnell	Thomson
Caron	Himes	Orban	Thornburgh
Casey	Hocker	Orbin	Tomascik
Clark	Hook	Otto	Tully
Clinger	Horne	Percey	Warman
Conley	Hostetler	Popil	Westerberg
Corey	Huggins	Pott	Whittum
Cortese	Irvis	Powell	Wilcox
Cosetti	Jirolanio	Rea	Woodring
Croop	Johnson	Redick	Woodside
Curran	Kauffman	Reynolds	

NAYS—1

Griffith

NOT VOTING—43

Aberman	Fleming	Manderino	Rappaport
Allison	Fortney	Mangery	Roberts
Banes	Gehrlein	Markley	Sahli
Bashoff	Goldman	Miller, R.	Scarlett
Brennan	Gray	Morton	Scott
Camardella	Keller, M.	Musselman	Stroup
Cunningham	Kelly	Pasquerilla	Van Sant
Donaldson	King	Pechan	Waldron
Donolow	Kline	Pelletier	Welsh
Dumbauld	Lane	Prendergast	Wilmarth
Fay	Lee, K.	Quiles	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil. For what purpose does the gentleman rise?

DELEGATE POPIL. I rise to a question of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE POPIL. I was not here to vote on the Tate amendment regarding the traffic courts of Philadelphia. I would like the record to show that if I was here I would have voted "yes."

PRESIDENT BRODERICK. Your remarks are being placed on the record.

DELEGATE AMSTERDAM. Mr. President, the delegates will be pleased to know we are now on the last amendment for Section No. 7.

THORNBURGH AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE THORNBURGH offered the following amendment which was read by the clerk:

Amend Sec 1 (Sec. 7), page 3, line 11 by striking out "five" and inserting: two

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. The effect of this amendment would be only to reduce from five per cent to two per cent of the total votes cast for all candidates, etc., the number of names necessary to place the question of the community courts on the ballot. It is an attempt, consistent with other expressions from the floor, to free up the process. I remind the delegates, the matter of this being brought up once in every five years remain in the proposal. It must remain because otherwise we might be flooded with these matters. This would apply, I would suggest, to the Redick amendment as well, so it is a two-way street that I would suggest that we would be providing, in particular the situations that have already been referred to where there may be some difficulty in getting signatures, a more facile way of dealing with this problem.

I would urge its adoption.

PRESIDENT BRODERICK. Are we ready for the question? Does the committee have any position?

DELEGATE SCRANTON. The Committee discussed numbers in this field and at one point it had 10 per cent, then it votes five per cent. We are ready for the question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I take it the gentleman intends this amendment to apply only to the question on the ballot with regard to optioning to take community courts? It has nothing to do with the selection of judges, or anything of that nature?

DELEGATE THORNBURGH. Absolutely not, Mr. President.

DELEGATE KAUFFMAN. Just in this one particular area?

DELEGATE THORNBURGH. Yes, for the moment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. Chairman and fellow delegates, I rise in opposition to this amendment. We have in other places in the Constitution, as proposed, set forth a requirement of five per cent.

Specifically, in the tax article there is a five per cent figure which was already approved on this floor. I have been counsel for the Department of Elections, County of Allegheny, and I believe this small number of voters would be too sparse an introduction to having this on the ballot at every whipstitch. I believe five per cent, or the 27,000 that Mr. Rea thought would be necessary when he talked on the subject is not too large a figure.

There are over 27,000 people living in Mr. Rea's home municipality, and I suggest if it is not possible to get that many people on a petition in Allegheny County, it should not go on. The electorate and the public officials in that county should not be harassed by a lesser number on a petition. Therefore, I suggest the amendment be defeated.

PRESIDENT BRODERICK. Are we ready for the question?

We will unlock the voting machine and the question is, will the Convention agree to the Thornburgh Amendment?

Those who vote "yea" will vote for the support of the amendment, those who vote "nay" will vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Thornburgh?

The roll was recorded as follows:

YEAS—42

Amsterdam	Cosetti	Mattioni	Shapiro
Baldus	Fawcett	McGlynn	Sharp
Bloom	Fealher	Michael	Sprogell
Braham	Filson	Michener	Stout
Brennan	Fineman	Murray	Swope
Buck	Gabreski	Otto	Tate
Bunting	Hook	Percey	Thornburgh
Burkholder	Horne	Popil	Welsh
Butera	Hostetler	Rea	Whittum
Casey	Huggins	Scales	Wilcox
Clinger	Laputka		

NAYS—74

Aurentz	Dailey	Johnson	Pott
Bagenstose	Desmond	Kauffman	Powell
Baldrige	Devlin	Keller, J.	Redick
Baldwin	Erwin	Krill	Reynolds
Barron	Fagan	Leach	Rovner
Barry	Fohl	Lee, L.	Ruth
Benedict	Forster	Leinbach	Scranton
Benfield	Gerber	Leonard	Sebastian
Broderick	Goldstein	Levin	Shettig
Brown	Griffith	McGeary	Shively
Caln	Hannum	Meyer	Solomon
Caputo	Harding	Miller, D.	Strickler
Caron	Hatter	Moorhead	Thomson
Clark	Henderson	More	Tomaselk
Conley	Heyburn	Nelson	Tully
Corey	Himes	O'Donnell	Warman
Cortese	Hocker	Orban	Woodring
Croop	Irvis	Orbin	Woodside
Curran	Jirolanio		

NOT VOTING—47

Aberman	Gehrlein	Markley	Sahli
Allison	Goldman	Miller, R.	Scarlett
Banes	Gouger	Morton	Scott
Bashoff	Gray	Musselman	Shoemaker
Camardella	Keller, M.	Pasquerilla	Shrager
Cunningham	Kelly	Pechan	Silverman
Donaldson	King	Pelletier	Stroup
Donolow	Kline	Prendergast	Van Sant
Dumbauld	Lane	Quiles	Waldron
Fay	Lee, K.	Rappaport	Westerberg
Fleming	Manderino	Richter	Wilmarth
Fortney	Mangery	Roberts	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHOEMAKER AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHOEMAKER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 8), page 3, line 26, by striking out "(a)"
Amend Sec. 1 (Sec. 8), page 3, line 30; page 4, lines 1 to 8, by striking out all of said lines

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. I have a question here. Has this section been discussed, Section 8?

PRESIDENT BRODERICK. I am advised by Chairman Amsterdam that it has been discussed.

DELEGATE SHOEMAKER. Mr. President, we have listened to a lot of debate concerning mandate to the people. We have listened to a lot of debate concerning what is legislative, what is administrative, what is a judicial function. We have all through woven what our discussions have been skirted around, the problem that pokes its head into Section 8 (b), which is the section that I would eliminate from this Constitution as it is proposed.

I would ask you to examine Section 8 (b) and tell me, if you can, what we mean by saying and writing into a constitution that the future of a judicial system, a minor judiciary, shall be solely on this basis. I ask you whether we are ready now to mandate to the people whether they like it or not, we are not giving them a referendum on this; whether we are ready to mandate a salary to the justice of the peace.

I ask you now, gentlemen and ladies of this delegation, whether or not we are ready to have the Supreme Court and the court of common pleas butcher up the judicial districts and carve out what will be the minor judiciary. Is this a judicial function?

I have talked to the four Judges of my Judicial District, and they have told me that they want no part of the political arena in carving up the minor judiciary system. I believe that we cannot in good conscience pass a proposal that places maybe a legislative and maybe an administrative function in the hands of the court. I would challenge any judge here who has ever sat on the bench to tell me now that they think this is a judicial function.

If you examine the Federal Constitution, you will find that right up front it says the courts of the United States shall have the power of jurisdiction, the ultimate power shall be in the Supreme Court, and the Congress shall set up such other courts as shall be necessary.

If that be our guideline, if the Federal Constitution is the best Constitution that ever was, then let us look at that guideline. Let us follow it. Let us not say the Supreme Court shall be the ultimate power and the Supreme Court shall set up the courts. I could describe how I could cut up my county, York County, into minor judicial districts to favor either political party and any personality within that county merely by juggling the boundaries and the lines.

I say to you, Mr. President, that the courts do not want this job, it is not part of their function, and this section has no place in our Constitution.

Look at Section 8 (a). Section 8 (a) says, "As provided by law." That is the way it ends.

Section 8 (a) says the Legislature shall have this job, but Section 8 (b) turns around and says, despite what the Legislature may from time to time do, we are mandating that the courts have the veto, we are mandating that they are going to set up these districts. We are giving to the Supreme Court an ultimate right to veto and the court of common pleas the right to veto and carve up the very things that they themselves are going to have to review on appeal. Gentlemen, it is wrong. It is wrong.

It would be unfair for me to stand here and argue about this one section of this proposed constitutional revision without telling you that on the broad base, I believe, first, that we need to improve the courts and we need to have an ultimate goal in mind. Perhaps, that ultimate goal is in the presently vague expression, the community court, and, if that be so, fine. It would be, also, unfair if I did not tell you that I think and I believe we should give the people a choice between what we have now and an alternative, not a choice between what we may have on paper and another thing on paper. I am going to be coming back to you later when we get to later sections to talk to you on that subject and it would be unfair of me just to make my argument now on the basis of the single question as to whether the Supreme Court and the court of common pleas should have the right to carve up these districts. But that in and of itself is sufficient reason to strike this unneeded and unnecessary section from this proposed draft. There is nothing to stop the Legislature from passing that very same language if they want to, if that is what they believe.

Gentlemen, we look at practicality next. Let me tell you that it is my sincere and honest belief that if we as a Convention want this judicial article to pass, then we better clean it up a little bit. What I am saying is practical "gut" politics, if you will, because I do not believe we can sell an unknown as well as we can sell a chance for an ideal system as against the status quo.

I do not question for one minute that the justices of the peace in this State are not going to like; well, they probably will not like anything we do, but you can rest assured if we are cutting them into districts that are mandated to be cut up by the county courts they are going to rise up and fight it down the line.

Those people that talked about giving the people a fair choice, a fair chance, better look twice at what they are doing in Section 8 (b), because we are not giving them a choice there. We are saying this is the way it is going to be, no ifs, no ands, no buts, it is either this or you may option. It is either this or it is a community court. That is what we should give them the right to do.

I have heard a lot of speakers on this floor skirt around this issue, and I ask you all now to examine what was said, what you yourself said in prior discussions when we looked at the philosophy behind Section 8 (b).

I have no endorsers, I have no sponsors, I did not go around and get a lot of people to sign this. I did not try to sell it to the committee, but I think the committee should recognize that it is ill-conceived.

I ask for your support.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the Judiciary Committee went into this quite thoroughly. It was because of the very substantial change in the system, whereby the magisterial districts were being set up, that we felt it was necessary for the electors, if they were going to vote intelligently upon this matter, have some idea of how this would be set up. Therefore, we provided that the General Assembly should establish the various classes of magisterial districts, based on population and population density, and that they should also fix the salaries to be paid in those various classes.

We also provided, because we wanted to have the magisterial system as closely and as much a part of the total judicial system as possible, that the number and boundaries of magisterial districts should be fixed by the court system itself, viz., either by the Supreme Court or by the Supreme Court through the court of common pleas in which the magisterial districts were located.

This was gone into very, very carefully, and this represents the considered judgments of the Judiciary Committee.

PRESIDENT BRODERICK. The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, if there was anything on which the Judiciary Committee was unanimous, this was it.

When we came here to Harrisburg there were those voices who said abolish the justices of the peace, because there are certain defects in the system. We discovered that we could not abolish them because of the fantastic differences that exist throughout the Commonwealth of Pennsylvania, between the needs of your sparsely settled and densely settled areas of the State.

Those areas which were most subject to criticism were the fee system, for one; the lack of educational qualifications, for two;

The fact that the justices of the peace were not a part of the unified system, three; and four, and perhaps more important than any other, is this matter of proper jurisdiction and venue in a magistrates court.

Electors, voters and interested citizens all over the State see the fallacy, see the wrongdoing that is involved in the matter of magistrates, in effect, soliciting business, rather than merely accepting the court business which comes before them. We read here even in Dauphin County of two justices of the peace who apparently are trying to see who can move their house trailers closer to a certain exit on the Turnpike to secure that business.

These provisions in the judiciary article are part and parcel of the program, the total program to correct all of the known deficiencies in the magisterial system in Pennsylvania. These reforms are needed. These reforms are excellent, and Mr. Shoemaker's proposal just takes and rips these reforms right out of the judiciary article, and I vehemently protest.

I ask for a vote of "no."

PRESIDENT BRODERICK. Are you ready for the question?

I want to say that Delegate Shoemaker has a right to close, but he just has one minute left.

DELEGATE SHOEMAKER. Mr. President, this will not take very long.

Mr. President, Mr. O'Donnell's statements, as I understand, he is the artisan behind this section. If you said and can say honestly that we came here with a mandate to get rid of the JP, but we found we could not do it, so then we set up the community court out in the future, and, in turn, he is telling me we are not getting rid of the JP, but, in fact, we are getting rid of the JP and I am saying what is going to happen, the people that rose up against just plain abolition of the JP are going to vote down this judicial article, if we let it ride through in this fashion.

PRESIDENT BRODERICK. We are ready for the question, and the question is, will the Convention agree to the amendment being offered by Delegate Shoemaker?

The voting machine is open. Those voting "yea" will vote to support the amendment, those voting "nay" will vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Shoemaker?

The roll was recorded as follows:

YEAS—14

Banes	Irvis	McGlynn	Shoemaker
Cortese	Jirolanio	Rea	Tulty
Devlin	Johnson	Shettig	Welsh
Erwin	Mattioni		

NAYS—96

Amsterdam	Corey	Horne	Powell
Aurentz	Cosetti	Hostetler	Rovner
Bagenstose	Croop	Kauffman	Ruth
Baldrige	Cunningham	Keller, J.	Scales
Baldus	Curran	Krill	Scranton
Barron	Dailey	Lee, L.	Sebastian
Barry	Desmond	Leach	Shapiro
Benedict	Fagan	Leinbach	Sharp
Benfield	Fawcett	Leonard	Shively
Bloom	Feather	Levin	Silverman
Braham	Filson	McGeary	Solomon
Brennan	Fohl	Meyer	Sprogell
Broderick	Forster	Michael	Stout
Brown	Gabreski	Michener	Strickler
Buck	Gerber	Miller, D.	Stroup
Bunting	Gray	Moorhead	Swope
Burkholder	Griffith	More	Tate
Butera	Hannum	Murray	Thornburgh
Cain	Harding	Nelson	Tomasetik
Caputo	Hatter	O'Donnell	Warman
Caron	Henderson	Orban	Whittum
Casey	Himes	Orbin	Wilcox
Clark	Hocker	Popil	Woodring
Clinger	Hook	Pott	Woodside

NOT VOTING—53

Aberman	Goldman	Mangery	Redick
Allison	Goldstein	Markley	Reynolds
Baldwin	Gouger	Miller, R.	Richter
Bashoff	Heyburn	Morton	Roberts
Camardella	Huggins	Musselman	Sahli
Conley	Keller, M.	Otto	Scarlett
Donaldson	Kelly	Pasquerilla	Scott
Donolow	King	Pechan	Shrager
Dumbauld	Kline	Pelletier	Thomson
Fay	Lane	Percey	Van Sant
Fineman	Laputka	Prendergast	Waldron
Fleming	Lee, K.	Quiles	Westerberg
Fortney	Manderino	Rappaport	Wilmarth
Gehrlein			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

DELEGATE MICHENER. Mr. President, I am glad that the vote was to that degree of finality, because it was

brought to my attention that a delegate who sought permission to go home some time ago and is now many miles from this hall is registered as voting.

I think we had better start being rather careful about this, please.

WIFE AND FAMILY OF DELEGATE WOODSIDE WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, while the Convention is more or less at ease, I would like to rise just a moment on a question of special personal privilege.

PRESIDENT BRODERICK. Would you state your question of personal privilege, please?

DELEGATE WOODSIDE. Today my son and law partner, Robert J. Woodside, and his wife and my grandson, Michael Woodside, and now Mrs. Woodside and my daughter, Jane Woodside, have all visited the Convention. Delegate Hocker said that they knew it was pay day.

PRESIDENT BRODERICK. I think it would be very nice if they would stand so we could recognize them, because we are very happy to have the Woodside family with us.

Would you all stand and give them a long round of applause?

I think they came over to check to see if you were really working late on Friday afternoon.

BAGENSTOSE AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Bagenstose.

DELEGATE BAGENSTOSE. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BAGENSTOSE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 8), page 4, line 5, by striking out "the Supreme Court or by"

Amend Sec. 1 (Sec. 8), page 4, line 6, by striking out "please under the direction of the Supreme Court" and inserting: pleas

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Bagenstose.

DELEGATE BAGENSTOSE. This will be short, Mr. President.

The Supreme Court is not familiar with the areas to establish these classes of magisterial districts. Therefore, this amendment will give the local court of common pleas the duty of designing and fixing the magistrate districts within the counties after the Legislature has set the sizes by population per square mile and density that it should be.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. I rise in opposition to this amendment. So does the Judiciary Committee oppose this.

Frankly, if you are going to put into the Supreme Court the operation of the unified judicial system, and this is the essence of this whole thing, you have to give them the power to do some of these things.

Perfectly clearly, much of it will be done by the court of common pleas. We have given them that alternative, but they have got to have some over-all say about the administration of the whole system for which they, and they alone, are accountable. All this is clearly charted out in this.

I plead with you to turn this one down. Here goes another one to hit the unified judicial system.

PRESIDENT BRODERICK. Are we ready for the question? Unlock the voting machine.

The question before the Convention is, will the Convention agree to the amendment offered by Delegate Bagenstose. Those voting "yea" will vote to support the amendment, those voting "nay" will reject it.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Bagenstose?

The roll was recorded as follows:

YEAS—9

Bagenstose	Mattioni	Michael	Shoemaker
Baldrige	McGlynn	Michener	Tully
Leinbach			

NAYS—99

Amsterdam	Curran	Kauffman	Ruth
Aurentz	Dailey	Keller, J.	Scales
Baldus	Desmond	Krill	Scranton
Baldwin	Devlin	Laputka	Sebastian
Banes	Erwin	Leach	Shapiro
Barron	Fagan	Lee, L.	Sharp
Barry	Fawcett	Leonard	Shettig
Benfield	Feather	Levin	Shively
Bloom	Fikson	McGeary	Shrager
Braham	Fohl	Meyer	Silverman
Brennan	Gabreski	Miller, D.	Sprogell
Broderick	Gerber	Moorhead	Stout
Brown	Griffith	More	Strickler
Buck	Hannum	Murray	Stroup
Bunting	Harding	Nelson	Swope
Burkholder	Hatter	O'Donnell	Tate
Butera	Henderson	Orban	Thornburgh
Cain	Heyburn	Orbin	Tomascik
Caron	Himes	Popil	Warman
Casey	Hook	Pott	Welsh
Clark	Horne	Powell	Whittum
Clinger	Hostetler	Rea	Wilcox
Corey	Irvis	Redick	Woodring
Cortese	Jirolanio	Richter	Woodside
Croop	Johnson	Rovner	

NOT VOTING—55

Aberman	Fleming	Lane	Quiles
Allison	Forster	Lee, K.	Rappaport
Bashoff	Forney	Manderino	Reynolds
Benedict	Gehrlein	Mangery	Roberts
Camardella	Goldman	Markley	Sahli
Caputo	Goldstein	Miller, R.	Scarlett
Conley	Gutger	Morton	Scott
Cosetti	Gray	Musselman	Solomon
Cunningham	Hocker	Otto	Thomson
Donaldson	Huggins	Pasquerilla	Van Sant
Donolow	Keller, M.	Pechan	Waldron
Dumbauld	Kelly	Pelletier	Westerberg
Fay	King	Percey	Wilmarth
Fineman	Kline	Prendergast	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BARRON AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I rise to offer an amendment to Committee Proposal No. 7.

On the question,
Will the Convention agree to the proposal on second consideration?

DELEGATE BARRON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 9), page 4, lines 9 and 10, by striking out ", with the advice and consent of the Supreme Court,"

Amend Sec. 1 (Sec. 9), page 4, line 12, by striking out ", with the advice and consent of the Supreme Court,"

Amend Sec. 1 (Sec. 9), page 4, line 13, by inserting after "statute.": Courts hereafter created by the General Assembly shall be a part of the unified judicial system and subject to the provisions of this article.

Amend Sec. 1 (Sec. 18), page 14, line 27, by striking out "shall" and inserting: may

Amend Sec. 1 (Sec. 18), page 14, lines 28 and 29, by striking out "only with the advice and consent of the Supreme Court"

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I would point out to this body that there are two sections covered here, Section No. 9 and Section No. 18. There are two different concepts involved, even though the thrust of both is to take out only "with the advice and consent of the Supreme Court."

Before proceeding on, Mr. President, I would respectfully ask leave to divide the discussions on Section 9 and Section 18. I would say in explanation, Mr. President, these were combined at the behest of the committee which met at noontime for luncheon today in order that we could, at least, argue the concepts at the same time, hopefully, however, that we could move things on by presenting the idea of where and in what areas advice and consent of the Supreme Court is required.

Accordingly, Mr. President, I would ask if we might have such a division in the discussion of this matter? May we have a division of discussion and vote on Section 9 followed by a division—

PRESIDENT BRODERICK. Let me speak to the Parliamentarian. We have a question to the Chair as to whether or not we can divide this amendment and vote on it as two amendments. Is that, in effect, your question?

DELEGATE BARRON. Yes, sir.

PRESIDENT BRODERICK. Unless we have an objection, then we will consider this as two amendments.

Now, the first part of this would be what, Delegate Barron?

DELEGATE BARRON. It would be the first three paragraphs, each one of which is introduced by the words amend Section 1, Section 9.

PRESIDENT BRODERICK. In other words, it does not include "Amend Section 1, Section 18, and thereafter."

DELEGATE BARRON. Correct. That would be the second part.

PRESIDENT BRODERICK. Unless the Chair hears an objection, we will consider it as two amendments, and you will speak now to the first amendment.

DELEGATE BARRON. By way of background, I would ask the delegates' attention to look at Section 1 of Printer's No. 20 that we are now discussing.

Please notice that in section 1(a) the committee proposal creates certain specific constitutional courts, which are hereby created and ordained if this proposal is passed. As has been explained before, these courts cannot be abolished by the General Assembly. They can only be changed in that justices of the peace can be taken out or put back in, and the same with the municipal and traffic courts in favor of community courts. By voter action they will, nonetheless be, constitutional courts.

Anticipating the future, this Section 9 was put in with the idea purely that any courts in the future, in addition to those provided constitutionally, can be created by the General Assembly and can be removed by the General Assembly, that is, if the General Assembly creates a particular court to handle a particular situation, or situations, as it did the Superior Court, it may do so, and, in turn, if the need, necessity, or whatever of this court becomes extinguished, the court may be abolished, as well.

In committee, the concept that this should be done with the advice and consent of the Supreme Court was carried on and perpetuated in this Section 9.

Considering that this assembly had understood the thrust of the proposition of amending Section 1(b), which limited the removal, change, and so forth, of jurisdiction of the constitutional courts only by approval of the Supreme Court, and this we took out, it is an effort here to parallel that idea, that which the General Assembly creates, and endows with jurisdictions, it may likewise remove.

Notice, however, that we want to make it crystal clear that any court hereafter created by statute—and this is the third paragraph in the topics under Section 9—shall be a part of the unified judicial system, and this, we believe, is stated beyond a fair adventure.

PRESIDENT BRODERICK. The Chairman recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, I cannot speak for the whole committee, but this goes again to the problem of the unified judicial system, which everybody in the commmittee knows I feel very strongly about.

May I say to you, I think what they want to do with regard to Section 9 does not interfere with the unified judicial system whatsoever. In fact, I do not think it is even necessary to add the additional information, or additional paragraph, which they put in, because it is already taken care of in the first paragraph, Paragraph A of Section 1 on page 1. So far as I personally am concerned, if the other committee members would be agreeable, this first division of their change I agree to.

I want to make it very clear, however, I do not agree to what they want to do in Section 18, which comes next, because I think that goes to the heart of the unified judicial system.

PRESIDENT BRODERICK. I take it we are ready for the question. We are ready for the question now.

Remember, we are only voting on the first part, the portion of this amendment that includes the first three paragraphs. It does not include the portion that starts "Amend Section 1, Section 18, page 14." From then on it is the second amendment.

Now, unlock the voting machines and all those voting "yea" will vote to support the first part of the Barron amendment, those voting "nay" will vote to reject it.

On the question recurring,

Will the Convention agree to the first portion of the amendment offered by Delegate Barron?

The roll was recorded as follows:

YEAS—68

Aurentz	Filson	Keller, J.	Richter
Baldrige	Fohl	Laputka	Rovner
Banes	Gerber	Leach	Ruth
Barron	Gouger	Lee, L.	Scales
Barry	Hannum	Leinbach	Scranton
Broderick	Harding	Leonard	Sebastian
Brown	Henderson	Mattioni	Shapiro
Buck	Heyburn	McGeary	Sharp
Cain	Himes	McGlynn	Shively
Corey	Hook	Miller, D.	Shoemaker
Cortese	Horne	More	Shrager
Crnop	Hostetler	Nelson	Silverman
Curran	Huggins	Orban	Swope
Dailey	Irvis	Orbin	Thomson
Desmond	Jirolanio	Pott	Tully
Devlin	Johnson	Powell	Welsh
Fawcett	Kauffman	Redick	Westerberg

NAYS—41

Amsterdam	Caron	Hocker	Sprogell
Baldus	Casey	Kriti	Stout
Baldwin	Clinger	Levin	Strickler
Benedict	Erwin	Michael	Stroup
Benfield	Fagan	Michener	Tate
Bloom	Feather	Moorhead	Thornburgh
Braham	Forster	O'Donnell	Tomasetik
Brennan	Gabreski	Popil	Whittum
Bunting	Griffith	Rea	Wilcox
Burkholder	Hatter	Shettig	Woodring
Butera			

NOT VOTING—54

Aberman	Fineman	Mangery	Quiles
Allison	Fleming	Markley	Rappaport
Bagenstose	Fortney	Meyer	Reynolds
Bashoff	Gehrlein	Miller, R.	Roberts
Camardella	Goldman	Morton	Sabli
Caputo	Goldstein	Murray	Scarlett
Clark	Gray	Musselman	Scott
Conley	Keller, M.	Otto	Solomon
Cosetti	Kelly	Pasquerilla	Van Sant
Cunningham	King	Pechan	Waldron
Donaldson	Kline	Pelletier	Warman
Donolow	Lane	Percey	Wilmarth
Dumbauld	Lee, K.	Prendergast	Woodside
Fay	Manderino		

The majority having voted in the affirmative, the question was determined in the affirmative and the first portion of the amendment was agreed to.

JUDGE JAMES S. BOWMAN WELCOMED

PRESIDENT BRODERICK. The Chair would like to take this time to point out that we have a guest with us in the rear sitting in one of the delegate's seats. It is Judge James S. Bowman of the Common Pleas Court of Dauphin County.

Judge, would you stand up so we can show you a welcome?

I do not think I have to point out to you that he is a big man in judicial circles.

BARRON AMENDMENT (PART 2)

PRESIDENT BRODERICK. We will recognize Delegate Barron in connection with the second part of his amendment.

DELEGATE BARRON. I fondly hope and pray that this is the last section to be discussed under which the advice and consent of the Supreme Court is involved. I recognize immediately that this is much more controversial, and, as tired as we may be, please take a look at it. My own feelings are kind of mixed, and we put these together with the idea of presenting them in this fashion. I hope to make it more understandable.

The gist of this amendment is this, we provide now that the number and boundaries of the judicial districts shall be changed by the General Assembly.

This is current law, subject only to a limitation that any county having more than 40,000 people then becomes entitled to its own independent judge. However, the Committee decided to go on and provide, as they had before, that this should be done, meaning the number and the boundaries of the districts should be changed only with the advice and consent of the Supreme Court.

I did not originally prepare an amendment on this, and I do not feel fully qualified to speak on it. I suggest that the dividing line is this, if you believe that this is an administrative function, you would be persuaded to vote against this amendment. If you believe the financial impact of the changing of districts, the problem involved between the State paying for the people, the judges, the counties which presently build court houses and pay for all of the staffs and members thereof, is important and should be a matter for the General Assembly, you will be in favor of it.

I am sure that the proponents who have more direct feelings, more positive approaches to this, will speak accordingly.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President, Mr. Barron has said this better than I could. Quite frankly, the proposition from the standpoint of the committee is that this is both a financial and an administrative function, and that is precisely why we put both groups into it, the Legislature and the Supreme Court.

The Legislature should have jurisdiction concerning judicial districts, because they partly pay for same, and the boundaries thereof, and, likewise, the Supreme Court under the new unified system for the first time in Pennsylvania has the responsibility for the administration of same and, therefore, they should be a part of it.

That is precisely why we did this, and I earnestly hope that you will not support this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hook.

DELEGATE HOOK. I would like to ask Governor Scranton one question.

PRESIDENT BRODERICK. He will stand for interrogation.

DELEGATE HOOK. I have been bothered by this lan-

guage, Mr. President, and I have raised this question before. What happens if the General Assembly goes ahead and does this without the consent of the Supreme Court?

DELEGATE SCRANTON. I assume you have a court case and the Supreme Court decides it.

DELEGATE HOOK. That is the answer I wanted, Mr. President.

PRESIDENT BRODERICK. Are we ready for the question, or does Delegate Sharp wish to be recognized?

DELEGATE SHARP. Mr. President, I wonder if I might interrogate Governor Scranton a moment.

PRESIDENT BRODERICK. I am sure Chairman Scranton will stand for interrogation by Delegate Sharp.

DELEGATE SHARP. Mr. President, I am interested in the exact meaning of these words "advice and consent of the Supreme Court." I wonder if this speaks of before the Assembly acts or subsequent to the Assembly acting. In other words, under the words "advice and consent," as we well know them in connection with the Senate of the United States, this is an act after the President. Is it to be thought here, then, that the Supreme Court, if the General Assembly should pass an act, and the Governor should not veto it, it would then have the power of veto even though the Governor did not?

DELEGATE SCRANTON. No. I think it is quite clear that Judge Woodside's answer to the same question the other morning is a proper one and that is clearly, the Legislature itself, for example, the head of the appropriate committee, which would be the judiciary committee of the Legislature, would get a certification from the Supreme Court on the bill.

DELEGATE SHARP. Would it not be better, then to state, as we did in Section 1, using the words "prior approval" rather than "advice and consent," or do these mean one and the same as far as you are concerned?

DELEGATE SCRANTON. As far as I am concerned, they can do it any way they want to. As long as you have both units in it, which I think properly belong there. If you want Style and Drafting to change it into words that are better, I have no objection.

DELEGATE SHARP. This is my point. Thank you.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, I voted for the Barron amendment, the first one we passed, because I viewed that to be a proper amendment because, as drafted, in my view this was an encroachment on the legislative function and, therefore, to be consistent, we should not encroach on the legislative function.

I concur in the view of Governor Scranton with respect to the second proposal, that this is an administrative function and not an encroachment on the legislative function and would, therefore, suggest that this body decline the second amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Mattioni.

DELEGATE MATTIONI. Mr. President, I consider this one of the most important amendments that has come before the delegates. I agree with Governor Scranton that it is administrative, but, at the same time, it is legislative.

When I went to school—and this is not too many years ago—I learned a simple concept of separation of powers and a checking function of the General Assembly, along with the other checking functions interdependent between the executive and the judiciary.

I think this found its genesis even earlier than the Magna Charta, but it is primarily indigenous to this country of ours and, if you go back to the 16th and 17th centuries, you will find that the separation of powers with the checking functions built within it were found in the early charters in that colonial period.

I am not opposed to a unified judicial system, and yesterday, when someone said what did we do, I said we really did something very great. We did unify the courts. It was very important. I am not opposed to an independent judiciary, but I am opposed to an independent judiciary to the sacrifice of an independent General Assembly.

I urge that we adopt this amendment and I say it most sincerely.

PRESIDENT BRODERICK. Delegate O'Donnell.

DELEGATE O'DONNELL. For the same reasons ensigned by Delegate Mattioni, I urge this amendment be rejected. It would do violence to the warp and woof of the entire scheme of the judiciary article.

Consider this: In judicial district which has opted, or adopted, if you will, a community court system for that judicial district. Let us suppose that the disabused and disaffected justices of the peace take issue with that and they have enough strength in the Legislature to have the Legislature now change that judicial district by drawing a line down through the middle of it, or making it part and parcel of two adjoining districts which still have the justices of the peace system, or, conversely, a district which has elected to retain the justice of the peace system, could become a community court system by having the Legislature blend it with other districts. What I am trying to get across is, it would permit the Legislature to tamper with the judicial functions and with the entire court scheme.

From the very arguments on this floor, it is obvious that an approach could be made to the Legislature, for example, to make the City of Pittsburgh a single judicial district of its own, and there may be merit in that, or the balance of Allegheny County be made a judicial district of its own, and there may be merit in that. But, since it is going to affect the entire unified system and the entire court scheme, the Supreme Court should have the final say as to whether or not a change of district lines is acceptable, and I urge that this amendment be defeated.

PRESIDENT BRODERICK. Are you ready for the question? We will now unlock the voting machine and the question is on the second part of the Barron Amendment: Will the Convention agree to the second part of the Barron Amendment?

All those voting "yea" will vote to support the amendment, those voting "nay" will vote to reject it.

On the question recurring,

Will the Convention agree to the second portion of the amendment offered by Delegate Barron?

The roll was recorded as follows:

YEAS—17

Baldrige	Gerber	Johnson	Shoemaker
Banes	Himes	Mattioni	Tate

Barron	Irvis	McGlynn	Thornburgh
Benedict	Jirolanio	Orban	Tully
Corey			

NAYS—93

Amsterdam	Devlin	Lee, L.	Ruth
Aurentz	Erwin	Leinbach	Scales
Baldus	Fagan	Leonard	Scranton
Baldwin	Fawcett	Levin	Sebastian
Barry	Feather	Mangery	Shapiro
Benfield	Filson	McGeary	Sharp
Bloom	Fohl	Meyer	Sheltig
Brennan	Forster	Michael	Shively
Broderick	Gabreski	Michener	Shrager
Brown	Gouger	Miller, D.	Silverman
Buck	Griffith	Moorhead	Sprogell
Bunting	Hannum	More	Stout
Burkholder	Harding	Murray	Strickler
Butera	Hatter	Nelson	Stroup
Caln	Henderson	O'Donnell	Swope
Caron	Heyburn	Orbin	Thomson
Casey	Hocker	Popil	Tomascik
Clark	Hook	Pott	Welsh
Clinger	Horne	Powell	Westerberg
Cortese	Hostetler	Rea	Whittum
Croop	Kauffman	Redick	Wilcox
Curran	Keller, J.	Richter	Woodring
Dailey	Krill	Rovner	Woodside
Desmond			

NOT VOTING—53

Aberman	Fineman	Laputka	Prendergast
Allison	Fleming	Leach	Quiles
Bagenstose	Fortney	Lee, K.	Rappaport
Bashoff	Gehrlein	Manderino	Reynolds
Braham	Goldman	Markley	Roberts
Camardella	Goldstein	Miller, R.	Sahli
Caputo	Gray	Morton	Scarlett
Conley	Huggins	Musselman	Scott
Cosetti	Keller, M.	Otto	Solomon
Cunningham	Kelly	Pasquerilla	Van Sant
Donaldson	King	Pechan	Waldron
Donolow	Kline	Pelletier	Warman
Dumbauld	Lane	Percey	Wilmarth
Fay			

Less than the majority having voted in the affirmative, the question was determined in the negative and the second portion of the amendment was not agreed to.

BLOOM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. Mr. President, I submit an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BLOOM offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 17), page 14, line 5 by inserting after "of" where it appears the first time: justices,

Amend Sec. 1 (Sec. 17), page 14, line 6 by inserting after "another": and to a court other than that for which he was selected or elected

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bloom.

DELEGATE BLOOM. All the other amendments in connection with the unified system wanted to do something to lessen its strength. This amendment that I have offered strengthens the unified system. It gives the court administrator the right to move a judge to any other court than the one to which he was selected or elected. That gives him great freedom.

We had testimony here, I heard this honorable gentleman by the name of Carl Rolewick testify before the committee and I know the committee decided otherwise, because they talked to my good friend, Judge Woodside, who does not agree with my position in this, but I thought we should have the full benefit of Illinois' practical solution to their administrative unified court system.

In that system the administrator, being under the direction of the Chief Justice of the Supreme Court, can move a judge from one class to another and thereby reduce the cases that might be causing a two-year delay or a three-year delay. In this way it creates great efficiency. I will leave it to the body. I think I stated the position of Judge Woodside and he feels that this court may be attacked by the Supreme Court administrator. I have no fear of the Supreme Court administrator, because I feel that he will be an honorable gentleman under the direction of the Chief Justice of the Supreme Court and I have the greatest respect for our courts.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. I feel very badly about having to again oppose my good friend Delegate Bloom, but I think this is a very serious amendment and, if I understand what it does, it would permit a court administrator to say to a justice of the peace—or, at least, to a judge of the community court—"They are short a judge on the Supreme Court. You go up there and sit for a while." Or, "They are short a judge on the Superior Court. Go up there and sit for a while."

It may transfer judges back and forth between the different courts. I think the mere thought of what could happen as a result of that is sufficient reason to have everybody vote "no" on this amendment.

PRESIDENT BRODERICK. Is there anyone else who wants to be heard?

DELEGATE BLOOM. All I want to say is that I do not think any administrator would move a justice of the peace up to a court of record like the court of common pleas or any other court.

PRESIDENT BRODERICK. We will unlock the voting machines.

The question before the House is, will the Convention agree to the amendment being offered by Delegate Bloom? All those voting "yea" will vote to support the amendment, those voting "nay" will vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Bloom?

The roll was recorded as follows:

YEAS—13

Banes	Burkholder	Harding	Scales
Bloom	Clinger	Michener	Shapiro
Braham	Cosetti	Rea	Swope
Brennan			

NAYS—92

Aurentz	Fawcett	Leach	Rovner
Baldrige	Feather	Lee, L.	Ruth
Baldwin	Filson	Leinbach	Scranton
Barron	Fohl	Levin	Sebastian

Barry	Forster	Mangery	Shettig
Benfield	Gerber	Mattioni	Shively
Broderick	Gouger	McGeary	Shoemaker
Brown	Griffith	McGlynn	Silverman
Buck	Hannum	Meyer	Sprogell
Bunting	Hatter	Michael	Stout
Butera	Henderson	Miller, D.	Strickler
Cain	Heyburn	Moorhead	Stroup
Caron	Himes	More	Tate
Casey	Hocker	Murray	Thomson
Clark	Hook	Nelson	Thornburgh
Corey	Horne	O'Donnell	Tomascik
Cortese	Hostetler	Orban	Tully
Curran	Irvis	Orbin	Welsh
Dailey	Jirolanio	Popil	Westerberg
Desmond	Johnson	Pott	Whittum
Devlin	Kauffman	Powell	Wilcox
Erwin	Keller, J.	Redick	Woodring
Fagan	Krill	Richter	Woodside

NOT VOTING—58

Aberman	Fay	Laputka	Quiles
Allison	Fineman	Lee, K.	Rappaport
Amsterdam	Fleming	Leonard	Reynolds
Bagenstose	Fortney	Manderino	Roberts
Baldus	Gabreski	Markley	Sahli
Bashoff	Gehrlein	Miller, R.	Scarlett
Benedict	Goldman	Morton	Scott
Camardella	Goldstein	Musselman	Sharp
Caputo	Gray	Otto	Shrager
Conley	Huggins	Pasquerilla	Solomon
Croop	Keller, M.	Pechan	Van Sant
Cunningham	Kelly	Pelletier	Waldron
Donaldson	King	Percey	Warman
Donnelow	Kline	Prendergast	Wilmarth
Dumbauld	Lane		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

CHAIR WELCOMES DAVID THORNBURGH

PRESIDENT BRODERICK. I would like to call the attention of our fellow delegates to the fact that Delegate Thornburgh has with him today his son, David, age 9. David, where are you? Stand up, Dave. We just want to welcome you here.

We want you to know your dad is doing a great job and we are glad he is with us.

TATE AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I submit an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment which was read by the clerk:

Amend Sec. 1, (Sec. 17), page 14 by inserting between lines 25 and 26: (d) The Supreme Court may prescribe a merit system for appointment, promotion, removal, discipline, and suspension of nonjudicial personnel in the judicial system and may provide for exempt categories. The Supreme Court may administer the merit system through an administrative director, or may provide for its administration by other appropriate agencies of the Commonwealth or its political subdivisions, who shall be required to render necessary assistance to the court.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Tate for his statement.

DELEGATE TATE. Mr. President, I know we are all getting tired and we are tired of hearing speeches, and probably particularly tired of hearing speeches from me, so I will not make a speech, I will just briefly explain what this is. I think this is important, but I do not think it requires a great deal of discussion.

Quite simply, this would give to the Supreme Court what, in my opinion, are additional powers which will strengthen the unified judicial system, additional power to create a merit or civil service system for nonjudicial personnel. It does not mandate anything. It merely provides the open door, or the mechanism, whereby nonjudicial personnel could be placed under a civil service system.

I happen to be one who believes in the civil service system insofar as possible. I believe that it is possible to make a civil service system applicable to the judicial system as far as nonjudicial personnel is concerned, and I have every confidence the Supreme Court will be able to work out a system which will take into account all the individual preferences of judges for their own court clerks, and so forth.

Therefore, I would like to see the Supreme Court have that power and I would like to ask for a "yes" vote for this addition to the committee proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. This, to me, seems to be nothing but legislation. If the Legislature in its wisdom feels it should grant this power to the Supreme Court, its staff, I am sure it can do it. I think this is burdening the Constitution with more words and phrases that the committee in its wisdom saw fit not to include.

I think we ought to vote "no."

DELEGATE BUTERA. Along the same lines, while Delegate Tate is tired of speeches, I am tired of legislation. Let us oppose this amendment.

PRESIDENT BRODERICK. Are we ready for the question?

We will unlock the voting machines.

The question before us is:

Will the Convention agree to the amendment being offered by Delegate Tate? Those voting "yea" will vote to support the amendment, those voting "nay" will vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Tate?

The roll was recorded as follows:

YEAS—16

Baldus	Bunting	Hook	Rea
Banes	Casey	Michael	Silverman
Bloom	Clinger	Michener	Swope
Buck	Cosetti	Popil	Tate

NAYS—84

Amsterdam	Devlin	Kauffman	Richter
Aurentz	Erwin	Keller, J.	Ruth
Baldrige	Fagan	Krill	Scales
Baldwin	Fawcett	Lee, L.	Scranton
Barron	Feather	Leinbach	Sebastian
Barry	Filson	Levin	Shettig

Benedict	Fohl	Mangery	Shively
Benfield	Forster	Mattioni	Shoemaker
Brennan	Gerber	McGlynn	Sprogell
Broderick	Gougler	Meyer	Stout
Brown	Griffith	Miller, D.	Strickler
Burkholder	Hannum	Moorhead	Stroup
Butera	Harding	More	Thomson
Cain	Hatter	Murray	Thornburgh
Caron	Henderson	Nelson	Tomascik
Corey	Heyburn	O'Donnell	Tully
Cortese	Himes	Orban	Welsh
Croop	Horne	Orbin	Westerberg
Curran	Hostetler	Pott	Wilcox
Dailey	Irvis	Powell	Woodring
Desmond	Jirolanio	Redick	Woodside

NOT VOTING—63

Aberman	Fortney	Lee, K.	Reynolds
Allison	Gabreski	Leonard	Roberts
Bagenstose	Gehrlein	Manderino	Rovner
Bashoff	Goldman	Markley	Sahli
Braham	Goldstein	McGeary	Scarlett
Camardella	Gray	Miller, R.	Scott
Caputo	Hocker	Morton	Shapiro
Clark	Huggins	Musselman	Sharp
Conley	Johnson	Otto	Shrager
Cunningham	Keller, M.	Pasquerilla	Solomon
Donaldson	Kelly	Pechan	Van Sant
Donolow	King	Pelletier	Waldron
Dumbauld	Kline	Percey	Warman
Fay	Lane	Prendergast	Whittum
Fineman	Laputka	Quiles	Wilmarth
Fleming	Leach	Rappaport	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

O'DONNELL AMENDMENT TO COMMITEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I offer an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE O'DONNELL offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 17), page 14, line 14, by striking out "and" and inserting a comma

Amend Sec. 1 (Sec. 17), page 14, line 14, by inserting after "peace": and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, the only reason this does not contain the signatures of every member of the Judiciary Committee is that we just did not have time to circulate it and get all their signatures. I believe I can say without fear of contradiction that this represents the intent virtually of the unanimous Judiciary Committee.

The fact is that we overlooked including those officers who enforce court orders and serve process as being persons who should be subject to the rule-making power and supervision over the conduct of those officers.

In other words, this is the first place in the judiciary article in which the office of sheriff and the office of constable comes under a system whereby the Supreme Court can prescribe rules of procedure for it.

I do not believe there is any opposition to this in the Convention, as far as I know.

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera.

DELEGATE BUTERA. I would address one quick question to the gentleman.

PRESIDENT BRODERICK. He will stand for interrogation.

DELEGATE BUTERA. Could this amendment give the Court any other powers other than those just enumerated over the process servers, etc.?

DELEGATE O'DONNELL. No, indeed. If you compare it to the proposal itself, the Committee Proposal No. 7—in other words, if you turn to page 14 it would simply say this, "The Supreme Court shall have the power to prescribe general rules governing practice, procedure and conduct of the courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace."

You will note it says nothing about selection, election, appointment, nothing at all. In other words, it leaves it to the Supreme Court to determine whether a constable can or cannot operate a collection agency on the side, or what have you. That is the purpose of this, to bring the constables under the unified judicial system and to make the conduct of their office and their practices and procedures subject to Supreme Court rule, and nothing else whatever.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Baldrige.

DELEGATE BALDRIGE. I would like to interrogate Delegate O'Donnell, too.

PRESIDENT BRODERICK. The gentleman will be interrogated.

DELEGATE BALDRIGE. Delegate O'Donnell, would you say if this amendment is adopted that the Supreme Court could not order the sheriff of Allegheny County to start serving papers in Philadelphia?

DELEGATE O'DONNELL. No, sir, Mr. Baldrige, not at all. I trust that, at least, most of the attorneys in the room are aware that the Supreme Court now has general rules governing—notice the word "general," that word "general" was put in there after hard argument. To order the sheriff of Allegheny County to go to Philadelphia would, of necessity, be a special rule.

DELEGATE BALDRIGE. The article says it provides for the assignment, reassignment. I certainly would think it would.

DELEGATE O'DONNELL. If I can answer the question:

The Supreme Court now has prescribed general rules governing practice, procedure and conduct of the sheriff's office already, everywhere in Pennsylvania. All this really does is bring the constables into those very self-same general rules.

You will notice it does not say a thing about assigning a sheriff from one county to another, or even a constable from one district to another, not a word about that. You can reassign cases, but you cannot transfer an officer other than a judge.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. I would like to query Delegate O'Donnell on his proposal.

PRESIDENT BRODERICK. He is standing for interrogation.

DELEGATE THOMSON. I would like to know if, under this proposal, the Supreme Court could issue instructions or regulations that would stop the constables from acting as traffic officers, special police, speed traps, and such abuses as the situation exists today?

DELEGATE O'DONNELL. No, sir, and I would like to show you why my answer is correct.

Every police officer, as you know, Mr. Thomson, in local government is ex officio a constable having to do with arresting and traffic violations, and the like. You will notice that we did not say that in the areas in which they are acting otherwise, we are talking about enforcing orders, judgments and decrees of the courts and in the service of process in the court system. That is all we are talking about.

DELEGATE THOMSON. Mr. O'Donnell, I am not opposed to your idea. I am merely trying to expand the idea and do something that this Convention should have done from the start, and that is to do something about the constable situation in Pennsylvania. We have a lot of debate and a lot of complaints and a lot of publicity from our brothers of the press about the way certain justices and magistrates have abused their privileges, but I want to tell you that all I have seen in that field has not even approached what has happened in the constable field. I would be perfectly satisfied to see any amendment put in there that would abolish completely the police power of the constable.

DELEGATE O'DONNELL. This amendment leaves it to the Supreme Court to decide all of the questions which you have just referred to, in this sense, for example, it permits the Supreme Court to determine by general rule what would be an incompatible activity, say, for a constable. This would eliminate 90 per cent of the criticism in Philadelphia. In other words, the Supreme Court could readily adopt a rule prohibiting a constable from having a collection service on the side or operating as a collector.

Rather than write all the detailed rules that would cover every conceivable abuse by a constable, this proposal leaves the Supreme Court in the future to write the rules as the need arises to make sure these people behave themselves well in office.

DELEGATE THOMSON. It would be a pleasure for me to support your proposal.

DELEGATE AMSTERDAM. I want to say for the Judiciary Committee that this is entirely compatible with the section which we brought before this body. We realize there was a lack with regard to the process servers as constables. Unfortunately, the exigencies of time did not permit us to get this in earlier.

PRESIDENT BRODERICK. Are we ready for the question?

We will unlock the voting machines. All those voting "yea" will vote to support the O'Donnell amendment, those voting "nay" will vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate O'Donnell?

The roll was recorded as follows:

YEAS—104

Amsterdam	Cosetti	Irvis	Redick
Aurentz	Croop	Jirolanio	Richter
Baldrige	Curran	Kauffman	Scales
Baldus	Dailey	Keller, J.	Scranton
Baldwin	Desmond	Krill	Sebastian
Banes	Devlin	Leach	Shapiro
Barron	Erwin	Lee, L.	Shettig
Barry	Fagan	Leinbach	Shively
Benedict	Fawcett	Levin	Shrager
Benfield	Feather	Mattioni	Silverman
Bloom	Filson	McGeary	Sprogell
Braham	Fohl	McGlynn	Stout
Brennan	Forster	Meyer	Strickler
Broderick	Gabreski	Michael	Stroup
Brown	Gerber	Michener	Swope
Buck	Gouger	Miller, D.	Tate
Bunting	Griffith	Moorhead	Thomson
Burkholder	Hannum	More	Thornburgh
Butera	Harding	Murray	Tomaselk
Cain	Hatter	Nelson	Tully
Caron	Henderson	O'Donnell	Welsh
Casey	Heyburn	Orban	Westerberg
Clark	Himes	Orbin	Whittum
Clinger	Horne	Popil	Wilcox
Corey	Hostetler	Powell	Woodring
Cortese	Huggins	Rea	Woodside

NAYS—2

Hocker	Shoemaker

NOT VOTING—57

Aberman	Gehrlein	Manderino	Rappaport
Allison	Goldman	Mangery	Reynolds
Bagenstose	Goldstein	Markley	Roberts
Bashoff	Gray	Miller, R.	Rovner
Camardella	Hook	Morton	Ruth
Caputo	Johnson	Musselman	Sahli
Conley	Keller, M.	Otto	Scarlett
Cunningham	Kelly	Pasquerilla	Scott
Donaldson	King	Pechan	Sharp
Donolow	Kline	Pelletier	Solomon
Dumbauld	Lane	Percey	Van Sant
Fay	Laputka	Prendergast	Waldron
Fineman	Lee, K.	Pott	Warman
Fleming	Leonard	Quiles	Wilmarth
Fortney			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

CHAIR THANKS DELEGATES

PRESIDENT BRODERICK. The Chair would like to say thank you, fellow delegates, for what I think was a very productive afternoon because we have now run out of amendments.

RECOGNITION OF PAGES

At this time I know that you are in a hurry to get out, but there is one function we have gone through every week and I think you enjoy it as much as I do, and that is recognizing the wonderful service that these honor students have been given us by our pages here. I would like them to stand as I call their names.

Kenneth Nichols and Mark Simeral from Conestoga Valley Senior High School in Lancaster;

John K. Kerr, III, Lancaster County Day School of Lancaster;

Jennifer Hoffer and Gregory Rutter of Lancaster High School in Lancaster;

Denise Witwer and Stephen Kraybill of Warwick Junior-Senior High School in Lititz;

Dolores Rhoades of Central Dauphin Senior High School in Harrisburg;

Christopher Lynn and Ronald Lauer of York High School in York;

Deborah Turner and Christopher Burns from Southwestern Junior-Senior High School in Hanover;

Scott Jackson from Central Dauphin East Senior High School in Harrisburg;

Joseph Layser from Cedar Crest Senior High School in Lebanon;

Jean Spence and Keith Stump from Red Lion Area Senior High School in Red Lion.

MEETING OF COMMITTEE CHAIRMEN AND OFFICERS

PRESIDENT BRODERICK. We have one announcement, please.

The CLERK. There will be an important meeting of the co-chairmen and officers on Monday, February 19th, at 11:30 a.m. in Room 615, Main Capitol Building. Please make every effort to attend.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Gabreski for the adjournment motion.

DELEGATE GABRESKI. Mr. President, I move that the Convention do now adjourn until Monday, February 19, 1968, at 1:30 p.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Gabreski, seconded by Delegate Irvis, that this Convention do now adjourn until Monday, February 19, 1968, at 1:30 p.m., e.s.t.

The motion was agreed to, and (at 4:40 o'clock p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 **Monday, February 19, 1968** **Number 46**

The Convention was called to order at 1:30 p.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND GLENN L. STAHL, pastor of the Evangelical Lutheran Church, Waynesboro, Pennsylvania, offered the following prayer:

O God, who by the gracious Providence didst lead our forefathers to this land wherein they sought and found refuge from oppression and established freedom to worship thee, we beseech Thee to guide us, yet a pilgrim people, in the way of truth, brotherhood and peace. Enlighten our hearts and minds that we may always honor our citizenship as a sacred trust and so guard, defend and employ it in accordance to Thy will.

We remember before Thee this day the blessings that have crowned our history. For the courage and foresight of those who left the security of home for the insecurity of an unknown frontier; for the steadfast endurance of those who won liberty and signed its documents in their own blood; for the wise counsel of those who shaped our laws and forged them into a pattern of life which made each man responsible to his brother in love; we bring to Thee our praise. Grant now strength and good understanding to Thy servants upon whom rests the special responsibility of creating new instruments of law and fashioning relevant forms of constitutional government. Guide their hearts and minds as well as the hearts and minds of all citizens of the Commonwealth that we may not be tempted to offend against Thee by forsaking Thy will in favor of our own. Amen.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. There are no Journals to be approved this morning.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the secretary, Delegate Michener.

SECRETARY MICHENER. Mr. President, the following members have made requests for leaves of absence:

The delegate from the 42nd District, DELEGATE FAGAN.

The delegate from the 48th District DELEGATE CARON.

The delegate ex officio, DELEGATE MANDERINO. They all had to be absent on business.

DELEGATE FLEMING. Mr. President, I would like to ask for a leave of absence for my colleague, Mr. Donaldson for the balance of this week.

PRESIDENT BRODERICK. Thank you, Secretary Michener and Delegate Fleming.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Allison	Desmond	Keller, J.	Reynolds
Amsterdam	Devlin	Keller, M.	Richter
Aurentz	Dumbauld	Kelly	Roberts
Bagenstose	Erwin	Kline	Rovner
Baldrige	Fawcett	Krill	Ruth
Baldus	Fay	Leach	Sahli
Baldwin	Feather	Lee, K.	Scales
Banes	Fineman	Lee, L.	Scarlett
Barron	Fleming	Leinbach	Scott
Barry	Fohl	Markley	Scranton
Benedict	Forster	Mattioni	Sebastian
Benfield	Fortney	McGeary	Shettig
Bloom	Gabreski	McGlynn	Shively
Braham	Gehrlein	Michener	Shoemaker
Brennan	Gerber	Miller, D.	Silverman
Broderick	Goldman	Miller, R.	Solomon
Brown	Goldstein	Moorhead	Sprogell
Bunting	Gouger	More	Stout
Burkholder	Gray	Morton	Strickler
Butera	Griffith	Nelson	Swope
Camardella	Hannum	O'Donnell	Tate
Cain	Harding	Orban	Thomson
Caputo	Hatter	Orbin	Thornburgh
Casey	Henderson	Otto	Tully
Clark	Heyburn	Pelletier	Van Sant
Conley	Himes	Popil	Waldron
Corey	Hocker	Pott	Warman
Cortese	Hook	Powell	Welsh
Cosetti	Horne	Prendergast	Westerberg
Croop	Huggins	Quiles	Whittum
Cunningham	Irvis	Rappaport	Wilcox
Curran	Johnson	Rea	Wilmarth
Dalley	Kauffman	Redick	Woodring

PRESIDENT BRODERICK. The electric roll call tabulator indicates there are 132 delegates present, which constitute a quorum.

The Chair also notes the presence of the following delegates:

Aberman	Jirolanio	Meyer	Sharp
Bashoff	King	Michael	Shrager
Buck	Leonard	Murray	Stroup
Clinger	Levin	Pasquerilla	Tomascik
Filson	Mangery	Shapiro	Woodside

RULES COMMITTEE REPORT

PRESIDENT BRODERICK. The Chair recognizes Delegate Gabreski.

DELEGATE GABRESKI. Mr. President, some ques-

tion was raised with regard to the rules as to the electric roll call voting procedures, and we wanted to call it to the attention of the delegates to this Convention that the rule on page 18, Rule No. 19 in Paragraph 4, indicates that no delegate shall vote on behalf of another delegate except as hereinafter provided.

Meaning in effect, should we have to be in our seats whenever we wish to vote on any issue at the time the question is raised, and perhaps if we could abide by this rule in strict conformity, it may create some inconvenience for some of the co-chairmen and some of the committee members who are in front of the convention hall, but I understand the procedure will be, they will be going back to their individual seats to make a vote on the particular question by themselves individually.

Thank you, Mr. President.

PRESIDENT BRODERICK. Thank you, Chairman Gabreski.

BISHOP ALFRED DUNSTON WELCOMED

First of all, we have with us today as the guest of Delegate Gray, Bishop Alfred Dunston of the AME Zion Church. I understand the Bishop is a former Philadelphian and now resides in West Africa as the Bishop of Nigeria.

Bishop Dunston, would you please stand up so we can give you our cordial greeting of welcome?

WIFE OF DELEGATE BANES WELCOMED

PRESIDENT BRODERICK. Also today, we have with us the wife of Delegate Banes from Allegheny, Mrs. Gay Banes.

We are happy to have you with us Mrs. Banes.

FAMILY OF DELEGATE KAUFFMAN WELCOMED

PRESIDENT BRODERICK. In addition, we have the children of Delegate Kauffman of Montgomery County. With him he has his children Bradley and Marjory.

I am advised that Robert who is 4, could not be with us today so you tell Robert that we miss him.

PARENTS AND CHILDREN OF DELEGATE O'DONNELL WELCOMED

PRESIDENT BRODERICK. I understand that Delegate O'Donnell's parents as well as his children are with us today.

We are happy to have you with us.

WIFE AND CHILDREN OF DELEGATE BUNTING WELCOMED

DELEGATE BUNTING. I am embarrassed, Mr. President. My wife and five children are here today and I did not have the foresight to advise you and I cannot very well go home after the introductions the other families have received without straightening this out.

PRESIDENT BRODERICK. I want you to know that I have a wife and five children and I understand your problem. We will ask them to stand up and be recognized and we will tell Mr. Bunting and the Bunting family how happy we are to have them with us.

WIFE AND CONSTITUENTS OF DELEGATE CROOP WELCOMED

PRESIDENT BRODERICK. Now we have Delegate Croop who wishes to be recognized.

DELEGATE CROOP. Mr. President, in addition to my wife, who is with us almost constantly, I have two of my constituents: Mrs. Hupp and her daughter, a student at my own seminary in Wilkes-Barre. They are seated in the rear.

PRESIDENT BRODERICK. I wish they would stand so we can given them recognition and tell them how happy we are to see them. It is good to have you with us.

CALENDAR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 7, Printer's No. 20,** entitled:

A proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

PRESIDENT BRODERICK. I understand we are about ready to proceed with the judiciary article. The Chair wishes to explain that on your desks you have what is labeled Committee Proposal No. 7. You will notice that there is no printer's number on this and it is our understanding that this is a clean copy of the proposal as it now reads with the amendments up to the present time. You will find that there are no numbers on the lines because this is just an unofficial printing which we wanted you to have so you could see how far we had gone and how the article now reads. We will proceed to amend the original, which is on the calendar, which is Committee Proposal 7, Printer's No. 20. We will work from No. 20 copy for purpose of amending.

RESOLUTION

PRESIDENT BRODERICK. The Chair now recognizes Delegate Benedict.

DELEGATE BENEDICT. Mr. President, I offer the following resolution and ask for its immediate adoption.

In the Constitutional Convention

WHEREAS, On February 19, 1890, J. W. and Clara Thomson were blessed with a bouncing baby boy; and

WHEREAS, Said bouncing baby boy grew up to become First Class advocate for Second Class Townships; and

WHEREAS, Said advocate for Second Class Townships later became Freshman Delegate to the Constitutional Convention of Pennsylvania from Chester County; and

WHEREAS, Said Constitutional Delegate is loved and admired by all Convention Delegates; therefore be it

RESOLVED, That the Secretary of said Convention record this Convention's expression of Happy Birthday Cappy Thomson.

BIRTHDAY GIFT PRESENTED BY SECRETARY

PRESIDENT BRODERICK. The Chair recognizes Secretary M'chener.

DELEGATE MICHENER. The Convention had some trouble trying to decide what to give Delegate Thomson, our youngest and most vital member as a birthday present and we decided upon a copy of the Holy Bible—the St. James version—with one innovation. We went to the publisher and told him we wanted this Bible but in Genesis 2, verse 2, we wanted a slight change. It presently reads: "On the sixth day, God finished the work he had been doing and he rested on the seventh day from all the work he had done." We wanted that last sentence changed to read: ". . . and he rested on the eighth day from all the work he had done," because we all know that God would never have rested until he had created a second class township.

PRESIDENT BRODERICK. The Chair again recognizes Delegate Thomson.

DELEGATE THOMSON. This merely adds to the pleasure that I expressed before. I am not going to take any more time because I have visions of a late session again this evening.

PRESIDENT BRODERICK. Some people may get the idea we do not have much work to do, since we have been having so much fun for these first 15 minutes.

DELEGATE O'DONNELL. I second the resolution.

PRESIDENT BRODERICK. The Chair now recognizes the birthday boy, Delegate Thomson.

DELEGATE THOMSON. First, Mr. President, permit me to thank you for that adjective "boy" and permit me further to say that I do really appreciate this resolution and, more than that, the sentiment back of it and the source from which it comes.

I have greatly enjoyed two and a half months of association with 163 dedicated Pennsylvanians and, because of this resolution, the source—namely, the 163 Pennsylvanians—is very much appreciated and I am sure the whole Thomson family thanks you.

(Applause.)

PRESIDENT BRODERICK. I think we should first have the resolution adopted.

Is there any objection to its being up for consideration?

Those in favor of the adoption of the resolution please say: "aye." All the dissenters please say: "no." I just want to report that this was unanimous.

PRINTING CORRECTION

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Yes. In connection with the so-called clean copy of Proposal No. 7, I would like to bring to the attention of the Chair and this body the fact that I believe there is an error in this.

In Section 9, appearing on page 4 of the clean copy, the words "with the advice and consent of the Supreme Court" were repeated. I believe that in each case where the words "with the advice and consent of the Supreme Court" appear in Section 9, those words should have been deleted.

PRESIDENT BRODERICK. We will have that checked and report back to you on that copy.

I understand, Delegate O'Donnell, that you are correct, that should have been stricken out in both places. That was Delegate Barron's amendments. It will be taken care of.

THORNBURGH AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. We will now get busy on our amendments, and we have quite a few this afternoon, so as not to delay any further, the Chair recognizes Delegate Thornburgh for an amendment.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE THORNBURGH offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 5), page 2, lines 19 to 21 by striking out all of said lines and inserting: Section 5. Rights of Appeal.—There shall be such rights of appeal to courts of record and appellate courts as shall be provided by law.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, to refresh the recollection of this body with respect to this amendment, Section 5, as it appears presently, in Committee Proposal No. 7 provides there shall be a right of appeal in all cases to an appellate court of statewide jurisdiction. There was some concern expressed in the Judiciary Committee at the time this amendment was adopted, and other concern expressed since then, that we may have created a problem here so far as the clogging of the channels of the appellate process.

My amendment would provide that there shall be such rights of appeal to courts of record and appellate courts as shall be provided by law.

In effect, this would leave the status of appellate jurisdiction as it is at present. I would particularly remind the delegates of this fact, because some of the debate last week which surrounded the introduction of this amendment seemed to treat it as if it said there shall be no rights of appeal.

This merely carries forward the present constitutional provisions respecting rights of appeal and, parenthetically, I think of no little significance, it is essentially the same as the rights of appeal provision of our Federal Constitution, Article III, Section 2, which provides for the Federal system that the Supreme Court shall have appellate jurisdiction, both as to law and facts with such exceptions and under such regulations as the Congress shall make.

I would point out that this section, as amended, would provide to two levels of appellate jurisdiction, if you will. It would deal with the problem of certiorari from courts not of record, and it would deal with the problem of appeals from courts, trial courts of record, to the appellate courts.

I would submit that the amendment which has been offered by myself, Delegate Butera and Delegate Fohl, would give the Legislature the right to adjust such problems as may come up in the future dealing with a potential clogging of the appellate process, and would be consonant with the laws that exist at the present time and with the

provisions of the counterpart of the Federal Constitution. I would, therefore, urge the adoption of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Will Delegate Thornburgh consent to be interrogated?

PRESIDENT BRODERICK. I am sure he will. Proceed with your question.

DELEGATE STROUP. Mr. President, will the gentleman advise the delegates of the Convention or give an example of a court not of record under the judicial article as proposed?

DELEGATE THORNBURGH. My understanding is that the justices of the peace are not intended to be courts of record under the proposal as it presently stands. Perhaps the committee chairman might be able to give you a more authoritative answer than I could.

DELEGATE STROUP. Mr. President, I think it is a rather pertinent question since the magistrates or the justices of the peace courts will be under the unified judicial system. Whether or not they are courts of record is a matter that should be clarified, and I ask that question and direct it to Co-Chairman Amsterdam, who is now taking the microphone.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. All of the courts set up by the amended Article V, with the exception of the justices of the peace that are continued, are clearly courts of record.

As far as the justices of the peace are concerned, since they will be under the jurisdiction of the Supreme Court for rule-making purposes, they can also be made by the Supreme Court courts of record or, at least, their proceedings can be made of record.

PRESIDENT BRODERICK. Is there any further debate on this, or are we ready for the question?

The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I would like to comment on this. I rise in support of the amendment.

I would call to this body's attention that presently I understand there is no constitutional right of appeal, either State or Federal, nor is there any question but what there should necessarily be an absolute right of appeal. The Federal and State decisions have universally held that there is no constitutional right here, and before we create any constitutional right which is, as I understand the present committee proposal when they say "court of record or appellate," or I think it is the appellate court, this would mean that in every case where you have spitting on the sidewalk, or catching a fish out of season, or some such thing, you would have an automatic right to appeal through the Superior Court, which I think is highly undesirable.

I would strongly support the present right of appeal as it now exists, which would basically be embodied in the amendment.

I would support the amendment.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber. For wnat purpose does the gentleman rise?

DELEGATE GERBER. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GERBER. As I understood the Chairman of the Judiciary Committee to state that only justice of the peace courts, as they would be continued, would not be courts of record. Would the traffic court of Philadelphia be a court of record? This is only a point of information.

PRESIDENT BRODERICK. We will ask the Chairman of the Judiciary Committee, Chairman Amsterdam, to answer that question, if he will.

DELEGATE AMSTERDAM. That will depend on whether the Supreme Court under its rule-making power determines that the traffic court in Philadelphia shall be set up in a way that will make it a tribunal of record. It may be under the rule-making powers of the Supreme Court, since it is all part of a single judicial system.

PRESIDENT BRODERICK. The Chair wishes to recognize Delegate Barron, who is at the microphone.

DELEGATE BARRON. Mr. President, as I indicated to this body last week, this subject lies very close to my heart. I will take a risk here that I may bore some of those who are not learned in the law and, perhaps some of those who are, by a brief recitation of how the law now stands regarding one's right to have a particular case reviewed by a second court, one other than a court of first jurisdiction.

When any case is brought into court, Mr. President, there is a problem both of fact and of law. The facts are considered by the judge. The law is interpreted by him, and a ruling comes out as a result.

In certain cases a jury is brought in to review both the facts and the law, and at present where there is a jury trial the results of that trial are subject to an outright unlimited appeal. It may seem obvious to many here that an appeal is so fundamental that the idea that it should be denied or limited in any way casts some reflection on the ability of our courts of justice to handle the problem.

However, let me again take the risk of losing the interest of some of you by explaining this. At present the right of appeal takes two forms, one we call an appeal, the other we call a writ of certiorari. The writ of certiorari is a constitutionally protected writ. However, it is limited in what it can do by way of review. Certiorari permits the record, in whatever situation it may be, to be brought up to a higher court and the record only reviewed.

We have gotten into such a problem with this use of the writ of certiorari, because it is constitutionally guaranteed, that our appellate courts have been obligated to split it into two concepts, which they call broad certiorari and narrow certiorari. It, perhaps, is a bit too broad in generalization. However, may I suggest this to you, if the court wishes to take the lower court's findings, the record is reviewed narrowly and the lower court's opinion is upheld. If, on the other hand, it does not wish to do so, it looks into the record by applying what is called a broad writ of certiorari. Both, however, ladies and gentlemen, I suggest to you beg the question. The proposition should be clearly that in any given instance one court alone should not be permited to sit in judgment without

having its deliberations reviewed both as to the facts and as to the law. This process is called an appeal.

For example, your youngster may be out at a junior prom, or something similar, with a group of youngsters where there is some liquor being passed around. At present he is arrested before a justice of peace, subjected to a fine between $25 and $100, or 30 days in jail, or both. An appeal on the facts is denied you at the present time, unless a judge of the court of common pleas will grant what is known as an allocatur, an allowance, a permission, not a right to have the matter as to whether the youngster is guilty or whether he is not.

This is also true and, perhaps, astonishingly so in fish and game laws. We have cases where fines up to $4,663 have been levied by a justice of the peace in game law violations without any right of appeal.

By the way, the alternative, and this is a reported case in 207 Superior Court 374, indicates defendant could not pay and consequently was sentenced by the justice of the peace to 4,663 days in jail—4,663 days in jail and the man did not have a right to appeal his conviction.

Some of you have had experience in election laws. Do you know if you are denied the right to register to vote, if you are denied a vote, if you are involved in a contested election, the review is not as to all the facts that surround the situation, but you can only use this writ of certiorari as a constitutional matter at this time.

This, Mr. President, I suggest to you, involves something as plain and as fundamental as being the only substantive right proposed to be given to the people of Pennsylvania by virtue of this new constitutional provision. We have worked considerably with the machinery and the mechanics as to how this court system shall operate. Curiously, we have only in these three lines touched that fundamental known as substantive law as to how a litigant will be treated in the courts of this Commonwealth.

I would like to point out, in addition to the example which I have given to you, an appeal does not lie in adoption cases, only a review of the record is permitted.

In matters of extradition, zoning, civil trials without a jury, labor relations, workmen's compensation, unemployment compensation, decisions of the Public Utility Commission, annexation of boroughs, decisions of the Board of Finance and Revenue, the Philadelphia Commission on Human Rights, banking law and the Board of Arbitration, the claims are reviewable only on the record created below and not both on the facts and the law.

Moreover, the Supreme Court by rule 68½ has elected that it shall be the sole arbiter in all matters relating to certiorari, because whether the statute says there shall be a righ of certiorari, whether there is no expression in the statute, the Supreme Court has assumed the power that it can refuse the right to hear matters on even certiorari.

There has been a very recent constitution in the State of Illinois. Some of the mechanics and machinery this Constitution where they use a circuit court rather than Pennsylvania judicial article are provided in that Illinois Constitution where they use, a circuit court rather than a court of common pleas as we do. It is plainly provided in Section 7 of their judiciary article in all cases, other than those appealable directly to the Supreme Court, appeals from final judgment of the circuit court lie as a matter of right to the appellate court in the district in which the circuit court is located.

Mr. President, I promise you two things. One, I will urge you as vigorously as I know how to give to the people of Pennsylvania a plain, understandable right of appeal in all matters.

No. 2, that if this present motion is defeated, I shall present to you appeal language which will make this right as clear as I know how to do.

One final word about the clogging proposition. I very carefully checked in the Superior Court reports concerning motor vehicle violations. These under present legislation are appealable first to the court of common pleas, the court of quarter sessions actually which will be merged in common pleas, and secondarily to the Superior Court. In Volumes 204, 205, 206, 207 and 208 Superior Court, those which have been most recently found which cover a period from June 11, 1964, to November 17, 1966, there was not one motor vehicle case appealed when this right was now provided.

I suggest to you that the concept of clogging, if there is any, is not unlike the situation of a sewer. If it is clogged up, now is time to open it up.

I suggest that we do this at this time by defeating this proposed amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. Chairman, I will yield to Delegate Hannum.

DELEGATE HANNUM. Mr. President, there is no one in this hall who has more respect for Delegate Barron than I do, but Mr. President and ladies and gentlemen, what Delegate Thornburgh's amendment does is, as I understand it, the view of all the judges of the Appellate Courts of Pennsylvania, and I have a telegram here which I think some of you other delegates have, urging that the Section 5 as Delegate Thornburgh proposes be amended, and the very simple thing here which I suggest makes the utmost sense and Delegate Irvis and Delegate Fineman, and many others have spoken of it much more effectively and eloquently than could I, and that is this separation of power.

Mr. President, with respect to the right of appeal, this in most instances rests with the Legislature and the present Article V is, in my judgment, a clear encroachment on the powers of the Legislature and the Thornburgh amendment takes care of this.

Also, I would suggest that insofar as the present Article V, it is an encroachment on the executive branch and I can only say this, that from conferences with a great many lawyers whom I have known, judges whom I have known, I strongly urge this delegation to adopt the Thornburgh amendment because it corrects what in my view is an improper section, being Section 5 of the proposed Constitution, that is, in short, my suggestion and request.

There is one more thing that I forgot to say, and please forgive me. Secretary Michener earlier said insofar as this judiciary article is concerned he, among others, needs the wisdom and the guidance of the Bar and of the judges with respect to the proper thing. I have been wrong before and maybe I will be wrong again, but, in my judgment, the Thornburgh amendment is what is proper and what should go in the revised Constitution.

DELEGATE STROUP. Mr. President, the discussion which has been presented by Delegate Barron and Delegate Hannum clarifies the situation considerably. As I understand the amendment, it will be either by statute

or by rule of the Supreme Court as to exactly what a court not of record would be. This would not be in our Constitution, but will be determined by law. Secondly, the type of appeal that could be taken, whether it be to the merits of the case or as a matter of law, would be determined by the statute or by a Supreme Court rule. I think this is cleared up and I want to be sure exactly what this amendment was doing.

I spoke on behalf of the amendment when it was placed on the floor before. Since now, I have that clarification and I am in favor of the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, in response partially to Senator Stroup's remarks, I believe the intention of this amendment was to allow first of all, an appeal from a court not of record to common pleas court, and, second of all, to allow an appeal from common pleas court to an appellate court, so that in all cases there would be what Judge Woodside referred to as getting your two days in Court. I say that you do not have your one day in Court unless you have a right of appeal to an appellate court.

The Federal system has been cited as an example of how you do not have an absolute right of appeal to a court. However, I call the delegates' attention to the fact that there is a right of appeal to a circuit court or to a supreme court of a state, before the supreme court would turn down a person from having a right of appeal to that highest court of the land. So that when our Supreme Court adopted a rule that you had to petition it to have the right of appeal in certain cases and did not have the right of appeal, it is different from the Federal system where there is an absolute right of appeal to a circuit court. Delegate Barron talked about his problems in his county where there is one judge and where you have to go to that judge to find out whether you are going to have a right of appeal to common pleas court. He talks about the problems of appeal from liquor laws, suspension laws, summary convictions, where you must go and appeal to the grace discretion of the lower court before you go up to that court. We do not have that problem in Allegheny County, and I think it is because we have in our county court where these cases go, and in our new common pleas division where it will go, six judges and they all tend to be as liberal as the most liberal judge. In other words, you can wait two days and, if a judge would turn you down, you can go back to another judge, so that multi-judge counties do not have the same problem of appealing to the grace of one judge who gets rid of cases where you could not in a bigger county.

I say to Delegate Barron talk to the one court judgeship to a county, talk to Mr. Solomon, talk to Mr. Keller, and talk to those lawyers from the counties where there is only one judge and see if very often there is not an injustice done where there is not an absolute right of appeal to the common pleas court. I am not saying the judges turn down appeals willy-nilly. I think most of them want to listen to every appeal and they very rarely make a mistake. It is like saying one innocent man was hanged. It should not be that in our system at all, at a lower level, and certainly not on a higher appellate level.

I would like to talk a minute about that. A couple of years ago the Supreme Court of Pennsylvania adopted a rule with a sort of crazy minicker, Rule 68½ of the Supreme Court.

If the statute does not provide that there is a right of appeal, you have to petition the court for that right of appeal, as in the Supreme Court of the United States, where it has not gone up to a court of appeal in the meantime, and that means the Legislature has not specifically said there is a right of appeal. You run a risk of the court not hearing it. I know our court is a fine court and it reads all these petitions, but it does not hold oral argument on any of them. There are a lot of cases, zoning cases, different types of tax appeals, which never get up to oral argument before the court because the court has the right to determine in its own mind whether it wants to hear it, or not. Probably, this disposes of a lot of cases that are before the court. I say one case that should be heard in full with oral argument and with an opinion written by the court and is not heard is an abuse of our judicial process. As a practical matter, they have to read all these papers, and the only thing they do not do is hold an oral argument and write an opinion.

In a lot of the cases that Mr. Barron has cited there are a lot of other ones in the court of arbitration in claims. In the Commonwealth there is no absolute right of appeal from a decision relating to claims against the Commonwealth. The courts held a couple of years ago there was no right of appeal when the State Harness Racing Commission granted a license to one person rather than another. It was an unappealable action. In the City of Philadelphia where there was an appeal from a ruling of the Human Relations Commission, the Court held there was no right of appeal. I am not saying the courts would not listen with attention to a petition to have an appeal in cases like that. I feel the abuses probably would be rare, but one abuse is too many.

Delegate Hannum talked about how Delegate Irvis and Delegate Fineman talked about the separation of power, but I was thrilled when Delegate Fineman got up and said, "This is an absolute right. If we have to have more courts, then we are going to have to get them." You do not get rid of somebody's right by saying it is going to create business for people, too much business for them to handle, any more than you call off a Constitutional Convention because it ties up 163 people.

We are going to have a Commonwealth Court and more appellate court judges. If there is more business for these courts, surely we have all the substance to provide these courts. We have 14 appellate court judges now for approximately 12 million people, one appellate court judge for approximately 1 million people. Pennsylvania has enough on the ball that it can afford the right of appeal to every litigant. As I say, it is not a second day in court. You do not have your day in court unless you have a right to appeal to one of the higher courts of this Commonwealth.

I urge the defeat of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Chairman Gerber.

DELEGATE GERBER. Mr. President, without wanting to be redundant in any way and speaking humbly before the statement of His Honor, Judge Hannum, it seems to me that this is one of the issues that we have heard at this Convention, one of the issues that we are really talking about is the rights of people and one of the issues that

is constitutional and legislative. I do not think there is any more important right than a right for an individual to be heard. It seems to me one of the critical points that Delegate Barron addressed himself to that cannot be passed over lightly is, in my opinion, there must be a right of appeal from a decision in any election dispute.

To permit the present law to stand as it is and to permit this to be legislative rather than constitutional, I think is a situation where we are running away from a problem under the guise which is legislative not constitutional.

It amuses me when I see amendments come forth that are specifically legislative from the pen of certain people and then turn around and to deny rights that are constitutional. If an individual does not have a right to appeal as to whether or not they may register to vote, if an individual does not have a right to appeal when a common pleas court can determine who fills a vacancy, and a board of commissioners in a first-class township, a board of supervisors in a second-class township, or a borough council, I think that is a deniable right. It certainly seems to me when we are talking about rights, that of one of the "gut" issues of this Convention, this is one of them. To permit their denial through this amendment, I think, would be a retrogressive step on the part of this Convention.

I think it is incumbent upon us to analyze what are really rights of the people and what are guidelines. This is not a guideline. This is a determination of whether an individual does, in fact, have vested within him, or within her, the right to be heard by a different tribunal.

With all due respect to our common pleas courts, I must repeat what Delegate Barry has said, that unless that individual has a right to appeal on the most important question of whether they have a right to be heard as a voter or whether or not the absentee ballot questions that are determined on merit on a lower level can go up on appeal, or whether or not who is seated to fill vacancies in municipal government.

I submit to you, these are rights, and these are rights to determine self-government and to be heard as an elector in the Commonwealth of Pennsylvania. If we support this amendment, we are then denying these rights as to legislation. I do not think this is a responsibility of the General Assembly. I think it would be unfair to burden them with this responsibility. I think it is beholden upon us to assume those responsibilities which are ours as delegates to a constitutional convention. And as one who has fought against legislation in the constitution from the beginning of the debate, I submit this is not legislation.

We are talking about whether or not human beings have a right to be heard by a different court other than the one in their county or the judicial district. To deny them this right, is to deny them a voice. To deny them a voice, is to deny them participation in our democratic republic.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gabreski.

DELEGATE GABRESKI. I rise in opposition to the Thornburgh amendment and in support of Delegate Barron's position with regard to the absolute right of appeal. May I kindly add that in our County of Venango, which has a population of 65,000, our courts are not flooded with appeals, and if this is any indication to take these figures into your respective areas and to apply them to the population base of this Commonwealth, may I suggest to you that in 1962 there were in a population of 65,000, five appeals to the county court from the minor judiciary in civil cases. This was, in effect, an absolute right that was being exercised by the people. In 1963 there were six cases; and in 1964 there were nine cases; in 1965, three; in 1966, four; in 1967, six; a total of 33 cases in six years' time.

It would not have taken more than possibly an hour of the court's time to determine all 33 of these cases.

This is true with regard to quarter sessions petitions, in other words, defendants or parties coming into court and requesting that their cases be heard upon special allowance to the court on an a la carte Magna Carta that was referred to here. There were no more than 33 cases in that particular aspect of the law.

We are not talking about summary convictions in the motor vehicle cases. They were treated separately. We are talking about this one field of specific rights, the rights that are in existence at the present time under the law and under our Constitution. There is no cluttering up of the courts of record, as may be proposed by the Thornburgh amendment, if this is the fear that is being generated.

I feel very strongly about this issue. I request your support of Delegate Barron. I request your turning down the amendment as proposed by Delegate Thornburgh.

DELEGATE SOLOMON. Mr. President, on Tuesday of last week I spoke in support of the amendment submitted by Mr. Barron. He still has an amendment to present to this body so, consequently, before we are cut off, I would like to speak against the present proposed amendment.

It is surprising to me that so many of you who seemed to mark the fact that you are not lawyers would sit still and remain quiet when an absolute human right not only is being taken away from you, but is being legislated away. Truthfully, this amendment—if I am any kind of a lawyer—takes away the rights of appeal, it leaves it up to the Legislature.

We are talking about the right of appeal. Mr. President and members of this convention, in the judiciary section of this amendment to the Constitution, the right of appeal was passed. It was a close vote but, nevertheless, the arguments given there were fully tested. I say this to you, our present Pennsylvania Constitution, Article V, Section 14, in cases of fines and penalties, permitting an appeal upon cause shown, has been whittled away from the people of Pennsylvania by the action of our Appellate Courts and our Legislators.

Yesterday I read a volume of approximately 270 pages that was captioned "Appeals." Why, it is the rottenest obstacle course in our law. This is what we are saying when we bring this to you. This is what Delegate Barry said, this is what Delegate Gabreski said, this is what Delegate Barron said. Somewhere along the line the people ought to know that from the top—not from the bottom—has come down this doctrine that you are not entitled to a hearing, that you cannot get your hearing if the judge does not want to give it to you.

This is not the kind of society that I would like to continue living in nor have my children live in. Lawyers normally are not permitted to express their opinion when we go before a jury, but in this hall I can tell you that if my professional life is worth anything—it has been brief, but it is 30 years—this amendment is worthless.

I want to say to you, Judge Hannum, when you get into that Superior Court, look at those cases Delegate Barry speaks about and throw them out.

PRESIDENT BRODERICK. We have two delegates still standing, Delegates O'Donnell and Filson.

DELEGATE O'DONNELL. I would like to address myself to the question for one minute. There has been great confusion in this discussion. The right to appeal is being confused with the right to take a case to an appellate court. They are different. Every citizen of this Commonwealth now has a right to take a case to an appellate court as on certiorari, which means the appellate court takes a look at the record and looks at the briefs prepared by counsel to determine whether there was any error committed by the court below.

A right to appeals is a much vaster right and requires the appellate court to consider the entire case from the lower court which, in the main, means not a second time but a third time, and would involve the appellate courts in so much litigation and so much involvement that we will have to create four other courts of intermediate appellate jurisdiction.

The point is that the right to be heard has with it the correlative right to get an answer, and when non-meritorious cases—cases in which counsel cannot point to an error—are being brought up on this alleged right of absolute appeal, I say to you that claimants having cases of merit will be denied.

PRESIDENT BRODERICK. The Chair recognizes Delegate Filson.

DELEGATE FILSON. Mr. President, I was going to say something else, but I shall move the question.

PRESIDENT BRODERICK. Very well. We will unlock the voting machine. The question is: Will the Convention agree to the amendment being offered by Delegate Thornburgh?

All those voting "yea" will vote to support the Thornburgh amendment. Those voting "nay" will vote to reject it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Thornburgh?

The roll was recorded as follows:

YEAS—32

Bashoff	Fohl	Mangery	Shrager
Braham	Griffith	Morton	Tate
Buck	Hannum	O'Donnell	Thomson
Butera	Hatter	Pasquerilla	Thornburgh
Casey	Hook	Pelletier	Waldron
Corey	Huggins	Rea	Welsh
Dailey	Irvis	Sebastian	Woodring
Fleming	Lee, K.	Shoemaker	Woodside

NAYS—108

Allison	Curran	Keller, M.	Rappaport
Amsterdam	Desmond	Kelly	Redick
Aurentz	Dumbauld	Kline	Reynolds
Bagenstose	Erwin	Krill	Richter
Baldrige	Fawcett	Leach	Roberts
Baldus	Fay	Lee, L.	Royner
Baldwin	Feather	Leinbach	Ruth
Banes	Filson	Markley	Sahli
Barron	Fineman	Mattioni	Scales
Barry	Forster	McGeary	Scarlett
Benedict	Fortney	McClynn	Scranton
Benfield	Gabreski	Meyer	Shapiro
Bloom	Gehrlein	Michael	Sharp
Brennan	Gerber	Michener	Shettig
Broderick	Goldman	Miller, D.	Shively
Brown	Goldstein	Miller, R.	Silverman
Bunting	Gouger	Moorhead	Solomon
Burkholder	Harding	More	Sprogell
Cain	Henderson	Murray	Stout
Caputo	Heyburn	Nelson	Strickler
Camardella	Himes	Orban	Swope
Clark	Hocker	Orbin	Tully
Clinger	Horne	Otto	Van Sant
Conley	Jirolanio	Popil	Warman
Coretti	Johnson	Pott	Westerberg
Croop	Kauffman	Powell	Wilcox
Cunningham	Keller, J.	Quiles	Wilmarth

NOT VOTING—23

Aberman	Fagan	Leonard	Prendergast
Caron	Gray	Levin	Scott
Cortese	Hostetler	Manderino	Stroup
Devlin	King	Musselman	Tomascik
Donaldson	Lane	Pechan	Whittum
Donolow	Laputka	Perrey	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

QUESTIONS OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. This is a matter of personal privilege. I sat in the wrong seat and pushed the wrong button.

Furthermore, Mr. President, after hearing the discussion, I reversed my opinion as far as the amendment is concerned and voted "nay." I do not think this amendment went far enough. I am not exactly in favor of the amendment as it came out of the committee. I am hopeful something more clarifying will be brought to our attention.

PRESIDENT BRODERICK. Those remarks will be placed upon the record and we hope the delegate can find his right seat.

The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I was unable to be here at the opening of the session. I would like to be recorded as present.

PRESIDENT BRODERICK. You are recorded as present. We noted your presence when you came in.

BARRON AMENDMENT No. 1 TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron who has two amendments to offer. Which one will be presented first?

DELEGATE BARRON. The longer one of the two which is being distributed, Mr. President.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BARRON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 5), page 2, lines 20 and 21 by striking out "There shall be a right of appeal in all cases to" in line 20 and all of line 21 and inserting: (a) In all cases of summary conviction, judgment is a suit for a penalty, or judgment in any civil suit before a court not of record, a party shall have the right of appeal, with trial de novo

on all matters, to such court of record as may be designated by law.

(b) In all cases of conviction before a trial court of record, a defendant shall have, and in all other cases of final judgment before a trial court of record, excepting interlocutory orders and decrees, a party shall have the right of appeal on all matters, but without trial de novo, to a court of Statewide jurisdiction as may be designated by law.

(c) The Supreme Court shall not abridge or deny the right of appeal granted in this section by the exercise of the powers conferred upon it in subsection (a) of section 2 of this article.

(d) Nothing contained herein shall be construed to forbid the imposition of reasonable court costs or the adoption of reasonable rules of court relating to the exercise of the right of appeal granted herein.

(e) Nothing contained herein shall be construed to deny a writ of certiorari to any party as heretofore.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron for a statement in connection with his amendments.

DELEGATE BARRON. Mr. President, I had two amendments sent out at one time in the interest of conservation of time, as suggested by the President. The language in either one of them is acceptable to me. However, I am urging for your consideration the first and, unfortunately, the longer of the two because it states—in as tight and as sharp legal and common sense language as I and the Legislative Reference Bureau know how to state—the various rights involved. I would like to point out only three things, and I will do it very briefly.

Subsection (a) of the proposed amendment takes care of the situation relating to summary convictions and provides for one appeal, with trial de novo, with the evidence and the law to be presented to a court of record for its consideration.

Subsection (b) provides one right of appeal after the trial court level to a—not too many but to a—court of statewide appellate jurisdiction.

Paragraph (c) is for clarification so there would be no conflict between this proposed amendment and the language set forth in Section 2, subsection (a), of the article as it now reads.

Subsection (d), I would like to dwell on this just at short length. One of the great hurdles which any appellant has to get over and which discourages many appeals and gives our courts considerable range and latitude of control is the matter of requiring costs to be put up in advance and, also, to require certain forms, printed matter, and otherwise, to be made a part of the records. This I do not intend to touch or destroy in any way, but to keep the orderly progression of cases as it now exists.

Finally, since the writ of certiorari can be a matter of considerable right and should run hand in hand with it, I provide that it shall not be extinguished.

I respectfully submit to you that, as a lawyer, I prefer the language that is here. I would urge its adoption and ratification by this convention because I think it has that essential of clarity.

I may say, if it does not succeed, I am perfectly content with the language which now appears in Section 5 and this would be acceptable.

I would, however, in the interest of clarity state that when the committee voted upon the language that appears in its report, we were under the extreme pressure of time at that particular moment and the detailing of the right involved was not fully expressed, as I consider it. Accordingly, I would urge ratification and continuation of this language.

The second amendment, the short one which has been passed out to you, was an effort to show you perhaps a method by which this present language could be shortened. However, so that everyone may know exactly what I and many of the supporters of this concept have in mind, I urge the amendment as presented.

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. I would like to interrogate Delegate Barron.

PRESIDENT BRODERICK. Delegate Barron will stand for interrogation.

DELEGATE ORBAN. Under the long amendment, there is no appeal from the action of the Secretary of Revenue on license appeals, is there?

DELEGATE BARRON. No, sir.

DELEGATE ORBAN. Under the short form, there would be?

DELEGATE BARRON. Yes, there would be.

DELEGATE ORBAN. Thank you.

DELEGATE BARRON. If I may just amplify that in one fashion, I am sure Delegate Orban, being the fine lawyer that he is, appreciates that the right of appeal on license suspensions to the Superior Court is legislative at the present time.

DELEGATE ORBAN. Is it not a fact that under the present setup, it is impossible to appeal from the Secretary of Revenue to the common pleas court on the point system?

DELEGATE BARRON. That would be a matter of legislation.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. I apologize for coming to this microphone so frequently. A problem has been brought to my attention which I think should be expounded upon to the delegates of this Convention.

The right to appeal under the new point system was attempted to be preserved by the Legislature when that Act was passed. We were sure that right to appeal was preserved. However, under certain technical considerations in some county courts that right has been denied under a motion to quash and, as a consequence, the Department of Justice today and the Department of Revenue say you do not have that right of appeal. In order to correct that, our Senate by a vote of 48 to 0 passed a bill to the House to make certain that such interpretation would not be allowed, but it still rests over here in this body and, as Delegate Orban has pointed out, that right of appeal from the point system by our citizens is now in many of our jurisdictions being denied. I believe it should be preserved.

BARRON AMENDMENT NO. 1 TO PROPOSAL NO. 7 WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I would like to ask the sponsor whether he would not agree to an amendment to his amendment. The amendment I would suggest would be the short form that he has proposed, striking out his amendment and inserting therewith the short form that he has proposed.

DELEGATE BARRON. That is acceptable, Mr. President.

PRESIDENT BRODERICK. What we are saying, in effect, is that you will withdraw your first amendment and you are going to substitute for it your second amendment.

BARRON AMENDMENT No. 2 TO PROPOSAL No. 7

DELEGATE BARRON. At the request of Delegate Jirolanio, I will withdraw the first one and put in the second one, the so-called short one.

PRESIDENT BRODERICK. All right. We understand we are now going to vote on what I will refer to as the second. Has it been distributed?

It has been distributed.

So that there is no mistake, I will ask the Clerk to read this short form.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BARRON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 5), page 2, lines 19 and 21, by striking out both of said lines and inserting: Section 5. Right of Appeal.—There shall be a right of appeal in all cases to a court of record and from such court to an appellate court.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I would like to interrogate Delegate Barron concerning this.

PRESIDENT BRODERICK. Delegate Barron will stand for interrogation. Proceed with your questions.

DELEGATE WOODSIDE. We are proceeding very rapidly here on a matter which is of extreme importance to the Commonwealth of Pennsylvania and the judicial article. I do not know of anything more important than this. I would like to know how this provision would affect an appeal from the Public Utility Commission.

I call attention to the fact that cases before the Public Utility Commission are often referred to masters and in some of the cases may last as much as six months in the taking of testimony and, after the case is heard before the Public Utility Commission and argued before that body, it is appealable to the Superior Court. This provides there shall be a right of appeal in all cases to a court of record and from such court to an appellate court. I would assume from this that there would then have to be set up an appeal, not to the Superior Court, from the Public Utility Commission, but to some other court of record, and then an appeal to the Superior Court, which would seem to me to be a very undesirable thing.

If I am not correct, I wish Delegate Barron would point out to me wherein I am not correct.

DELEGATE BARRON. My understanding of the language, Judge Woodside, is that the appeal coming from the Public Utility Commission, as it now does, in broad certiorari, it would under legislation be permissible to be stated that the appeal to the Superior Court would be the appeal to the court of record as an appellate court.

DELEGATE WOODSIDE. But this proposed amendment here says that the appeal shall be to a court of record and from such court to an appellate court. Now, that is two separate courts. The Public Utility Commission is not a court.

The original language which was used in the report of the committee that Mr. Barron proposed before might not have the same result, but this, it seems to me, certainly has that result. I think it is an extremely dangerous amendment.

DELEGATE BARRON. I would suggest that that is not the intent, and I do not believe that the language is in any way in conflict. Frankly, it has been my long-cherished idea that the present appeal in workmen's compensation matters to the court of common pleas is entirely unnecessary, and I would hope for immediate legislation on that to do away with it. You went right from the workmen's compensation board to the Superior Court.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Scranton.

DELEGATE SCRANTON. I apologize for delaying the Convention, but in another way I do not apologize.

Frankly, I think that this is one of the most important things that is before us. To the best of my knowledge, there is no such provision in any other state constitution in the United States. This is charting a brand new track here.

I do not understand it, I have admitted this in committee and I admit it now, and I am simply trying to get some information. I would like to get it from both Mr. Barron and Judge Woodside, both of whom are very well versed in this subject.

What I would like to know, first of all, is on the short amendment, the one we are now about to vote on, the gentleman's second amendment, in his opinion, will this somewhat cut down the number of appeals as compared to what is in the proposal from the committee?

DELEGATE BARRON. No, Mr. President.

DELEGATE SCRANTON. The delegate thinks it will be approximately the same?

DELEGATE BARRON. Yes, sir.

DELEGATE SCRANTON. Then, why do we have it?

DELEGATE BARRON. As I believe, you will recall when the language was suggested in committee, it was dictated by the very able Delegate Barry off the top of his head.

I would like to say with great pride of authorship that this is mine alone. It is not. We looked this thing over very carefully for several days and determined that this language was an improvement of what appears in Section 5, as printed.

DELEGATE SCRANTON. May I ask one other question? What would be the difference, in the gentleman's judgment, in the number of appeals comparing the long amendment with the short one?

DELEGATE BARRON. None.

DELEGATE SCRANTON. None?

DELEGATE BARRON. My intent in presenting both is the same. The shorter one has brevity as its principal merit; not entirely its sole one, but its principal one.

DELEGATE SCRANTON. May I ask a question of Judge Woodside?

Does Judge Woodside prefer the long amendment or the short one in comparison to the committee statement?

DELEGATE WOODSIDE. Mr. President, as Governor Scranton well knows, I am not exceedingly happy with any one of the three, but after a hasty consideration of it, which I just made from reading it right now, it would indicate that I would prefer of the three the long amendment.

DELEGATE SCRANTON. Mr. President, for one who does not know what to do, I would like to say that my reaction is that probably the thing to do is to approve the short amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, may I interrogate Delegate Barron?

PRESIDENT BRODERICK. Yes, indeed. Proceed with your questions.

DELEGATE STRICKLER. Speaking in connection with the short amendment, the last one, do I understand we are talking about the right of appeal as two separate propositions, the right of appeal to a court of record, and then, also, guaranteeing the right of appeal from the court of record to an appellate court? In other words, it does not have to be a continuous proposition under the utility cases, and others, they could appeal directly to the Superior Court, if the legislature so desired?

DELEGATE BARRON. Yes, that is my understanding.

DELEGATE STRICKLER. In other words, it would not prevent them from going directly to an appellate court, which is the court of record, is that correct?

DELEGATE BARRON. That is correct.

This language was especially hewned, if I may say, to give to Pennsylvania law as a matter of right, the same concepts which the Legislature has in its wisdom, and it is the only place, to my knowledge, the Legislature has done it. Where there is a summary conviction under the Motor Vehicle Act, one is entitled to waive the hearing, which is called an appeal, and have one's case tried de novo in a court of record, in a court of quarter sessions of the county. From that there is also given the right of appeal to an appellate court.

This was in broad strokes the proposal we sought to embrace in as tight and, we hope, sharp language contained in the short amendment.

DELEGATE STRICKLER. In other words, what he is telling me is that he considers an appellate court a court of record, is that correct?

DELEGATE BARRON. Yes, sir, that is my understanding.

DELEGATE STRICKLER. Therefore, if the Legislature so provided that an appeal could be taken from a decision from one of the agencies, or the Public Utility Commission, or something of that nature, it could go directly to the appellate court, is that correct?

DELEGATE BARRON. Yes.

DELEGATE STRICKLER. That is all.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Braham.

DELEGATE BRAHAM. It is distasteful to me to feel that I ought to speak on this, because everybody is attracted by the right of universal appeal. However, we must remember nothing has been said here that appeals mean delays, and the public is constantly becoming more and more apparent of the danger, and difficulty and bad results of delay.

Secondly, I have noticed the statement as though all prompt decisions are wrong and I noticed reference made to the election laws. The judges on election day are required to make prompt decisions immediately, and the idea that there has to be an appeal from those decisions is all wrong, because in 999 cases out of a thousand the rising of the sun the next morning makes the decision that the judge made on election day entirely academic and entirely immaterial.

I do not believe we ought to saddle the courts with this general provision. The very first one indicates that all appeals must be heard and all the evidence must be heard. I would say, in conclusion, that there are cases where this is true.

If there is a defect in the game laws, if there ought to be a more definite right of appeal, let the Legislature fix that up.

If in any of these cases there is needed a more generous right of appeal, fix it up, but do not grant this right to impose upon the courts the obligatory appeal in every case.

Remember what is being done in the criminal law by the over-generous allowance of appeals in habeas corpus and similar cases. There are cases in which 50 appeals have been made in the same case, and we do not want to make that mistake again.

I believe this ought to be controlled by an application of the statutes to individual cases. Give more generous appeal where it is allowed, but do not put this burden on the court.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I hate to delay this matter any longer, but I do consider it very important. I would like to ask Mr. Amsterdam some questions pertaining to the committee on this. This matter of appeal is a very important matter to any litigant, and I feel that we should have some of the benefits of what the committee did in this area and what they considered.

PRESIDENT BRODERICK. You may proceed with your questions.

DELEGATE HOOK. Mr. President, could he tell us exactly what types of appeals he considered? I do not oppose Mr. Barron's proposal, the short form, but there is one question that bothers me here right now, and that is, I take it that an appeal to the Superior Court the decision will give the right of appeal to the Supreme Court by right, and the Supreme Court cannot refuse to accept this appeal. Will this be true? Will this result from this amendment?

DELEGATE AMSTERDAM. I think the delegate is asking several questions. Why do I not try to give you a little background and see if this helps us at all.

This came very late in the committee's proceedings. As a matter of fact, the subcommittee came up with no recommendation in this area at all, and it was presented to us as we were completing the judiciary article. There was a feeling on the part of a number of the members that there should be an absolute right to have an appeal taken to an appellate court, which right does not exist today. There were many of us that had qualms about this, particularly about clogging up the courts, and there was a vote, and the vote was rather substantial. It was about two to one in favor of having a right of appeal to an appellate court, and we felt that there were dangers here, as I have indicated, a volume in the courts. On the other side you have a feeling that there should be an absolute right, to take care of the citizens of the Commonwealth who ought to have their full day in court, and they might not be having a full day by having the matters decided at a lower level and not by an appellate court.

Now, that is about all that happened at the committee level.

I must say that from all the dicussion I have heard, it seems to me that there is a very definite feeling that there should be an appeal in the first instance from tribunals not courts of record, to a court of record that seems to be essential in every single instance.

Secondly, there was a further feeling that in situations where there was not presently a provision for an appellate court, where an appellate court could refuse to take jurisdiction, that that ought to be tempered.

Now, whether Delegate Barron's language adequately does that, I do not know.

It seems to me that Judge Woodside has raised the problem that is a serious one, viz., what type of appeal should be accepted in this context from a non-judicial body, from an administrative body.

It seems to me from the discussions that we had in our committee it was felt that if there was an appeal from such a body to any of the appellate courts, that meant all of the requirements that any of us felt were necessary to be fair and equitable. I notice Delegate Barron is shaking his head "yes." If his amendment does provide for that, then it seems to me that the amendment covers all of the things we talked about in our committee. If it does not, then the language ought to be corrected.

I suggest, Mr. President, that we might as well approve this, unless somebody can point out that the language is inadequate. Since he points out that this is his desire, we might as well approve this and then let our drafting people go to work and see whether they can make sure that the language does what is intended as a result of our discussions here today.

DELEGATE HOOK. My only question, Mr. President, on this is that I had a vast amount of work in the past ten years involving certain administrative agencies, and you have answered this question. I have had a hard time with the Superior Court. I am being very truthful about this. On workmen's compensation cases the appeal is to the Court of common pleas at your local level, whereas in the unemployment cases you have to appeal directly to the Superior Court, and I agree with Mr. Barron's philosophy here, but I do not know whether this is a field of legislation or whether this is a field for the Constitutional Convention. I have a definite feeling on this, that most of the appeals should be to your court of common pleas where it pertains to the facts, and so forth, that arise out of your own locality, and not directly to the Superior Court.

I do not feel Delegate Barron goes far enough in his right of appeal. I definitely agree that all cases should be able to be appealed. I agree with you at one stage, but, basically, I do not know whether this language clarifies the situation sufficiently. I know a lot of long-time legal people here have asked me this same question.

If we do not understand it, how are they supposed to understand it?

DELEGATE AMSTERDAM. I believe in both the committee's proposal and in Delegate Barron's proposal the right to appeal from an unemployment compensation board to the Superior Court would be the same, but there is an absolute right of appeal in either one of those cases.

DELEGATE HOOK. That is true, but, what about the appeal to the local court of common pleas? Would this now be a right in your own locality, and then can we skip to the Superior Court in these particular cases?

DELEGATE AMSTERDAM. That is the very thing that troubles me, that is why when Delegate Barron answered that it was his intention that the appeal to the Superior Court should meet all the mandates of his paragraph, I thought it was simply a matter of language. If it is not clear that that is enough, it ought to be made clear.

DELEGATE HOOK. What I am afraid of is that it is going to eliminate the local court of common pleas, and I do not like to come to Harrisburg all the time or go to Pittsburgh to try my cases.

PRESIDENT BRODERICK. Let me recognize Delegate O'Donnell, who has been standing at the microphone a long time.

DELEGATE O'DONNELL. I would like to interrogate Delegate Barron.

While Delegate Barron is preparing to come to the microphone, Mr. President, from Delegate Amsterdam's observations, apparently this was not considered at all in subcommittee, it was considered once-over lightly in the judiciary committee and that does comport with my recollection as well. It seems to me we are dealing with an extremely important area. We are under some time restrictions here, but I do believe we have time enough to write a good constitution, and I think we have a duty to stay until we do.

In this regard, Delegate Barron, if he would consent to be interrogated, I would like to know just what the mechanic would be if I object to a decision from the Unemployment Compensation Board.

DELEGATE FINEMAN. I wonder if Delegate O'Donnell would yield to me? I want to make a motion if I may.

DELEGATE O'DONNELL. Yes, Mr. President.

MOTION TO TABLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. It seems to me there has been enough dialogue on the floor to establish two things. No. 1, that the overriding sentiment of the Convention is that

the right of appeal be constitutionally preserved and protected;

No. 2, that the Legal Eagles in the Convention are not in any kind of substantial agreement as to the language needed to be adopted to implement this right.

I have spoken to Delegate Barron about this suggestion. He has agreed that I may state this motion, so I move in order to give those interested in this amendment an opportunity to work out the language, that it be placed upon the table.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Michener.

DELEGATE MICHENER. In seconding this amendment, I would like to point out, that as a man who has spent his life with words, I simply cannot be convinced by any evidence so far given on this floor that this so-called short Barron Amendment does not mean three specific steps; an original case, from that an appeal to a court of record, and from the court of record to an appellate court. If it does not mean what this says here, then we better clean up the words as words.

PRESIDENT BRODERICK. All those in favor of the motion which has been made by Delegate Fineman, seconded by Delegate Michener, placing this amendment on the table, please say "aye."

On the question,
Will the Convention agree to the motion?
It was agreed to.

We will consider the amendment on the table for the purpose of working out the words to take care of the intentions of the Convention.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron. For what purpose does the delegate rise?

DELEGATE BARRON. Mr. President, I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The delegate will state it.

DELEGATE BARRON. I believe we are now about concluded on the first section of the judiciary article. Do I understand that the matters now laid on the table need not be recalled from the table until the entire article is subject to consideration?

PRESIDENT BRODERICK. They can be recalled, I think, at any time here in order to take care of this. This is not going to limit you and when you can recall them.

DELEGATE BARRON. Thank you, Mr. President.

SECTIONS 10, 11 AND 12 OF COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. We have completed our business as far as the amendment process is concerned, with regard to the consideration of Sections 1 to 9 and 17 and 18. Now, as I understand the suggestion of the Judiciary Committee, it was and I hope still is, to now take up Sections 10, 11 and 12, is that correct?

DELEGATE AMSTERDAM. That is correct, sir.

PRESIDENT BRODERICK. We may proceed with that.

DELEGATE AMSTERDAM. Mr. President, I will remind the delegates that Section 10 deals with the qualifications of justices, judges and justices of the peace, Section 11 sets forth the number and methods of selection of those officers and Section 12 sets forth the characteristics of a qualifications commission on the assumption that that commission is a part of the selection process.

We would like to present to the delegates Section 10 for such amendments as may be suggested in connection with qualifications, when it comes to Section 11, which deals with the method of selection of members of the judiciary, we would like to suggest that Section 11 be taken up first, which is the method of selecting judges in the various judicial districts, as distinguished from the statewide selection of justices and judges. The reason we are suggesting that is because we found out from our discussions in our committee that the decisions which are made at the local level are the ones that trouble most of the delegates. We feel that if those decisions could be ascertained in the first instance, there would be relatively little problem about what happens on the matter of statewide judges, although we may have some amendments.

Our experience would indicate that it would be relatively easier to handle it if we do it that way, and we, therefore, recommend it to you, Mr. President. If that is satisfactory, I would suggest that we go forward with Section 10 at this time.

PRESIDENT BRODERICK. Yes.

The Chair now recognizes Delegate Bunting.

DELEGATE BUNTING. Mr. President, before we leave this section, I wonder if the committee would spend just a few more minutes in explaining how it intends the office of register of wills is to be considered under our unified court system.

Our present register of wills office has original jurisdiction on the probate of wills, and our orphans' court has, in a sense, appellate jurisdiction over the question of probate. I am concerned as to whether this is a matter which is intended to be left up to the Legislature to determine by statute as to whether the original jurisdiction can be established by statute in the orphans' court or by rules of the orphans' court, should the need arise in the event the register of wills should pass out of our local government system.

DELEGATE AMSTERDAM. Mr. President, may I suggest that this is a matter that is covered in the interim period by the schedule. I think when we get to the schedule you will find that most of the answers with respect to the register of wills is set forth. There is one answer in the City of Philadelphia, for instance, there is another answer in the balance of the Commonwealth.

So I think if we would hold that up until we get to the schedule, you will find it is covered. If there is any dissatisfaction, it can be corrected at that point.

DELEGATE BUNTING. That will be fine, sir.

PRESIDENT BRODERICK. I hear no objection to the suggestion you made, Chairman Amsterdam, so you may proceed with your discussion.

DELEGATE SHAPIRO. Do I understand from the last statement that this is not the time for a presentation of amendments to the schedule, that they are to be handled after the completion of the article itself?

DELEGATE AMSTERDAM. That is correct.

Mr. President, I might indicate that at the beginning, that the schedule for the most part would follow what was done in the article itself and, therefore, we suggested that all questions regarding the schedule be held up until the

article itself has been completed. I believe at that point most of it will fall into place.

DELEGATE SHAPIRO. All right.

PRESIDENT BRODERICK. Delegate Shapiro indicates that he agrees with your answer.

DELEGATE AMSTERDAM. Mr. President, I do not know that we need any period of time on the items set forth in paragraph 10.

The delegates will notice that the qualifications are as follows, that the justices, judges, and justices of the peace must be citizens of the Commonwealth.

As far as justices and judges are concerned, they must be members of the bar of the Supreme Court of Pennsylvania, except for the judges of the traffic court in Philadelphia, who need not be learned in the law.

The justices of the Supreme Court and the judges of the Superior Court and the Commonwealth Court must reside within the Commonwealth and the other judges must reside within the various judicial districts in which they serve.

If there are amendments, we can take them up at this point, Mr. President.

PRESIDENT BRODERICK. Let me inquire of Vice President Casey and Vice President Orban whether they would sit down with the amendment committee, of which they are members, together with the attorneys and see if we have any amendments to this particular section.

DELEGATE ORBAN. I would like to interrogate Delegate Amsterdam. As I understand it, you are on Section 10(a)?

DELEGATE AMSTERDAM. We are on Section 10, yes, sir.

DELEGATE ORBAN. According to Section 10(a), a judge appointed or elected need not be a resident of the Commonwealth of Pennsylvania.

DELEGATE AMSTERDAM. I do not think that is correct. I believe we provided in Section 10(a) that all justices and judges shall reside within this Commonwealth, that is statewide. In the case of other judges and justices of the peace, they must reside within the district which they serve.

DELEGATE ORBAN. That is prefaced with a remark, during their continuance in office. This does not say they must be in the State or in the county at the time of their election or appointment.

DELEGATE AMSTERDAM. That is correct, during their continuance in office.

DELEGATE ORBAN. According to this provision, as it now stands, a judge from another county could be appointed to the courts of Dauphin County, is that correct?

DELEGATE AMSTERDAM. There is nothing in this article which requires them to be a resident at the time of election, yes, sir.

DELEGATE ORBAN. As to statewide judges, all they need be is citizens of the Commonwealth, and citizenship and residence is not synonymous, is that correct?

DELEGATE AMSTERDAM. No, I do not believe so. We say, starting on line 19, "the justices of the Supreme Court, the judges of the Superior Court and the Commonwealth Court during their continuance in office shall reside within this Commonwealth."

DELEGATE ORBAN. That is restricted during the continuance in office, is that correct? It does not say at the time of their appointment or election, depending on what we decide. Is that it?

DELEGATE AMSTERDAM. That is correct, sir.

DELEGATE ORBAN. Therefore, an attorney who is a citizen of Pennsylvania could be a resident of Florida and could be appointed to the Supreme Court, could he not?

DELEGATE AMSTERDAM. That is right, provided he must reside in the Commonwealth during the entire period of his continuance in office.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President, that is exactly the same phrase that is used in the present Constitution, "during their continuance in office." The reason for it is, technically, that if somebody was elected to Congress, or if he was appointed an Ambassador to the Philippines, or if he was somewhere else around the world, and was technically residing there for a period of time and was appointed, we did not think he ought to be thrown out as a possibility.

DELEGATE ORBAN. In those cases they do not change their residences. That is just a temporary leave.

DELEGATE SCRANTON. Some of them do, and this is why it was done in the present Constitution and this is why we have continued.

DELEGATE ORBAN. My feeling is that if the old Constitution was bad, we should not make this one bad.

DELEGATE SCRANTON. All I can say to you is, there has been no problem with it on that score.

PRESIDENT BRODERICK. The Chair recognizes Delegate Reynolds.

DELEGATE REYNOLDS. It seems to me we are trying to get these people who are interested in these various items together. I remember when the Home Rule Committee was reporting they had two leaders sitting up there and explaining this as we went along, and we got through quickly and congratulated the committee.

I believe if ex-Governor Scranton will go up there with the other eminent Chairman, I believe we can do the same thing. They are fully prepared to give us the necessary information, they can tell what the committee did, but it seems that somehow or other the Judiciary Committee does not have the same focus that we had with the Home Rule Committee. Those two fine leaders sat there, and each time they explained what it was. We did not have much trouble.

I see Governor Scranton sitting over here conferring with everybody who wants to talk with him, because he is congenial, but I believe we need him up here where we can have the weight of his influence and his leadership, even though he says once in a while he does not understand. I bet you all the tea in China he knows more about all these things better than any other man in this room because he has studied them. Certainly, Co-Chairman Amsterdam is sitting there, and I think they ought to be together and the whole subcommittee ought to be there like the Rule Committee was to explain it. We would not have so many arguments, and we can adjourn for them to get together.

PRESIDENT BRODERICK. The only thing I can say, Delegate Reynolds, is that you have Chairman Scranton on the move now.

Chairman Amsterdam, we have some amendments on

Section 10. Those amendments on Section 10 are in the process of being duplicated and it will be a minute or two before they are distributed.

Would you like to go ahead and explain the next section?

DELEGATE AMSTERDAM. Yes, sir, I would be glad to do so.

Starting with Section 11, we come to the method of selecting justices, judges and justices of the peace.

Of course, when we use the word "justice," I am sure everybody understands that we are talking about justices of the Supreme Court as distinguished from judges of the various other courts in the Commonwealth. In the one case of justices of the peace the term we are using is the term that we have always used in the Commonwealth, and where we mean justices of the peace we use that term.

We have provided in Section 11(a) that whenever a vacancy shall occur in the office of statewide courts, whether it be a justice of the Supreme Court, or a judge of the Superior Court, or Commonwealth Court, that the Governor shall fill the vacancy by appointment from a list of persons qualified for that office, and set forth in the report of the State Judicial Qualifications Commission which will be referred to in some detail a little later.

So for the purpose of an initial appointment of a statewide judge or justice, the Governor is the appointing authority from a list, and you will see later that that list must be at least 10, and not more than 20, for each and every one of the openings on the Court, whether it be Supreme, Superior or Commonwealth. Such an appointment is not required to have the consent of the Senate.

In Section 11(b) we then come to the method of selecting nonstatewide judges, which are judges in the various judicial districts, and here we have maintained the present method of selection of judges, which is by election.

In the first instance, judges in all the judicial districts are required to be elected in the same manner in which they are elected today. However, we do provide that in any judicial district by a plebiscite with a majority of the electorate voting in favor of that type of method of selection of judges, there may be a district judicial qualifications commission similar to the one provided in the case of the statewide courts. There the Governor will appoint based on accepting one of the names given to him by the district judicial qualifications commission. But I must point out very clearly that after such an election by the electorate in any district, the present system for the selection of judges continues in the first instance.

When it comes to a second election, after a judge has been elected in a particular judicial district for the first time and his term of office is terminated by the time period of 10 years, which we have fixed later in this Constitution, then we provide for a retention election. If that same judge desires to continue in office, he files a declaration of candidacy, and then the vacancy is filled at a municipal election by the electors who decide whether that judge is qualified, or not, to continue in office. So he does not run against anyone else in a normal type of political election, he merely runs on his record and the electorate in the particular judicial district decides whether on his record he may be continued for an additional period of 10 years as a judge in that particular judicial district.

In those cases where the qualified voters have elected to fill vacancies by panel selection, the provision for election of judges, will, of course, cease, and the district judicial panel, which we have provided for in Section 12(b), will give names to the governor from which he shall select the judge for that particular judicial district.

We have also provided in Section 11(e) that any question with regard to placing upon the ballot the question of whether judges should be selected by the panel method as against the elective method shall be placed on the ballot when five per cent of the total votes cast for all candidates for the office receiving the highest number of votes shall have been the number of electors equal to that five per cent and shall have asked for that item to be put upon the ballot.

When that is done, there is an election to determine whether the qualifications commission shall be adopted as a means of selecting judges in that judicial district and, if approved by a majority of the electorate, that continues until such time as the judicial district at a later election upon the same five per cent of the electorate shall determine that it once again be put on the ballot and, if it is put on the ballot a second time, and the electorate decides, by a majority vote that there will no longer be such a judicial selection, then you go back to the election method once again.

In other words, you can go from the present election method to the selection by panel method and then back to the election method as often as there is an election, provided, however, an election may not be held for that purpose more than once in any five-year period. So we have tried to provide that the electors in a particular judicial district shall have the option of determining their own method of selecting their judges by either the election method or the qualification method.

Then we have provided that the chief justice and the president judge—and I am now reading from paragraph (g) on the bottom of page 6—shall be selected for five year terms by the members of their respective courts, except in the case of the president judge of the traffic court of the City of Philadelphia, and in that case, since they are not lawyers in that court, we have provided that the selection shall be made by the Governor.

In Section 12(a) we set up the make-up of the qualifications of the statewide qualifications commission. You will note that it is made up of four nonlawyer electors and three nonjudge members of the bar of the Supreme Court, and of these seven members no more than four of whom can come from the same political party, must afford to the Governor a series of names not less than 10 nor more than 20 for each vacancy.

In the case of the district qualifications commission, this is made up of three nonlawyers and two lawyers, all of them must be residents of the district, and they serve for a term of five years.

We provided, of course, on page 8 of Section 12(c) that the members of the commission may not hold political office. This is simply to make sure that they are not putting the political process into the judicial selection.

That, I think, Mr. President, is the highlight of what these provisions are.

PRESIDENT BRODERICK. Thank you, Chairman Amsterdam.

We are ready to take up the amendments now to Section 10, and I might add that we have four, and possibly five. We will proceed with the amendments on Section 10.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Henderson. For what purpose does the gentleman rise?

DELEGATE HENDERSON. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE HENDERSON. May I speak on a point of personal privilege in opposition to the committee's proposal before the amendments are started? I would like to speak in opposition to the qualifications commission approach to the selection of judges.

PRESIDENT BRODERICK. Delegate Henderson, I am advised by the Parliamentarian that you may not speak on a point of personal privilege in connection with something that we are now considering. You may be heard, there is no question about that, at any time we come to that.

DELEGATE HENDERSON. We are on this right now.

PRESIDENT BRODERICK. Do you wish to be recognized in connection with Section 10?

DELEGATE HENDERSON. That is right, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Henderson in connection with Section 10.

DELEGATE HENDERSON. The basic premise of American democracy is based on the fact that we, as a people, consent to be governed and governed in a three-fold plan of separation of powers—

DELEGATE AMSTERDAM. Mr. President, may I just suggest to Delegate Henderson that what he is talking about comes up really in Section 11, and it would help us all, I think, if he would give us the benefit of his remarks at the time we are taking up Section 11.

DELEGATE HENDERSON. I yield to the Co-Chairman.

PRESIDENT BRODERICK. Thank you, Delegate Henderson.

AMSTERDAM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE AMSTERDAM offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 4, line 21, by removing the comma after "Commonwealth" and inserting a period

Amend Sec. 1 (Sec. 10), page 4, line 22, by striking out "and the" and inserting: The

Amend Sec. 1 (Sec. 10), page 4, line 24, by removing the period after "serve" and inserting: , except as otherwise provided in this article for temporary assignments.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, in a number of the sections in Article V we provided for the temporary assignment of judges and justices in accordance with the rules and prescription of the Supreme Court. Unfortunately, we provided in Section 10 that a judge may only serve in the judicial district, in which he resides and, therefore, we have to have an exception if we are really to make the provisions as flexible and as desirable as has been intended by the committee. We must provide that in the case of temporary assignment judges need not live in the judicial district in which they are serving. This is simply to take care of that one situation, in order to gain the flexibility that was intended by the entire committee.

I do not believe that this is controversial.

PRESIDENT BRODERICK. If it is not controversial, do we have the feeling of the body that we should move the question right now?

On the question,

Will the Convention agree to the amendment offered by Delegate Amsterdam?

The roll call is as follows:

YEAS—125

Allison	Devlin	Krill	Richter
Amsterdam	Dumbauld	Leach	Ruth
Aurentz	Erwin	Lee, K.	Sahli
Baldrige	Fawcett	Leinbach	Scales
Baldwin	Fay	Leonard	Scarlett
Barron	Feather	Mangery	Scott
Bashoff	Filson	Markley	Scranton
Benedict	Fineman	Mattioni	Sebastian
Benfield	Fleming	McGeary	Sharp
Bloom	Fohl	McGlynn	Shettig
Braham	Fortney	Meyer	Shively
Brennan	Gerber	Michael	Shrager
Broderick	Goldman	Michener	Silverman
Brown	Goldstein	Miller, R.	Solomon
Buck	Gouger	Moorhead	Sprogell
Bunting	Griffith	More	Stout
Burkholder	Hannum	Morton	Strickler
Butera	Hatter	Murray	Stroup
Camardella	Henderson	Nelson	Swope
Caputo	Heyburn	Orban	Tate
Casey	Himes	Otto	Thomson
Clark	Hocker	Pasquerilla	Thornburgh
Clinger	Hook	Prendergast	Tulty
Conley	Irvis	Popil	Van Sant
Corey	Jirolanio	Pott	Waldron
Cortese	Johnson	Powell	Welsh
Cosetti	Kauffman	Quiles	Westerberg
Croop	Keller, M.	Rappaport	Whitlum
Cunningham	Kelly	Rea	Wilcox
Curran	King	Redick	Wilmarth
Dailey	Kline	Reynolds	Woodring
Desmond			

NAYS—0

NOT VOTING—38

Aberman	Forster	Laputka	Pelletier
Bagenstose	Gabreski	Lee, L.	Percey
Baldus	Gehrlein	Levin	Roberts
Banes	Gray	Manderino	Rovner
Barry	Harding	Miller, D.	Shapiro
Cain	Horne	Musselman	Shoemaker
Caron	Hostetler	O'Donnell	Tomascik
Donaldson	Huggins	Orbin	Warman
Donolow	Keller, J.	Pechan	Woodside
Fagan	Lane		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

TATE AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 4, lines 22 to 24, by striking out all of said lines.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, this amendment is designed to do one simple thing and that is to eliminate the residence requirement within the district in which a judge serves from the committee proposal. To the best of my knowledge this is an amendment which will have practical effect only in Philadelphia County.

There are two sides to this question, and I do not wish to deny that fact. This has been a problem in Philadelphia because of the fact that many of the lawyers who practice in Philadelphia, a very large number of the lawyers who practice in Philadelphia, which has a Bar of over 5,000 members and who are eligible to become judges and do become judges in Philadelphia, actually live outside Philadelphia, or may during their term in office desire, as many people do from time to time, to move outside the limits of Philadelphia, but within the metropolitan area.

Under the present Constitution and under the committee proposal, such people would be prohibited from serving in judicial office in the County of Philadelphia. Because of the fact that their professional lives have been located in the County of Philadelphia, they would, of course, not normally be named or elected as judges in the counties of their residency, wherever that might be.

There are arguments, and I recognize them, that a judge ought to live close to where he is going to have to serve and understand the community in which he is going to serve. Those arguments I recognize as having some validity.

However, when you come to a large metropolitan area such as Philadelphia, there is very little difference between living in a suburban area within the County of Philadelphia and living a couple of blocks farther in Montgomery, Delaware or Bucks County. The neighborhoods are approximately the same. We all in the metropolitan area, share the same problems and the same understanding. Therefore, I think what the present amendment's language and the committee proposal actually does is to encourage people to maintain fictitious residences in the County of Philadelphia, when actually they live outside the County of Philadelphia.

I am advised this has happened on a number of occasions, and I think will be happening in the future if the committee proposal stands in this respect.

I think this will be a wise amendment and urge the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, it is with some regret I must disagree with my learned friend of Chestnut Hill, Mr. Tate. I must speak against this amendment. I live in the City of Philadelphia and I practice law in the City of Philadelphia. It so happens that of my three law partners not one of them lives in the County of Philadelphia, they all live in the suburbs, but I must state to this Convention that if a man is too good to live in his district, if he cannot find some place in his district that meets with his approval as a place to live, then he is too good to be a judge and in any way represent that district.

I think the concept of absentee politicians must come to an end, and this is especially true in the field of the judiciary. After all, a lot of the problems that come into our criminal courts are social problems. We already have some small difficulty with visiting judges from upstate who really do not understand our problems. Some of these judges will give out prison terms for "numbers writing," which just does not happen.

To be serious about this, Mr. Butera has just reminded me that Philadelphia, in order to give representation to the suburbs, that pay wage taxes sometimes elect city councilmen from Montgomery County. This is just a matter of courtesy to Delegate Butera so that his people cannot claim taxation without representation.

Seriously, I think a judge especially should live in the district in which he is a judge. The people of that district have a right to somebody who lives there, and only a man who lives in his district can understand the problems of the district.

It is for this reason in the upstate counties, the smaller counties they have lay judges to acquaint visiting judges with the problems. We in any county must insist on having judges who live in the county. Any man who wants to be a judge can move back into Philadelphia County and, if he is not willing to make that sacrifice, then, perhaps, he is too good to be a judge and we should let him remain a lawyer.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran. For what purpose does the gentleman rise?

DELEGATE CURRAN. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE CURRAN. Would the Amsterdam Amendment which we just passed, which pertains to lines 22 and 24, prohibit the consideration of the Tate Amendment?

PRESIDENT BRODERICK. No, not according to our Parliamentarian because they refer to an entirely different subject.

Are we ready for the question?

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Tate?

The roll was recorded as follows:

YEAS—10

Buck	Cosetti	Shapiro	Swope

Bunting	McGlynn	Sprogell	Tate
Burkholder	Rea		

NAYS—129

Allison	Dumbauld	Keller, M.	Rappaport
Amsterdam	Erwin	Kelly	Redick
Aurentz	Fawcett	King	Reynolds
Bagenstose	Fay	Kline	Richter
Baldrige	Feather	Krill	Roberts
Baldus	Filson	Leach	Ruth
Baldwin	Fineman	Lee, K.	Sahli
Banes	Fleming	Lee, L.	Scales
Barron	Fohl	Leinbach	Scarlett
Barry	Forster	Leonard	Scott
Bashoff	Fortney	Levin	Scranton
Benedict	Gabreski	Mangery	Sebastian
Benfield	Gerber	Markley	Sharp
Bloom	Goldman	Mattioni	Shelhig
Braham	Goldstein	McGeary	Shively
Brennan	Gouger	Meyer	Shrager
Broderick	Griffith	Michael	Silverman
Brown	Hannum	Michener	Solomon
Butera	Harding	Miller, R.	Stout
Cain	Hatter	Moorhead	Strickler
Camardella	Henderson	More	Stroup
Caputo	Heyburn	Morton	Thomson
Casey	Himes	Murray	Tulty
Clinger	Hocker	Nelson	Waldron
Conley	Hook	Orban	Warman
Corey	Horne	Otto	Welsh
Cortese	Huggins	Pasquerilla	Westerberg
Croop	Irvis	Popil	Whitmm
Cunningham	Jirolanio	Pott	Wilcox
Curran	Johnson	Powell	Wilmarth
Dailey	Kauffman	Prendergast	Woodring
Desmond	Keller, J.	Quiles	Woodside
Devlin			

NOT VOTING—24

Aberman	Gebrlein	Miller, D.	Percey
Caron	Gray	Musselman	Rovner
Clark	Hostetler	O'Donnell	Shoemaker
Donaldson	Lane	Orbin	Tomasclk
Donolow	Laputka	Pechan	Thornburgh
Fagan	Manderino	Pelletier	Van Sant

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

ORBAN AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. Mr. President, I wish to offer an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE ORBAN offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 4, line 20, by inserting after "Court," where it appears the last time: at the time of their election or appointment and

Amend Sec. 1 (Sec. 10), page 4, line 22, by inserting after "peace,": at the time of their election or appointment and

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Orban to speak on behalf of the amendment.

DELEGATE ORBAN. Mr. President, the purpose of this amendment is to add to the resident requirement during the term of office of the judge, whether he be elected or appointed. It will require that he be a resident of the State of Pennsylvania as to the appellate court judges, and in the counties he shall be a resident of the county in which he may be elected or appointed.

I think the remarks of Delegate Rappaport go to the same issue and in reply, as I indicated in the exchange with Governor Scranton, if a congressman is to be appointed or elected, he does not change his residence, it is a temporary move and he comes back to vote, his residence is back in his district. I submit that any man who wants to be a judge in any county, or in the State, should feel that that county is good enough for his residence.

There was a remark made by Delegate Tate that in Philadelphia the man sets up a fictitious residence. If he sets up a fictitious residence, then I do not think he deserves to be a judge. I think he should show where he lives.

These people will be dealing with the people in that county. These are the people who know the man when he is a candidate for election, or whenever he is appointed or designated by the nominating commission, if that is in effect.

I feel that this amendment should be passed by this body.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber. For what purpose does the gentleman rise?

DELEGATE GERBER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GERBER. Mr. President, on this amendment does Delegate Orban mean line 22 in the second part rather than line 20?

DELEGATE ORBAN. I am sure that is right, Mr. President. That is correct, they passed out the wrong sheet.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. I would like to ask Delegate Orban a few questions.

PRESIDENT BRODERICK. He will stand for interrogation.

DELEGATE CROOP. Mr. President, does not the gentleman think a period of time, rather than just to say "residence," would be a great improvement? For instance, in the Act that permitted this Convention to be here, in order to confine ourselves to people who were residents of the senatorial districts, we had to be residents for a period of one year, or more.

I suggest that this be a part of the amendment, that the time of residence or the time of appointment should be one year, or more, because I can visualize that somebody might be elected and then move in in time to pick up their commission or their appointment. I would like the gentleman's reaction to this?

DELEGATE ORBAN. It appears to me, Delegate Croop, that the Legislature could set the period of time he must be a resident of the county and, if such an amendment was offered to my amendment, I would have no objection. I do feel the Legislature can set the time limit.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. This was considered by the subcommittee and Judiciary Committee, and I should like Delegate Shrager to give the points of view of the committee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shrager.

DELEGATE SHRAGER. Mr. President, as a practical matter, this provision is the same as the provision in the present Constitution. We found it caused no difficulty whatsoever, as long as the judge lives in the district, when we are talking about the judicial district, after he has been elected and served as a judge, or appointed. That seemed to take care of any qualms that any members of the committee had on any information that anyone had given them as to whether or not this provision should be changed. The majority of the committee felt that the provision as written should be the one that should be placed in the present Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fleming.

DELEGATE FLEMING. Mr. President, for the information of Delegate Orban, I have an amendment somewhere, which was the first one I offered, in which I do insert the words "qualified elector."

DELEGATE ORBAN. What is your intent? Where would you insert it?

DELEGATE FLEMING. Line 16.

I am not sure that takes care of what you are doing, Mr. Orban. I am afraid it does not, now that I look at this. I do not want to consume the time. I will prefer not to agree to the amendment.

PRESIDENT BRODERICK. Are we ready for the question on Delegate Orban's Amendment? I will ask the clerk to unlock the voting machine and proceed to vote.

All those that vote "yea," support the amendment and those who vote "nay" reject the amendment.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Orban?

QUESTIONS OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Cain.

DELEGATE CAIN. Mr. President, I intended to vote "yea" on that amendment and I inadvertently voted "nay." Will you change my vote?

PRESIDENT BRODERICK. You may change your vote, because it has not been announced yet and we will see that it is so recorded.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Please record me as voting "yea" on this proposition.

PRESIDENT BRODERICK. Delegate Barron also wishes to be recorded as voting "yea."

The roll was recorded as follows:

YEAS—110

Allison	Fenlin	Kline	Prendergast
Aurentz	Fawcett	Krill	Rea
Bagenstose	Fay	Leach	Redick
Baldrige	Feather	Lee, K.	Reynolds
Baldus	Filson	Lee, L.	Richter
Baldwin	Fineman	Leinbach	Roberts
Banes	Fleming	Leonard	Rovner
Barron	Fohl	Levin	Sahli
Bashoff	Forster	Mangery	Scales
Benedict	Gerber	Markley	Scarlett
Bloom	Goldman	Mattioni	Scott
Braham	Goldstein	McGeary	Sharp
Brennan	Gouger	Meyer	Shettig
Broderick	Griffith	Michener	Shively
Brown	Harding	Miller, D.	Solomon
Butera	Hatter	Miller, R.	Stout
Cain	Henderson	Moorhead	Strickler
Camardella	Himes	More	Stroup
Caputo	Hocker	Murray	Swope
Casey	Hook	Nelson	Tully
Conley	Horne	Orban	Van Sant
Cortese	Huggins	Orbin	Waldron
Croop	Irvis	Otto	Westerberg
Curran	Jirolanio	Pasquerilla	Whittum
Dailey	Keller, J.	Popil	Wilmarth
Desmond	Keller, M.	Pott	Woodring
Devlin	Kelly	Powell	Woodside
Dumbauld	King		

NAYS—26

Amsterdam	Cosetti	McGlynn	Sprogell
Barry	Fortney	Morton	Tate
Benfield	Gabreski	Ruth	Tomasclk
Bunting	Gehrlein	Scranton	Warman
Burkholder	Hannum	Sebastian	Welsh
Clark	Johnson	Shapiro	Wilcox
Clinger	Kauffman		

NOT VOTING—27

Aberman	Fagan	Michael	Rappaport
Buck	Gray	Musselman	Shoemaker
Caron	Heyburn	O'Donnell	Shrager
Corey	Hostetler	Pechan	Silverman
Cunningham	Lane	Pelletier	Thomson
Donaldson	Laputka	Percey	Thornburgh
Donolow	Manderino	Quiles	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

TATE AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I rise to offer an amendment to Committee Proposal No. 7.

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 4, lines 18 and 19, by striking out "except the judges of the traffic court in Philadelphia." and inserting a period

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Tate.

DELEGATE TATE. This amendment, quite simply, would require that judges of the traffic court, as other judges throughout the Commonwealth as this Convention has decided, be members of the Bar of the Supreme Court of Pennsylvania.

This Convention had decided already last week that it wishes to deal differently with Philadelphia in connection with the minor judiciary than other parts of Pennsyl-

vania, and I accept that decision as the decision of the Convention. However, this provision would mean that we are going to have two kinds of minor justice in Philadelphia. We will have one kind dispensed by the municipal court, which will be composed of men learned in the law, members of the Bar of the Supreme Court of Pennsylvania, and then we will have traffic justice, which will not be dispensed by such persons.

In my opinion, the traffic problem is one where perhaps more citizens will come in contact with the law than in any other single place. If we need respect for law and justice, we should begin, in my opinion, where it hits most of the people. I think that more people come in contact with the law in connection with traffic violations than any other place.

I do not propose for a minute that lawyers have more character than other people, and I do not propose that, therefore, the traffic court in Philadelphia should be composed of lawyers because they are going to be better men.

I do propose, however, that with the complications which we all know are coming into our law—and they come in at the traffic court level just as they come in at other levels, because traffic court violations are subject to many of the same personal rights that other violations of law have, as far as defendants are concerned—that is where we ought to begin, not end, the effort to bring respect for the conduct of the judiciary. So I think we ought to man our traffic courts in Philadelphia, as long as it is the decision of this Convention to have such a court, with persons who are able to interpret legal decisions and the decisions of our higher courts.

Therefore, I ask this Convention to approve this amendment which would, with respect to qualifications, put the judges of Philadelphia's traffic court on the same plane as the rest of Philadelphia's minor judiciary.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I would like to interrogate the Chairman of the committee on the language to which this is an amendment.

PRESIDENT BRODERICK. You may proceed with your questioning.

DELEGATE RAPPAPORT. Was the language in the proposal as it reads now, "except the judges of the traffic court" from being members of the Bar, in the proposal passed by the committee on February 2nd?

DELEGATE AMSTERDAM. Yes, it was. The date is the only thing that confuses me. This was a part of what was in the proposal that was approved. Now, whether it was that date, or not, I do not know. Whatever date it was adopted, this language to my recollection—let me just check and make sure. I am told that that is correct that this was in it at the time of approval.

DELEGATE RAPPAPORT. I have before me what purports to be a copy of the proposal that was before your committee on February 2nd, and it states that all justices and judges shall be members of the Bar of the Supreme Court of Pennsylvania—period, with no exception.

DELEGATE AMSTERDAM. Mr. President, I am assured—and it is my recollection, also—that this was a part of what was approved. The only thing unclear to me is whether this was in the schedule or in the article itself. I am trying to get some confirmation whether it was in one or the other.

PRESIDENT BRODERICK. May I ask Delegate Rappaport if he will yield until that is ascertained, and we will recognize you again.

DELEGATE RAPPAPORT. I think I made my point. I am sure Delegate Amsterdam will have a reply to the floor as to what happened in the committee, and I will yield the floor back to the Chair to recognize any other delegate.

PRESIDENT BRODERICK. Thank you.

The Chair recognizes Delegate Devlin.

DELEGATE DEVLIN. I am speaking in opposition to this particular amendment simply because if Mr. Tate would want all of the JPs throughout Pennsylvania to hear the same cases that appear before the traffic court in Philadelphia to be lawyers, then I would think he would have substance to his argument that he presented to you.

But by virtue of the fact that he has singled out the traffic court of Philadelphia, which just hears summary cases involving the Motor Vehicle Code and does not hear indiefiul cases which go before the common pleas court, we feel this is a nonlawyer's job similar to the hearing examiners that the vote license which is far above the jurisdiction of our traffic courts in Philadelphia and Pittsburgh and JPs throughout this Commonwealth. They are laymen in the Department of Revenue and they do a good job.

I think that there is room in our judicial system for lay people for many reasons. I do not think this Commonwealth has enough lawyers in every county and in every section to man the courts as they properly should be manned. Until that time I am in favor of the lay magistrate or the lay justice of the peace, so that the judicial business of the court may continue to process and take place.

We feel that having a nonlawyer in this job does several things. It allows us to put laymen in quasi-judicial positions and it allows us to run a traffic court at a salary commensurate to the work and the effort that is put in it. To me, it would be simply ridiculous to pay a lawyer —of course, I am speaking objectively, perhaps 68 of you would disagree with me—but it would be ridiculous to pay a lawyer $20,000 a year to sit in traffic court to hear summary offenses.

I, for one, believed we had settled this last week. I was perfectly willing—and so were our Democratic magistrates, and I talked with all of them over the weekend, as well as our Republicans—to let the people decide. We let the Shapiro amendment go through and I was happy to have that amendment go through. This attack upon the judicial standing of the traffic court in Philadelphia in the way Mr. Tate presented it is really an attack upon Philadelphia only and not upon the system of the justices of the peace throughout Pennsylvania.

I ask you not to support this amendment and to support Proposal No. 7 as it has come out of committee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I think there is much merit in what the last speaker has said, but I wonder if he is aware of the fact that the following subsection of Section 10 makes provision with respect to the justices of the peace and with regard to their qualifications that do not apply in the case of the Philadelphia traffic court judges.

Section 10 (b) provides that justices of the peace shall be members of the Bar of the Supreme Court, or shall complete a course of training and instruction in the duties of their office and pass an examination prior to assuming office. The course of study and examination shall be as provided by law.

So far as I have been able to ascertain, there is nothing in the article as proposed by the committee—Proposal No. 7—which would place any similar requirement on the judges of the traffic court. I would like to first check as to whether or not I am correct on that.

PRESIDENT BRODERICK. Chairman Amsterdam, would you answer Delegate Shapiro's question?

DELEGATE AMSTERDAM. Would you restate it, please?

DELEGATE SHAPIRO. My question is whether there is any requirement in Proposal No. 7 with respect to the training of judges of the traffic court similar to the provisions with respect to the training required of justices of the peace in Section 10 (b).

DELEGATE AMSTERDAM. Mr. O'Donnell would be glad to clarify that.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. This was a matter which was very lightly covered, Delegate Shapiro, but I gather from speaking to Mr. Devlin that he would not object, after the grandfather clauses and what have you that are in it, that men in the future—in other words, men who are not magistrates now at all—would then take the usual justice of the peace qualifying test and would be examined. Am I correct?

DELEGATE SHAPIRO. That is not my question. The question is whether the proposal presently has any requirements—

DELEGATE O'DONNELL. No. It was an oversight, I believe.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Devlin.

DELEGATE DEVLIN. I would go one step further. I think it is right that these men should be trained in the law whatever law they deal with, whether it be motor vehicle law only or other jurisdictional matters pertaining to the justice of the peace. I think you have a good point, Delegate Shapiro, and, if you take the time to prepare the proper amendments, then the magistrates that are going to continue on in Philadelphia, either in the municipal court or in the traffic court, should come under the same type of training that now applies to the justices of the peace, magistrates, etc., as contained in this Proposal No. 7.

DELEGATE SHAPIRO. I was going to suggest that perhaps Delegate Tate would be willing to accept some form of amendment to his proposed amendment so that the judges of the traffic court would be accorded the same treatment or the same requirements as justices of the peace, with exception, as you point out, that perhaps their training should be something different. But that is a matter, I think, for the Legislature.

I think the article, as presently providing for justices of the peace, would permit that if we included in Section 10 (b) the judges of the traffic court.

DELEGATE DEVLIN. Mr. Chairman, I think that Delegate Shapiro's approach to this is rather tangential. I think a direct approach would be more becoming to this article if we would take Section 9 (b) and make it apply to the magistrates in Philadelphia, both in traffic court and municipal courts.

DELEGATE SHAPIRO. All right, I will withdraw my suggestion for an amendment to Delegate Tate's amendment.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. We have been checking the question posed a while ago and we find the provision that was asked about—exempting the traffic court personnel from the provision about being members of the Bar of the Supreme Court—was in the proposal that was dated February 2, 1968, but it was actually revised on the 5th day of February, 1968, and there was taken out of the schedule those portions of the schedule which the committee felt should be in the article, itself.

This was one of the items taken out of the article and put into the schedule and approved, according to our records, by the entire committee on February 5th.

PRESIDENT BRODERICK. Are we now, therefore, ready for the question?

DELEGATE RAPPAPORT. In view of what Chairman Amsterdam just said, I was wondering by what vote the committee approved this. The votes are a matter of public record under the rules of the Convention, I understand.

DELEGATE AMSTERDAM. I do not know what the vote was and I do not know that in each specific instance a vote was recorded. We provided, if you will recall, when we came to the final proposal there had to be at least 22 votes for it to go to the floor. There were 22 votes minimum in order for it to go to the floor.

DELEGATE RAPPAPORT. When was this final vote taken?

DELEGATE AMSTERDAM. On or about the 5th of February.

DELEGATE RAPPAPORT. Thank you.

PRESIDENT BRODERICK. Are we ready for the question? The question is: Will the convention agree to the amendment now being offered by Delegate Tate?

We now unlock the voting machine. All those voting "yea" will vote to support the Tate amendment. Those voting "nay" will vote to reject it.

Now the question recurs,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—40

Allison	Conley	Huggins	Roberts
Amsterdam	Cosetti	Irvis	Shapiro
Banes	Dumbauld	Mattioni	Solomon
Baldus	Feather	Michael	Sprogell
Bloom	Filson	Michener	Swope
Brown	Fineman	Popil	Tate
Bunting	Gabreski	Prendergast	Thomson
Burkholder	Gehrlein	Quiles	Thornburgh
Caputo	Hook	Rappaport	Welsh
Casey	Horne	Rea	Whittum

NAYS—100

Aurentz	Fawcett	Krill	Rovner
Bagenstose	Fay	Leach	Ruth
Baldrige	Fleming	Lee, K.	Sahli
Baldwin	Fohl	Lee, L.	Scales
Barry	Forster	Leinbach	Scarlett
Bashoff	Fortney	Leonard	Scott
Benedict	Gerber	Mangery	Scranton

Benfield	Goldman	Markley	Sebastian
Braham	Goldstein	McGlynn	Sharp
Brennan	Gouger	Meyer	Shettig
Broderick	Griffith	Miller, D.	Shively
Buck	Hannum	Miller, R.	Shrager
Butera	Harding	Moorhead	Silverman
Cain	Hatter	More	Stout
Camardella	Henderson	Morton	Strickler
Clark	Heyburn	Nelson	Stroup
Clinger	Himes	O'Donnell	Tomascik
Cortese	Jirolanio	Orban	Tully
Croop	Johnson	Orbin	Van Sant
Cunningham	Kauffman	Otto	Warman
Curran	Keller, J.	Pott	Westerberg
Dailey	Keller, M.	Powell	Wilcox
Desmond	Kelly	Redick	Wilmarth
Devlin	King	Reynolds	Woodring
Erwin	Kline	Richter	Woodside

NOT VOTING—23

Aberman	Fagan	Levin	Pechan
Barron	Gray	Manderino	Pelletier
Caron	Hocker	McGeary	Percey
Corey	Hostetler	Murray	Shoemaker
Donaldson	Lane	Musselman	Waldron
Donolow	Laputka	Pasquerilla	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

JIROLANIO AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I submit an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE JIROLANIO offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 4, line 25 by striking out "shall" and inserting: may

Amend Sec. 1 (Sec. 10), page 4, lines 27 and 28 by striking out "and pass an examination prior to assuming office"

Amend Sec. 1 (Sec. 10), page 4, line 28 by striking out "and examination"

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio in connection with his amendment.

DELEGATE JIROLANIO. Mr. President, the amendment which I just offered would eliminate the question of passing an examination.

The reason for that, of course, is this, first of all, last year the people of the Commonwealth of Pennsylvania adopted an amendment to the Constitution which now requires that JPs shall undergo 90 days training before they assume their office.

Second, if you look at the words "a course of study and examination," and the type of examination, nothing is said as to what particular type of examination would be given to the justices of the peace. Presumably, it could be so hard that it could accomplish the same thing as those who want to get rid of the justices of the peace in the entire State.

Third, the justices of the peace, when they run for office, do submit themselves to a searching examination of their own individual character and integrity because they go before the people and ask the people to vote for them for that particular office.

Fourth, elections are usually held and could be held, let us say, on the 8th day of November. The election board would not certify their election until possibly the 18th. When would the course of study be given and when would the examination be given? You would run into the period of Christmas, you run also into the question of New Year's. There is no time set. In all consideration I do not think it would be possible to have him ready for the first Monday of January when his term of office would actually take place.

I submit to this Convention that what some people are trying to do is, they are trying to blow hot and cold. One minute they say yes, they will give the people an opportunity to vote for the JP if they want it. If they want to keep the JP we have laws on the books, and we have enforcement officers that, if they do anything wrong, those JPs can be prosecuted. In this particular judiciary article, provision is made that if you do not want the JP system, you can have the referendum and put in your community court. Therefore, I say the restriction attempted to be put on this particular office is unfair and uncalled for.

I reiterate the words of Delegate Devlin, this is an old office and a very good office. Laymen can fill that office well. This is the place to have men of good reputation and character. If they are no good, if they are guilty of various crimes, if they do not have the necessary integrity, then the people of that particular district should not return them to office.

PRESIDENT BRODERICK. Does anyone else wish to be heard in connection with the Jirolanio amendment?

The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. I would like to oppose this amendment. A few years ago I took one of these courses, so-called, for the justice of the peace. I was not a justice of the peace, but I wanted to be sure I knew what I was talking about when I talked about the justice of the peace. Twenty-five JPs and I took a 24-week course in criminal law.

Now I thought it was a very good course, but there were some justices there—most of them took the course and benefited from it, but there were a few there who paid no attention. They took the course, but I think an examination was needed to prove that they got something out of the course.

I hate to see this lifted out of the proposal from the committee.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Michener.

DELEGATE MICHENER. On no other matter that will come before this Convention did I do more work prior to coming here. I assembled a board of justices to give me advice. I went over all their testimonies. Members of the Judiciary Committee will remember that I brought before their committee a summary of the recommendations of the justices themselves. Not my opinion at all, but the record of their recommendations to this Convention as to what they wanted done. They had, in total, nine recommendations. Some of these are in print in the appendix to your splendid manual on the judiciary. These are all state-

ments by justices of the peace. Some of them are by organizations of justices of the peace.

On nine of those specific recommendations there was this degree of unanimity. On three of them, only one of the major organizations approved. On three, two of the major organizations approved. On three, all of them approved. The one thing that they approved of most unanimously was the requirement that they themselves wanted an education course before they took office. There was no dissent from this at all that I can remember. They also wanted the numbers cut. They also wanted better quarters.

The things that your committee has brought onto the floor are things which go far to reach and solve all the problems which the justices have posed in the matter of justice in this State. I think that the committee report is a fine one because it does maintain the justices where they are needed, and it does provide for better justices throughout.

I think this would be a body blow to the record of this Convention if Senator Jirolanio's amendment were accepted. I think it would be a denial of all we agreed upon. I think it would be a step backward and I think we would be ashamed of ourselves tomorrow morning if we saw in the papers that we had gone back on one of the most fundamental principles of this Convention.

I, therefore, must speak rather sharply against this amendment and advise all of us not to accept it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, I rise in opposition to this amendment. I have had the privilege in the past of being able to act as an instructor at some of the squires' courses that Delegate McGeary talked about.

It seems to me we make a great mistake in lumping these justices of the peace together under one label. There are many excellent men in the squires' association. At the same time, just as in our own bar association, there are many men who could do much better. I found, from my own experience, in teaching these courses that there were men taking the courses, coming to all of the lectures and meetings, who knew more about law on that level than any of the instructors did. There were other men, Mr. President, who, regardless of the amount of instruction, could not possibly pass even the most fundamental type of examination.

It seems to me that this amendment does a disservice not only to the public, but also to the squires themselves. I have talked to many squire groups and organizations. The leaders of those organizations, the men in those organizations who care about their jobs, want the committee proposal and do not want this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. I rise in opposition to this amendment and endorse completely and in toto the comments of Delegates Michener and Scales.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. The only point I wanted to make —and I rise in opposition, also—was that this matter was a constitutional amendment in 1966 and it was approved by the people of the State of Pennsylvania by a very heavy vote. I think it would be a mistake to take it out of the Constitution at this time.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I believe I do have some time to answer the arguments from the other side.

It seems to me, regardless of how the delegation feels, there are some delegates in this Convention who feel, whenever some amendments are offered, that the end of the world is going to come because it does not meet the approval of one or two. May I say to this Convention that the end of the world is not going to come and that there is no delegate in this hall who is interested in destroying the rights of the people. I certainly want to give to the people of my district and to the Commonwealth of Pennsylvania the best that is in me and the best I think I can possibly offer. If at any time I am attempting to make an amendment, I do it because I think it will serve the best interests, not because I am doing it with a selfish motive or with any other motive whatsoever.

I firmly believe that the justices of the peace are interested in educating themselves and that is why we passed the constitutional amendment last year. Certainly, I agree they should better themselves and they will better themselves by getting 90 days training, but this particular language in the judiciary article will work a hardship to those men who will be and are your justices of the peace.

On the question,

Will the Convention agree to the amendment offered by Delegate Jirolanio?

The roll was recorded as follows:

YEAS—22

Allison	Erwin	Kline	Qulles
Baldwin	Goldstein	Krill	Redick
Benfield	Hatter	Markley	Reynolds
Cain	Hocker	Orbin	Van Sant
Cortese	Jirolanio	Prendergast	Warman
Devlin	Keller, M.		

NAYS—115

Aberman	Fawcett	Leach	Sahli
Amsterdam	Fay	Lee, L.	Scales
Aurentz	Feather	Leinbach	Scarlett
Bagenstose	Filson	Levin	Scott
Baldrige	Fineman	Mattioni	Scranton
Banes	Fleming	McGeary	Sebastian
Barry	Fohl	Meyer	Shapiro
Bashoff	Forster	Michael	Sharp
Bloom	Fortney	Michener	Shettig
Braham	Gabreski	Miller, D.	Shively
Brennan	Gehrlein	Miller, R.	Shrager
Broderick	Gerber	Moorhead	Silverman
Brown	Goldman	More	Sprogell
Buck	Gouger	Morton	Stout
Bunting	Griffith	Murray	Strickler
Burkholder	Hannum	Nelson	Stroup
Butera	Harding	O'Donnell	Swope
Caputo	Henderson	Orban	Tate
Camardella	Heyburn	Otto	Thornburgh
Casey	Himes	Pasquerilla	Thomson
Clinger	Hook	Popil	Tomascik
Conley	Horne	Pott	Tully
Corey	Huggins	Powell	Waldron
Cosetti	Irvis	Rappaport	Welsh
Croop	Johnson	Rea	Westerberg
Cunningham	Kauffman	Richter	Wilcox
Curran	Keller, J.	Roberts	Wilmarth
Desmond	Kelly	Rovner	Woodring
Dumbauld	King	Ruth	

NOT VOTING—26

Baldus	Donolow	Leonard	Pelletier
Barron	Fagan	Manderino	Percey
Benedict	Gray	Mangery	Shoemaker

Caron	Hostetler	McGlynn	Solomon
Clark	Lane	Musselman	Whittum
Dailey	Laputka	Pechan	Woodside
Donaldson	Lee, K.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

CROOP AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, I read in place and present to the Chair the following amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE CROOP offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 4, line 20, by inserting after "Court," where it appears the last time: for a period of one year preceding and

Amend Sec. 1 (Sec. 10), page 4, line 20, by inserting after "peace,": for a period of one year preceding and

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Croop in connection with this amendment.

DELEGATE CROOP. Mr. President, this is merely extending and cleaning up, or putting a period of time on the amendment and I am happy to say that Senator Fleming joins with me in this amendment. He and I had an idea which I mentioned before, and it is merely putting a period of one year preceding the appointment or the election of the respective judge, so that we have something definite in there and do not have carpetbagging by jumping across judicial district lines.

PRESIDENT BRODERICK. Is there any further discussion in connection with this?

Does the committee have anything to say in connection with this? Chairman Amsterdam?

DELEGATE AMSTERDAM. No. This follows along with the one that was already adopted, contrary to what we had had in it.

PRESIDENT BRODERICK. Judge Woodside, did you want to say something on the Croop amendment?

DELEGATE WOODSIDE. Mr. President, in going over it this Sunday, it seemed to me that it would be well to add right at this place these words—I did not prepare an amendment because I did not think it was absolutely necessary, but in order to provide for future contingencies, I thought it would be well to say, "The justices of the Supreme Court, the judges of the Superior Court and of the Commonwealth Court and of any other statewide court hereafter created." This is to take care of the possibility raised by Delegate Irvis and others that there may be in the future some other statewide courts and there is no provision relating thereto. I did not think it was terribly important. Therefore, I did not prepare an amendment. If there is anyone else who feels that should be in, this is the place it should be put in, with an amendment attached to the one that is proposed.

PRESIDENT BRODERICK. The Chair has a question of Judge Woodside. Were you speaking to the Croop amendment in front of us?

DELEGATE WOODSIDE. I was. I was talking about an amendment to the amendment, because this is the place where that ought to go in as an amendment to the amendment. It is right at this point.

PRESIDENT BRODERICK. May I suggest that if you think there should be an amendment, we could get one prepared. That might be easier.

DELEGATE WOODSIDE. If no one else in the Convention thinks this is important enough, I will not insist upon it, but I thought it should be called to the attention of the Convention that there is no provision for any other statewide court created by statute.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fleming.

DELEGATE FLEMING. Mr. President, I am sure my co-sponsor agrees with me that this would be in the best interests of the Commonwealth. We have no objection at all to having this amendment added if Judge Woodside would care to have it run off and added.

PRESIDENT BRODERICK. May the Chair suggest that we could vote on the Croop amendment and we can still take care of the Woodside amendment if that is the desire of the Convention.

On the question recurring,
Will the Convention agree to the Croop amendment?

The roll was recorded as follows:

YEAS—110

Aberman	Dumbauld	Jirolanio	Powell
Aurentz	Erwin	Johnson	Prendergast
Baldrige	Fawcett	Keller, J.	Quiles
Baldwin	Fay	Kelly	Rea
Banes	Feather	King	Reynolds
Barry	Filson	Kline	Richter
Bashoff	Fineman	Krill	Roberts
Benfield	Fleming	Leach	Sahli
Bloom	Fohl	Lee, L.	Scales
Braham	Forster	Leinbach	Scarlett
Brennan	Fortney	Mangery	Scott
Broderick	Gabreski	Markley	Sharp
Brown	Gehrlein	Mattioni	Shively
Buck	Gerber	Meyer	Solomon
Butera	Goldstein	Michael	Strickler
Cain	Gouger	Michener	Swope
Camardella	Griffith	Miller, D.	Thomson
Caputo	Hannum	Miller, R.	Tully
Casey	Harding	Moorhead	Van Sant
Clark	Hatter	Murray	Waldron
Clinger	Henderson	Nelson	Warman
Corey	Heyburn	Orban	Welsh
Cortese	Himes	Orbin	Westerberg
Croop	Hocker	Otto	Whittum
Cunningham	Hook	Pasquerilla	Wilmarth
Curran	Horne	Popil	Woodring
Desmond	Huggins	Pott	Woodside
Devlin	Irvis		

NAYS—18

Bunting	Morton	Sebastian	Stout
Burkholder	O'Donnell	Shapiro	Tate
Kauffman	Rappaport	Silverman	Thornburgh
Keller, M.	Rovner	Sprogell	Wilcox
McGlynn	Scranton		

NOT VOTING—35

Allison	Dailey	Lee, K.	Percey
Amsterdam	Donaldson	Leonard	Redick
Bagenstose	Donolow	Levin	Ruth

Baldus	Goldman	Manderino	Shettig
Barron	Fagan	McGeary	Shoemaker
Benedict	Gray	More	Shrager
Caron	Hostetler	Musselman	Stroup
Conley	Lane	Pechan	Tomasclk
Cosetti	Laputka	Pelletier	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

HOOK AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I submit an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE HOOK offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 4, line 25, by inserting after "peace": and judges of the traffic court in Philadelphia

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Delegate Hook, we are still duplicating copies. Do you want to stand by or talk on your amendment? You have the option. I do not know whether it will be to your advantage or disadvantage to have it in front of the delegates.

DELEGATE HOOK. Mr. President, I believe this proposal will bring in line some of the discussion that was had here when the Mercer-Tate proposal was made and this will bring in line with the request of many of the delegates that the members of the traffic court in Philadelphia must meet the same qualifications as the other justices of the peace of the State of Pennsylvania must meet. They must be qualified and take a training course and be qualified in accordance with this particular section. This is the only purpose for this. I believe other delegates, if they had an opportunity, would join in with this. This is just a matter to bring everything in line with this particular section, I believe.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam for a comment.

DELEGATE AMSTERDAM. This was not voted upon separately by the committee. It would certainly be consistent with everything we have in the judiciary article. I understood from what Delegate Devlin and the others said that this was generally satisfactory to the delegates. I wonder whether we cannot go to a fairly prompt vote?

PRESIDENT BRODERICK. Does Delegate Devlin wish to be heard on this?

DELEGATE DEVLIN. Let us vote.

PRESIDENT BRODERICK. Are we ready for the question? Has everyone received a copy?

DELEGATE HOOK. This proposal has been joined in with me by Mr. Shapiro, so it is both his and my amendment, together.

On the question,

Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—135

Aberman	Erwin	Leach	Sahli
Amsterdam	Fawcett	Lee, L.	Scales
Aurentz	Fay	Leinbach	Scarlett
Baldrige	Feather	Levin	Scott
Baldus	Filson	Mangery	Scranton
Baldwin	Fineman	Markley	Sebastian
Banes	Fleming	Mattioni	Shapiro
Barron	Fohl	McGeary	Sharp
Barry	Forster	Meyer	Shettig
Bashoff	Fortney	Michael	Shively
Benedict	Gabreski	Michener	Shoemaker
Bloom	Gehrlein	Miller, D.	Shrager
Brennan	Gerber	Moorhead	Silverman
Broderick	Goldstein	More	Solomon
Brown	Gouger	Morton	Sprogell
Buck	Griffith	Murray	Stout
Bunting	Hannum	Nelson	Strickler
Burkholder	Harding	O'Donnell	Stroup
Butera	Hatter	Orban	Swope
Cain	Henderson	Orbin	Tate
Camardella	Heyburn	Otto	Thomson
Caputo	Himes	Pasquerilla	Thornburgh
Casey	Hocker	Pelletier	Tomasclk
Clark	Hook	Popil	Tully
Clinger	Horne	Pott	Van Sant
Corey	Irvis	Powell	Waldron
Cortese	Johnson	Prendergast	Warman
Cosetti	Kauffman	Quiles	Welsh
Croop	Keller, J.	Rappaport	Westerberg
Cunningham	Keller, M.	Rea	Whittum
Curran	Kelly	Reynolds	Wilcox
Desmond	King	Richter	Wilmarth
Devlin	Kline	Rovner	Woodring
Dumbauld	Krill	Ruth	

NAYS—5

Braham	Jirolanio	McGlynn	Redick
Huggins			

NOT VOTING—23

Allison	Donaldson	Lane	Musselman
Bagenstose	Donolow	Laputka	Pechan
Benfield	Fagan	Lee, K.	Percey
Caron	Goldman	Leonard	Roberts
Conley	Gray	Manderino	Woodside
Dailey	Hostetler	Miller, R.	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

PROPOSAL No. 7, SECTION 11

PRESIDENT BRODERICK. Those are all of the amendments we have prepared at this time in connection with Section 10. We will now move on to Section 11. We wish to report that in accordance with your suggestion, Chairman Amsterdam, we have no amendments in connection with the (b) Section.

DELEGATE AMSTERDAM. No amendments.

PRESIDENT BRODERICK. We received none. We will not encourage any more.

PRESIDENT BRODERICK. Delegate Henderson, do you want to be heard in connection with this Section?

DELEGATE HENDERSON. I rise in opposition to the qualification commission philosophy in the selection of judges. I would like to make a statement of my feelings.

PRESIDENT BRODERICK. You may proceed and you will be limited, of course, to 10 minutes.

DELEGATE HENDERSON. It will only take two minutes.

The basic premise of American democracy is based on the fact that we as a people consent to be governed, governed by a three-fold plan of separation of powers. We consent to have laws enacted by the legislative process

of a General Assembly, of a House and of a Senate. We consent to have these laws administered by an administrative branch. We also consent to be judged in accordance with the law of the land. Each area of the separation of powers consists of legislators, administrators and judges, all nominated and elected by the people.

By utilizing a selection process with a "blue ribbon panel," we would be diluting or disenfranchising a segment of our democratic form of government, viz., the judicial branch. By utilizing a list of selectees, we would be developing a hierarchy of a chosen few. Hypothetically, many would not be chosen because of a varied and sundry reason. The manner in which a lawyer either prosecuted or defended a certain case may eliminate him. The blue ribbon panel could be influenced by those wanting special favors. Many would be eliminated because they graduated from the "wrong school," many would be eliminated because their names may end in the "wrong syllable," many would be eliminated because their skin may not be of the "right color."

By adopting a panel system of selection, we are saying, in effect, that the judges—past and present—elected by the people are not capable.

This is not the case. We can be proud of the choice that the people have made in all areas of our judicial branch of government. When a young lawyer passes the bar, he should have the right, after he gains the experience, to progress up the judicial ladder by the elective process and not the selective process. The Commonwealth of Pennsylvania would be losing a basic freedom, won in 1776, of having a government elected by the people in all three areas, separation of powers of the administrative, the legislative and the judicial.

The will of the people must be realized in all areas. We consent to be governed and we have a voice in this. We consent to be legislated and we do have a voice. We consent to be judged, and I say that we must keep this voice if we are going to keep the democratic form of government as we know it now.

PRESIDENT BRODERICK. Delegate Warman.

DELEGATE WARMAN. I would also like to make a statement concerning the selection of judges.

PRESIDENT BRODERICK. You may proceed.

DELEGATE WARMAN. The major concern of any citizen in a democracy is that his right of franchise is preserved from the lowest level to the highest. The choice of men who will sit in judgment should remain with those who are to be judged. We cannot delegate this responsibility to a small group of persons, no matter how high-minded.

We are told that "selection" would remove judges from politics. We are not told—and the voters have no way of knowing—who will ultimately make these selections. We are not told for a single, simple reason:

Try as it did, the Judiciary Committee could not devise language to guarantee that the selectors will be totally removed from political, or personal, or human motivations, for the original appointers of a selection panel are themselves political.

I, for one, cannot visualize who these selectors would be. For where can we find men who are not influenced by their environment? No matter how high-minded, would not this selection panel ultimately place men on the bench who reflect their own attitudes? The selection process —as opposed to free elections—would replace the judgment and wisdom of a few men for the judgment and wisdom of thousands of voters. Whatever the "mistakes" that might be made at the ballot box, we must allow the individual voter to name the men who will judge him.

Moreover, the attitudes of men "selected" for lifetime terms will change. And we should not compare the work of the Supreme Court with the day-to-day decisions of a lower court. The Supreme Court deals with broad philosophies and with technical challenges. The lower courts deal with the daily lives of people.

Removed from the workaday, competitive world, a judge loses a certain public awareness—the need for tempering justice with mercy. The mere promise of a lifetime tenure can lead to indolence on the part of appointed judges. Even at present, under 10-year terms, there are instances where judges rule as autocrats. Longevity on the bench is no guarantee of wisdom. In many instances just the opposite is true. Many a jurist becomes set in his ways and domineering. He loses a certain intellectual flexibility and responsiveness to the needs and motivations of the individuals he judges.

This Convention has spent nearly three months searching out the ideal. We are not here to make changes simply for the sake of change. And the ideal is a democracy —or a republic, if you please—a government of, for and by the people. We in this Convention must not participate in a procedure which in any way will dilute the voting rights of the citizens of Pennsylvania.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cain.

DELEGATE CAIN. I would like to express myself on the subject. As Delegate Henderson has put the question very strongly, I would like to say at this Convention that I certainly would oppose any blue ribbon panel for the selection of judges for the many reasons that he gives, plus many more. We have been talking here about letting the people make a decision. I think this is one area where the people should certainly make a decision and not leave it to a hand-picked group of blue ribbon panels to decide on the selection of judges.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tomascik.

DELEGATE TOMASCIK. May I interrogate Delegate Amsterdam?

PRESIDENT BRODERICK. Delegate Amsterdam will stand for interrogation. You may proceed.

DELEGATE TOMASCIK. Mr. President, is it the intent of this Committee proposal to terminate the right of any lawyer in good standing in the Commonwealth to make it impossible for him to run for public office such as justice of the Supreme Court?

DELEGATE AMSTERDAM. This provides in Section 11(a) that states when a vacancy occurs the appointment shall be by the Governor in the case of the statewide courts, and the Governor shall choose from among a list of names supplied by a qualifying commission. Does that answer the question?

DELEGATE TOMASCIK. No, I want to find out whether, in spite of the qualification commission, any good lawyer in good standing could, nevertheless, run for the office to the Supreme Court?

DELEGATE AMSTERDAM. No, there is no provision

for election in the first instance. It is by the Governor's appointment.

DELEGATE TOMASCIK. Will you clarify for me the rationale of the committee in coming to the conclusion in recommending a judicial qualifications commission?

DELEGATE AMSTERDAM. The committee was of the opinion from the testimony that was given to it over a period of time and the information supplied by the various studies that have been made, that there was relatively little likelihood that the electors across the State would be familiar with the persons who would be running for the office of justice of the Supreme Court or judge of the other two statewide courts. They were of the opinion, in the first instance, the nominee was chosen by the political chairman in the various instances, that is the way their names were put on the ballot in the first case, and, thereafter, their chance of success or failure depended on whether the ticket as a whole was successful or unsuccessful. Therefore, they felt in no true sense on a statewide election was this an election by the electorate. They felt this was, in effect, an appointment, in the first instance, by those who were charged with the responsibility for putting up political candidates and, in the second instance, the fact of whether they won or lost was dependent not on their own qualifications, but on whether the ticket as a whole was successful or unsuccessful. Therefore, they agreed that this nominating panel be made up of lawyers and nonlawyers giving the Governor an opportunity to make a choice from a very wide group of names, which would result in getting, according to the committee, the best qualified justices and judges for statewide courts.

DELEGATE TOMASCIK. Would you say, Delegate Amsterdam, the committee's proposal really amounts to giving up some of the personal sovereignty of the individual candidate in favor of the collective judgment of the qualifications commission?

DELEGATE AMSTERDAM. When you say "candidate," I am not sure I understand. The candidate's name could, of course, be brought up before the commission.

DELEGATE TOMASCIK. I mean the applicant for the position. In other words, you are substituting the collective judgment of the qualifications commission for election by the people, is that right?

DELEGATE AMSTERDAM. That is correct.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, I rise in support of this amendment. Until 10 years ago I never knew what the word "wasp" meant and I am glad a blue ribbon panel did not pick us to come to this Convention.

I think the political balance of a two-thirds Senate guarantees minority representation to people of all ethnic, racial and religious backgrounds. I think it is very important the people do not lose this right to a hand-picked blue ribbon panel. I think it tears down some of our basic philosophies of government.

PRESIDENT BRODERICK. Delegate Murray, the Chair just wants to say there is no amendment before the Convention at the present time. The delegates have been making statements generally, not in reference to any specific amendment.

DELEGATE MURRAY. I thought this amendment had been placed. I will repeat myself later.

PRESIDENT BRODERICK. You may do that, or we will remember what you said now.

Is there anyone else who wants to be heard generally, because we are getting ready now to call an amendment?

I made a statement that we did not have any amendments in connection with 11(b). We do have an amendment in connection with 11(b). We have the Ruth amendment and, in accordance with the suggestion of the committee chairman, we will take up the Ruth amendment first.

RUTH AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth.

DELEGATE RUTH. Mr. President, I rise to offer an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE RUTH offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, lines 8 to 15, by striking out all of said lines

Amend Sec. 1 (Sec. 11), page 5, line 16, by striking out "(c)" and inserting: (b)

Amend Sec. 1 (Sec. 11), page 5, lines 16 to 18, by striking out "other than a judicial district which has elected to have the judges in that district appointed as provided in section 11(b)"

Amend Sec. 1 (Sec. 11), page 6, lines 2 to 24, by striking out all of said lines

Amend Sec. 1 (Sec. 11), page 6, line 25, by striking out "(f)" and inserting: (c)

Amend Sec. 1 (Sec. 11), page 6, line 30, by striking out "(g)" and inserting: (d)

Amend Sec. 1 (Sec. 12), page 7, line 9, by striking out "Commissions" and inserting: Commission

Amend Sec. 1 (Sec. 12), page 7, lines 21 to 30; page 8, lines 1 to 3, by striking out all of said lines

Amend Sec. 1 (Sec. 12), page 8, line 4, by striking out "(c)" and inserting: (b)

Amend Sec. 1 (Sec. 12), page 8, line 5, by striking out "any" and inserting: the

Amend Sec. 1 (Sec. 12), page 8, line 8, by striking out "(d)" and inserting: (c)

Amend Sec. 1 (Sec. 12), page 8, line 8, by striking out "any" and inserting: the

Amend Sec. 1 (Sec. 13), page 8, lines 17 to 19, by striking out "or in any court" in line 17; all of line 18; and "of judges provided in section 11 (b)," in line 19

Amend Sec. 1 (Sec. 13), page 8, line 29, by striking out "or 11 (b)"

On the question,

Will the Convention agree to the Amendment?

DELEGATE RUTH. Mr. President, I will try to keep both my original presentation and summary to about five minutes.

This amendment basically removes the local option of appointment of your local county judges and would retain the election system of local judges as we now have it.

The judiciary is the third branch of government, is the defender of citizens' rights and liberties against encroachment by either the legislative or executive branch, as well as the arena for the settlement of disputes of citizens. It is in our local courts that issues affecting life, liberty and property of the people are first resolved, thus, the people should have the right to say how courts can best serve them, how they should be run, and who should administer justice on the people's behalf. It is the right of the people who are going to be judged to elect their judges.

I campaigned on this very issue and I can guarantee you, and even you Delegate Irvis, that the people from my county want to elect their judges. They do not want an option, they do not need an option. Certain pressure groups and blind editorial writers push a plan on the people they do not want.

The Philadelphia Inquirer late last week by editorial said the Pennsylvania Bar Plan removes judges from politics. I say to you delegates to take this with a grain of salt. This plan is the "Missouri Plan," that they would push on you, supposedly the panacea for the judiciary. The so-called reformers devised a new label and gave the "Missouri Plan" a misnomer, they called it the "Non-Partisan Merit Selection Plan," an idealistic and altruistic approach.

This is nothing more than labeling a plan by the results you hope it will achieve and then proceeding to sell it as a cure. This guise is more commonly known in the legal profession as pulling one's self up by his own bootstraps. Saying a thing is so does not make it so.

The appointment system does not eliminate politics, it only changes the battleground and the type of war to be fought on that battleground. It involves Bar Association politics and gives priority to the select few who have the ear or the rear of the appointing power, whether it be the Governor or the panel. In other words, palace politics or house of lords politics, and merit be hanged.

We came here to protect people's rights and not to take them away. The courts do not belong to the palace or house of lords. They belong to the people.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I am afraid I cannot top the last speaker, but I would like to speak on this.

At the time this was discussed in the judicial section, it was discussed at length and possibly covered the greater part of two days. I will not be granted the same privilege on this floor as I was in the committee. Nobody rang any bell and I do not want you to ring a bell, just raise your hands, the cows will not come home.

But truthfully, in taking out this selection panel and permitting the people of our trial court to be elected by the people only reaffirms what we know to be our Pennsylvania system. The Missouri Plan I will not spend too much time on, but you would be interested to know that this plan is not in effect in the State of Missouri, with the exception of one county, Jackson County, which contains Kansas City, one city, St. Louis, and it does not cover St. Louis County.

It came about because of a breakdown in law and order, not only of judges, but of district attorneys, sheriffs and police departments. It came about as a result of the terrible Union Station Massacre in 1934, in which it was found that all branches of the government, judicial, legislative, police, were fleecing the public. Missouri had only one way to go and they took this system.

Just within the past two weeks the Wall Street Journal, and I quote the Wall Street Journal, stated, "In St. Louis where the mayor now appoints municipal judges, the leader of Pipefitters Union," and I do not want any of the union fellows to get mad, "the leader of the Pipefitters Union has named the last several judges, even though this man is out on bail and awaiting trial."

The appointive system for trial court judges does not comport with what we understand is the best system yet devised. I would like to say to you that our judicial system in this State has been lambasted from one end of the State to the other for the past several years, perhaps in preparation for this Convention. Many untruths have been said. Charges were made but never proven, and they were proven to be groundless and unfounded. Those of us who have served in the Judiciary Committee say this to you, that in the section of incompatible judges and discipline and removal of judges we have given this Convention and the people of the State a chance to take care of their senile judges, their drunkards, their dullards, so that much of the evils that have been spoken about the judiciary system would be obviated by the right of any citizen who feels himself aggrieved to take his complaint ultimately to the Supreme Court of the State and see that that person is either disciplined or removed.

We in Pennsylvania, too, in the 1830s, and shortly thereafter, arrived at this point. Until the American Revolution, Mr. President, kings ruled and princes ordained judges. This was according to the 8th Chapter of Proverbs. But following the Revolution when we found that men did not rule by the divine right of kings and legislatures were made free, it took a number of years before those who were self-appointed and had all the goods and wherewithal of the Commonwealth to remove, perhaps, from their ranks those who were appointed as judges for life.

If you will just listen to me for a moment, please? In the 1830s this Commonwealth established the first public school system in the world. In the 1830s this Commonwealth established the principle that a workingman's wages would be free from garnishment. At the same time they protected the family by setting up the estate by the entireties in which a man's home could not be taken from him solely for his own debt.

They also promoted what had not been known in the United States and in the state, they finally approached a point where they had universal suffrage where workingmen, and others who did not, perhaps, have property, got to vote. Then they found out and they looked and said that we are not being judged by princes, we are revolted by the fact that a man can be appointed for life as a judge. They had their belly full of the midnight judges appointed by John Quincy Adams.

They had this picture, and in 1838 they elected their justices of the peace and in 1851 they then elected their judges, and they have done so for nearly 120 years. This is the Pennsylvania plan. This is a good plan.

What good is it to have a system of universal education to raise and train our men and women in our State

schools, our State universities, to live within the framework of Jefferson's dream for universal education, and then run into the gentlemen's agreement.

I told the committee that under no system devised by panel could I ever be a judge and I am 58 and I do not want to be a judge. I told the boys to forget about me, because I do not need it. I do not want to be a judge. I ran and was defeated, and I am still sore.

Truthfully, Mr. President, in my county we have not elected a Democratic judge since 1925, but I say this to you, that if you have any integrity, if you honestly look back and see, and read and remember the things you learned, this nation was based on the hope that a man given an equal start could rise as high as he would. This is all that I can ask. I am not asking this for myself, but for my children and my children's children, even if it means breaking into the garbage heaps. This nation has given men and women from common and low origins, who perhaps did not sit too well with those forces which rule our community and could only but serve on this panel. I am opposed to the gentlemen's agreement.

I say this to you. Take a look at Delegate Ruth's amendment, as he has lived with this thing for nearly a year, long before I came to the Convention. I ask you to read his statement. I am sorry he only took five minutes, and I want you to listen to him on the last five minutes.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. May I say to the Convention, we had the benefit of this eloquence before in the Judiciary Committee and I must say many were persuaded by the excellence of the argument. It was for that reason we did not provide for a panel to operate throughout the various districts, as such. We simply provided in each judicial district where there was a plebescite and the electors wished to have such a means of appointing their judges, instead of electing them, this would be done, and in those judicial districts where they chose to keep their present system of electing judges, this also shall be done.

PRESIDENT BRODERICK. The Chair recognizes Delegate Clinger.

DELEGATE CLINGER. I cannot hope to match the eloquence of Delegate Solomon. I do rise in support of the committee's proposal here and against the amendment. It seems to me the issue here is this, will we foreclose, perhaps forever, any possibility for change in the method of selection of judges which we now have in our judicial district, or are we going to be farsighted enough, as we have been in all of the other areas with which we have been concerned about in this Convention. Are we going to be farsighted enough to provide that measure of flexibility which it seems to me is the very crux touched on of a workable constitution.

I already indicated that I come from a rural Republican district and I admit I am a member of the Pennsylvania Bar Association. At the same time, this seems to be almost tantamount to admitting that one is a communist. I would hasten to add that I have never attended one of their meetings, and I do not think that I am any more a spokesman for them than Delegate Irvis or Orban. I am convinced in my district the people do elect good judges, they have elected good judges in the past and will continue to do so in the future, the reason being that they know their judges, they know their qualifications and they take a good deal of interest in them. They know them generally, personally. They have some measure of their character, of their leadership ability, and of their general judicial qualifications and they have some reasonable basis on which to elect their judges. I am sure this system will continue to be in effect in my district for some time to come.

I am by no means sure that the elective system will remain workable in my district, or other districts, 50 years or even 15 years from now. The fact is, we live in an era of population explosion, we live in an era of rapid urbanization, and it is entirely conceivable in my mind that in my very rural district, what is a very rural district now, we may become urbanized to the point where the people, the electorate, will not know these candidates for judges, will not know their qualifications and will not be able to intelligently vote on the best possible man for the office of judge. It is for this reason that I am unauthorably opposed to locking in. This is what we are saying we are going to do, we are going to lock in the elective method as the only method by which we can select our judges.

We are willing to say we trust the electorate in every other field, we have given them the referendum in almost every other field that we have entered into here, but we are saying here, if we adopt this amendment, that we are not willing to trust the electorate in this vital matter. As I have pointed out, the committee's approach is precisely the same as the approach utilized by the Committee on Local Government in the matter of optional forms of local government. The change will only occur by the people. The elective system will continue unless and until changed by the people, not by the Governor, not by the Legislature, not by the Bar Association and not by the politicians, but by the people.

I submit to you, that this change will only occur when the people themselves are in a position where they cannot vote intelligently and do not know the qualifications of their candidates for judges. I suggest to you at that point change should occur; otherwise it seems to me we begin to play Russian roulette with our judicial system. Throughout this Convention we have said time and time again that we should entrust the people to chart their own destiny in the century that lies ahead.

Time and time again we have provided the means by which they can charter this destiny. I certainly hope we are going to be consistent in this vital area and provide them with this option for change. It is not going to occur overnight or next year. It is giving them the same choice that they have in the other areas we have dealt with here.

While I am on the subject of people, I would like to say one other thing here. This is on another theme that has been echoed continually in this hall over the past two months. We are going to have to go to the people with a constitution which we can sell and which they are going to buy. I could not agree with this more, but I want to point out, whether we like it or not, the Pennsylvania Bar Association is people, the League of Women Voters is people, and it was these people who went out and sold the rest of the people on calling this Convention in the first place.

I very much doubt whether we would be here had

not these interested and concerned people gone out and convinced the people to call this Convention, in the first place. I suggest to you that we are going to need their help in selling our work or in getting the people to approve our work come April 23rd. I doubt very much if help is going to be forthcoming if we lock in the only system, the system which we now have, and provide no possibility for change in the future, or if we change to a system which will permit political tampering with the judiciary any more than now exists.

One final point: This was a close vote in our committee. It was a razor thin vote. It is also true that after this proposal was accepted by the committee, those who are arguing, many of those in the Judiciary Committee, who would now like to rip it out of our proposal, tried on at least five different occasions to rip out this provision in committee and failed on every occasion. I ask you, think very carefully before you repudiate the committee on this matter. I would remind you, you have not overturned any other committee on a major issue which has been recommended to you by that committee. I think, on the contrary, in almost every area you have expressed your confidence both in debate and in your voting for the recommendations of the committee. This particular issue is one of three major issues in the judiciary article. You have already approved in substance the committee recommendation on the other two major issues. I assure you, this issue received just as much, in fact, more consideration, and detailed and thoughtful study than the other two.

I would beg you, I would implore you, that the Committee is deserving of your support in this area and I urge you to defeat this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caputo.

DELEGATE CAPUTO. Mr. President, I rise in support of the amendment. I adopt by reference the arguments and debates presented by Delegates Henderson, Ruth and Solomon. I, too, am a victim of the election processes.

Two years ago, a little over two years ago, I was defeated in a Democratic county by the electorate of Beaver County for the office of judgeship. I am not speaking because of my own personal failings, but because the people have a right to vote for offices, for candidates. Since I went to school, and throughout my career in politics, in this very assembly room and other places, I have been told and taught that the right of the people to vote is sacred. I have been told that we should make it easy for the people to vote and not place obstruction in their path.

I had the privilege during my career in this legislative hall to help to abolish the requirement of poll tax for voters in Pennsylvania, because that made second class citizens out of those people, people who could not afford to pay the tax.

Therefore, throughout my life, I have supported any movement which helped the voters to gain the right to vote, and not to deprive them of that right.

We have three branches of government and they are all supposed to be separate and apart. We vote for President of the United States and I am sure most of us do not know the candidates personally. We vote for congressmen and we do not know them personally. We vote for senators and we do not know them personally. We vote for governors and we do not know them personally. Now they tell us we are not qualified to vote for a judge because we are not personally familiar with those candidates.

I say that is not true and I say, furthermore, the people of Pennsylvania, the people of my county, are good enough to vote for me, and they should be good enough and smart enough to vote for a judge locally.

In the matter of retention of judges, we are proceeding closer and closer to the Russian philosophy, do not permit the people to vote for two candidates, or three, or four; do not permit them to have a choice but listen to them. You either vote for the man on the ballot or you do not vote at all, and that is the effect of the retention provision of the article.

Last week we saw the results of the Local Government Committee reports. In many instances we have given the people back home the right to vote on certain features of that article. We come back here today and say to them, "Yes, you may vote for annexation, you may vote for a president, you may vote for a governor, but you cannot vote for a judge because you are not qualified."

Are the people of Pennsylvania to allow the proposal of the Pennsylvania Bar Association, an unofficial organization not representing all of the lawyers of Pennsylvania, but only a small portion of the lawyers? I say to you people here, we ought not to deprive the people of a right to vote under any circumstances. As a matter of fact, we should increase their right to select the people, because they are the government. We should not permit anyone to deprive them of the consent to be governed.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sprogell.

DELEGATE SPROGELL. I would like to look, just look, at the concept which we have before us when we say we have an option and try and see clearly what this option is and how it differs from what we have now if the people were to select a selection commission.

You may be interested to know that at the appellate level, at least half of the judges who are there now were not primarily elected, were not first elected, they were appointed. The Governor appoints these men and I think there is something to be looked at when he has to go back to the Senate for approval. From what I can gather, there are at times reciprocal backtracking, which is not always advisable. Even when the Governor does appoint under our present system, I believe there or in a direct election, very often it can be the committee chairman who chooses or passes upon the selection of a candidate to come before the public, and sometimes I think that he confuses the value of votes with the value of quality.

It is also very possible under our present situation for a judge to be swept out of office in a strong national election, which I think is very unfortunate, and we know this has happened before and will happen again if we continue this way.

I have also heard a great deal about the backlog of cases, and I think there is plenty to do for our judges to continue with their work, instead of electioneering, particularly on a statewide basis where they have to go all over the entire State.

Under our Proposal No. 7 they must come back to the public for your vote as to whether their record has been

good or not, and I think this is placing back in the hands of the public their ability to choose and select.

I was very interested in what Governor Scranton said to our committee. When he was Governor, he appointed a small panel and asked them to give him a list of names. He chose from these names and they were, I think, outstanding men, and I would like at some point to have Governor Scranton comment upon this a little further.

PRESIDENT BRODERICK. The Chair recognizes Secretary Michener.

DELEGATE MICHENER. I have been very impressed by the splendid oratory of Delegates Solomon and Caputo, but I have not been too impressed by their logic.

They speak of preserving a democratic right when, indeed, they are speaking to a point of denying a democratic right, that is the right of free choice. I think this should be kept in mind as this flood of oratory envelopes us.

The burden of their argument is that although we have now what we want and they have what they want, do not forget them. They are not pleading for something, they are pleading to keep something from the rest of the people. They say we have what we want, but we do not want you to have a free choice in judging that. They do not want you to have a free choice in assessing it in the future. They do not want you to have a free choice by referendum to approve the system 40 years from now when other developments may have taken place, so I think in all fairness one must question the logic of these appeals.

I think, also, one should recall my experience with the election system of judges. If my memory is not faulty, I may have missed some elections, I cannot remember in my adult life ever having voted for a judge of the common pleas court. In every instance that I can recall a vacancy has occurred and with some wonderful political shenanigans in which I have often taken part—and I can tell you precisely how the last three judges got on my bench, it was in a part I had participated in—has appointed a judge. We never voted on it. Then, after he has been on the bench for a while, we have a sitting judge principle who runs on both tickets and he is elected automatically. There has never been an election in Bucks County that I am aware of in recent years. We have gotten some splendid judges by the appointment method. I think the third from the last one is an interesting case in point. The Chairman of the Republican Party who was also the District Attorney and dissident Democrat brought charges against the Democratic County Chairman who was then hauled into Court and tried by the Republican County Chairman, a beautiful example of real Pennsylvania politics in action. We kept a very close watch on the Chairman of the Republican Party and he handled himself admirably in this case.

Governor Lawrence was the principal character witness and I was the No. 2 character witness, and we watched them with a magnifying glass. This man behaved admirably. When the trial was through and we got our Democratic boy off by the skin of his teeth, thanks in part because he did have a completely honest and fair trial, when the next vacancy came up, some of us got together and said that it has got to be a Republican. We cannot do any bettter than the Chairman of the Republican Party, so up he went.

I had a dear friend who had run with me for office as a Democrat, the only reason he did was we could not get any Democrat to run for the office. We made a deal if they got two, we would get one. This marvelous young friend of mine was promoted to the bench by this system. Since we have been here in session, a fellow I used to play basketball with in high school and one of the best Republicans we have in Bucks County, he was elevated to the bench. I do not know what the agreement was on this, but even with the election system we are talking about so seriously here I would venture to say that not 50 per cent of the common pleas judges of Pennsylvania are elected, they are appointed by precisely the process that is given here as an alternative, except that the Governor does not have an advantage of a selection committee, he has the advantage of whatever deal has been worked out by the Republican Party and the Democratic Party at the local level and, by and large, we have done a very good job on this and I agree with Delegate Solomon that we have a fine judicial system in Pennsylvania.

To plead that this is a system of election, does not make any sense to me. I am perfectly willing to see it continue as it is, but I do believe, Mr. President, that there should be this option of a referendum at some future date.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. Chairman, I do not speak for or against this amendment. I have put in and I believe there is being reproduced an amendment to this amendment which has been accepted by the sponsor of the amendment itself, and I think from what I can gather in this Convention, it will generally receive the approbation of the House.

The point of the amendment to the amendment is to cover the situation that is not covered in the amendment itself, and that is how is an interim appointment filled. The thrust of my amendment is to have the interim appointment filled by the Governor, with the advice and consent of two-thirds of the Senate, for and during the period until the next municipal election.

I do not know whether that has been distributed yet or not. I ask the Chair to discern whether it has.

PRESIDENT BRODERICK. I understand the amendment to the amendment that you are now offering has been prepared. It will be distributed and I am asking the clerk to read the amendment to the amendment and we will have a debate and discussion which should be confined to the amendment to the amendment, because we are going to have to vote on that first.

DELEGATE RUTH. I want to clarify that point if I may as sponsor. If I accept it, at least, at this time, is it my understanding that the amendment to the amendment can be voted on separately first before my full amendment?

PRESIDENT BRODERICK. The amendment to the amendment has to be voted on separately first before your amendment.

O'DONNELL AMENDMENT TO COMMITTEE PROPOSAL No. 7

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Ruth to Committee Proposal No. 7?

DELEGATE O'DONNELL offered the following amendment to the amendment offered by Delegate Ruth:

Amend the Amendments by inserting between lines 6 and 7:

Amend Sec. 1 (Sec. 11), page 5, line 30, by inserting after "of": two-thirds of

On the question,

Will the Convention agree to the amendment to the amendment?

PRESIDENT BRODERICK. Delegate O'Donnell, do you wish to speak on your amendment to the amendment which we are going to vote on first?

DELEGATE O'DONNELL. I do not think it requires extensive discussion. The present Constitution calls for filling an interim appointment and the judge to run for election if the municipal election follows two months later. There is language elsewhere in Committee Proposal No. 7 that changes that period to 10 months obviously because the two months language contemplated that period of time when we had a fall primary, as well as a fall general election.

We now have a spring primary and the interim appointment would have to be at least 10 months before the municipal election requires a judge to run then.

In addition to that, the present Constitution calls for confirmation by two-thirds of the Senate, if they are in session. However, a more recent amendment to the Pennsylvania Constitution says in effect, that the Senate is never out of session, that it merely recesses and adjourns.

Consequently, the effect of this amendment will be solely to make clear that there is no constitutional change in the requirement that confirmation be by two-thirds of the Senate. That is all it is.

PRESIDENT BRODERICK. Does anyone wish to be heard?

DELEGATE O'DONNELL. Delegate Butera indicated to me it is not printed properly and I am not sure. I will have to look at it.

PRESIDENT BRODERICK. It is an amendment to an amendment.

DELEGATE O'DONNELL. It is all right. If you take your original Ruth amendment and go down to line 6, and then put in as an insert there between lines 6 and 7 just what it says and add to that language, "Amend Section 1, Section 11, page 5, line 30, by inserting after "of" the words "two-thirds of." That means if you go back to the proposal itself the interim appointment is filled with the advice and consent of two-thirds of the Senate.

PRESIDENT BRODERICK. Are we ready for the question in connection with the amendment to the amendment? Apparently we are. I will ask the clerk to unlock the voting machine. The question is, will Convention agree to the amendment to the amendment being offered by Delegate O'Donnell? All those voting yea, will vote in favor of the amendment to the amendment, and those voting nay, will reject the amendment to the amendment.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth. For what purpose does the gentleman rise?

DELEGATE RUTH. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE RUTH. Point of inquiry. If my amendment now, as I see it, should fail as amended, will I have the opportunity to present my amendment without the O'Donnell amendment?

PRESIDENT BRODERICK. No. I am advised by the Parliamentarian the answer to that is "no," except by a vote to reconsider.

The question recurs,

Will the Convention agree to the amendment to the Ruth amendment offered by Delegate O'Donnell?

The roll was recorded as follows:

YEAS—88

Aberman	Fawcett	Lee, K.	Scales
Allison	Fay	Levin	Shapiro
Baldus	Filson	Markley	Shettig
Baldwin	Fineman	Mattioni	Shively
Banes	Fleming	McGlynn	Shoemaker
Barron	Fohl	Michael	Shrager
Barry	Fortney	Michener	Silverman
Bashoff	Gabreski	Moorhead	Solomon
Brennan	Gehrlein	Murray	Sprogell
Broderick	Gerber	Nelson	Stout
Brown	Goldman	O'Donnell	Stroup
Butera	Gouger	Orban	Swope
Camardella	Henderson	Orbin	Tate
Caputo	Heyburn	Otto	Thornburgh
Casey	Irvis	Popil	Tully
Cosetti	Jirolamio	Powell	Van Sant
Croop	Johnson	Prendergast	Waldron
Cunningham	Kauffman	Quiles	Warman
Curran	Keller, J.	Redick	Welsh
Dailey	Keller, M.	Richter	Westerberg
Desmond	King	Roberts	Wilmarth
Dumbauld	Kline	Ruth	Woodring

NAYS—59

Amsterdam	Cortese	Kelly	Reynolds
Aurentz	Devlin	Krill	Rovner
Baldrige	Erwin	Lee, L.	Sahli
Benedict	Feather	Leinbach	Scarlett
Benfield	Forster	Leonard	Scott
Bloom	Goldstein	Mangery	Scranton
Braham	Griffith	McGeary	Sebastian
Buck	Hannum	Meyer	Sharp
Bunting	Harding	Miller, D.	Strickler
Burkholder	Hatter	Miller, R.	Thomson
Cain	Himes	Morton	Tomascik
Clark	Hocker	Pasquerilla	Whittum
Clinger	Hook	Pelletier	Wilcox
Conley	Horne	Pott	Woodside
Corey	Huggins	Rea	

NOT VOTING—16

Bagenstose	Fagan	Laputka	Musselman
Caron	Gray	Leach	Pechan
Donaldson	Hosteller	Manderino	Percey
Donolow	Lane	More	Rappaport

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis. For what purpose does the gentleman rise?

DELEGATE IRVIS. I rise to a point of information.

Mr. President, I trust that I am accurate in this analysis and, if I am not, would Delegate Ruth correct me. The amendment as we have it before us, I believe, does not address itself to the question of the judicial qualification commission as far as statewide offices are concerned, is that correct?

DELEGATE RUTH. That is correct.

DELEGATE IRVIS. As far as your amendment is concerned, it would leave the recommendations of the judiciary committee intact as far as statewide judges are concerned?

DELEGATE RUTH. I am not trying to attack that problem.

DELEGATE IRVIS. Mr. President, I have been at this microphone many times in the last several days saying the same thing, that I am going to say again today. Authority originally existed among the human tribes in the man who was the strongest, the most agile, and sometimes the most brutal. He was both executive, judiciary and legislative. It has taken many, many generations and many thousands of years to evolve the present day system of democracy and I am convinced it is still evolving.

There are many of us who talk about a republican form of government. The republican form of government was made necessary only because the people in the large democracy were not able to communicate rapidly with one another. We sent representatives to Washington and Harrisburg only because the people themselves cannot at this point of development of human communication be heard from instantly.

The time will come when the people of this country and, perhaps, indeed, the people of the world will be able to voice electronically their opinions on major decisions which affect them. When that day comes, true democracy would have finally evolved.

The proposal of the committee here is a backward step, it is a step backward into the age of kings. It says, in effect, there are certain selected human beings who know better what is right for the rest of humanity than the rest of the humanity knows for itself. I decry that position and deny it. I am in favor of the election of the executive. I am in favor of the election of the Legislature and I am in favor of the election of the judiciary. I quite agree with the learned Secretary. I, too, know in a lesser degree than he, of course, how some of the judges get on the bench. The system does not always work the way it is in the books but that does not deny the basic democracy of the system. The fact that men may corrupt it does not deny the basic usefulness of the system.

We are here deciding today one of the basic questions of all mankind. Shall men govern themselves? And you cannot logically ask a man the question, do you wish to be a slave or do you wish to be free? There is no logic in a question like that, and that is what the option plan does. It says, in effect, are you willing to vote away your democratic right to select the people who shall judge you? If 51 per cent of the people say "yes," 49 per cent must submit. I say this is wrong. This is not an option which we have a right to offer. It is immoral for us to offer such an option to the people. The people have spoken a long time ago before the advent of this country. They have stated without equivocation that they mean to govern themselves and they mean to elect their executive leader. They mean to elect the men who pass their laws and elect the men who sit in judgment on them. It is for this reason I rise today to support this amendment and I will support the amendment for statewide election of statewide jurists. However, this is the amendment before us. Let us not deny to the people the right which they over long and bloody centuries have won, and that is the right to select their judges. This is their human right and we have no right here today to even tamper with it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bunting.

DELEGATE BUNTING. Mr. President, after hearing Delegate Irvis, I am having a difficult time in getting to my starting place on what I had intended to say, because we are not asking the people to abdicate their voice in the ultimate judicial system.

The possible panel selection, which will be preserved for their adoption, would be composed as to its majority by people appointed by the Governor whom the people elect. Where I feel Delegate Irvis is overlooking a most essential form of our system of justice, is its dedication to the proposition that justice shall be impartial, it shall not be a matter of satisfying the majority. The unpopular cause, the communist, the rapist, he deserves the same due process before the bench of the court as any litigant and, if he does not have it, none of us do.

Justice wears a blindfold, in order to establish that justice is impartial. Delegate Irvis has talked about kings, and I call the delegates' attention, if I may, to the book of Deuteronomy, the book of Moses in the Old Testament where the charge was, "I charge you judges, hear the causes between your brother and judge righteously between every man and his brother and the stranger that is with you, ye shall not respect persons in judgment. You shall hear the small as well as the great." I do not mean to say that the Lord is on my side and not on Delegate Irvis', because, if that be the case, I would be the first casualty.

I do say this comes to us over the ages, and this is the fundamental concept in our law, impartiality. I firmly believe that the merit panel selection which is intended by the Committee to be preserved to the people affords justice the means of maintaining that blindfold in place. I say we must make every effort to insulate, to protect our judges from political pressures. We must demand this immunity for our judges. The merit selection is just one step in maintaining that blindfold and in preventing partisan political pressures from pecking away at it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michael.

DELEGATE MICHAEL. Mr. President, I would like to elaborate a bit on the point Delegate Bunting brought out. I think we have been carried away with the idea of the will of the majority and we are applying it to all three branches, legislative, executive and judicial.

Delegate Bunting first brought out the idea of impartiality of justice. I think the second point that should be brought out concerning justice is that it does not necessarily reflect the will of the majority.

Because a judge makes an unpopular decision, we do not turn him out, as we can turn out the legislature because we want a change in policy. His decision may be unpopular, but if he is upholding and deciding fairly on an unpopular law, you turn out the legislature and get a change, you do not turn out the judge to get a change.

Let me be specific here. We are upholding the rights of individuals, many times the right of the minority. I can use two examples: First, Delegate Bunting mentioned Communist. If we can go back to the Joe McCarthy era when there was thought of Communists, every one a suspect of being a Communist, there we had to rely on the courts to protect the individual. We can turn out the legislature and have them set up different laws on the regulation of the Communist Party, but we cannot just turn

out the courts because they make a decision that may be unpopular with the majority but does protect an individual. Let us go up and look at a Supreme Court decision on prayers in schools. If that court, or the judges of that court, were put up for popular election right after that decision, they probably would have been defeated because of the reaction of the majority of the people at the time the decision was handed down with regard to the prayer in schools. That court was upholding a principle stated in the Constitution of the United States in the First Amendment on Freedom of Religion.

The court should not be subject to the pressures of either politicians or waves of public enthusiasm to bend its decisions. It should, on the other hand, be upholding the rights that are stated in our Constitution. It should uphold the laws that are passed by our Legislature, there is the place we make the changes. You say what difference is this going to be. We still can reject or accept a judge after he has been appointed, two or three years after, when he comes up for approval or for rejection.

Let me point out one basic difference in this system from the popular election system. In the popular election system, suppose a judge has made a decision in favor of an individual, at this time, for example, we will take the present Vietnam war and the predominant public feeling that he has made it against it. The party in power, and I am looking forward to the presidential elections of 1968, may be changed because of popular feeling concerning the conduct of the Vietnam war. If the judge is up at that time, under the present system he will be turned out with the party that is turned out, not on the merits of whether he has done a good job as a judge or not.

Under the system that is proposed both as a local option in the counties and statewide, a judge is put up without a party designation to run on his record two or three years after he has been chosen. You as voters can say, yes, we like the way he is doing his job, or, no, we do not like the way he is doing his job. He is not going to be pushed out on the wave of party pressure, he will not go out with the Republican Party if it goes out or go out with the Democratic Party if it goes out because he is running on a party label and has been elected on a party basis.

I think this is something we have to consider very seriously when we are talking in terms of the role of the judicial system in our government. That role is very important in upholding the law, in protecting individuals and protecting minorities.

The second point I make is this, that we have to go back to the voters. One of the primary things that the reform organization in this State campaigned on was reform of the judiciary.

One of the primary arguments they used was that we should have a merit selection and put it to the voters for adoption or rejection of a particular judge without a party label. If we are considering the people who sold the Convention and now have to go out and sell the Constitution, we have to think in terms of the Chamber of Commerce, the JCs, the League of Women Voters, and the American Association of University Women. These organizations feel that it is important that our judiciary be just as fair and selected in just as proficient a manner as we can be. I think we should consider that point also when we are making our decision here as to whether to offer the voters an option on the local level, and whether on a statewide level to offer them a merit system.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, I would like to make one small point and it is particularly to my dear friend, Secretary Michener, and that is that I do not care what kind of system or what kind of a deal Bucks County may have once their judges are appointed. The nub of the question is that even though they may have a deal and even though they may come up with a Republican or Democrat, or have some formula for splitting their bench, the fact is that every single person who meets the qualifications for the Judiciary, has a right to circulate his nominating petition and file the same and submit his name to the voters of that judicial district, and that is the point. No matter how big or small, how stupid or how brilliant you are, you still have the ultimate right to have the voters confirm or disaffirm your suspicions. When the day comes that every man who is practicing law no longer has that right, it is a sad, sad comment and a sad, sad day.

I think it should be pointed out that insofar as our Committee is concerned, this particular provision had an interesting history and the history is, first of all, there was no option. Then the option got put in and then the option was tried to be taken out and, as was said by Chairman Amsterdam, it lost by a razor thin majority.

It is a fact, and I am sure everyone knows it, that this was a very contentious point in the Judiciary Committee and, as was said, it was never taken out and that is why it is in.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, not being a learned man, I can only speak about the things that I have seen happen in history in my lifetime.

I want to say to anyone in this room, yes, I was a politician for a lot of years. I would not have given it up for anything in the world, but each time I ran—and I ran 11 times—I won, but I never quarreled with the right of another man to file against me and pick me apart before the voters. If you are this weak, then you better stay out of politics and you also better stay out of the court, it does not matter how you get on there.

I want you to know that the rights of the minority in this State and in the United States are upheld by the right of the electorate, not only to elect, but to submit names by petition at election time, and then let the chips fall where they will. Let the electorate go after it.

Nothing hurts me more in the world than when I drive to Florida and pass four or five signs along the road that say, "Impeach Earl Warren." It is a most difficult task. I do not know anything bad about Mr. Warren, but someone evidently does or he would not have put those signs up along the road. I do not even know the gentleman, but in my lifetime I saw the Supreme Court of the United States packed, and packed for a reason, and they made no bones about it. They said, "We are going to pack the court so we can do the things that we want done." I think that has been done in the United States, and I dread to think of the day that that could ever happen in Pennsylvania.

I want them to go before the electorate. I am like that young man over there who I think has the right to approach the bench. I cannot approach the bench and, after you people get through here, I do not think I can even be

a JP, but if you want to change the JP system—and there are some wrongs in it—good, do it. If you want to change some other things that are wrong, you do it, but do not ever take away from the people the right to elect their peers.

We left the mother country because we did not believe in breeding for blood lines. We believed in breeding people that could come up by their boot straps, immigrants, whoever they are. The people should have a right to file a petition and they do not have to bow down to a supreme body who is chosen to pick them. Are we right? Are they ready to go on the bench?

Mr. President, we are as political in Dauphin County as we can be without going to jail, but I have never known in my lifetime a bad judge in Dauphin County, never. We got a man right here in this Convention who came to the common pleas court in Dauphin County as a very young man. In fact, when he came into the hall of the House, they told him to grow a mustache or nobody would listen to him. That is how young he was. He went on to common pleas court, and I will guarantee you, if you had a system like this, Bob Woodside would have never been chosen from over Peters Mountain to serve on the common pleas court. He served and he served well.

Mr. President, if you do not do anything else in this Convention and, if you want to save what you are trying to do here, the things that are wrong, do not butcher it up with what you are trying to put in here. The right of the people to choose and pick their peers and the right of any man to file a petition to run for judge, if he has the ability.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sharp.

DELEGATE SHARP. Mr. President, it has been suggested by Delegate Irvis only a very few moments ago that one of the most fundamental sociological rights of man is man's right to be judged, and with this I heartily agree. There is no question that this is fundamental. This is the precept to which we who are members of the Bar have dedicated our lives and our professional talents but that is not the issue before this body today. The issue before this body by this amendment is whether the people shall select their judges in only one way, in perpetuity, and that of election. This is the issue that is raised by Delegate Ruth's amendment.

A great deal of that which Delegate Hocker so eloquently said a few minutes ago, I subscribe to heartily. I would not wish at any time to see this body, or any other body, take away from the people the right to select their peers, nor would I any the less wish to see it take away their right to choose those that shall judge them.

Mr. President, I wonder whether the opponents of this committee proposal, the supporters of the amendment, are really being honest with this. On the one hand, they say to us that we must give the people the right to elect their peers, and yet, on the other hand, they say, but the only right we will give the people is to elect their judges, we will not accord them the right to decide for themselves whether they should wish to elect or whether they should wish to choose another system.

I would say that the issue posed here is one which is vital and most fundamental to our rights as citizens of this Commonwealth, but, by the same token, I would not be so presumptuous as to believe that the people do not have the right to choose for themselves, whether they should desire to continue electing judges or whether they should desire to employ another method.

How can we in intellectual honesty with each other, state that the people shall have the right in this Commonwealth to change the very form of government itself which has existed for much greater period than the 1830s referred to so eloquently by Delegate Solomon? How can we say the people are sufficiently sophisticated that they may choose home rule if they wish, that they may choose area government in the variety and styles and sizes that they so desire, that they may exercise rights of optional government in such manner as they please, but at the same time say that you must continue to select your judges as they have been selected for the past 175 years in Pennsylvania? I say this is not an expression of our confidence in the people of this Commonwealth. I say this is not concommitant with the principles which I have heard so loudly on this floor as the faith in the people of this Commonwealth.

The issue, Mr. President, is not that we are denying anything to the electorate of this Commonwealth by the committee proposal, for the committee proposal gives to the people the right to either continue election or to use the alternate method.

I believe it was Justice Holmes that said, "The life of law is not logic but experience."

I cannot be so wise. I cannot be so honest as to look forward 40 years from now, 50 years from now, 60 years from now, and say a judicial district in Pennsylvania would not be better in itself if it chose another method rather than election, and yet at the same time I would have no quarrel if that district decided to continue election for the next 200 years.

Let us have faith in the people who sent us. I would take nothing from them. I would, however, grant them the right to determine their own destinies in regard to those whom they wish to judge them.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. Mr. President, two of the previous speakers have mentioned my home county of Bucks, and I would like to mention it, also.

Our esteemed Secretary outlined the procedure of selecting judges in Bucks County. That procedure is no different than in any other county throughout this Commonwealth.

What I would like to ask the esteemed Secretary is, have we gotten bad judges from this system? Have we gotten judges that should not be judges from a system of election as a sitting judge principle? Furthermore, to bring his memory up to date, if you will recall in 1956 there was an election of judges. Although I come from a Republican County, a Democrat became judge in a race with the Republican.

I say that opportunity should remain, and I support this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. In starting my remarks, I want to say a few things. I came down here as a delegate not only to represent Washington County and Greene County, but to represent the people of the State of Pennsylva-

nia. I came down here to reform, and by reform I mean to revise the four articles for which we were elected.

I did not speak too much, nor did I offer any amendments whatsoever to the three first articles, because I felt very sincerely that those with the political know-how knew more than I did by coming down here and making a hurried study in the period of two months and a half. I felt they were better qualified to talk on these particular subjects and know what reforms should be made. I voted for all of the reform measures that were offered that might be for the betterment and the revision of these particular articles.

The remarks that I make in my talk right now are not derogatory to the politicians, but in favor of the politicians in their own field. I favor politics because my best and closest relative is what is commonly known as a politician, has been for a great number of years, so, therefore, I would not say anything in derogation of politics in American government or in the State of Pennsylvania.

I have had something close to my heart and I speak from my heart and I speak from my own conscience, not from anybody else's conscience or anybody else's heart, and I speak to this delegation not derogatory, but in the sense of trying to help them come to some conclusions here in this judicial article.

In the first place, I am a realist, because a realist always knows and takes people for what they are. I realize, No. 1, that everyone here, with few exceptions, were put on a party ballot either Republican or Democratic and they were elected on that party ballot. They were put there, and I realize this. I was put there, too, and I do not segregate myself from any of the rest of the delegates. I was put there by the political leaders of our county. However, I am not bound to those political leaders whenever it comes to judicial reform. Therefore, I am speaking only as an individual.

I believe that I have worked in the vineyards of the judiciary for the past 45 years. I have seen many changes in this time, I have seen many reforms in this time. I realize all of us think in terms of our provincialism, our own judicial district, and we feel if it is good enough in our judicial district, it ought to be good enough in the whole State of Pennsylvania. I take the broad view in this matter. I think what is good for all of the people of Pennsylvania, both Republicans and Democrats, is good for my people in Washington County and Greene County.

I am here for one purpose, and I am only speaking for one purpose, that is to get better qualified judges in the judicial system. Not mainly for the present, but for the future. Now, let us get at it.

I hate to do this, but I know that you all know the procedures that are followed in politics. What are the qualifications of a judge that is going to be picked by the political heads of that particular judicial district? No. 1, does he make a good appearance before the public? No. 2, is he a friendly person and can he make friends quickly? No. 3, what has he done for the party and does he deserve this elevation for the work he has done politically? No. 4, is he financially able to contribute money to the campaign, and how much? And is he going to be a good campaigner and is he going to win? Those are the qualifications that they usually look for when they select judges.

When they say that the people select judges, the people do not select the judges that run for the parties. The party heads of that particular judicial district pick those people and you do not make an application to become a judge. They pick you, usually on the general qualifications that I have outlined. They are picked by the few and they are picked by the political leaders, and they are the ones that either win or lose in a campaign. Both parties are on an equal basis in this.

If you will note the qualifications under our present system for the selection of judges, there is not mentioned a very important fact: Does the candidate have judicial temperament? This is never mentioned in any campaign as the politician does not know, nor does he usually care, whether or not the candidate does have judicial temperament.

However, to get down to the facts of the case—this is the main question—do you want the political heads of the two-party system to choose your judges, or do you want a qualified commission which will deal with the lawyers? Some of them are lawyers and they know whether or not he has judicial temperament or will make a better judge? Do you want them to select those people and let the Governor choose from the qualified selected group that is given to him? I believe if you do that, in the long run, in accordance with my own experience, we will have better qualified judges for the future.

I want to call this to your attention, have you noticed the great decay in the moral concepts and in the respect of the court, and the respect of lawyers and the respect of our own government in the young people today? We must protect the judicial system, and I think the only way we can protect the judicial system, in my honest opinion, is by the merit system. Call it what you may, if there is a better system to get better judges for the future, I will be for it.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Lee.

MOTION TO TABLE RUTH AMENDMENT

DELEGATE L. B. LEE. Mr. President, it is my humble opinion that we have the cart before the horse at this instant. The Kauffman amendment provides the method of selection for statewide judges and, as such, the option discussed in the Ruth amendment.

Therefore, Mr. President, I move we table the Ruth amendment and consider Mr. Kauffman's amendment first.

PRESIDENT BRODERICK. Has your motion been seconded?

DELEGATE SOLOMON. There was no second to the motion. I would like to speak.

PRESIDENT BRODERICK. I saw Mrs. Sprogell's hand go up.

DELEGATE SOLOMON. I do not think she meant it.

PRESIDENT BRODERICK. Did you second the motion?

DELEGATE SPROGELL. Yes.

PRESIDENT BRODERICK. Moved by Delegate Lee, and seconded by Delegate Sprogell that we table the Ruth amendment until we have considered the Kauffman amendment.

I see Delegate Scranton. I understand this is not debatable.

DELEGATE SCRANTON. I do not want to debate it. May I give an experience of the Committee?

PRESIDENT BRODERICK. Does the Chair hear any objection to that?

On the question,
Will the Convention agree to the motion?
The motion was not agreed to.

The question recurs,
Will the Convention agree to table the Ruth amendment until the Kauffman amendment has been considered?

The roll was recorded as follows:

YEAS—26

Barron	Cosetti	Rea	Tate
Broderick	Forster	Richter	Thomson
Buck	Goldstein	Scranton	Thornburgh
Bunting	Hannum	Sprogell	Tomaselk
Burkholder	Lee, L.	Stout	Whittum
Clinger	Leinbach	Strickler	Wilcox
Corey	Morton		

NAYS—109

Aberman	Devlin	Keller, J.	Rappaport
Allison	Dumbauld	Kelly	Redlek
Amsterdam	Erwin	King	Reynolds
Aurentz	Fay	Kline	Rovner
Baldrige	Feather	Krill	Ruth
Baldus	Filson	Laputka	Sahli
Baldwin	Fineman	Leach	Scale
Banes	Fleming	Markley	Scarlett
Barry	Fohl	McGeary	Scott
Bashoff	Fortney	McGlynn	Sebastian
Benedict	Gabreski	Meyer	Shapiro
Benfield	Gehrlein	Michael	Sharp
Bloom	Gerber	Michener	Shettig
Braham	Gouger	Miller, D.	Shively
Brennan	Griffith	Miller, R.	Shoemaker
Brown	Harding	Moorhead	Shrager
Butera	Hatter	Murray	Silverman
Cain	Henderson	Nelson	Solomon
Camardella	Heyburn	O'Donnell	Swope
Caputo	Hocker	Orban	Tully
Casey	Hook	Orbin	Van Sant
Clark	Horne	Otto	Waldron
Conley	Huggins	Pasquerilla	Warman
Cortese	Irvis	Pelletier	Welsh
Croop	Jirolanio	Popil	Westerberg
Curran	Johnson	Powell	Wilmarth
Dailey	Kauffman	Prendergast	Woodside
Desmond			

NOT VOTING—28

Bagenstose	Goldman	Leonard	Pechan
Caron	Gray	Levin	Percey
Cunningham	Himes	Manderino	Pott
Donaldson	Hostetler	Mangery	Quiles
Donolow	Keller, M.	Mattioni	Roberts
Fagan	Lane	More	Stroup
Fawcett	Lee, K.	Musselman	Woodring

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion to table was not agreed to.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Henderson.

DELEGATE HENDERSON. I have not spoken on the amendment. I spoke as a prelude to discussion.

Our democratic form of government calls for the people's voice and also their choice in all three areas of government. If we change from the elective process to the selective process, then we change this democratic form of government. Let us not transplant a philosophy from another state. Missouri's problems belong to Missouri, and not to Pennsylvania.

I say this, who shall judge the panel? Who shall determine the qualifications? These are questions that disturb me. If we begin to select judges by the panel process, then the next step we shall select our legislators by the panel process, and then our administrators, and then we have an autocracy and not a democracy. Why should the people suffer with an individual who serves as a judge for the first two years on a trial basis when they really did not have the chance to actually select this judge?

I say this, Delegate Bloom's comments concerning the qaulifications of judges may pertain to Washington County, but they do not pertain to Beaver County. We have a history from 1776 of elected judges, and they stood on their merits. Never has the Supreme Court questioned any of their decisions. I say this applies to the whole Commonwealth of Pennsylvania. The elective process is part of our democratic heritage and, if we change this heritage, then we are changing democracy.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I sat here and listened to this discussion and I was not going to rise, but, being the son of a former judge who served the Commonwealth of Pennsylvania for a period in excess of 20 years, I felt I should reiterate some of the points that I have discussed with my father and point out some of his thinking on this present subject.

In answer to Delegate Henderson, I would like to state that Judge Scalera and Judge Riley were both originally appointed in your county. I think you remember this, it was within the last two years. I think this perfectly well shows some of the problems we have. I think these two gentlemen are exceptionally good judges. I think they were appointed by the Governor and they were elected, and I think these two gentlemen are very exceptional men.

I have lived with the problems of a judge for over 20 years. I know some of the things and some of the ideas that he has to go through. I say this from the bottom of my heart, because I have been in politics a number of years through my association with my father. I feel very strongly about what the Committee has proposed. I believe that this gives to the people in the State of Pennsylvania an option that they have been in need of for a number of years.

I will tell you why. Look around your own counties. Look at it and look at it hard. There are many attorneys in your Bar Associations who I feel—and I know you feel the same as I do—should be judges of your court of common pleas of your particular counties. Have you ever asked yourselves why they are not? I can tell you why they are not. Basically, for one reason politics. This is viable. We are losing many men who should be and could be judges of our courts. I know some of the gentlemen in this room who I feel very strongly about and I have discussed with them their political futures, as to whether or not they would consider being candidates for judges in their own counties, and their answer is, no. I asked them why not. The basic reason is they have to go out and face the public and they have to go out and put a lot of money into a political campaign. This is expensive. In our county it costs $30,000 to run for a judgeship and

there are only 15,000 Democratic votes. That is $2.00 a head.

I think we have to sit down and look this thing over and apply a lot of sense to this because it is very possible that many counties will adopt the option plan. I think we have to consider this, and I think the Committee has made a wonderful suggestion to the people of the State of Pennsylvania in answer to an area which I feel has to be considered.

Over the weekend I think many of you watched Channel 2 in the western part of the State, and one of the things brought up by the announcer—and I think this announcer has been very fair in his dealings with this Convention—was that there were 91 politicians in this Convention and this is why, when we come to a controversial area, we back away from it and we use the words, "Let the people decide." I think with this option form, we will let the people decide. I think it is important that we give them a choice. This is not just for today, this is for the future. This is very important. I think we ought to talk to Judge Woodring, Judge Burkholder, Judge Fortney, Judge Shettig and Judge Woodside about this matter and get some of their ideas on the election of judges and selection of judges. I will say to you in many counties there will only be one or two judges that will be approved by the qualifications committee. Mainly because many of our counties do not have judges or attorneys who are of judicial timber.

Yes, there will be many attorneys who will run who are not qualified, and they will expend a lot of money. They will get defeated by the popular votes. The people do have the final say, but, at the same time, when these particular counties are asking for a change, we turned down Allegheny County and I have had a flood of telegrams for the last ten days from the people of Allegheny County saying, let us give them a community court that we elected here not to do so. But, at the same time, we are going to provide an option for the people in Allegheny County to reform their line of judiciary. I say the same thing is true here, we should still give an option to the people of the Commonwealth of Pennsylvania, a right to see if they are going to choose the merit selection of judges on the county or judicial district level.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, the speeches have been in passion and eloquent and in many instances very logical and analytical, both pro and con. When a man convinced against his will and is of the same opinion still and so it goes. I have listened now to many good addresses on this matter.

I have, also, Mr. President, studied the Missouri Plan very carefully over the years. I have studied the Pennsylvania plan as proposed, and I have come to the conclusion that we are really, in the article submitted by the committee, giving our constituents no choice at all.

In the alternative we say to them, you may elect your judges, or in the alternative we say, you may surrender this right which is yours as an inheritance over all the years you have been in this republic of ours to a small committee of five, who can very easily, very easily and readily, make that choice, influence the choice, and they become the hierarchy which determines the judicial perrogatives of the judicial district.

For that reason, I say, Mr. President, it is far better to favor this amendment. Eliminate it as an alternative, which it is not at all for it is not a good alternative. Let the people speak as they have a right to speak in this, our republic.

PRESIDENT BRODERICK. Let me ask the delegates, are we ready for the question or do we want to hear more about this?

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise to a question of personal privilege.

PRESIDENT BRODERICK. The gentleman may state it.

DELEGATE MICHENER. Mr. President, my esteemed fellow delegate from Bucks County asked two questions, which in a sense do touch my honor as it was—

PRESIDENT BRODERICK. Delegate Michener, I do not think that is a point of personal privilege. I think you are going into the debate on this.

DELEGATE MICHENER. No, Mr. President. It is clearly a point of personal privilege, sir.

QUESTION OF PERSONAL PRIVILEGE WITHDRAWN

PRESIDENT BRODERICK. Can you ask them after we have had the vote?

DELEGATE MICHENER. Yes, Mr. President.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Ruth?

The roll was recorded as follows:

YEAS—90

Aberman	Erwin	Kelly	Rappaport
Allison	Fawcett	King	Redick
Aurentz	Fay	Kline	Reynolds
Baldwin	Filson	Krill	Rovner
Banes	Fineman	Laputka	Ruth
Barry	Fleming	Leach	Scales
Bashoff	Fohl	Lee, K.	Sebastian
Benfield	Gehrlein	Leonard	Shettig
Brennan	Gerber	Markley	Shoemaker
Brown	Goldman	Mattioni	Silverman
Butera	Goldstein	McGlynn	Solomon
Caln	Gouger	Meyer	Stroup
Camardella	Griffith	Miller, D.	Swope
Caputo	Harding	More	Thomson
Conley	Hatter	Murray	Tully
Corey	Henderson	Orban	Van Sant
Cortese	Heyburn	Orbin	Waldron
Croop	Hocker	Otto	Warman
Curran	Irvis	Pasquerilla	Welsh
Dalley	Jirolanio	Pott	Westerberg
Desmond	Kauffman	Powell	Wilmarth
Devlin	Keller, J.	Prendergast	Woodside
Dumbauld	Keller, M.		

NAYS—55

Amsterdam	Cosetti	Michael	Scranton
Baldrige	Feather	Michener	Shapiro
Baldus	Forster	Miller, R.	Sharp
Barron	Fortney	Moorhead	Shively
Benedict	Gabreski	Morton	Sprogell
Bloom	Hannum	Nelson	Stout

Braham	Himes	O'Donnell	Strickler
Broderick	Hook	Pelletier	Tate
Buck	Horne	Popil	Thornburgh
Bunting	Huggins	Rea	Tomascik
Burkholder	Johnson	Richter	Whittum
Casey	Lee, L.	Sahli	Wilcox
Clark	Leinbach	Scarlett	Woodring
Clinger	McGeary	Scott	

NOT VOTING—18

Bagenstose	Fagan	Manderino	Percey
Caron	Gray	Mangery	Quiles
Cunningham	Hostetler	Musselman	Roberts
Donaldson	Lane	Pechan	Shrager
Donolow	Levin		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

KAUFFMAN AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. We have one amendment which is similar to the one you have just voted on, which is the Kauffman amendment. If you want, we can take that now, or we can close now and let this in with the others.

I am going to try to get the feeling of the delegates as to how you want to handle this.

A VOICE. Let us do it now.

PRESIDENT BRODERICK. You want to take up the Kauffman amendment now?

A VOICE. Yes.

PRESIDENT BRODERICK. The understanding is, then, that after we finish the discussion of the Kauffman amendment and vote on it we will ask those who have amendments pending, and there are quite a few of them, if they will meet tonight with the committee in order to cut down on the number of amendments, consolidate them and get us lined up for a productive day tomorrow.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. I note that Delegate Kauffman has somewhere between six and ten amendments on the subject of judicial selection. I was under the impression that the next Kauffman amendment on the table had to do with statewide judges.

DELEGATE KAUFFMAN. I do not know where you got that impression, Delegate O'Donnell.

PRESIDENT BRODERICK. My understanding is that the Kauffman amendment pertains to Section 11 (a). It starts off with Section 11 (a).

This is the amendment, by the way, that we were not going to take up until we got the one on 11 (b).

DELEGATE O'DONNELL. Is that 11 (a), sir, having to do with statewide judges?

PRESIDENT BRODERICK. Yes.

DELEGATE O'DONNELL. In other words, that really is a brand-new subject to bring up?

PRESIDENT BRODERICK. Yes, it is.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman. For what purpose does the gentleman rise?

DELEGATE KAUFFMAN. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KAUFFMAN. Mr. President, is this the proper procedure if Mr. O'Donnell is going to engage in this dialogue to move to table the proposed Kauffman amendment? There was a motion to table the prior Ruth-Solomon amendment and that was overruled.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. I wonder if we are now dealing with the amendment that was distributed prior to the Ruth-Solomon amendment, whether or not we are properly raising a question to table this amendment?

I ask that question of the Parliamentarian. I do not understand the procedure that is presently being engaged in.

PRESIDENT BRODERICK. There is no motion in connection with this amendment. This amendment, as far as I know, has not been presented yet. This is the next amendment we have on the list to consider. I understand it has not been distributed yet.

DELEGATE FINEMAN. We have it.

PRESIDENT BRODERICK. Not the amendment we are now considering.

MOTION TO ADJOURN

DELEGATE O'DONNELL. I move to adjourn.

DELEGATE BLOOM. I would like to second that.

PRESIDENT BRODERICK. A motion to adjourn was made by Delegate O'Donnell, seconded by Delegate Bloom.

PRESIDENT BRODERICK. All right. We will open up the voting machine, and all those in favor will vote aye, and those opposed to the motion will vote no. Those favoring adjournment, and I assume that your complete motion would be to adjourn until tomorrow morning at nine o'clock—is that correct?

DELEGATE O'DONNELL. Yes.

PRESIDENT BRODERICK. That is the motion before the House.

Those voting yea will vote in favor of it.

The question recurred,

Will the Convention agree to the motion to adjourn until tomorrow morning at 9 a.m.?

The roll was recorded as follows:

YEAS—62

Amsterdam	Feather	Markley	Scott
Baldrige	Forster	McGeary	Scranton
Bashoff	Fortney	Michael	Shapiro
Benfield	Gabreski	Michener	Sharp
Bloom	Gougler	Miller, R.	Shrager
Braham	Hannum	Moorhead	Silverman
Broderick	Himes	O'Donnell	Sprogell
Buck	Hocker	Orban	Stout
Bunting	Horne	Pelletier	Tate
Cain	Johnson	Popil	Thornburgh
Casey	Keller, M.	Pott	Tomascik
Clark	Kelly	Powell	Van Sant
Clinger	King	Rea	Whittum
Cosetti	Laputka	Redick	Wilcox

Croop	Leach	Scarlett	Woodring
Dailey	Levin		

NAYS—74

Aberman	Curran	Keller, J.	Rappaport
Allison	Desmond	Kline	Reynolds
Aurentz	Devlin	Krill	Richter
Baldus	Erwin	Lee, K.	Sahli
Baldwin	Fawcett	Lee, L.	Scales
Banes	Fay	Leinbach	Sebastian
Barron	Filson	Leonard	Shettig
Barry	Fineman	Mattioni	Shively
Benedict	Fleming	McGlynn	Shoemaker
Brennan	Fohl	Meyer	Solomon
Brown	Gerber	Miller, D.	Strickler
Burkholder	Goldman	More	Stroup
Butera	Goldstein	Murray	Waldron
Camardella	Harding	Nelson	Warman
Caputo	Hook	Orbin	Welsh
Conley	Huggins	Otto	Westerberg
Corey	Irvis	Pasquerilla	Wilmarth
Cortese	Jirolanio	Prendergast	Woodside
Cunningham	Kauffman		

NOT VOTING—27

Bagenstose	Gray	Manderino	Roberts
Caron	Griffith	Mangery	Rovner
Donaldson	Hatter	Morton	Ruth
Donolow	Henderson	Musselman	Swope
Dumbauld	Heyburn	Pechan	Thomson
Fagan	Hostetler	Percey	Tully
Gehrlein	Lane	Quiles	

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion to adjourn was not agreed to.

KAUFFMAN AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The amendment to be considered is the Kauffman amendment, which has not yet been distributed, but will be distributed.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Kauffman to Committee Proposal No. 7?

DELEGATE KAUFFMAN offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 4, line 30, by inserting after "of": Appointment or

Amend Sec. 1 (Sec. 11), page 5, lines 4 to 7, by striking out "from a list of persons qualified for the office" in line 4, all of lines 5 to 7, and inserting: with the advice and consent of two-thirds of the Senate.

Amend Sec. 1 (Sec. 11), page 5, lines 13 to 15, by striking out "courts of Statewide jurisdiction," in line 13, all of lines 14 and 15, and inserting: in section 11 (a).

Amend Sec. 1 (Sec. 11), page 5, line 30, by inserting after "of": two-thirds of

Amend Sec. 1 (Sec. 12), page 7, lines 9 to 30; page 8, lines 1 to 10, by striking out all of said lines.

Amend Sec. 1 (Sec. 13), page 8, line 11, by striking out "13" and inserting: 12

Amend Sec. 1 (Sec. 14), page 9, line 25, by striking out "14" and inserting: 13

Amend Sec. 1 (Sec. 15), page 10, line 10, by striking out "15" and inserting: 14

Amend Sec. 1 (Sec. 16), page 11, line 2, by striking out "16" and inserting: 15

Amend Sec. 1 (Sec. 17), page 14, line 1, by striking out "17" and inserting: 16

Amend Sec. 1 (Sec. 18), page 14, line 26, by striking out "18" and inserting: 17

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman in connection with this amendment.

DELEGATE KAUFFMAN. Mr. President, I realize that it is late and that most of us are tired, but this is a terribly important subject which we are considering and I implore you all to listen carefully and consider this with an open mind. Listen carefully to the arguments which will be propounded both for and against the method of selection of statewide judges that this amendment proposes.

This amendment, if you have read it now, you will realize covers only judges of statewide jurisdiction, and what this amendment proposes is that all judges of statewide jurisdiction will be appointed in the same way, following the same concept now being followed by the Federal judiciary, by the State of New Jersey and by the State of Hawaii, and, incidentally, I think very importantly and significantly, the method proposed and advocated in the model state constitution prepared by the National Municipal League.

This is not a question of reformers against anti-reformers. This is a question of what is the method of reform that this body wants to propose and suggest.

I submit to you, Mr. President, that the judiciary, the Federal judiciary, has been reputed throughout the nation as being of outstanding quality and character. The Federal judiciary is appointed by the President with the advice and consent of the Senate.

What I am proposing here is the appointment of the judges of statewide jurisdiction by the Governor, with the advice and consent of two-thirds of the Senate.

As most of you, if not all of you, know I was one of the co-chairmen of the subcommittee on the selection of judges, and I think it is only fair for all of you to know that the proposal of the standing judiciary committee that is now before you, providing for a selection panel was not, I repeat, was not the recommendation of the subcommittee. The subcommittee, at least the majority of the subcommittee, objected to placing power in a group of persons without any responsibility.

The selection panel, as recommended in the present proposal of the judiciary committee, would be composed, as I am sure you know, of four laymen appointed by the Governor and three lawyers appointed by the Supreme Court, and I think in considering this proposal we must carefully analyze and consider the make-up of that commission.

To label the other proposal as a nonpartisan merit proposal is a contradiction really of facts, because, if you will examine the language of the committee proposal, it is suggested, it is required, that four of the members of the panel be of one party and three of the members be of the other political party, which demonstrates beyond any doubt that it was contemplated by the framers of this proposal—

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham. For what purpose does the gentleman rise?

DELEGATE BRAHAM. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BRAHAM. Mr. President, I rise to a par-

liamentary point. Some of us were not allowed to speak on this last argument. This gentleman is now making his speech against the plan of the Judiciary Committee. I think he is out of order. He is supposed to be speaking about approval by two-thirds of the Senate. He is spending his time destroying the plan we proposed which we were not allowed to defend.

PRESIDENT BRODERICK. I just want to say to Delegate Braham, that my understanding was that Delegate Kauffman was speaking to his amendment. Now, if he confines himself to the amendment—

DELEGATE KAUFFMAN. Mr. President, I have been certainly. I cannot think of anything more relevant to an amendment which abolishes a selection panel than to tell why you are abolishing this selection panel.

This amendment, if Delegate Braham would read it carefully, abolishes a selection panel and imposes the requirement that a selection by the governor be confirmed by two-thirds of the Senate.

I cannot think of anything more relevant to the abolition of the panel than tell why you think it ought to be abolished.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. You may proceed, Delegate Kauffman.

DELEGATE KAUFFMAN. As I was about to say, Mr. President, the panel clearly contemplates that political considerations will enter into the considerations of the panel itself, since the proposal provides that no more than four of the members of the seven-man panel will be members of one party and three will be members of the other party. It is not nonpartisan at all. It is very conceivable, as a matter of fact, that you could clearly have totally political recommendations to the Governor, and the Governor could make totally political appointments without any responsibility on anyone. On whom would you put the blame? The panel is not elected by the people. It is not directly responsible to anyone.

The Governor, who must make his appointment from a list of 10 to 20 names submitted to him by the panel, simply could say, I appointed one of the persons whose name was submitted to me, I have no further responsibility. I was limited. Therefore, you diffuse responsibility so completely that there is no one upon whom you could lay the blame for political appointment. On the other hand, if you place the responsibility where you place the power and give the Governor the power to make the appointment and require the Senate to confirm the appointment, you have no one involved in that process who has not been directly elected by the people and who is not directly responsible to the people.

I submit to you that any governor of this Commonwealth of Pennsylvania is not going to pick a man, when he is responsible solely with the Senate for that appointment, who is not qualified and who is not meritorious to serve as a member of the judiciary.

DELEGATE KAUFFMAN. I think we have to be very careful of what really is the antithesis to every thing that democracy has been based upon, and that is the concept of a body selected not by the people, not responsible to the people, meeting in secret behind closed doors, basing their decisions upon qualifications that will be kept private into which no one can inquire, permitting that type of a body to select our judges.

I submit that it is far better, far more non-political and far more meritorious, to permit your Governor to select the judges. I also submit that two-thirds of the Senate assures minority representation and, in the words of the National Municipal League, who has propounded the model state constitution, straight gubernatorial appointment, with advice and consent of the Legislature, recommends itself to the National Municipal League because of the high degree of visibility. Its deliberations are not in secret, not behind closed doors and it will be in the open. It will be for the public to see, and their reasons will be clearly known and defined.

DELEGATE THORNBURGH. May I interrogate Delegate Kauffman?

PRESIDENT BRODERICK. Yes, he will stand for interrogation.

DELEGATE THORNBURGH. Reference has been made to recommendations of the National Municipal League and their model constitution. As I refer to page 406 of the manual, The Judiciary, do they not set forth as an alternative to their recommendation as 604(a) the kind of nominating commission referred to in the committee proposal?

DELEGATE KAUFFMAN. They set forth as an alternative, less favored by them, the concept of a selection panel, but one that is picked in a different way. One which I remind you, Delegate Thornburgh, would not be controlled, in essence, by the Supreme Court.

This nominating commission, which the standing committee has proposed, would literally be controlled by the Supreme Court, which would name three members, and not by the Governor who names four, but because of the staggered terms of the members, it would take a Governor until he was in his second term to have any chance of nominating people who might be responsive to his will, so that this type of nominating panel, which I think you must consider, when you are considering the plan, it would be conceivably possible and most likely probable that the Supreme Court would be naming the panel, would name the Supreme Court, which would name the panel and you would have an elite naming an elite.

DELEGATE THORNBURGH. Referring to the alternative, is it not so that the Chief Justice of the Supreme Court would be a member of the panel?

DELEGATE KAUFFMAN. He would be one of the members.

DELEGATE THORNBURGH. And he would act as chairman?

DELEGATE KAUFFMAN. He would be one of the members. However, there would be six other members who would not be members of the court. There would be three laymen and three lawyers, and the lawyers, may I remind you, would be selected by the Bar and not by the Supreme Court. I think that is an important distinction to draw.

PRESIDENT BRODERICK. Now, the Chair recognizes Delegate Tomascik.

DELEGATE TOMASCIK. May I interrogate Delegate Kauffman, please?

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE KAUFFMAN. Yes, sir.

DELEGATE TOMASCIK. Mr. Kauffman, assuming under your proposed amendment that the Governor makes the appointment with the consent and advice of two-thirds of the Senate, then that person stands for office, is that correct?

DELEGATE KAUFFMAN. That is correct.

DELEGATE TOMASCIK. Then is he permitted to have any opponent? Can any other member of the Bar also be a candidate against him, or is it on the basis of whether he is a good judge or not?

DELEGATE KAUFFMAN. It would be on a "yes-no" retention basis. You must keep that in mind, too. You cannot consider this proposal in isolation, or in a vacuum, coupled with the "yes-no" retention as well as the judicial inquiry review board, I think we have coupled also with the two-thirds consent, you have a total package which is completely free from political control, and it will give us the kind of judiciary we are aiming for in this Convention.

DELEGATE TOMASCIK. Thank you for the clarification.

PRESIDENT BRODERICK. The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. May I ask Delegate Kauffman one question?

Is it not true that the model plan which you have mentioned does not require two-thirds of the Senate? It seems to me that the majority of the Senate and two-thirds is a very important difference, two-thirds would allow for considerable political maneuvering.

DELEGATE KAUFFMAN. What you say is true, and the reason why the two-thirds was inserted was to insure that there would be minority representation, and in the words described some place—I am not sure of the exact page reference in our manual—one of the reasons why some of us discussed the two-thirds is because it would require support of the minority party, plus it would promote a nonpartisan spirit, and that is what we are aiming for by putting the two-thirds in.

DELEGATE McGEARY. May I point out just one thing? I think you referred to the United States system, the Federal system, as being good, and they do not require two-thirds, it is merely a majority.

PRESIDENT BRODERICK. The Clerk now recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, as I understand this system, there would be a simple appointment by the Governor without the use of a mandatory selection panel. If this amendment were adopted, would there be any thing to prevent the Governor from creating his own advisory panel to aid him in making such a selection?

DELEGATE KAUFFMAN. No, Mr. President. As a matter of a fact, as the co-chairman of our standing Judiciary Committee did when he was Governor of this Commonwealth, it would be perfectly possible and, as a matter of fact, advisable for a governor during his election campaign to state that he would select his judges on the basis of the recommendations given to him by an advisory panel, but that would be permissive and not mandatory. You would not be dividing responsibility, because in that instance the Governor would still be the person responsible for the appointment and he could not shirk his responsibility by saying, well, the names were submitted to me by some selection panel and I am sorry about that, but I had to pick one of them.

DELEGATE SCALES. Mr. President, I have one further question, if I may?

PRESIDENT BRODERICK. You may proceed.

DELEGATE SCALES. Can you elaborate a little bit further, Mr. Kauffman, on your statement that your amendment is, in effect, the Federal system?

The reason that I asked that question is that I have heard proponents of the Bar Association comment with respect to the panel selection plan that it was similar to the Federal system, and I think many of us would find your comments as chairman of your sub-committee interesting in that regard.

DELEGATE KAUFFMAN. I believe we have modeled our plan after the type of system which has worked very well for the Federal judiciary.

We have placed the responsibility with the Governor, which would correspond with the responsibility placed upon the President, and we have placed the responsibility for confirmation in the hands of the Senate, as the responsibility is placed in the hands of the United States Senate. The inquiries which would be made, obviously, into a person's qualifications would not be done in secret behind closed doors, but, on the contrary, the inquiry would be made in public, in the halls of the Senate by persons who were elected by the people and directly responsible to the people.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. I am certain that this motion what is tantamount to lifetime appointment by the Governor is something very new in the minds of thinking Pennsylvanians, and it is certainly one which I would like to have the opportunity to digest. That is one of the reasons why a bit earlier this evening I suggested that we adjourn so we could have an opportunity to think this one over this evening.

However, I understand from an earlier ruling made in this Convention that some kind of business has to be transacted between one motion to adjourn and another. Is that correct, sir?

PRESIDENT BRODERICK. That is correct.

We will recognize Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, if we are about to adjourn, I have an amendment I would like to offer to the amendment, and it has just been prepared. I would like to be able to offer it before we adjourn.

It is an amendment which would merely strike out "of two-thirds", those three words. It is made up and I would like to offer it.

PRESIDENT BRODERICK. You are in order in offering your amendment to the amendment at this time.

WOODSIDE AMENDMENT TO COMMITTEE PROPOSAL No. 7

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Kauffman to Committee Proposal No. 7?

DELEGATE WOODSIDE offered the following amendment to the amendment offered by Delegate Kauffman which was read by the clerk:

Amend the Amendments by striking out in line 5 "of two-thirds"

On the question,

Will the Convention agree to the amendment to the amendment?

MOTION TO TABLE WOODSIDE AMENDMENT TO KAUFFMAN AMENDMENT AND THE KAUFFMAN AMENDMENT

PRESIDENT BRODERICK. The Chair now recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. I now move to lay the amendment and the amendment to amend the amendment on the table until tomorrow morning.

DELEGATE O'DONNELL. I second that, sir.

PRESIDENT BRODERICK. It has been moved by Delegate Jirolanio, seconded by Delegate O'Donnell, that the amendment to the amendment being offered by Judge Woodside, as well as the Kauffman amendment, be laid on the table until tomorrow morning.

On the question,

Will the Convention agree to the motion to table the Kauffman and Woodside Amendments?

The roll was recorded as follows:

YEAS—91

Aberman	Croop	Keller, M.	Redick
Allison	Fawcett	Kelly	Reynolds
Amsterdam	Fay	King	Richter
Aurentz	Filson	Kline	Sahli
Baldrige	Fineman	Laputka	Scarlett
Baldus	Fleming	Levin	Scott
Banes	Fohl	Markley	Scranton
Barron	Forster	Mattioni	Sharp
Bashoff	Fortney	McGlynn	Shrager
Benedict	Gabreski	Michael	Silverman
Benfield	Gehrlein	Michener	Solomon
Bloom	Goldman	Miller, D.	Sprogell
Braham	Griffith	Miller, R.	Stout
Broderick	Hannum	Murray	Tate
Buck	Harding	O'Donnell	Thornburgh
Bunting	Heyburn	Pasquerilla	Tomasetik
Camardella	Himes	Popil	Tully
Caputo	Hook	Pott	Van Sant
Casey	Horne	Powell	Waldron
Clark	Huggins	Prendergast	Wilcox
Clinger	Irvis	Quiles	Woodring
Conley	Jirolanio	Rappaport	Woodside
Cosetti	Johnson	Rea	

NAYS—51

Baldwin	Feather	Leonard	Sebastian
Barry	Gerber	McGeary	Shapiro
Brennan	Goldstein	Meyer	Shettig
Brown	Gouger	Moorhead	Shively
Burkholder	Henderson	More	Shoemaker
Butera	Hocker	Nelson	Strickler
Cortese	Kauffman	Orban	Stroup
Cunningham	Keller, J.	Orbin	Warman
Curran	Krill	Otto	Welsh
Dailey	Leach	Pelletier	Westerberg
Desmond	Lee, K.	Rovner	Whittum
Devlin	Lee, L.	Ruth	Wilmarth
Erwin	Leinbach	Scales	

NOT VOTING—21

Bagenstose	Dumbauld	Lane	Pechan
Cain	Fagan	Manderino	Percey
Caron	Gray	Mangery	Roberts
Corey	Hatter	Morton	Swope
Donaldson	Hostetler	Musselman	Thomson
Donolow			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

MEETING OF JUDICIARY COMMITTEE

PRESIDENT BRODERICK. The Chair recognizes the chairman of the judiciary committee, Chairman Amsterdam.

DELEGATE AMSTERDAM. In accordance with the suggestion made by the President, we would like the members of the Judiciary Committee to meet with those who are proposing amendments to the various items on selection which we have been discussing all day immediately following the end of this session. I will read off their names, and by that time we hope to know where the meeting will be held.

The names of the persons I am told who have amendments are as follows: Delegates Gerber, Woodside, Baldrige, Barron, Tate, Orban, Jirolanio, Shoemaker, McGlynn, Curran, Kauffman, Banes and Burkholder.

The meeting will be held in Room 615 of the Main Capitol Building.

As you all know, the elevators at the south end going up to the fifth floor take you into Room 615. There will be a meeting for the purpose of trying to sort out the amendments and get them in as good order as is possible for tomorrow's introduction.

A MEETING OF SUBCOMMITTEE ON LOCAL FINANCE

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. I have one quick announcement.

The subcommittee on local finance will meet immediately following this session in the rear of this room to make a presentation.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasqeurilla for the adjournment motion.

DELEGATE PASQUERILLA. Mr. President, I move that this Convention do now adjourn until Tuesday, February 20, 1968 at 9 a.m., e.s.t.

The motion was agreed to and (at 6:45 p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 | Tuesday, February 20, 1968 | Number 47

The Convention was called to order at 9 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND JOHN S. McCALL of the Third Presbyterian Church in Pittsburgh, offered the following prayer.

Almighty God, who has always demanded of Your people that we let justice flow as the waters and righteousness be like an everlasting stream in our midst, deliver us, we pray, from those who confuse justice with an endless flow of platitudes and righteousness with an everlasting stream of words, in order that decisive and honest reason may prevail in this assembly. Strengthen us with the courage to assume the responsibility of forthrightly decided what is good for the people; deepen us with the humility to sincerely submit our decisions to the final judgment of the people, and inspire us with the faith that our common destiny is ultimately with You, O Lord of all history. Amen.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. The first order of business today is the approval of the Journals for January 2 through 5.

DELEGATE CASEY. Mr. President, I move that the Journal for January 2 be approved.

PRESIDENT BRODERICK. It has been moved by Delegate Casey that the Journal for January 2 be approved. The motion is seconded by Delegate Orban.

On the question,
Will the Convention approve the Journal for January 2?
It was approved.

The Chair recognizes Delegate Casey in connection with the Journal of January 3.

DELEGATE CASEY. Mr. President, I move that the Journal for January 3 be approved.

PRESIDENT BRODERICK. It has been moved by Delegate Casey that the Journal for January 3 be approved. The motion is seconded by Delegate Orban.

On the question,
Will the Convention approve the Journal for January 3?
It was approved.

The Chair recognizes Delegate Casey in connection with the Journal of January 4.

DELEGATE CASEY. Mr. President, I move that the Journal for January 4 be approved.

PRESIDENT BRODERICK. It has been moved by Delegate Casey that the Journal for January 4 be approved. The motion is seconded by Delegate Orban.

On the question,
Will the Convention approve the Journal for January 4?
It was approved.

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey in connection with the Journal of January 5.

DELEGATE CASEY. Mr. President, I move that the Journal for January 5 be approved.

PRESIDENT BRODERICK. It has been moved by Delegate Casey that the Journal for January 5 be approved. The motion is seconded by Delegate Orban.

On the question,
Will the Convention approve the Journal for January 5?
It was approved.

ANNOUNCEMENT CONCERNING JOURNAL

SECRETARY MICHENER. Mr. President, there is an important announcement concerning the Journal. We have shifted to a new reporting company by the name of Mohrbach and Marshal, Inc., which puts the previous day's Journal on my desk at 8:00 o'clock the next morning, so yesterday's debates are on my desk right now, also, last Friday's debates the 16th. Then from the previous system we have February 6th and we will trail along with them.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

DELEGATE MICHENER. Mr. President, I want to submit the following requests for leaves of absence:

The delegate from the 43rd District, Marie C. Aurentz, who is ill, for the 19th.

The delegate from the 15th District, Guy J. Swope, for the 20th.

The delegate from the 44th District, James D. Morton, for the 20th.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

ILLNESS OF DELEGATE MUSSELMAN

DELEGATE MICHENER. Mr. President, no notice has

been taken in this chamber of the fact that one of our most beloved delegates has been quite ill and, I believe, in a hospital for some time. I refer to "Woody" Musselman. If anyone can inform us as to his progress, there are many of us who would like to know about it.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Devlin	Kelly	Reynolds
Amsterdam	Dumbauld	Krill	Richter
Aurentz	Fagan	Laputka	Roberts
Bagenstose	Fawcett	Leach	Rovner
Baldrige	Fay	Lee, K.	Ruth
Baldus	Feather	Lee, L.	Sahli
Baldwin	Filson	Leinbach	Scales
Banes	Fineman	Leonard	Scarlett
Barron	Fohl	Levin	Scott
Barry	Fortney	Manderino	Sebastian
Bashoff	Gabreski	Mangery	Shettig
Benedict	Gehrlein	Markley	Shively
Benfield	Gerber	Mattioni	Shoemaker
Bloom	Goldman	McGeary	Shrager
Brennan	Goldstein	Meyer	Silverman
Broderick	Gouger	Michael	Solomon
Buck	Gray	Michener	Sprogell
Bunting	Griffith	Miller, D.	Stout
Burkholder	Hannum	Miller, R.	Strickler
Cain	Harding	Moorhead	Tate
Camardella	Hatter	More	Thomson
Caputo	Heyburn	Nelson	Thornburgh
Caron	Himes	Orban	Tully
Casey	Hocker	Orbin	Van Sant
Clark	Hook	Otto	Waldron
Clinger	Horne	Pasquerilla	Warman
Corey	Huggins	Pelletier	Welsh
Cortese	Irvis	Percey	Westerberg
Cosetti	Jirolanio	Pott	Whittum
Croop	Johnson	Powell	Wilcox
Cunningham	Kauffman	Rappaport	Wilmarth
Curran	Keller, J.	Rea	Woodring
Dalley	Keller, M.	Redick	Woodside
Desmond			

PRESIDENT BRODERICK. The electric roll call tabulator indicates that 133 delegates have recorded their presence.

The Chair also notes the presence of the following delegates:

Allison	Forster	O'Donnell	Shapiro
Braham	Henderson	Popil	Sharp
Brown	King	Prendergast	Stroup
Butera	Kline	Quiles	Swope
Erwin	McGlynn	Scranton	Tomascik
Fleming	Murray		

CALENDAR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 7, Printer's No. 7**, entitled:

A Proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

On the question,

Will the Convention agree to the proposal on second consideration?

BARRON AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BARRON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 5), page 2, lines 19 to 21, by striking out all of said lines and inserting: Section 5. Right of Appeal.—There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. In redrafting the language, Mr. President, in this amendment, we endeavored to break it up into three clauses.

The first portion reads: "There shall be a right of appeal in all cases to a court of record from a court not of record." This, we hope, is plain and manifests as clearly as we know our intent in regard to appeal from courts not of record.

The middle clause provides: "There shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law." This is intended to cover the situation of cases when they are in a court of record or before an administrative agency and permit the Legislature, in its wisdom, to select the appeal, the right thereof being guaranteed and the appeal lying to a court of record or an appellate court, as may be directed by the Legislature. The language employed was endeavored to be broad enough to permit the creation of special courts, statutory courts, as has been allowed thus far in the language submitted and approved by this Convention.

Finally, the last clause reads: "And there shall be such other rights of appeal as may be provided by law," is to permit, as now exists, for the Legislature to provide an intermediate court of appeal, if such should be its pleasure. For example, a workman's compensation proceeding, where the appeal lies from the compensation board to the court of common pleas and thence to the Superior Court, or it will also permit, should the occasion and need arise, for the Legislature to provide an appeal route from anyone of its appellate courts to the Supreme Court of Pennsylvania.

Notice that the first clause is a mandatory one. The second clause is mandatory as to the right of appeal, but the selection is permissive in the General Assembly, meaning that the General Assembly shall have the right of selection. In order to give the General Assembly power

in this area, we have a permissive right of appeal in the third clause.

I believe this substantially covers the thrust and intent of the proposed language, Mr. President.

PRESIDENT BRODERICK. Does anyone wish to be heard in conection with this matter?

The Chair now recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, I certainly believe that the labors to which Delegate Barron has put himself have been most fruitful and I have discussed this informally with him. Clearly, we are here only to effect the utmost clarification in what is the full intent and product of this body.

I would want to make something perfectly clear, we are not concerned with possible extended work on the part of the appellate courts, clogging them, or anything else. We are interested in the rights of the people. What concerned me—and I believe, informally, that can be worked out—this amendment, as drafted, may be somewhat polished in the style and drafting and, as I read it and understand it, having discussed it with Delegate Barron, I have no objection to it and would urge this body to accept it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Casey.

DELEGATE CASEY. I have a question I would like to direct to Delegate Barron regarding the language of this amendment.

PRESIDENT BRODERICK. He will certainly stand for interrogation. Proceed.

DELEGATE CASEY. Delegate Barron, in the first clause you say: "There shall be right of appeal in all cases to a court of record from a court not of record."

Then, in the clause following the semicolon, beginning on line 3, as I read it, you say: "There shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court."

My question is: the words "in all cases" which appear in the first clause do not appear in the second clause. Was the omission intentional? If so, is a change in result intended by the omission?

DELEGATE BARRON. No. I believe the use of the word "also" was intended to refer back, since it compounds against the first clause in the appeal language.

DELEGATE CASEY. Is it your intention, therefore, that there shall be a right of appeal in all cases, not only from a court not of record to a court of record, but also from a court of record or an administrative agency to a court of record or an appellate court?

DELEGATE BARRON. It is.

PRESIDENT BRODERICK. Does anyone else wish to be heard in connection with the Barron Amendment? Are we ready for the question?

The question recurs,

Will the Convention agree to the amendment offered by Delegate Barron?

The roll was recorded as follows:

YEAS—128

Amsterdam	Desmond	Keller, J.	Rea
Bagenstose	Devlin	Keller, M.	Redick
Baldrige	Dumbauld	Kelly	Reynolds
Baldus	Erwin	King	Roberts
Baldwin	Fagan	Krill	Rovner
Banes	Fawcett	Laputka	Ruth
Barron	Fay	Leach	Sahli
Barry	Feather	Lee, K.	Scales
Bashoff	Filson	Lee, L.	Scarlett
Benedict	Fineman	Leinbach	Scott
Benfield	Fohl	Levin	Sebastian
Bloom	Fortney	Manderino	Shapiro
Braham	Gabreski	Mangery	Sharp
Brennan	Gehrlein	Mattioni	Shettig
Broderick	Gerber	McGeary	Shively
Brown	Goldman	Meyer	Shoemaker
Buck	Goldstein	Michael	Shrager
Bunting	Gouger	Michener	Strickler
Burkholder	Gray	Miller, D.	Tate
Butera	Griffith	Miller, R.	Thomson
Camardella	Hannum	Moorhead	Thornburgh
Caputo	Harding	Nelson	Tomascik
Caron	Hatter	Orban	Tulty
Casey	Himes	Orbin	Van Sant
Clark	Hocker	Otto	Waldron
Corey	Hook	Pasquerilla	Warman
Cortese	Horne	Pelletier	Welsh
Cosetti	Huggins	Percey	Westerberg
Croop	Irvis	Popil	Whittum
Cunningham	Jirolanio	Pott	Wilcox
Curran	Johnson	Powell	Wilmarth
Dailey	Kauffman	Prendergast	Woodring

NAYS—2

Sprogell	Stout

NOT VOTING—33

Aberman	Forster	McGlynn	Rappaport
Allison	Henderson	More	Richter
Aurentz	Heyburn	Morton	Scranton
Cain	Hostetler	Murray	Silverman
Clinger	Kline	Musselman	Solomon
Conley	Lane	O'Donnell	Stroup
Donaldson	Leonard	Pechan	Swope
Donolow	Markley	Quiles	Woodside
Fleming			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

DEATH OF GUY DAVIS

PRESIDENT BRODERICK. The Chair recognizes Delegate Van Sant.

DELEGATE VAN SANT. I would like permission to make a brief announcement. I am sorry to inform the Convention that the beloved General Counsel for the Joint State Government Commission, Guy Davis, had a heart attack this morning downstairs in the Capitol at the cafeteria and I know many will be concerned. I am sorry to be the one to convey the news that Mr. Davis has died.

PRESIDENT BRODERICK. Delegate Van Sant, I am sure we all accept that with a note of great sadness. If you will permit the Chair to suggest this, why do we not all rise for one second of silent prayer in memory of Guy Davis.

(The Convention stood in silent prayer.)

LIMITATION OF DEBATE

PRESIDENT BRODERICK. The Chair just wishes to announce that whenever we are engaged in debate, a motion is always in order for closing debate and putting the question.

The Chair wishes to make clear to all the delegates that in connection with the Ruth amendment yesterday we had a vote on closing debate and putting the question, and it was almost unanimously approved. When that is the situation, that means that even the proposer of the amendment does not have the right to close and we cannot hear any more debate or discussion whenever we have a motion or a vote on the matter.

WOODSIDE AMENDMENT

PRESIDENT BRODERICK. I see Delegate Hook is at the microphone and I will recognize Delegate Hook.

DELEGATE HOOK. Mr. President, are we going to continue at this time with the Woodside amendment to the amendment?

PRESIDENT BRODERICK. Delegate Hook, I think I now have the answer to your question, and the reason the Chair was momentarily at a loss for the answer is the fact that we do have a Woodside amendment here to be taken up now, but this, I understand, is the Woodside amendment that was discussed yesterday in connection with Section 10. I understood from the committee chairman that this was an amendment that probably would not require too much debate or discussion, and we would like to take this up at this time.

I am going to ask the clerk to read the Woodside amendment that is now before us.

Amend Sec. 1 (Sec. 10), page 4, line 20, by inserting after "Court" where it appears the last time: and any other Statewide court hereafter created,

On the question,

Will the Convention agree to the amendment to the amendment?

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. We are all very much concerned about the time that we are taking to go over this judiciary article, and I would like to make an inquiry as to why we do not get to the meat of this problem.

It appears that we now have before us an amendment to eliminate the panel. We have an amendment to the amendment that it should be by the Governor with two-thirds approval of the Senate, and now we are going to eliminate the two-thirds approval of the Senate, and after we have apparently debated that for several hours, I understand there is another amendment coming up whereby we want to eliminate altogether the method in which statewide judges are to be chosen, and go back to the election system.

It seems to me, if we are going to save time, why do we not take up the amendment first as to whether these delegates want the statewide judges to be appointed or to be elected, and, if we once settle that problem, we can perhaps eliminate a great deal of debate and many amendments. If we decide that this body wants to appoint statewide judges, then we can get into the methods by which we want them to be appointed.

I understand there is an amendment coming out, and I am not speaking for or against it, my only purpose in rising is to try to save some time.

PRESIDENT BRODERICK. May the Chair answer and then turn you over to Chairman Amsterdam.

Last night there was a meeting with the Judiciary Committee of all those who had amendments pending. The Judiciary Committee at that time, together with our own committee on amendments, consisting of Delegates Casey and Orban, together with the Assistant Parliamentarian, and our solicitor, decided on a procedure for accepting these amendments with the idea of expediting the amendment process.

The first amendment this morning was the Barron amendment, which proved to be true, that they thought this was one that would go through quickly.

They are now suggesting that we take up the Woodside amendment, which is one that I understood would go through quickly on Section 10, and then my understanding is that we take up the Kauffman amendment, which is on the table, which was to be considered first.

DELEGATE PASQUERRILA. That is exactly my point.

PRESIDENT BRODERICK. We are prepared, as soon as we get these two small amendments out of the way, to take up the Kauffman amendment.

DELEGATE PASQUERILLA. This would be debating these issues for two hours, and somebody will come up with another amendment and eliminate two hours of hard work by saying that we should have judges, statewide elected and, therefore, we have wasted all this time on these amendments.

Is there an amendment to be presented to this floor whereby judges on a statewide basis are to be elected?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. I have no objection whatsoever to Delegate Pasquerilla's suggestion that we keep my amendment on the table until we determine the basic principle as to whether or not we want to have election of statewide judges or appointments.

I am not expressing an opinion in favor or against election or appointment at this moment, but I do think it makes sense to postpone consideration of my amendment until we first determine the basic principle.

So I would have no objection to keeping my amendment on the table, assuming that there will be an amendment offered which will provide for election of statewide judges.

DELEGATE PASQUERILLA. I understand—Mr. Jirolanio is raising his hand over there—if that is the meat of the issue, why do we not let this body decide that first, and then after we decide that, we could have saved maybe a half a day here.

PRESIDENT BRODERICK. Delegate Pasquerilla, let me say to you that we have appointed a committee and our committee consists of Vice President Casey and Vice President Orban, and they, as a result of a meeting that took place, I understand, for several hours last night, set up a procedure and a sequence for the amendments.

The Chair does not pull them off the pile willy-nilly, and this was the procedure I was advised we were going to follow. If this body wants to follow another procedure, they can. I think the proper way is to go through the committee that worked last night and determine which way they want to handle the amendments.

DELEGATE AMSTERDAM. Mr. President, may I say two things at this time, please?

In the first place, the reason we put on some of the less important amendments this morning is that Governor Scranton is delayed because of the snow coming in this morning, and he particularly wanted to be able to speak on the matter of the selection of judges statewide. He requested us, if it were possible to do so, to simply hold it off for a little while this morning until he could get in from Scranton, the very important matter which is being

mentioned by Delegate Pasquerilla. That is the reason why we put these less controversial ones on first.

On the more important matters which you raised, last evening when we got together for the purpose of seeing what amendments there were, there was no such amendment as you mentioned. I understand now that there is such an amendment.

DELEGATE PASQUERILLA. I have known it for two days.

DELEGATE AMSTERDAM. Unfortunately, there are some people, as you well know, that hold out amendments, hoping if they are put in at a later time they may get some tactical advantage. There is not anything we can do except when they come in with it.

DELEGATE PASQUERILLA. My only point is I hate to see the Convention spend hours deciding the method of selection of a judge on an appointive basis when this Convention is liable to decide we want an election of statewide judges. Let us get rid of that problem first.

DELEGATE AMSTERDAM. I agree with you completely, and the first that comes in it will go at the head of the list.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, may I say that yesterday I tried to get this amendment prepared that Mr. Pasquerilla would like to have disposed of, and I did instruct the gentlemen at the table there, the research men, but they did not have it prepared, and they are preparing it now.

I did tell Delegate Amsterdam last night that I was preparing two amendments. One was this particular one, and I realize he has a lot of matters on his hands, and I did not go to the meeting because I had nothing to eat, with the exception of a sandwich, from 8:00 o'clock that morning until nighttime. I am a diabetic and I have to get some food once in a while. That is the reason I was not at the meeting.

PRESIDENT BRODERICK. In order to save time, I would suggest that Delegate Pasquerilla sit down right now with Delegate Casey and Delegate Orban, who have helped arrange the committee sequence of amendments, and, if it can be changed, let us change it.

I can tell you this, there is no one more interested in expediting the amendment process and the work of this Convention than your presiding officer. I want to say, until we change this, there is only one thing that the Chair can do, and that is to take the amendments up in the order that we now have them.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Woodside in connection with the amendment which was labeled No. 2 for this morning.

DELEGATE WOODSIDE. Mr. President, this amendment is merely a change in the language of what seems to me a slight oversight. It is not terribly important at all and totally immaterial to me whether the Convention accepts it, or not, but this Section 10 provides that all justices of the Supreme Court, Superior Court and Commonwealth Court during their continuance in office shall reside within the Commonwealth.

As has been pointed out, it is possible that the Legislature will create new and other statewide courts, and it seems to me that all statewide courts should be subject to this provision. Therefore, I suggest that we add after the Commonwealth Court "and any other statewide court hereafter created" either by an amendment to the Constitution or by statute. I suggest it might be possible for the Committee on Style and Drafting to reduce the number of words where at least the idea will be there expressed.

PRESIDENT BRODERICK. Does anyone else wish to be heard on the Woodside amendment which is now before you?

The Chair now recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, this is consistent with what happened in the committee, and I would see no objection from the committee's point of view to the acceptance of this amendment.

On the question,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—137

Aberman	Dumbauld	Kelly	Rea
Amsterdam	Erwin	Kline	Redick
Bagenstose	Fagan	Krill	Richter
Baldrige	Fawcett	Laputka	Roberts
Baldus	Fay	Leach	Rovner
Baldwin	Feather	Lee, K.	Ruth
Barron	Filson	Lee, L.	Sahli
Barry	Fineman	Leinbach	Scales
Bashoff	Fohl	Levin	Scarlett
Benedict	Fortney	Manderino	Sebastian
Benfield	Gabreski	Mangery	Shapiro
Bloom	Gehrlein	Mattioni	Sharp
Braham	Gerber	McGeary	Shettig
Brennan	Goldman	McGlynn	Shively
Broderick	Goldstein	Meyer	Shoemaker
Brown	Gouger	Michael	Shrager
Buck	Gray	Michener	Solomon
Bunting	Griffith	Miller, D.	Sprogell
Burkholder	Hannum	Miller, R.	Stout
Butera	Harding	Moorhead	Strickler
Camardella	Hatter	Murray	Stroup
Caputo	Henderson	Nelson	Tate
Caron	Heyburn	Orban	Thomson
Casey	Himes	Orbin	Thornburgh
Clark	Hook	Otto	Tomascik
Clinger	Hocker	Pasquerilla	Tully
Corey	Horne	Pelletier	Warman
Cortese	Huggins	Percey	Welsh
Cosetti	Irvis	Popil	Westerberg
Croop	Jirolanio	Pott	Whittum
Cunningham	Johnson	Powell	Wilcox
Curran	Kauffman	Prendergast	Wilmarth
Dailey	Keller, J.	Quiles	Woodring
Desmond	Keller, M.	Rappaport	Woodside
Devlin			

NAYS—0

NOT VOTING—26

Allison	Forster	More	Scott
Aurentz	Fleming	Morton	Scranton
Banes	Hostetler	Musselman	Silverman
Cain	King	O'Donnell	Swope
Conley	Lane	Pechan	Van Sant
Donaldson	Leonard	Reynolds	Waldron
Donolow	Markley		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

KAUFFMAN AMENDMENT

PRESIDENT BRODERICK. We are ready to take up the next amendment in the order submitted by the committee, which is the Kauffman amendment and which will have to be called from the table.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman. For what purpose does the gentleman rise?

DELEGATE KAUFFMAN. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KAUFFMAN. Mr. President, are we going to consider my amendment before we consider the Jirolanio amendment?

PRESIDENT BRODERICK. We have no Jirolanio amendment. I want you to know in the order of amendments that I have here the Kauffman amendment is next for consideration. I have asked the staff if we had the Jirolanio amendment ready and they said, no. They advised me there is one in the process.

I think we should, unless the committee states otherwise, take these amendments in the order that the committee gives them to us.

DELEGATE KAUFFMAN. I understand Senator Jirolanio has asked them for over a day now to prepare this amendment and it ought to be ready at any moment.

DELEGATE BALDRIGE. What happened to the Woodside amendment to the Kauffman amendment?

PRESIDENT BRODERICK. They were both tabled at the same time and that will be taken up with the Kauffman amendment.

I want the delegates to know that right at the present time up at this desk I have no Jirolanio amendment. I do not know when it was put in, but I know that they are trying to expedite the preparation and they are trying to expedite its completion.

Unless our committee on amendments decides on a different procedure, I would like to take the amendments in the order that the committee gives them to me because, otherwise, it is a hit-and-miss proposition.

The Chair recognizes Delegate Hook.

DELEGATE HOOK. I would like to interrogate Delegate Amsterdam at this time.

PRESIDENT BRODERICK. Delegate Amsterdam will rise for interrogation.

DELEGATE HOOK. Delegate Amsterdam, from your committee, can you tell us of the 42 members of your committee, what was the vote pertaining to the statewide election of judges versus the appointment system?

DELEGATE AMSTERDAM. On the matter of statewide election, my recollection is, and I think the staff is nodding yes, there was no specific vote, no number taken with regard to that. It was accepted as a part of a package and was no separate specific vote, as I recall it, on the matter of statewide appointment of judges on statewide courts.

DELEGATE HOOK. Delegate Amsterdam, this particular point was not discussed in the committee at all, other than the fact it was determined that statewide would be by the appointive system?

DELEGATE AMSTERDAM. The discussion was primarily as to whether there should be a panel selection, a panel effort in order to get names to the Governor, or whether the Governor should appoint them without a panel. That was primarily where the discussion was.

I do not recall any vote taken on the matter of the election of judges on a statewide basis. I will ask the staff to check that to make sure that is correct.

May I elaborate on that?

PRESIDENT BRODERICK. Yes.

DELEGATE AMSTERDAM. The matter came to the entire Judiciary Committee primarily on a recommendation of the sub-committee that there be a screening panel, that a panel be set up which would screen all of the attorneys, either on a statewide basis or, if they were in a judicial district, in the district, and the recommendation was that the panel make known to the appointing authority, the Governor, all of the names of the persons who were qualified to be appointed. That was the first item that was taken up.

The alternative to that was that there be a panel that would give the Governor a lesser number of names than all that were qualified.

There were a great many discussions as to whether this should be a small number or relatively large number. Most of the votes failed to arrive at a number that we were requiring of 22 majority of the committee, until we arrived at the one finally that was recommended by the Committee, and, as it was indicated yesterday, that was by a relatively—I think it was described as a "razor thin vote," I would say that correctly describes it. I believe it was 23.

I am told that my recollection is not correct and there was a vote at one time during the course of the committee meetings on the election of statewide judges and there were 13 votes in favor of the election and 21 nay votes, so there was one vote taken during the course of our meetings on that question. I am sorry.

DELEGATE HOOK. Delegate Amsterdam, can you tell us what alternatives were submitted to the committee for the panel?

DELEGATE AMSTERDAM. Are you talking about the make-up of the panel, or are you talking about the manner in which they would make the names known to the Governor?

DELEGATE HOOK. The manner in which they would make the names known to the Governor, first.

DELEGATE AMSTERDAM. As I indicated a little while ago, the original suggestion was that all qualified persons be named and that a list of all qualified persons be given to the Governor. That was then cut down and the suggestion was made that there be, as I remember, a minimum of three and a maximum of six. Then there was another number. There were various possibilities suggested and votes were taken—some formal, some informal—on each of the possibilities. The one that finally got the necessary 22 or 23 votes was the one that was presented in the committee proposal, which was a minimum of six, a maximum of 10 for each vacancy on a statewide basis.

DELEGATE HOOK. What alternatives were presented to the committee and discussed at your Committee meetings?

For example, we now have the Kauffman amendment, which says the Governor with two-thirds of the Senate. I also know Judge Woodside's amendment has a majority of the Senate. What other suggestions were made to the committee on the floor of the committee hearings?

DELEGATE AMSTERDAM. I would say that the matter of election was discussed; the matter of appointment by the Governor, with the assistance, consent and advice of the Senate; the appointment by the Governor with

a panel; also, the possibility of the Governor himself setting up a nominee and having that nominee presented to a panel—not a nominating panel, but to a screening panel—and the panel either approving or disapproving the name submitted to it by the Governor. They, I believe, were the main items that were alternatives given to the committee.

DELEGATE HOOK. Delegate Amsterdam, what discussion was there pertaining to the panel itself and how it was to be composed?

DELEGATE AMSTERDAM. The discussion with regard to the panel revolved primarily around the question of whether it should be composed of any non-lawyers. Then the question was raised as to whether it ought to be a majority of non-lawyers. Then the question was raised as to whether there should be automatic categories. Perhaps, deans of law schools as distinguished from lawyers chosen by the Bar Association, then the possibility that the lawyers would be chosen by the Supreme Court, possibility that the Governor, or some other agency, would pick the non-lawyers. The make-up of the panel was discussed, I would say, from ten different points of view before we finally arrived at one that met the test of the majority of the committee.

DELEGATE HOOK. Mr. President, at this time I would like to make a motion to table the Kauffman amendment. I understand that you have an amendment in your possession—

PRESIDENT BRODERICK. We have many. I want you to know, No. 1, the Kauffman amendment is still on the table. It has not been called up. With the acquiescence of Delegate Kauffman, it was agreed that he would call it up at this time. Now he has in his power whether he wants to call it, or not, and I will recognize him.

DELEGATE KAUFFMAN. Mr. President, I suggest—and Judge Woodside agrees with me—that both my amendment and his amendment to my amendment be delayed until we first consider the basic concept of whether we want elections statewide or whether we want appointments. I respectfully suggest, in light of that, Mr. President, that we proceed to consider another amendment in the interim while Delegate Jirolanio's is being drawn up and prepared.

AMSTERDAM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE AMSTERDAM offered the following amendment which was read by the clerk:

Amend Sec. 1, (Sec. 11), page 5, line 2 by inserting after "any": Statewide

Amend Sec. 1, (Sec. 11), page 5, lines 2 and 3 by striking out "of Statewide jurisdiction"

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam in connection with his amendment.

DELEGATE AMSTERDAM. Mr. President, this is one of the amendments that is required because of the change we made earlier in another section of the judiciary article.

In discussing the commonwealth court, we had in originally that it would be a court of statewide jurisdiction. That was amended to provide that it be a statewide court. The same language, therefore, should appear on page 5 at the point indicated so that there is no question that the judges of the commonwealth court are chosen in the same way that the judges of the other statewide courts are chosen.

This is simply a clean-up amendment to make the selection of judges with regard to the commonwealth court exactly the same as it is for the Superior Court and the Supreme Court, no matter what that system turns out to be.

PRESIDENT BRODERICK. Does anyone wish to be heard, or are you ready for the question? Apparently we are ready for the question.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Amsterdam?

The roll was recorded as follows:

YEAS—116

Amsterdam	Erwin	Keller, M.	Reynolds
Bagenstose	Fagan	Kelly	Richter
Baldwin	Fawcett	Kline	Roberts
Barron	Fay	Krill	Rovner
Barry	Feather	Laputka	Ruth
Bashoff	Filson	Leinbach	Sahli
Benedict	Fineman	Levin	Scales
Benfield	Fleming	Manderino	Scarlett
Bloom	Fohl	Mangery	Scott
Braham	Forster	Mattioni	Sebastian
Brennan	Fortney	McGeary	Shapiro
Broderick	Gabreski	McGlynn	Shively
Brown	Gehrlein	Meyer	Shoemaker
Buck	Goldman	Michael	Sprogell
Bunting	Goldstein	Michener	Stout
Burkholder	Gouger	Miller, D.	Strickler
Butera	Gray	Miller, R.	Stroup
Camardella	Griffith	Moorhead	Tate
Caputo	Hannum	Murray	Thornburgh
Caron	Harding	Nelson	Tomasclk
Casey	Henderson	O'Donnell	Tully
Clinger	Himes	Orbin	Van Sant
Cosetti	Hook	Otto	Warman
Croop	Horne	Pasquerilla	Welsh
Curran	Huggins	Percey	Westerberg
Dalley	Jirolanio	Pott	Whittum
Desmond	Johnson	Powell	Wilcox
Devlin	Kauffman	Rea	Woodring
Dumbauld	Keller, J.	Redick	Woodside

NAYS—0

NOT VOTING—47

Aberman	Donaldson	Lee, L.	Rappaport
Allison	Donolow	Leonard	Scranton
Aurentz	Gerber	Markley	Sharp
Baldrige	Hatter	More	Shettig
Baldus	Heyburn	Morton	Shrager
Banes	Hocker	Musselman	Silverman
Cain	Hostetler	Orban	Solomon
Clark	Irvis	Pechan	Swope
Conley	King	Pellctier	Thomson
Corey	Lane	Popil	Waldron
Cortese	Leach	Prendergast	Wilmarth
Cunningham	Lee, K.	Quiles	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilmarth. For what purpose does the gentleman rise?

DELEGATE WILMARTH. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE WILMARTH. Mr. President, this is only a matter of personal privilege. Although this was a unanimous vote, I failed to vote because I had just gotten the amendment in my hand at the time you called for the vote. I realize that I have been on the floor trying to expedite voting, but I do not think this is fair that we do not have these in our hands before the vote is called for.

PRESIDENT BRODERICK. I would say this, the Chair agrees with the delegate. I have been making an effort and I thought they had been distributed.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban. For what purpose does the gentleman rise?

DELEGATE ORBAN. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE ORBAN. Being off the floor on business, I would like the record to show I would vote in the affirmative on the last amendment.

PRESIDENT BRODERICK. It will be placed on the record.

TEACHER AND STUDENTS OF CARNEGIE JUNIOR HIGH SCHOOL WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. I am privileged to announce that we have in our audience today a group of 101 students from the Carnegie Junior High School under the guidance of the history and civics teacher, Mr. Sobie. He has with him three teachers: Mr. Allen, Mr. Ceancione and Mr. Strange, also, two chaperones: Mrs. Schutte and Mrs. Weitzel. The delegates are, myself, Delegate Goldman and Delegate Rea. It is to be noted that this group will have traveled, after their return home, a total of 420 miles. At this time I feel we should ask these people to take a bow.

PRESIDENT BRODERICK. In accordance with our customary procedure, we will ask the students from Carnegie if they will please rise so we can give them our cordial greeting.

WELCOME TO FAMILY AND FRIEND OF DELEGATE WILCOX

DELEGATE WILMARTH. Mr. President, I believe one of our delegates is a bit shy this morning, but his family is here and I would like him to introduce them.

Tom, will you introduce your family, please?

DELEGATE WILCOX. My wife, Ann, my son Mark, my daughter Ellen and our friend, Ellie Barkman.

PRESIDENT BRODERICK. We are very happy to have the Wilcox family with us. We are very proud of the job that dad is doing down here.

ANNOUNCEMENT OF DINNER OF LOCAL GOVERNMENT COMMITTEE

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, may I make an announcement at this time?

PRESIDENT BRODERICK. Yes.

DELEGATE SCALES. The Local Government Committee wishes to announce that its first annual reunion dinner will be held tomorrow evening, Mr. President. The time of the dinner is 7:30. It will be held in Parlor A at the Holiday Inn Town. The cost of the dinner is $4.00 per person. Those wishing to attend should see our social chairman, Ed Walton, by 3:00 o'clock this afternoon. I am authorized to state that no business will be conducted at this meeting and, in fact, anyone who offers an amendment will be expelled without the benefit of trial.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Tomascik.

DELEGATE TOMASCIK. Mr. President, I came into the hall of the Convention after the roll call and I wish to have my presence recorded.

PRESIDENT BRODERICK. I want the delegates to know—also Delegate Braham—you have been recorded as present. All those that came in after we took the roll have been recorded as present.

JIROLANIO AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE JIROLANIO offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, lines 1 to 30; page 6, lines 1 to 30; by striking out "(a) Whenever a vacancy occurs for any" in line 1, all of lines 2 to 30, page 5, all of lines 1 to 29 and "(g)" in line 30; page 6 and inserting: (a) Justices, judges and justices of the peace shall be elected by the qualified electors of the State or districts as the case may be.

(b) Any vacancy happening by death, resignation or otherwise, in any court, shall be filled by appointment by the Governor, to continue till the first Monday of January next succeeding the first general election, which shall occur three or more months after the happening of such vacancy. Appointments shall be made with the advice and consent of two-thirds of the Senate.

(c)

Amend Sec. 1 (Sec. 12), page 7, lines 9 to 30; page 8, lines 1 to 10 by striking out all of said lines

Amend Sec. 1 (Sec. 13), page 8, line 11 by striking out "13" and inserting: 12

Amend Sec. 1 (Sec. 13), page 8, lines 16 to 30; page 9, lines 1 to 22 by striking out all of lines 16 to 30; page 8; all of lines 1 to 21 and "(e)" in line 22, page 9 and inserting: (b)

Amend Sec. 1 (Sec. 14), page 9, line 25 by striking out "14" and inserting: 13

Amend Sec. 1 (Sec. 15), page 10, line 10 by striking out "15" and inserting: 14

Amend Sec. 1 (Sec. 16), page 11, line 2 by striking out "16" and inserting: 15

Amend Sec. 1 (Sec. 17), page 14, line 1 by striking out "17" and inserting: 16

Amend Sec. 1 (Sec. 18), page 14, line 26 by striking out "18" and inserting: 17

On the question,

Will the Convention agree to the amendment?

DELEGATE JIROLANIO. What this amendment proposes to do is place the appellate judges on the ballot and their office will be up for election by the people as it is today. This eliminates the panel insofar as it applies to them and will make this an elective office, just as we have done for the district courts and district judges. I see no reason why we should not also have the same prerogative. The same arguments used yesterday afternoon by many of the distinguished delegates will also apply to this particular amendment. The people should have the right to select the appellate court judges. There is a saying here that many persons do not know who they actually are.

Let me say this, as my experience has been active in politics, I know that neither the Republican Party nor the Democratic Party has ever attempted to give to the people of the Commonwealth of Pennsylvania nominees for these particular offices of justices without them being men of high ability, high integrity and good character and their reputations placed right on the line where everyone can look right through them and know they are competent and able and would be good judges to serve all the people. To take away from the people of the Commonwealth of Pennsylvania the right to select the very men who are going to pass upon the laws in the final analysis, I think, is contrary to all democratic principles we stand for in our Constitution and in our country.

Therefore, I would say to this Convention that a vote in favor of this amendment will be restoring the rights to the people and giving to the people the right to select the type of judges and justices they want to serve them in the appellate courts of the Commonwealth of Pennsylvania.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the delegates may wish to have in their minds what motivated the Committee as far as trying to condense into a very few minutes what happened over many, many days of arguments and discussion.

It was felt, particularly in the case of statewide judges, that there was a real inability to know who the various candidates were on any intimate basis. The best judges for the appellate court might well come out of some of the smaller communities, as they have over the years, and they would not be known to very many people on any kind of a statewide basis. Because of that fact, very early in our discussion, when the panel recommendation of the subcommittee came in, there was a rather substantial vote in favor of the panel suggestion, or panel method of suggesting names to the Governor.

Thereafter, there were many votes on the question of whether the panel should give a few names or many names, whether they should give all the names, and whether the Governor, once he had made his appointment, have that appointment subject to the approval by the Senate, by a majority of the Senate, or by two-thirds of the Senate.

All of these were variations on the theme, but there was relatively little opposition in the discussions of the committee itself with regard to the panel selection on statewide judges. I think this is important.

It was felt that this is a way of keeping the judges out of politics, which is important. It was not felt that the judges, in connection with their activities, should be subjected to political pressure of any kind, and it was deemed desirable because of that to have eliminated from the selection process of statewide judges any reference to the electorate method as we have seen it heretofore.

The way in which many of the delegates expressed it was, for the most part, the choice of persons to be nominated was dictated at the party level by the Republican and Democratic State Chairman and, in most cases, it was not really a choice of the electorate in the same sense in which a choice is made for the selection of the Governor or for other important offices in the State. For that reason it was quite clear that the committee itself favored some type of panel discussion.

I should like at this time to have further elaboration, if I may, by calling on Delegate Kauffman, one of the co-chairmen of the subcommittee on the selection of judges.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kauffman. Delegate Kauffman, if you would yield for one second, the Chair wants to request the fellow delegates to please see if we cannot be in order, because it is difficult for everyone to hear. We know that when you reach the microphone you will want the courtesy of the attention of your fellow delegates, so I just ask you, please, if you have to talk, do it in subdued tone. It is difficult to hear the speakers.

Delegate Kauffman, you may proceed.

DELEGATE KAUFFMAN. Mr. President, in an area that was otherwise very controversial, there was one basic concept which drew virtual unanimity in the sub-committee on the selection of judges, that is, we decided it was far better for all of this Commonwealth to have our judges of statewide jurisdiction appointed, rather than elected as at present.

There was no question in our minds, at least, that many legitimate arguments which had been propounded for the election of local judges did not apply in any way, shape or form to the selection of judges of statewide jurisdiction. We felt very strongly that judges should be appointed and not elected.

The only contentious issues in our sub-committee, and really the only real contention in the standing committee itself, was in what manner should judges be appointed, not whether judges should be appointed or elected. That was practically a foregone conclusion among virtually all of the people on the subcommittee and virtually the great

preponderance of all of the members of the standing committee.

I strongly urge that this amendment be defeated, because I believe it would not be good for the Commonwealth. I think we would be maintaining the status quo, and I have not in this Convention been for change, for the sake of change alone, but this is one situation where the status quo would reflect very badly upon all of us.

There are no legitimate reasons which have been put forth, either in the subcommittee on selection of judges, or with regard to the standing committee on selection of judges, that would favor election of judges. Although there are many of us who do not approve of the particular appointive method which is contained in the standing committee's proposal, I believe I speak for at least many of us who would rather see even that, than the present elective method for statewide selection of judges.

PRESIDENT BRODERICK. The Chair recognizes Delegate Buck.

DELEGATE BUCK. Mr. President, I came to this Convention pre-opposed to merit selection. In fact, I hoped that I might serve on the sub-committee on selection of the Judiciary Committee, but was apparently overlooked.

In the light of the spirited debate, I think that was a fortunate turn of events, because I can now rise to speak in support of the Judiciary Committee's recommendation, not as a member of the Judiciary Committee, but as a non-metropolitan lawyer who finds himself in the unfortunate position of being located midway between Delegate Scales, who changes the labels on his suit, and Delegate Hook, who apparently goes to his office with dust on his shoes.

I support merit selection not because I wish to stifle or disenfranchise the electorate, not because I wish to substitute Bar Association politics for elective politics, not because I believe the judges that we have in Pennsylvania today are venal, not because I wish to deprive a member of a minority group like myself of an equal opportunity to become a judge on one of the courts in Pennsylvania. I support merit selection because after walking all around that problem and listening to the fine arguments that have been made in this assembly, I have come to the conclusion that merit selection will bring to the courts of our State the best legal talent willing to serve more consistently and more routinely than either the present elective system or the appointive system that has been advocated by Delegate Kauffman.

The argument that the will of the people is and ought to be supreme in every respect and no institution should be allowed to exist except on the direct expression of the people, one must admit, is fundamental to our way of life. As applied, however, to the judicial department, it is a specious argument calculated to destroy the independence of the judiciary though frequently urged in electioneering harangues and occasionally in newspaper editorials. It is certainly one calculated better than any other argument that I have ever heard to make an impression upon the people. This is all sophistry and sophistry so great that one is reluctant to argue against it. The idea that the voters themselves elect their judges is pure romance. The real electors are a few political leaders who do the nominating, and believe me, I find no fault with political leadership of the kind that has been demonstrated in this Convention, and I am a believer in the two-party system because I believe it is the very blood of our way of life, but I would like to direct your attention to the report of the Woodside Commission if there is any doubt in your minds as to the meaning and significance of the elective system. The Woodside Commission reported:

"The elective system is not adequate to determine the ability of a judge. It is their belief that politicians, rather than the people, select the nominee for judicial office under this procedure and that selection is determined not primarily on the basis of judicial ability, but rather on the basis of extra judicial considerations, such as party affiliation, membership in a particular racial or religious group, and patronage considerations.

"It is further thought that the elective system requiring the judge to periodically subject himself on the party ballot to the public, tends to produce a dependent judiciary in that he must appeal for support from those who are likely to have cases before him and they must keep friendly with the party bosses."

If you have any lingering doubt in your mind as to who the real electors are under the elective judicial system, I would merely like to refresh your recollection by a recent example. Both statewide committees of the Republican and Democratic Party met here in Harrisburg during our Convention sessions. Each nominated a candidate for the Superior Court of Pennsylvania. In April of this year the people of Pennsylvania will have a chance to vote for either one of the two nominees. Under that system, how can we say the people will elect their judges?

It has been said on this floor that anybody has the right to be a judge. Certainly, no one will quarrel with that statement. But how can anyone who seeks to become a judge in Pennsylvania hope to do so if he does not have the support of the political leadership? It is too costly and most impractical to wage a campaign in the primary election against the nominee of the political leadership.

As a matter of fact, in my judgment the lawyer in Pennsylvania who wishes to become a judge would have a better opportunity by seeking the favorable consideration upon his application before a merit selection commission such as the Committee on Judiciary has recommended for your approval.

There has been a great deal said in this Convention about the fact that the use of this commission is undemocratic, that it violates the checks-and-balances system upon which our form of government is founded. As a matter of fact, the founding fathers never contemplated that the people should elect their judges and, if any of you have any doubt about the accuracy of that statement, I would like to refresh your recollection by a quotation from the Federalist Papers No. 51 when John Madison wrote in regard to the checks-and-balances system, "Some deviations, therefore, from the principle that all appointments for the Supreme executive, legislative, and judiciary departments should be drawn from the same fountain of authority, the people, must be admitted. In the constitution of the judiciary department, in particular, it might be inexpedient to insist vigorously on the principle because peculiar qualifications being essential to the members, the primary consideration ought to be to select that mode of choice which best secures those qualifications.

As a result, Federal judges have never been elected, but at all times appointed by and with the consent of the Senate. This same practice also prevailed in all of the 13 original states, and in Pennsylvania until 1850, when the

growth of the Jacksonian democracy resulted in a constitutional amendment providing for the election of all judges.

It is true that no human institution, not even this Convention, works perfectly at all times, but of all methods of judicial selection, the appointive-elective merit plan is, in my opinion, the best. It eliminates, perhaps not entirely, but as far as possible, the wrong political considerations. It sets up a mechanism dominated by laymen for actively searching out the best talent by nonpolitical people whose objective is to beat the bushes in an attempt to find the most qualified men.

It leaves the final responsibility for selection in the executive where it belongs. It also preserves for the voters the one part they are best able to do, to remove a judge who has demonstrated his unfitness for office. I, therefore, urge you to support the recommendation of the Judiciary Committee on the merit selection of statewide judges and also the merit retention of our lower court judges.

DEATH OF MAJOR GENERAL THOMAS WHITE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, it is my sad task to announce the death of Major General Thomas White, Adjutant General of Pennsylvania, who died at Indiantown Gap, Pennsylvania, this morning.

PRESIDENT BRODERICK. I am sure I express the feelings of all the delegates that we are deeply saddened by that announcement and, if you permit me to suggest, we will again rise for a moment of silent prayer for our departed Brother, General White.

(The delegates stood in silent prayer.)

JIROLANIO AMENDMENT

PRESIDENT BRODERICK. To return to the business of the Convention, the Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, I rise in strong support of the Jirolanio amendment. It seemed to me as I sat here for the last two and a half months, particularly the last week, that most of the delegates, a big majority of them, feel the people back home, who had enough intelligence to elect them to come here, no longer have intelligence to vote for judges or anyone else whom they see fit.

It seemed to me that we want to take the right, the absolute right, away from the people. I do not think anyone in this State has sent a delegate here to take their right away such as we are attempting to do here in the judiciary.

The minute we start taking the rights away from the people, we are in trouble, in deep trouble. I am sure that we have enough intelligent people in this State to know what they want. We should maintain that right. It is not a privilege but a right to vote for people who shall represent them or judge them.

I strongly support this amendment and I urge each and every delegate to not forget by the mere fact that you are here that you are elected by the people. Do not tell them today they do not know what they are doing. So vote for this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate McGeary.

DELEGATE McGEARY. Mr. President, I have never spoken more than two or three sentences in this Convention, and I do not propose to do so now.

I feel very strongly that this amendment should not pass. We have three branches of the government—I am not telling you anything you do not know. The executive branch is mixed up in politics and should be, the legislative branch is mixed up in politics and should be, but the judicial branch should not be and it seems to me that the merit plan which is suggested, and which I approve of, does more than any of the other plans to take the judiciary out of politics.

I will not continue to talk. Others have talked of the merits of the merit system. I would just like to make one point against the amendment in this particular case and that is, it is merely one illustration, but I had a very good friend who is a member of the Superior Court. He said not to quote him, but I am quoting him now, but I am not quoting his name. He said, "Don't quote me, but when I ran for the Superior Court, I am sure that not only fewer than 10 per cent of the voters knew me, but fewer than 10 per cent of the voters knew anything about my qualifications."

I wanted to add that, because of that, I got curious and at the next election—other people have done this, too—at the next election I went around and took a little poll vote of 32 people the day after the election and asked them, "Whom did you vote for for Superior Court or Supreme Court?" and only two could tell me who they voted for.

I urge the defeat of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth.

DELEGATE RUTH. Mr. President, I will try to make this short. First of all, I have discussed this with Delegate Jirolanio and I understand he will accept an amendment to (b) of the amendment he is proposing whereby it would be 10 months instead of three months that an appointive judge would then stand for election. This is one period of time which was discussed at length in the Judiciary and it was felt that a judge should, if he runs, an appointed judge should, at least, run on a primary ballot in addition to running on a general ballot. I think this was indicative throughout our Judiciary Committee in a couple of other areas that we put in 10 months, and I think Delegate Jirolanio will agree to that amendment.

DELEGATE JIROLANIO. I have no objection if the Committee has discussed it.

PRESIDENT BRODERICK. Is this an amendment to an amendment you are now offering?

DELEGATE RUTH. Yes.

PRESIDENT BRODERICK. Is it prepared?

DELEGATE RUTH. I am sorry, it is not prepared, but I felt by putting in the number 10 for 3, that would be sufficient.

PRESIDENT BRODERICK. Would you come forward and see if we cannot get it prepared and we will then have it introduced.

DELEGATE RUTH. While I have the microphone, I do have a few comments if I may make them, and then I will come forward.

PRESIDENT BRODERICK. Certainly, you may. May I suggest, however, in the interest of saving the time of the delegates, if you will yield now, I will call on you again in order that we may get your amendment to the amendment prepared.

DELEGATE RUTH. All right.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, it had been my plan to speak affirmatively regarding the merits of the merit system of selecting judges. However, Delegate Buck has spoken so well and so eloquently on that point that I want to speak in a frame of mind more negative at the moment than affirmative. I want to consider what the merits of our present system have been and what the demerits have been.

Any attempt to improve the administration of justice must begin with the judges. The judge in commission, is the only person absolutely indispensable to the operation of the judicial article. Therefore, we have to examine our system.

It is all right to say we will go back now and elect the judges the way we always have. Then, we are asking the voters to believe it is going to be very much better. There has been talk about how corrupt things were in Missouri and how wonderful our own judges have been.

As a little boy, I remember hearing talk with regard to the construction of the State House and about the money that was spent and the money that was lost in graft.

Our people have always been Republicans and I remember hearing them talk about Governor Geary and they said one honest Governor which we had, who did not have anything to do with this great scandal.

I can think back over the periods of our history when we have been sadly in need of some control of the judiciary. With that let me make some few simple suggestions. I say the improvement of the judiciary must begin with the judges. Let me take this little subject of appeal. How we wrestled to get words that would take care of the subject of appeal. Did it ever occur to you that, when you are considering the language which will make everybody's rights secure after summary conviction, you better consider the merits and ability of the man who pronounced that sentence. If you have strong enough men in the front line rendering the initial decisions, you will not get this multitude of appeals. The trouble is, the justices of the peace and men of that sort do not have the capacity and the stature to impose upon the people before them the idea that you have been before the Court and this is what the law says.

Will you go with me to the other end of our judicial system, and this I hate to speak about because I have had so many friends on the appellate courts. There is one practice of the appellate court of this State now with respect to the allowing of appeals that is all wrong. That practice is that they still require printing of all the records of all the cases that come before them. All the records and all the briefs have to be printed.

Those of you who are not lawyers do not know how expensive that is. It would be not uncommon for a man who was involved in a $10,000 lawsuit to be told by his lawyer, "Well, we ought to take an appeal, but printing that paper book will cost $2,000, or $2,500, or $1,500." Your lawyer friends will tell you about that.

In other states over the line, in Ohio, my neighboring state, also, I might say my native state, they allow the reproduction of the printing of the record. They have materials and methods whereby they can replace and reproduce subjects instantly out of that and the cost only would be a few dollars instead of hundreds and thousands of dollars. If you want to talk about improving appeals, begin there, provided everybody can have an appeal within his reach. It is impossible now. The poor man cannot take an appeal. The insurance companies can take an appeal, the big companies, where there is an estate with money, they can afford to appeal, which is why the appellate courts are able to say that they have their dockets so clean.

The next subject is about delay, judges who do not come in on time, who do not go on the bench on time and who allow witnesses, and lawyers and everybody to delay. They came up with the political system, maybe they did not want to be judges so much as they wanted an office. There have been valuable suggestions made in the unification of the courts. That may involve having the judges punch time clocks. Why not? If they entrust people with the responsibility of being judges over them all, their life and their destiny, we have a right to know what hours they keep, how much they do work.

There was another suggestion made by one of our modest members, Delegate Sprogell. She suggested that the delay in the civil courts is in the negligence cases. Then she made this suggestion, and you young lawyers of the Young Lawyers Association, listened to the suggestion she made completely from the outside, which was, is it not perfectly apparent that nowadays we are going to have to put those plaintiffs cases in the workmen's compensation system? Certainly, we are, because in the courts we have not had the ingenuity, the strength, the fortitude, the wisdom, to devise a system to handle the situation where one lawyer, because he has a lot of cases, can tie up the whole operation of the courts.

Another thing that I would like to mention is this, the loss of business in the courts. We are so proud of our judicial system, we honor its traditions, we stand by its principles about no hearsay evidence, and all of that sort of thing, and presumptions. Well, my friends, the great majority of the business of the country has passed from the courts and is now handled by boards and commissions. The boards and commissions take this away from the public courts. They are run off into a corner, they set up their own little court, they come back staffed by laymen, they bring findings back and say the courts are expected to accept those things.

Let me give you an illustration. The most common of these boards and commissions would be the Workmen's Compensation Board. At the time that was adopted it displaced an old system of actions of law for negligence of employers and apparently, they thought at the time they had to get some disinterested body to handle it, and that is why they set up the Board of Water Commission.

Is it not perfectly clear now that if we had in each county in the county commissioners' office, say, a workman's compensation officer who handled all the agreements and all the settlements and, if there were disputes as to whether a man really was an employee, whether he

really was injured, whether he continued to be injured, have it tried in a court like any other case on the question of facts.

The same thing is true about the labor laws. A few years ago there was a case in our county concerning two employees of the Johnson Bronze Company. There was a question of whether they had the right treatment as to their vacation, or something, I do not remember just what it was. They brought it to Lawrence County for trial and had a full apparatus of judge, stenographer, attendant of the court, lawyers, and everything else. They set up this great apparatus to try this little case. The law ought to be revised so those cases would be tried in our courts as any other case. You say this may mean more judges. Certainly, it would mean more judges, but these questions are being decided by non-judges now, only we call them judges.

The life of a business community is research. A company that does not have research fails. Is there any research in the law? Let me ask you, is there not research in the law? What about the American Law Institute? What about the American Judicial Society? What about the Institute for Judicial Administration? All of those have had very valuable research and findings. What happened to them here? They are dismissed with a sneer of, "That's a blue ribbon committee." They are dismissed by many sneers of "blue ribbon stuff."

Then we come in with an outfit that no one heard of who recommends a way of selecting judges. Why do we not try to get the benefit of the study in our country? In our country the Missouri Plan, so reviled here, has been adopted in whole or in part in 14 states. Yet here we are in Penn's Woods saying that means nothing. Here is a little outfit—people look upon Pennsylvania as Penn's Woods. If we hand out a judicial article like this, people say we did not know the woods were so deep in Penn's Woods. We thought they came out of the backwoods some time ago. I do not like that system.

One other thing, as to the future of this thing, what we need is judges with more vision, with more experience, with more insight, and with more fortitude. Let me give an example. I hope I will not give offense to anyone. Let us suppose at the time these men were young men—they are young now, when they were younger—Governor Scranton and Delegate Amsterdam were young lawyers, and at a time when they might have been considered for judge, if we had the situation then so that it would appeal to them to want to be judges, would they not have done differently? Would they not have been able to bring insight, and health and wisdom to our system of administration of justice?

I ask the defeat of this amendment.

COMMITTEE MEETING

PRESIDENT BRODERICK. The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON. I wish to speak on the amendment, Mr. President, but before that, as a matter of personal privilege, I would like to make an announcement, if I may.

PRESIDENT BRODERICK. You may.

DELEGATE JOHNSON The way out of this assembly room for the members of the Committee on Style and Drafting is down to the basement through the tunnel to Room 500. Immediately after the afternoon recess we will have lunch and a very important meeting. All members of the Committee on Style and Drafting.

Concerning the amendment, Mr. President, I was tempted to introduce a resolution, but I was told by my friends it might be out of order, the resolution being that when we come to a vote all members of the bar and legislature refrain from voting and let us, the common electorate, decide

I am against the amendment simply because I do not believe that judges on the statewide level should be a matter of partisan politics, I do not believe the candidates should have the expense of the primary, I do not believe they have the real opoportunity to become acquainted with the electorate.

I will close with just this illustration:

During the recent election of Superior Court judges I happened to invite to our college, and have as a speaker at a luncheon, a very distinguished lady from Philadelphia. She was an authority on juvenile delinquency, and you know her name, so I will not repeat it, and, when the luncheon guests assembled, those persons who were members of the district court bench, those persons who were officials of Greenville who were of the opposite party, were not there. Why? Because at the time she happened to be a candidate for Superior Court judge.

I do not believe we should submit people on a higher level to that humiliation. Let us get it out of partisan politics.

PRESIDENT BRODERICK. The Chair recognizes Delegate Clinger.

DELEGATE CLINGER. Mr. President, I have a more recent poll than that cited to you by Delegate McGeary.

Knowing that this issue was going to arise this week, while I was home over the weekend I conducted a poll of my own. I talked to all of the members of the Republican County Committee, all of the members of the Democratic County Committee and all of the members of the bar that I could get in touch with, and 50 people selected at random out of the phone book, and I asked each of those people who they had voted for for the Superior Court in 1966. My results were basically the same as those found by Delegate McGeary. Only two remembered either of the candidates they had voted for. One of those thought he had voted for a man named Watson, rather than Watkins. The other gentleman I asked why he had voted for the candidate whose name he remembered, and he said he voted for him because he was on the Democratic ticket.

I think, perhaps, it might be instructive here to take a poll of this Convention body and see how many of you remember who you voted for for Superior Court judge two years ago. In case you have forgotten, the other candidates were Stout, Spaulding and Palmer.

In any case, it may or may not be too significant, but I do think you would have found the same results had you conducted a similar poll in your district and it indicates to me two things, first, that by and large the people do not know for whom they are voting for the office of appellate judge, and, secondly, they vote for the wrong reasons.

It has been clearly spelled out here how the process actually works, that is, candidates are really selected by the political leaders and then they run in a partisan polit-

ical election. Clearly, the ones who win are the ones on the ticket with the ones who are the most attractive candidates for governor or the most attractive candidates for president. As a matter of fact, the electorate really does not have any basis on which to assess the qualifications of the men who are running for appellate court judge.

A judge, after all, cannot run on a political platform as can a governor or as can a legislator, other than to say if he is elected he will administer justice in a fair and impartial way. I suggest to you that the man with a pleasing platform personality may very well turn out to be a tyrant on the bench, and a man with an attractive wife and four attractive children may have only the most tenuous grasp on the rule of perpetuities. Yet these are the qualities, pleasing personalities and the attractive family, that tend to take precedence in an election of this sort.

I suggest that judicial temperament, legal training and background cannot possibly be truly assessed in the heat of a partisan political campaign.

I think this deserves to be stressed, once on the bench the people do have an opportunity to assess the qualifications of the man that is on the bench. They can see how he does, in fact, administer justice.

Bear in mind, the committee proposal does not take this right away from the electorate, it does not remove the right of the people to judge their judges. I think this issue has been clouded here, that we are somehow removing their right to ever pass on the virtues of the judge.

All the committee proposal does, it says the people will have the right to judge their judges when they are in a position to have some basis on which they can make that judgment.

After they have had an opportunity to see the judge in action—and at that point, I submit, they should have a right to reject the judge if they do not feel that he is doing a good job administering justice—the merit retention system gives the people the right to pass on their judges.

The elective system will not produce qualified judges, because the people do not really have any basis on which to make that judgment.

I urge you to defeat the amendment. It can only perpetuate a system that has not been productive in the past.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, first of all, I would like to make a point of personal privilege and apologize to all of you. I understand and I did not know this was going to happen, that because I was late Delegate Kauffman has been willing to put over his amendment, and you are now discussing something else.

The reason I was late was because my second son got himself involved in a hockey game last night. I think he decided he was going to train to beat the Russians in the next Olympics, and he ended up in the hospital without most of his teeth, so I have been spending most of the night trying to get that worked out. I am not looking for sympathy. He is going to be all right.

May I say on this subject just four things.

First of all, you know the committee was overwhelming in their feeling that on a statewide basis we should not have the election system.

Secondly, and I think equally important, all of our experience, indeed, even recently, has been proving the fact that people really do not know about the election of judges and elections.

Let me give you what I consider to be the ideal election for them to know, which was the election of 1963. There was no governor running, there was no senator running, there was no president running. There were just two members of the Superior Court, and we had a series of polls, and, frankly, I got very interested in this because I wanted to know what people really thought. We had a series of polls taken all year long on this, and I insisted, incidentally, that they poll the home counties of the four men running, as well as everything else, and even with those four counties in it, on a very widespread poll by the end of the year it had gone up to about 55,000 or 65,000 people, only one out of 27 could name one of the four candidates.

I can assure you, Mr. President, that all of our experience has been that this is not really the people deciding who shall be the judges of the State of Pennsylvania.

Third, may I point out to you that this amendment would rip out the retention election system on a yes or no basis, which is very dear to the hearts of the committee, and I think extremely important for politics in our system of the judiciary.

And last, but by no means least, I would like, also, to point out and reiterate what Delegate Michael said yesterday. I remind you as strongly as all of us feel, that the majority must be the important element in our system of government in the United States in both the legislative and congressional halls and in the executive. They are voted in by the majority. They are beholding to them and they should be, but in our system of government we have the judiciary, which is at least partially, if not completely, designed to take care of the individual rights, the minority, and especially the Bill of Rights, and, if you are going to elect the United States Supreme Court, for example, and make sure that they are beholding to the majority, I say to you that the Bill of Rights is literally in jeopardy.

How do we take care of this? We take care of it in our system if we do not like what the decisions of the Supreme Court may be in this State or in the United States Supreme Court, we do it under our system of constitutional amendments.

There is the ability to impeach, but, thank heavens, that has not been used very much. There is the constitutional amendment process by which the majority can maintain their upper hand.

At least, the judiciary is designed in our whole system to make sure that the individual right is maintained against the majority, if need be, but maintained.

Therefore, I say to you that it is incumbent upon us to take a new step forward in Pennsylvania, as they are doing in many other places, not just Missouri, incidentally, but many other places, and no matter what kind of system you want, make sure it is not some kind of a fake election system which has no real meaning.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, I propose

to speak in opposition to the amendment. Therefore, under our rules if someone wishes to speak in favor of it, I would yield to them.

PRESIDENT BRODERICK. Does any delegate wish to speak?

The Chair recognizes Delegate Goldman. He has been standing a long time.

DELEGATE GOLDMAN. Mr. President, I rise in support of this amendment and for three really simple basic reasons.

One, it has been suggested to us that our judges that are now sitting are bad, that they are political ridden, that their decisions are improper, that they are incompetent, that they are senile, and none of this is true.

It seems strange to me that delegates who are practicing in front of these various judges, including myself, will stand here on the floor of the Convention and attack the judicial system we now have and the judges and say that they are bad, that they are corrupt, that they are inept, and yet at the same time, once having left these halls and the security of the privilege which we have, then defend our judges.

I just do not believe that our court system is as bad as it is being made out to be. I have heard no evidence that any judge has at any time done anything improper or rendered a decision on a purely political basis.

Sure, our system of electing judges now is on a political basis, but it is on a broad-scope, political basis. It is not on the narrow scope of any particular organization or group that may have a vested interest, not just as a mere passing interest, but an absolute vested interest in the selection of that particular judge.

It is political, but it has not been bad. A change simply for the sake of change does not make sense, that is not why we were called here.

Secondly, they say we want to keep judges out of politics. Agreed.

What happened to our sitting judge principle? Is that not designed to keep judgeships out of politics? A judge, once having attained the degree of that office, is then endorsed by both parties. Now, if he is endorsed by both parties, which he is, has that not taken him out of politics?

Does this not make it unnecessary for him to run in a primary or for him to do any campaigning or get into the gutty issues of party politics? I say it does. It takes him from that arena. It has effectively taken him from that arena and it will keep him out of it, as it should. That is a sufficient safeguard.

The third point—and perhaps this, to me, is really the crux of the issue—those proponents of the Bar Plan, and it is a Pennsylvania Bar Association plan, have suggested that our people do not know the qualifications of judges and, therefore, they cannot adequately assess their value and their merit so as to properly be able to decide whether or not this man, or someone else, should be a judge. The Bar Association says—perhaps, properly—we are better qualified, we have particular knowledge that is not available to anyone else and, therefore, we should make this decision. Well, if the Bar Association wants to make this decision for the people, would it not be just as simple and would it not be just as logical for the Bar Association in a primary to endorse and support a candidate and educate the people as to who is or who is not a good judge, rather than taking away the right of voting for that judge and supplanting it within themselves. Would it not be just as easy and more and more proper for the Bar Association to take a more active role as a real participant in the primary election of judges and tell the people who is good and who is bad. In my opinion, this is the democratic way of doing things, not saying that the people are unintelligent and unable to make these decisions and, therefore, we will take that right away from you and make the decision for you. That is not proper.

I stand in favor of this amendment and, if the Bar Association wants to go out and work, then let them work in a primary and let them teach the people who are good judges and who are not.

RUTH AMENDMENT TO COMMITTEE PROPOSAL No. 7

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Jirolanio to Committee Proposal No. 7?

DELEGATE RUTH offered the following amendment to the amendment by Delegate Jirolanio, which was read by the clerk:

Amend page 1 of the amendments, line 11 by striking out "three" and inserting: ten

Amend page 1 of the amendments, lines 19 to 22 by striking out all of said lines and inserting: Amend Sec. 1 (Sec. 13), page 8, lines 16 to 27 by striking out all of said lines

Amend Sec. 1 (Sec. 13), page 8, line 28 by striking out "(d)" and inserting: (b)

Amend Sec. 1 (Sec. 13), page 9, line 22 by striking out "(e)" and inserting: (c)

On the question,

Will the Convention agree to the amendment to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth in connection with this amendment to the Jirolanio amendment.

DELEGATE RUTH. I wish to indicate, first, that I discussed this amendment with Delegate Jirolanio and, as the delegates will remember, the first part of my amendment only changes the time an appointive judge would run and, instead of having to do it after three months of being on the bench, he would do it after ten months.

The second part would keep the merit retention of a judge. Once he was elected, he could then run on a yes-no ballot. Originally, Delegate Jirolanio's amendment would have eliminated merit retention on the statewide level. It was my understanding yesterday that on the local level we kept merit retention and we believe we would like to keep it on a statewide basis.

Now I would like to proceed on the main issue, if I may, Mr. President.

PRESIDENT BRODERICK. We have to dispose of your amendment first. From now on, the discussion must be limited to your amendment to the Jirolanio amendment and then we will vote on your amendment.

Does anyone else wish to be heard in connection with the Ruth amendment? Are we ready for the question on the Ruth amendment?

DELEGATE O'DONNELL. I would like to have an op-

portunity to see what it means. Perhaps, everyone else is more familiar with it than I am.

PRESIDENT BRODERICK. We recognize Delegate O'Donnell. Did you want Delegate Ruth to stand for questioning?

DELEGATE O'DONNELL. If I just have it in front of me long enough to read it, I think I may be able to vote intelligently. If you can let the Convention stand at ease for a moment, I would appreciate it.

PRESIDENT BRODERICK. All right.

The Chair now recognizes Delegate O'Donnell, who is apparently a fast reader.

DELEGATE O'DONNELL. I would like to have the privilege of interrogating the sponsor of the Ruth amendment.

PRESIDENT BRODERICK. He will stand for interrogation. Proceed.

DELEGATE O'DONNELL. If I am reading your amendment accurately, I go back to the Jirolanio amendment and underneath where it has No. 12, about 55 per cent of the way down the page, I take the next four lines, "Amend Section 1, etc., down to (b)" and remove it in its entirety, am I correct?

DELEGATE RUTH. I am sorry, but I am not sure where you are, Delegate O'Donnell. I am trying to find you in the Jirolanio amendment.

DELEGATE O'DONNELL. All right. You start out, it seems to me, after you get your 3 changed to 10 by saying "Amend Page 1 of the Jirolanio amendment, lines 19 to 22." Now, if I counted down properly to 19 and 22, that takes me to immediately below the number 12 appearing by itself, and it deletes the line which begins "Amend Section 1" and deletes the line which begins "Striking out all," deletes the line beginning "Page 9" and deletes "Subsection (b)," is that correct?

DELEGATE RUTH. That is correct.

DELEGATE O'DONNELL. All right. And it inserts in its place—I see, all right.

So, by removing that amendment, then, the amendment effectively is restoring to the judiciary proposal lines 16 to 30 on page 8.

DELEGATE RUTH. That is correct.

DELEGATE O'DONNELL. Which refers to a justice or judge appointed by the Governor to a vacancy in a court of statewide jurisdiction or in any court of a judicial district which has adopted the method of selection of judges provided in Section 11 (b).

DELEGATE RUTH. My understanding is that lines 16 to 27 are stricken. That is the very first part of my amendment in this area.

DELEGATE O'DONNELL. I see. In other words, the amendment puts that language back in and then takes it back out again.

DELEGATE RUTH. It does not put it back in, it takes it out. It just takes it out.

In other words, if there is no statewide appointive judge, if they are all elected, we do not have to worry about the problem of when he should run. We covered it up to the 10 months aspect.

DELEGATE O'DONNELL. Mr. President, if I may interrogate the speaker, if I compare the two and take the two together, it seems to me that I have this problem and, perhaps, someone more intelligent than I can answer this question. I might add that I have spoken to Mr. Comisky and he had the same problem.

As I understand the Ruth amendment, or the Jirolanio amendment as amended by the Ruth amendment, if it is amended by the Ruth amendment, it will read in (a) and (b) that justices, judges and justices of the peace shall be elected, and in (b) it says any vacancy happening by death, resignation, or otherwise, in any court shall be filled by appointment. Now, I do not quite see how you can fill a vacancy which happens by death, resignation or otherwise by appointment, and also elect. I am just completely, thunderingly astonished by that.

DELEGATE RUTH. The gentleman is addressing himself to the Jirolanio amendment and not the Ruth amendment to the Jirolanio amendment.

DELEGATE O'DONNELL. I wish I could understand either one.

Very well, I do not understand them at all.

DELEGATE RUTH. I hope you have not confused anyone else.

PRESIDENT BRODERICK. Are we ready for the question on the amendment to the amendment? Does anyone else wish to be heard?

The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I must say before voting on this extremely important issue that I share Delegate O'Donnell's ignorance. I do not know what these two amendments put together mean. I think we should find out before we vote.

DELEGATE RUTH. Mr. President?

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth.

DELEGATE RUTH. I am 100 per cent in accord that none of us should vote without understanding what we are voting on. I am trying to say that it is my intention, with the staff, to try to first put in 10 months in place of the 3 months. I think that part is clear.

Is that clear to you, Delegate Casey?

DELEGATE CASEY. No, it is not. I cannot find the 3 months.

DELEGATE RUTH. In the Jirolanio proposal in Part (b) thereof, about the fifth line down, it says that an appointive judge shall run in an election 3 or more months after the vacancy has occurred. I have supplied 10 months instead of three or more months, the reason being that in the judiciary this was discussed rather thoroughly —at least, this area—that any appointive judge should at least be on the bench 10 months and should run in a primary election in addition to the general election. If he only had to serve 3 months on the bench, he could get in in July and then run just in the general election.

DELEGATE CASEY. As I read your amendment to the amendment, it says "Amend page 1, of the amendments, line 11 by striking out three"—I cannot find that.

DELEGATE RUTH. If you count every line as printed on the Jirolanio amendment, it seems to me I count 11, Delegate Casey. You count each printed line from the top.

DELEGATE CASEY. May I suggest that somehow, whatever the parliamentary technique is, the Ruth amendment be integrated with the Jirolnanio amendment before we vote on it? I so move.

DELEGATE CAMARDELLA. I second that.

PRESIDENT BRODERICK. It has been moved by Delegate Casey, seconded by Delegate Camardella, that, as I interpret it, we have a clean copy of what this does.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—100

Amsterdam	Cortese	Keller, J.	Pott
Bagenstose	Cosetti	Keller, M.	Powell
Baldrige	Croop	Kelly	Quiles
Baldus	Curran	King	Rea
Baldwin	Dalley	Kline	Redick
Banes	Desmond	Krill	Reynolds
Barron	Devlin	Laputka	Richter
Bashoff	Dumbauld	Leach	Rovner
Benedict	Erwin	Leinbach	Sahli
Benfield	Fay	Leonard	Scott
Bloom	Filson	Levin	Scranton
Braham	Fineman	Manderino	Sebastian
Brennan	Fleming	Mattioni	Shettig
Broderick	Fohl	McGeary	Shively
Brown	Fortney	McGlynn	Shrager
Buck	Gabreski	Meyer	Silverman
Bunting	Gehrlein	Miller, D.	Sprogell
Burkholder	Goldstein	Miller, R.	Stout
Butera	Gouger	More	Tate
Camardella	Hannum	Murray	Thomson
Caputo	Henderson	O'Donnell	Tomasello
Caron	Heyburn	Otto	Tully
Casey	Huggins	Pelletier	Waldron
Clark	Irvis	Percey	Welsh
Corey	Jirolanio	Popil	Wilmarth

NAYS—39

Barry	Horne	Orbin	Shoemaker
Cunningham	Johnson	Pasquerilla	Strickler
Fawcett	Kauffman	Prendergast	Thornburgh
Feather	Lee, L.	Rappaport	Warman
Forster	Mangery	Roberts	Westerberg
Harding	Michael	Ruth	Whittum
Hatter	Michener	Scales	Wilcox
Himes	Moorhead	Scarlett	Woodring
Hocker	Nelson	Shapiro	Woodside
Hook	Orban	Sharp	

NOT VOTING—24

Aberman	Donaldson	Griffith	Musselman
Allison	Donolow	Hostetler	Peehan
Aurentz	Fagan	Lane	Solomon
Cain	Gerber	Lee, K.	Stroup
Clinger	Goldman	Markley	Swope
Conley	Gray	Morton	Van Sant

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

GUESTS WELCOMED

PRESIDENT BRODERICK. While you are going out, the Chair wants to call attention to the fact that the Harrisburg Chapter of Hadassah are the guests of Delegates Hocker, Woodside and Swope.

May we give them our cordial and sincere greetings.

RECESS

DELEGATE BRODERICK. The Chair has been advised that it will take some time to prepare a clean copy. A motion has been made to recess for lunch until 1:00 p.m. The Chair is willing to hear objections to that if there are any.

The Chair hears none and the Convention is now in recess until 1 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

WELCOME TO WIFE AND GUESTS OF DELEGATE NELSON

PRESIDENT BRODERICK. Before recognizing Delegate Ruth in connection with an explanation of his amendment to the amendment, I want to point out that we have with us Mrs. James W. Nelson, the wife of Delegate Nelson. Where are you Mrs. Nelson? I would like her to stand. There she is. Let us give her a warm greeting.

With Mrs. Nelson, we have three guests, Mrs. Earl Leidel, Mrs. Frank Womer and Mrs. Amos Davis, who is the wife of the District Attorney of Blair County. Will those people stand and we will give them our warm and cordial greeting. It is nice to have you with us.

RUTH AMENDMENT TO PROPOSAL No. 7

The Chair recognizes Delegate Ruth in connection with an explanation of his amendment to the Jirolanio amendment.

DELEGATE RUTH. Mr. President, first of all, I wish to apologize to this body for the delay, it certainly was not intentional. I hope that I have not confused anyone and/or Delegate O'Donnell has not confused anyone in relation to this.

Principally, the Jirolanio amendment would have eliminated merit retention of judges, had it been voted upon and passed as first submitted by Delegate Jirolanio.

I have attempted to put back in merit retention, because I believe this body should, when it votes on election of State judges, at least vote on that in its best possible form with merit retention of the State judges, and with an appointed State judge to run after he is on the bench 10 months.

It was basically a unanimous theory in the Judiciary Committee that an appointed judge, at whatever level, should at least be on the bench 10 months before running for an election, because otherwise he would not be going through a primary and he would have only been on a couple of months before he would have to come up. At least, this takes care of that.

We have tried to make it as little detailed as possible, but to change the judiciary article as the committee proposal has come out, we had to make certain changes and remove certain language. The intent and purpose is only to have the judges at the Superior and Supreme Court level, statewide judges, elected and after their term of office run on a yes-no basis.

If an appointed judge is appointed to the bench, he must after 10 months run in a contested election, and, if he is successful at the end of his term, he would then be eligible for merit retention like any other judge. The only purpose, and I cannot stress this enough, my only intent and purpose was to see that the election of statewide judges is presented to this body in its best possible light, win, lose or draw.

PRESIDENT BRODERICK. Does anyone have any questions in connection with the Ruth amendment to the Jirolanio amendment? Remember, we are confining ourselves to the amendment to the amendment now because that gets voted on first.

The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I have two questions. I note the amendment as amended would provide a procedure for the election of justices, judges and justices of the peace, not only at the statewide level but at the district level, as I so read it. May I interrogate Delegate Ruth and ask him if that was his intention?

PRESIDENT BRODERICK. Proceed.

DELEGATE RUTH. Delegate O'Donnell, first of all, yesterday this body voted on the local level judges being elected and I think that was inclusive of JPs at that time and would have kept the merit retention.

It is my understanding—perhaps, Delegate O'Donnell, this was not brought to my attention—I am only trying to clean up somebody else's amendment. It is my understanding that it was only for Superior and Supreme Courts because we dealt with the local level yesterday.

DELEGATE O'DONNELL. This was my impression, Mr. Speaker, I ask again, does this not read that it would apply even to the district level, a subject which I thought was closed yesterday and that is my question?

PRESIDENT BRODERICK. I can only ask the proposer of the amendment to explain his amendment to the amendment.

DELEGATE RUTH. I did not attempt in any way to adjust Delegate Jirolanio's language in Section (a). It is my understanding the intent here is only to deal with statewide judges, because the local judges were dealt with yesterday and it would have to be a reconsideration type vote. That is my understanding.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK The gentleman will state it.

DELEGATE O'DONNELL. As a parliamentary inquiry, am I not correct if this proposal, as I read it, does speak of the selection of judges at the district level, as well as the statewide level, then this would not require a motion to reconsider the action taken yesterday, because I thought we had disposed fully of the matter of district selection of judges yesterday?

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

I am not trying to ignore your question, Delegate O'Donnell. We want to hear from Delegate Jirolanio, and maybe he can throw some light on it.

DELEGATE JIROLANIO. Mr. President, I want you to know that I did go to the research department of our Convention and I told them there that all I was interested in, of course, was the question of the election of judges and justices to Appellate Courts. They drew up this amendment, and I questioned them on the language that Delegate O'Donnell is attempting to bring up again, and they said this is already in, and they do incorporate that in here. This does change what we have voted up to the present time. I am quoting the research men.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Sir, I was merely going to ask the Chair if an answer to my parliamentary inquiry would be forthcoming, because, again, I do not think we both want issues, as the intention is poorly stated, but I think we both want them as they are written down.

PRESIDENT BRODERICK. I think you are probably right, that we do vote as they are written, and we will be at ease for a moment. I am going to ask the attorney for the Judiciary Committee to get together with the attorney for our amendment committee, Tom Balaban, our Parliamentarian and the attorney for the Convention to see if we can get an answer.

Delegate O'Donnell, as the result of the conference between attorneys and the Parliamentarian, they advised me that there is no need for a motion to reconsider, because nothing is being done now to change the amendment that was adopted yesterday, that in the setup of this, in effect, they included striking out portions that were already stricken out yesterday in order to make it more understandable, they said, to the delegates, and everyone apparently has misunderstood it.

I want to point out one other thing to Delegate O'Donnell, that is, that his question pertains to the Jirolanio amendment and not to the Ruth amendment which we have to vote on first, the amendment to the amendment.

The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I am somewhat confused as to the situation under which we are now laboring with relation to the district judges which we passed yesterday, and I want to be sure, as we consider either of these amendments, as to the portents and the results thereof. I want to be positive, if we vote in the negative in this hall on the Jirolanio amendment, that we would not then be defeating what we had endorsed yesterday, and I think all the delegates would like to have this known.

PRESIDENT BRODERICK. I am advised by counsel and the Parliamentarian that we would not be changing anything that we changed yesterday.

DELEGATE STROUP. I thank you, sir, and I will rely on the Parliamentarian with respect to that ruling.

PRESIDENT BRODERICK. Does anyone wish to discuss the Ruth amendment further, or are we ready to put it to a vote?

The question recurs,

Will the Convention agree to the amendment to the Jirolanio amendment offered by Delegate Ruth?

The roll was recorded as follows:

YEAS—57

Aberman	Dalley	Lee, K.	Scarlett
Allison	Dumbauld	Markley	Shapiro
Amsterdam	Fagan	Mattioni	Sharp
Baldus	Fay	McGlynn	Shettle
Banes	Fineman	Michener	Shoemaker
Barron	Fohl	Miller, R.	Shrager
Barry	Gabreski	Moorhead	Stroup
Bashoff	Harding	More	Tully
Brennan	Henderson	Otto	Van Sant
Broderick	Irvis	Pasquerilla	Warman
Brown	Jirolanio	Popli	Welsh
Casey	Kauffman	Prendergast	Westerberg
Cosetti	Laputka	Richter	Whittum
Cunningham	Leach	Ruth	Woodside
Curran			

NAYS—71

Bagenstose	Desmond	Hook	Pot.

Baldrige	Devlin	Horne	Rea
Benedict	Erwin	Huggins	Redick
Benfield	Fawcett	Johnson	Roberts
Bloom	Feather	Keller, J.	Sahli
Braham	Filson	Kelly	Scales
Bunting	Forster	Krill	Scott
Burkholder	Fortney	Leinbach	Sebastian
Butera	Gehrlein	Levin	Shively
Cain	Gerber	McGeary	Sprogell
Camardella	Goldman	Meyer	Stout
Caputo	Goldstein	Michael	Strickler
Caron	Gouger	Miller, D.	Tate
Clark	Griffith	Nelson	Thornburgh
Clinger	Hannum	O'Donnell	Wilcox
Corey	Hatter	Orban	Wilmarth
Cortese	Himes	Orbin	Woodring
Croop	Hocker	Pelletier	

NOT VOTING—35

Aurentz	Hostetler	Morton	Rovner
Baldwin	Keller, M.	Murray	Scranton
Buck	King	Musselman	Silverman
Conley	Kline	Pechan	Solomon
Donaldson	Lane	Percey	Swope
Donolow	Lee, L.	Powell	Thomson
Fleming	Leonard	Quiles	Tomasclk
Gray	Manderino	Rappaport	Waldron
Heyburn	Mangery	Reynolds	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. Now we have under consideration solely the Jirolanio amendment.

The Chair recognizes Delegate Ruth.

DELEGATE RUTH. I have a shorter statement now than I would have had before.

Mr. President, in due respect to Representative Jirolanio, his amendment, in my opinion, does not have the best approach at this time. It is not in the best interest of statewide election and cannot be put to you in its best light as to statewide elections. I, therefore, would not support it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, I rise in opposition to this amendment.

My voting record, I think, is the best evidence of my faith in an informed electorate to elect those who will govern, those who will legislate and those who will adjudicate, but I use the word "informed" advisedly.

We have already discussed this first reason, and I point it up again as a reminder to you. The arguments that were made yesterday in favor of the local judicial districts being elected does not apply on a statewide basis for the very obvious reason that no superior court, no supreme court, no commonwealth court judge is going to have the same public exposure as a governor, a senator, a president and, necessarily, the people generally will not know who this man is that is running for this high office. They have no real way of being informed so that they can vote in favor of him.

Therefore, as has been indicated before, the majority of the people, the great majority, will simply vote the party ticket.

The second reason I have is very adequately expressed in Delegate O'Donnell's letter, which was put on our desks yesterday. In the third paragraph he points out, thereafter referring to a justice of the Pennsylvania Supreme Court—this is after he has been nominated by the governor—he runs as a party candidate and stands or falls with his party. Pennsylvania has no case in this century in which a candidate for the Supreme Court was elected while the candidate for Governor or United States President on the other ticket was successful. This is the best evidence of the fact that the people vote the party ticket when they are talking about the high offices of the statewide judiciary, because they simply do not know them. This is particularly true in the case of this amendment, because Delegate Jirolanio's amendment calls for an election of all things at a general election, which means that always your statewide judiciary will stand for election either when a president or a governor is running.

I would point out to you that we have in our midst one of our delegates, Delegate Woodside, who served this Commonwealth on the local level judiciary and the statewide level. When he ran for re-election he was defeated, not because he was not a dedicated jurist, not because he was not a competent jurist, but because he was on the wrong ticket at the wrong time.

Therefore, I urge you to oppose this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Butera.

DELEGATE BUTERA. Mr. President, there is very little to be added to this argument, but I want the record to show I rise in opposition to the amendment and support just about everything that has been said in opposition thus far, particularly those words of Governor Scranton this morning, which, I think, framed the issues.

I think the major reform—and those delegates who were not members of the Judiciary Committee will see this as we continue the debate on this article—the major reform which this Convention can make with regard to the selection of judges is to provide for statewide judges to be appointed rather than elected. That is the major reform.

As Delegate Kauffman said yesterday, once you make the determination that we do have a chance to make a reform here, then let us get on to debate as to how the judges shall be appointed.

Mr. President, I urge that we soon get to that question, that we vote this amendment down and then carry on the debate on Delegate Kauffman's amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fay.

DELEGATE FAY. Mr. President, I am speaking on behalf of the amendment.

In our newspaper a week ago an article appeared which said that the people should keep their right to elect judges. This is by Judge Conaboy from Lackawanna County. I want to read some excerpts of his speech.

He said it is hard to believe that so many people of good will can so loudly support an effort designed to place the selection of judges in the hands of a selected few. This is what the judge wrote. Then he said, this, in itself, can create far greater evil than the worst that can be said about the present elective system.

Then he said that a smaller group, which is obsessed with the determination to take upon themselves the appointment of judges, has clouded the true issue and has made general agreement on most of the needed changes almost impossible to achieve.

I am in full accord with Judge Conaboy, but I want to say a few words in regards to the voter. I come from a

mining town where we were deprived of a selection of candidates and deprived of the ballot. I am not sure if these are not the same people who want to bring this back into focus.

I remember, because I was one of them, that the polls were controlled by the coal interests and they picked the candidates. We had nothing to say about the candidates. They also voted the people in the mining area, because they worked in and about the mines and every man was voted by the mine boss. Therefore, we did not even have the right to the ballot.

You can sit here as delegates but these are actual experiences. No man who worked about the mines could defy the mine boss. He did not lose his job, but it was made pretty miserable. The miners did have the union, but they had a classic saying. Their saying to the union officials was, "You can have them 364 days a year, but we take them on election day."

Let me tell you, the court house doors were closed to us people. I do not know if it is not the same people who feel that we have something to say with the ballot, and I think rightfully so, we should have something to say.

I listened to some of the delegates and I do not believe you have to go to college to find out who is running for judge. I do not think the small people are that stupid. I think they have done very well so far.

Up in Luzerne County we have a fine selection. It took us 25 years to get our Court where it is and I would say they are fine, honorable men that were picked by the voters.

Maybe that is what they are against, I do not know. I am suspicious. We have men on our bench—we have a judge by the name of Peter Polanshinsky, we have a judge by the name of Brominski, we have a judge by the name of Lopatto, we have a judge by the name of Bigelow and we have a judge by the name of Hourigan. There is nothing wrong with them. Maybe you just do not like that system, but we do. I think the judges should be close to the people and I do not think that five men or 10 men have any right—I do not think the Governor has any more right if he were going to pick the men of Legislature, the men who would represent us here.

I think that would be a terrible mistake and I believe, like the judge from Lackawanna County, it is too much power for a few men.

I want to say this, Mr. President, I polled a lot of people back home and I did not have one who agreed with the panel. I will tell you right now—and I am pretty certain about this—that this whole proposal will fail if this system will be used. We appreciate our vote. As I said earlier, I was one of those who could not vote and I shall never vote to deprive any man of that vote and that right.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair recognizes Delegate Gouger.

DELEGATE GOUGER. Mr. President, down on the farm we know you can destroy a field by plowing it too much. We have plowed this field almost to the point of destruction. We are satiated with oratory. We know the issues. I move you, Mr. President, the question.

PRESIDENT BRODERICK. I will put it in the form of a motion.

Your motion is in favor of closing debate and putting the pending question, is that correct?

DELEGATE JIROLANIO. I understand that the Chair has up until now given an opportunity to the sponsor to talk last. I only spoke very, very briefly when I presented my amendment and, in due fairness, I would like to have that same courtesy extended to me now.

PRESIDENT BRODERICK. I want to say this to Delegate Jirolanio, that has been so, except where we have had a motion voted on. This motion has only been made. I have not yet gotten a seconder to it, yet.

DELEGATE ROBERTS. I second it.

PRESIDENT BRODERICK. Now the motion has been seconded by Delegate Roberts.

We have a motion before the floor and I want to say, if this motion passes, you will not have the opportunity to close. I am one that is sympathetic to the fact that you have only used two and a half minutes. You have seven and a half minutes left and if you want—

DELEGATE JIROLANIO. Mr. President, I am not so much interested in sympathy. All I want to do is to keep on operating the Convention in the same manner as you have to the present time.

PRESIDENT BRODERICK. That is exactly what I am saying, Delegate Jirolanio.

Yesterday we had a motion voted on. This is the motion of Delegate Gouger, and I will ask Delegate Gouger if he wants to amend his motion to permit Delegate Jirolanio to close.

DELEGATE GOUGER. In justice to Delegate Jirolanio, provided he limits himself to the seven and a half minutes and provided we then immediately move the question.

On the question,
Will the Convention agree to the motion?
It was agreed to.

DELEGATE JIROLANIO. May I first thank the Convention for giving me the opportunity of making closing remarks on behalf of my amendment.

I want the Convention to know that the only reason that I presented this amendment is because I felt, in my own mind and in my own conviction, that this was a good amendment. I have tried in the last several months, to find out the pulse of the people, just exactly how they felt about ripping out the provision that gives to the people of the Commonwealth of Pennsylvania the right to elect their own judges. I must report to you, frankly and honestly, that in my own area where I talked to people there is no such sentiment that we shall give this to a panel. They still believe that in the people this right should rest.

We have heard quite some discussion from the opponents of this bill where they point to the Federal system, where they say that the President of the United States, of course, appoints and then, of course, with the consent of the Senate, the gentleman, of course, then does get his office as a judge. Are we that naive? Are we that stupid? Are we morons not to know that there has never been a single person appointed by the President of this United States without some politician, without the senator, without the state committeeman, without other persons, endorsing him first?

You know what would happen if a nomination of a man for the judiciary was made by the President, and it would meet an objection in the Senate, that particular appoint-

ment would be held up. So that argument absolutely does not hold any water whatsoever.

Then when you are speaking of the Federal system in comparison with the system that we have in our State, it is entirely different. The rights of the people here are settled by our own courts. The Federal Courts, of course, have more to do where the diversity of citizenship is concerned and some basic rights as given to us by the Constitution of the United States of America. When you take that particular argument, I think you are barking up the wrong tree, to say the people do not have the right, do not have the intelligence, to cast a vote in favor of decent candidates.

I want to say this publicly—and I told this to Judge Woodside on several occasions—I happen to be a Democrat and I also happen to be the Chairman of the Democratic City Committee of Bethlehem, but I make an honest confession that I voted for Judge Woodside. Just because we live in the system and something happens once is no reason to rip out the entire system, because this system still belongs to the rank and file of the people of the Commonwealth of Pennsylvania and not to the Pennsylvania Bar Association, which has been trying to hammer down the throats of the people of this Commonwealth what they think is best. Give it to us, the so-called blue-bloods. Give it to us, those people who do not care, that never mingled, that never sat with the people in the lower strata of life. They are now trying to tell us what to do. This is just another indication. They have tried continuously during this entire Convention to convince us that they are the sole bright lights of America, that they know what is good for the people of the Commonwealth of Pennsylvania, that they know what we should have, and that the rest of the people are nothing but morons and idiots.

Unfortunately, my Bar Association pays my dues and, because of their attitude, I do not attend their meetings. They are just as much a dictatorship as anything that exists in the United States of America today. They have lobbyists here and lobbyists everywhere, literature everywhere, trying to force down the throats of the people of the Commonwealth of Pennsylvania those things which they think are the best, not what the general populace thinks.

It does not mean anything to me becouse I am 64 years of age and about to quit law practice. I have had a lot of work and a lot of respect. When you talk about judges and you elect judges, whether the Democrats or Republicans select them, you elect them, but the day after they are elected and they go on the bench they are the judges of the people of the entire Commonwealth of Pennsylvania and, brother, you cannot even talk to them because they represent all the people.

When the nominating party selects its candidates, it makes absolutely sure that it gives to the people of the Commonwealth of Pennsylvania those men with ability, those men with integrity, those men who are learned in the law and can serve the people with the best ability as the people are entitled to. That is the kind of man I want, that is why I introduced this amendment and that is why I ask each and everyone of you, search your mind, search your soul, vote your conscience and vote for the poor people, for the people on the street, for the people of the Commonwealth of Pennsylvania and put this amendment across.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Jirolanio?

PRESIDENT BRODERICK. The question is, has everyone had an opportunity to vote? Apparently so. We are going to ask the clerk to lock the machine and record the vote.

The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, my machine did not work so will you please open it up so I can vote?

PRESIDENT BRODERICK. I can check the results here. Do you declare how you want to be voted on this?

Do you want the microphone Delegate Gerber and then I will recognize Delegate Jirolanio.

The issue is solely whether or not these votes were properly recorded before it is announced.

DELEGATE GERBER. Mr. President, my machine did not record my vote and I tried to switch my machine and it did not work when I tried to vote.

PRESIDENT BRODERICK. We will be happy to record your vote now. The vote has not been announced. You have a right to announce your vote, if you care to.

DELEGATE GERBER. I feel like I am playing God with a 72-72 vote, but I would like to have it opened up so I could vote like everybody else. If you want me to, I will tell you.

PRESIDENT BRODERICK. I address myself to Delegate Gerber. I am advised by the Parliamentarian that at this time anyone can check their vote before it is announced. There is no reason for voting over. If yours did not record, we will recognize you and you can state how you want to vote and it will be declared.

The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President. Has the Clerk confirmed the fact there is no vote for Delegate Gerber?

PRESIDENT BRODERICK. Yes, there is no vote for Delegate Gerber.

The Chair recognizes Delegate Kline.

VERIFICATION OF ROLL CALL

DELEGATE KLINE. Mr. President, I request the verification of the roll and ask the roll be recalled.

PRESIDENT BRODERICK. It has been requested—let me state the request first. I will recognize Delegate Jirolanio.

DELEGATE JIROLANIO. First of all, the vote has not be verified. Secondly, our Rules provide that a member sitting in his seat must vote, so, therefore, Delegate Gerber must announce himself yes or no. That is the way the rules say and you can look at them and you will see that I am right.

PRESIDENT BRODERICK. Delegate Jirolanio is right, and we will ask Delegate Gerber to announce his vote. We have also had a request to verify the roll and that request has been moved.

DELEGATE GERBER. Mr. Chairman, is a motion for adjournment in order?

PRESIDENT BRODERICK. No.

DELEGATE GERBER. I vote, "no."

PRESIDENT BRODERICK. The Clerk will record the vote. We had this request for a verification from Dele-

gate Kline. Would you tell us whether your request to have the roll verified still stands?

DELEGATE KLINE. It stands. I want the roll verified.

DELEGATE JIROLANIO. I ask for verification of the vote.

PRESIDENT BRODERICK. We will now have the roll verified. The Clerk will first call the affirmative vote. Would all the delegates please take their seat until we have finished verifying the vote and then I will recognize you.

THE CLERK. Brennan, More, Sebastian, Benfield, Aberman, Leach, Tully, King, Desmond, Shoemaker, Croop, Prendergast, Murray, Quiles, Cortese, Meyer, Warman, Rappaport, Shettig, Harding, Kline, Devlin, Westerberg, Goldman, Waldron, Redick, Powell, Goldstein, Benedict, Barry, Pott, Miller, Popil, Van Sant, Brown, Bashoff, Shrager, Allison, Kelly, Dailey, Silverman, Wilmarth, Hocker, Ruth, Scales, Mattioni, Otto, Reynolds, Caputo, Pasquerilla, Fay, Fohl, Barron, Leonard, Solomon, Orbin, Stroup, Camardella, Jirolanio, McGlynn, Rovner, Henderson, Banes, Heyburn, Erwin, Fagan, Dumbauld, Orban, Irvis, Cain, Markley, Mangery.

PRESIDENT BRODERICK. The Chair asks, are there any corrections to the affirmative vote as just stated by the Clerk? The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. I would like to be recorded voting "aye."

PRESIDENT BRODERICK. We will hold it for just a minute.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Fleming.

DELEGATE FLEMING. I have a parliamentary inquiry, sir. I was not present when the vote was taken. I understand the vote has not been announced. I would like to have the privilege of voting.

PRESIDENT BRODERICK. Yes. I have your request.

We will rule on your request as soon as we have ruled on the request of Delegate Thomson. The Chair is about to rule.

The ruling of the Chair in connection with Delegate Thomson is that under the Rules as set forth on page 18 it says, "After the voting machine is locked, no delegate may change his vote, and the votes of tardy delegates will not be recorded." That has been interpreted by the Parliamentarian as meaning that if you were not present to cast your vote on the machine, your vote cannot now be received.

DELEGATE THOMSON. Mr. President, in that case, if you are not on the machine, you could not be recorded in spite of the fact that you are present in the Convention.

PRESIDENT BRODERICK. That is right, unless, of course, as in the case of Delegate Gerber, somebody says their machine did not operate when they tried to record their vote, which is the distinction between Delegate Gerber's situation and your situation, Delegate Thomson.

APPEAL FROM RULING OF THE CHAIR

DELEGATE THOMSON. Mr. President.

PRESIDENT BRODERICK. Yes, Delegate Thomson.

DELEGATE THOMSON. What is the procedure for an appeal from the ruling of the Chair?

PRESIDENT BRODERICK. You can take an appeal right now from the ruling of the Chair.

DELEGATE THOMSON. I so do, Mr. President.

PRESIDENT BRODERICK. Has anyone seconded the appeal of Delegate Thomson?

DELEGATE BANES. I second it.

PRESIDENT BRODERICK. We have had a request for an appeal by Delegate Thomson. Is anyone going to second the motion for the appeal?

DELEGATE BANES. Yes, Mr. President, I second it.

PRESIDENT BRODERICK. It has been seconded by Delegate Banes, and we, therefore, have an appeal in connection with the vote of Delegate Thomson with respect to the ruling of the Chair.

The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I understand that Delegate Pott voted "aye." It is not so recorded.

PRESIDENT BRODERICK. I understand that we verified number one, the affirmative roll, and that has been verified, and he has also been recorded here as voting "aye."

Now, the question is now on the appeal.

DELEGATE THOMSON. Do I understand from your statement that I am not recorded as voting "aye?"

PRESIDENT BRODERICK. No, indeed, the question by Delegate Jirolanio was in connection with Delegate Pott.

DELEGATE JIROLANIO. I move to suspend the rules.

PRESIDENT BRODERICK. There is an appeal pending at the present time, and we will now proceed to discuss the appeal if they want it discussed, if not, we will put the question—

The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. May I ask a question in the way of a suggestion?

These gentlemen who wish to vote—and you are now ruling that they are not entitled to vote under our rules—are they permitted to move to reconsider under having lost or having not been recorded with the prevailing side?

PRESIDENT BRODERICK. No. They have not voted.

As I have ruled, unless the Chair is overruled, they cannot, those who have not voted cannot move to reconsider.

DELEGATE COSETTI. They cannot.

PRESIDENT BRODERICK. They cannot. They have to vote on the prevailing side.

APPEAL WITHDRAWN

DELEGATE THOMSON. Mr. President, I withdraw my appeal.

PRESIDENT BRODERICK. The appeal is withdrawn by Delegate Thomson.

Now, let us have the negative roll verified, because there was a request for the verification of the vote. The Clerk will read the negative vote.

THE CLERK. The negative vote is as follows:

Miller, Fortney, Percey, Aurentz—

PRESIDENT BRODERICK. Just a moment. Let us go back and find out what happened here. Let us start the negative vote over again. We are starting the negative roll call.

THE CLERK. R. Miller, Fortney, Percey, Whittum, Clinger, Shively, Laputka, Gabreski, Michael, Krill, Welsh,

K. B. Lee, Bloom, Gouger, Wilcox, Griffith, Cosetti, Cunningham, Curran, Sharp, Clark, Scranton, Hannum, Braham, Forster, Bagenstose, Corey, Moorhead, Gerber, Gehrlein, Shapiro, Rea, Michener, Amsterdam, Himes, Woodring, Filson, Hook, Horne, Baldrige, Scott, Fawcett, Sprogell, Roberts, Sahli, Hatter, Lee, Caron, Richter, Feather, Baldus, Buck, Tate, Nelson, Kauffman, Manderino, Bunting, Scarlett, Johnson, Leinbach, Burkholder, Casey, J. Keller, Thornburgh, Stout, Butera, McGeary, Woodside, Huggins, O'Donnell, Strickler, Pelletier, and Broderick.

PRESIDENT BRODERICK. Are there any corrections?

DELEGATE RAPPAPORT. We heard the name of Delegate Aurentz mentioned on the first roll call and we know she is sick and is not here. I would ask for a specific verification of whether Mrs. Aurentz was counted as voting on that last vote.

PRESIDENT BRODERICK. Delegate Aurentz was recorded as not voting and that is the reason we asked the Clerk to start the negative roll call over, because the Clerk had made a mistake. There is no vote recorded for Delegate Aurentz. Is that clear?

Now we recognize Delegate Gerber.

DELEGATE GERBER. It seems, in view of the questions raised here, that it is only fitting to move for reconsideration and give everyone a chance to vote. I, therefore, move for reconsideration.

PRESIDENT BRODERICK. We have not announced the vote as yet, so we cannot make a motion to reconsider until we announce the vote.

PARLIAMENTARY INQUIRY

A DELEGATE. I would like a parliamentary inquiry with respect to Rule 19, page 19.

PRESIDENT BRODERICK. What is your question?

A DELEGATE. If there were two delegates who made such a request, would there be a new roll call?

PRESIDENT BRODERICK. I am advised by the Parliamentarian that that section applies where we have a voice vote and not where we have a vote by the electric roll call machine.

The roll, as verified, was recorded as follows:

YEAS—72

Aberman	Dumbauld	Mangery	Redick
Allison	Erwin	Markley	Reynolds
Banes	Fagan	Mattioni	Rovner
Barron	Fay	McGlynn	Ruth
Barry	Fohl	Meyer	Scales
Bashoff	Goldman	Miller, D.	Sebastian
Benedict	Goldstein	More	Shettig
Benfield	Harding	Murray	Shoemaker
Brennan	Henderson	Orban	Shrager
Brown	Heyburn	Orbin	Silverman
Cain	Hocker	Otto	Solomon
Camardella	Irvis	Pasquerilla	Stroup
Caputo	Jirolanio	Popil	Tulty
Cortese	Kelly	Pott	Van Sant
Croop	King	Powell	Waldron
Dailey	Kline	Prendergast	Warman
Desmond	Leach	Quiles	Westerberg
Devlin	Leonard	Rappaport	Wilmarth

NAYS—72

Amsterdam	Curran	Keller, J.	Roberts
Bagenstose	Fawcett	Krill	Sahli
Baldrige	Feather	Laputka	Scarlett
Baldus	Filson	Lee, K.	Scott
Braham	Forster	Lee, L.	Scranton
Bloom	Fortney	Leinbach	Shapiro
Broderick	Gabreski	Manderino	Sharp
Buck	Gehrlein	McGeary	Shively
Bunting	Gouger	Michael	Sprogell
Burkholder	Griffith	Michener	Stout
Butera	Hannum	Miller, R.	Strickler
Caron	Hatter	Moorhead	Tate
Casey	Himes	Nelson	Thornburgh
Clark	Hook	O'Donnell	Welsh
Clinger	Horne	Pelletier	Whittum
Corey	Huggins	Percey	Wilcox
Cosetti	Johnson	Rea	Woodring
Cunningham	Kauffman	Richter	Woodside

NOT VOTING—19

Aurentz	Fineman	Keller, M.	Pechan
Baldwin	Fleming	Lane	Thomson
Conley	Gerber	Levin	Tomascik
Donaldson	Gray	Morton	Swope
Donolow	Hostetler	Musselman	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

MOTION TO RECONSIDER VOTE

DELEGATE GERBER. Mr. President, in view of questions brought here as a result of the machine, or anything else, with all the heat, maybe we should generate light and give everyone a chance to vote without any question. I do not think this issue should come out of this Convention with a question in anyone's mind, either here at the Convention or anywhere else in the Commonwealth.

Therefore, I make a motion to reconsider and vote again.

DELEGATE HUGGINS. I second that. We both voted "nay."

PRESIDENT BRODERICK. I want to ask how you voted.

DELEGATE GERBER. I think it is public record. I voted "nay."

PRESIDENT BRODERICK. You therefore voted on the prevailing side.

DELEGATE HUGGINS. I seconded that motion.

PRESIDENT BRODERICK. How did the gentleman vote?

DELEGATE HUGGINS. I voted "nay."

PRESIDENT BRODERICK. Also on the prevailing side. It has been moved and seconded that we reconsider the vote by which the Jirolanio amendment was defeated.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. On a question of parliamentary procedure, after this vote is recorded, will this issue be up for debate again? It has been debated for perhaps an hour or so this afternoon?

PRESIDENT BRODERICK. If the motion carries, the matter will be up for debate, unless someone wants to move again to terminate debate.

The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. May I address myself to a serious

situation here and may I urge the delegate body to consider the situation in which we now find ourselves.

This is not a matter of substance alone to which I have to speak. I am now thinking of our own posture, vis-a-vis the public, which will be watching us. Several months ago all of you read of the embarrassment of the Legislature on absentee voting. Many of you chuckled to yourselves about it and when many of you came here you decried it. Now it happened in the last vote. I would suggest, if we are seriously interested in doing the serious business of rewriting the Constitution and if we are seriously interested in the people giving serious attention to our efforts, we conduct ourselves seriously, that we decide this matter—

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MICHENER. As a point of information, this body has been charged with voting an absentee member. May I please know the details?

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis. For what purpose does the gentleman rise?

DELEGATE IRVIS. I rise for a point of personal privilege.

DELEGATE BRODERICK. The gentleman will state it.

PRESIDENT BRODERICK. Delegate Irvis, do you stand for interrogation by Delegate Michener at this time?

DELEGATE IRVIS. If he wishes.

DELEGATE MICHENER. Delegate Irvis, I think you just said there was absentee voting on the floor just now.

DELEGATE IRVIS. I said that, sir.

DELEGATE MICHENER. As a man who led the fight against this last week, who was most concerned about it in executive meetings this week, I would like specifications, please?

DELEGATE IRVIS. I will not specify. I will not name the man who was absent and who was voted. He was absent; he was voted. I will not say anything further. I am not interested in accusing the Convention nor of accusing any delegate. I am interested, Mr. President, that this confusion be ended and that we come to a clean-cut vote on an important issue, viz., that the only people voting will be those actually in their seats.

DELEGATE MICHENER. When this matter came up under my attention, I got two witnesses and I made a very careful check. I put it in writing. I know exactly what happened and I turned it over to the Rules Committee. It seems to me that this is a responsible action.

DELEGATE IRVIS. I may not be as responsible as you and I do not claim that I am, but I am as interested as you in the appearance of this delegate body.

I reiterate my statement. It did happen. I witnessed it. I do not intend to say anything further about to whom it happened or who did it.

DELEGATE MICHENER. As Secretary of this Convention, it falls to me to preserve as much as I can the good name of this Convention and I simply refute the charge.

DELEGATE BUTERA. Will the gentleman yield?

PRESIDENT BRODERICK. Which one?

DELEGATE BUTERA. Both of them.

PRESIDENT BRODERICK. Delegate Butera wants to know if Delegates Irvis and Michener will yield?

DELEGATE IRVIS. I will be delighted to yield.

PRESIDENT BRODERICK. We recognize Delegate Butera.

DELEGATE BUTERA. I do not think it falls upon the Secretary any more than it falls upon everyone else to correct an alleged wrong. Let us correct it and cut off this debate, which is only degenerating into something which we do not like.

DELEGATE IRVIS. I thoroughly agree with Delegate Butera.

MOTION TO RECONSIDER VOTE

PRESIDENT BRODERICK. We have a motion before the House. The motion is a motion of Delegate Gerber, seconded by Delegate Huggins, and that motion is to reconsider the vote by which the Jirolanio amendment went down in defeat. Those voting "aye" will vote to reconsider. Those voting "nay" will vote against the motion to reconsider.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—93

Allison	Fagan	Laputka	Quiles
Bates	Fay	Leach	Rappaport
Barron	Fineman	Lee, K.	Redick
Barry	Fleming	Leonard	Reynolds
Bashoff	Fohl	Manderino	Rovner
Benedict	Gerber	Mangery	Ruth
Benfield	Goldman	Markley	Scales
Brennan	Goldstein	Mattioni	Sebastian
Broderick	Griffith	McGlynn	Shettig
Brown	Hannum	Meyer	Shively
Bunting	Harding	Miller, D.	Shoemaker
Butera	Henderson	Miller, R.	Shrager
Cain	Hocker	More	Silverman
Camardella	Hook	Murray	Solomon
Caputo	Huggins	Orban	Stroup
Corey	Irvis	Orbin	Thomson
Cortese	Jirolanio	Otto	Tomascik
Croop	Johnson	Pasquerilla	Tully
Curran	Keller, J.	Pelletier	Van Sant
Dalley	Keller, M.	Popil	Waldron
Desmond	Kelly	Pott	Warman
Devlin	King	Powell	Westerberg
Dumbauld	Kline	Prendergast	Wilmarth
Erwin			

NAYS—55

Amsterdam	Feather	Levin	Scranton
Bagenstose	Filson	McGeary	Shapiro
Baldrige	Forster	Michael	Sharp
Baldus	Fortney	Michener	Sprogell
Bloom	Gabreski	Moorhead	Stout
Braham	Gehrlein	Nelson	Strickler
Buck	Gouger	O'Donnell	Tate
Burkholder	Hatter	Percey	Thornburgh
Caron	Heyburn	Rea	Welsh
Casey	Himes	Richter	Whittum
Clark	Kauffman	Roberts	Wilcox
Clinger	Krill	Sahli	Woodring
Cunningham	Lee, L.	Scarlett	Woodside
Fawcett	Leinbach	Scott	

NOT VOTING—15

Aberman	Cosetti	Horne	Musselman
Aurentz	Donaldson	Hostetler	Pechan
Baldwin	Donolow	Lane	Swope
Conley	Gray	Morton	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. Let the Chair please just state the question. The question recurs now on the Jirolanio amendment. I am going to ask the delegates to confine their remarks to the question before the Convention.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair recognizes Delegate Clinger.

DELEGATE CLINGER. It seems to me we have sufficient debate on this issue and I would like to move the question.

DELEGATE FORSTER. Second the motion.

DELEGATE KAUFFMAN. I would like to make a one sentence statement, please, on behalf of the Judiciary Committee.

PRESIDENT BRODERICK. First of all, let me say we have a motion by Delegate Clinger, seconded by Delegate Forster, and that motion, as I understand it, is to close debate and put the pending question. Is that correct?

That means, therefore, that no one can speak on this question after we have voted unless, as I said in the case of Delegate Jirolanio, Delegate Clinger wishes to amend his motion to include a statement by the Committee. Do you wish to amend your motion?

DELEGATE CLINGER. Mr. President, I would accept the amendment that the Committee be permitted to make a statement on the issue before the vote.

PRESIDENT BRODERICK. How long a statement?

DELEGATE CLINGER. One minute.

PRESIDENT BRODERICK. Therefore, we consider that the motion is that we close debate and put the question on the Jirolanio amendment after a one-minute statement by the Committee.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—110

Aberman	Fawcett	Laputka	Reynolds
Allison	Fay	Lee, K.	Richter
Amsterdam	Feather	Lee, L.	Roberts
Bagenstose	Filson	Leinbach	Rovner
Baldrige	Forster	Leonard	Sahli
Baldus	Fortney	Levin	Scarlett
Benedict	Gabreski	Mandarino	Scott
Bloom	Gehrlein	Mangery	Scranton
Broderick	Goldstein	Markley	Sebastian
Bunting	Gouger	McGeary	Sharp
Burkholder	Griffith	Meyer	Shettig
Butera	Hannum	Michener	Shrager
Cain	Harding	Miller, D.	Silverman
Caron	Hatter	Miller, R.	Sprogell
Casey	Henderson	Moorhead	Stout
Clark	Heyburn	More	Strickler
Clinger	Himes	Nelson	Tate
Corey	Hook	O'Donnell	Thornburgh
Cortese	Huggins	Orban	Tomascik
Cosetti	Irvis	Otto	Van Sant
Cunningham	Johnson	Pasquerilla	Warman
Curran	Kauffman	Pelletier	Welsh
Dailey	Keller, J.	Percey	Westerberg
Desmond	Keller, M.	Popil	Whittum
Devlin	Kelly	Powell	Wilcox
Dumbauld	King	Prendergast	Wilmarth
Erwin	Kline	Rea	Woodring
Fagan	Krill		

NAYS—40

Banes	Caputo	Mattioni	Scales
Barron	Croop	McGlynn	Shapiro
Barry	Fineman	Michael	Shively
Bashoff	Fleming	Murray	Shoemaker
Benfield	Fohl	Orbin	Solomon
Braham	Gerber	Pott	Stroup
Brennan	Goldman	Quiles	Thomson
Brown	Hocker	Rappaport	Tully
Buck	Jirolanio	Redick	Waldron
Camardella	Leach	Ruth	Woodside

NOT VOTING—13

Aurentz	Donolow	Hostetler	Musselman
Baldwin	Gray	Lane	Pechan
Conley	Horne	Morton	Swope
Donaldson			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. The representative of the committee, whom I assume is Delegate Kauffman, is permitted to make a one-minute statement.

DELEGATE KAUFFMAN. Mr. President, the Committee simply wants to make it absolutely crystal clear and certain that the delegates in this body understand the Jirolanio amendment is confined solely to judges of statewide jurisdiction. This amendment does not relate to the method of selection of judges on the local judicial district level. We decided that issue yesterday. We want you to know that the Committee was overwhelmingly in favor of the appointive method of judges for judges of statewide jurisdiction. That is all that this amendment goes to. The Committee very strongly recommends that the judges of statewide jurisdiction be selected by the appointive rather than the elective method.

That is all this amendment goes to and, therefore, we ask that you vote "nay" on the amendment.

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—75

Aberman	Erwin	Mangery	Reynolds
Allison	Fagan	Markley	Rovner
Banes	Fay	Mattioni	Ruth
Barron	Fineman	McGlynn	Scales
Barry	Fleming	Meyer	Sebastian
Bashoff	Fohl	Miller, D.	Shettig
Benedict	Goldman	More	Shoemaker
Benfield	Goldstein	Murray	Shrager
Brennan	Harding	Orban	Silverman
Brown	Henderson	Orbin	Solomon
Cain	Hocker	Otto	Stroup
Camardella	Irvis	Pasquerilla	Thomson
Caputo	Jirolanio	Popil	Tully
Cortese	Keller, M.	Pott	Van Sant
Croop	Kelly	Powell	Waldron
Dailey	King	Prendergast	Warman
Desmond	Kline	Quiles	Westerberg
Devlin	Leach	Rappaport	Wilmarth
Dumbauld	Leonard	Redick	

NAYS—75

Amsterdam	Fawcett	Krill	Sahli
Bagenstose	Feather	Laputka	Scarlett
Baldrige	Filson	Lee, K.	Scott
Baldus	Forster	Lee, L.	Scranton
Bloom	Fortney	Leinbach	Shapiro

Braham	Gabreski	Levin	Sharp
Broderick	Gehrlein	Manderino	Shively
Buck	Gerber	McGeary	Sprogell
Bunting	Gouger	Michael	Stout
Burkholder	Griffith	Michener	Strickler
Butera	Hannum	Miller, R.	Tate
Caron	Hatter	Moorhead	Thornburgh
Casey	Heyburn	Nelson	Tomascik
Clark	Himes	O'Donnell	Welsh
Clinger	Hook	Pelletier	Whittum
Corey	Huggins	Percey	Wilcox
Cosetti	Johnson	Rea	Woodring
Cunningham	Kauffman	Richter	Woodside
Curran	Keller, J.	Roberts	

NOT VOTING—13

Aurentz	Donolow	Hostetler	Musselman
Baldwin	Gray	Lane	Pechan
Conley	Horne	Morton	Swope
Donaldson			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

KAUFFMAN AMENDMENT TAKEN FROM TABLE

PRESIDENT BRODERICK. In accordance with the procedure set up by the amendment committee, we are now ready for the next amendment and the Chair recognizes Delegate Kauffman to call from the table his amendment and the amendment to his amendment which was offered by Delegate Woodside.

The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I so move.

PRESIDENT BRODERICK. The question is now on the Woodside amendment to the Kauffman amendment and the clerk will read the Woodside amendment to the Kauffman amendment.

Amend page 1 of the Amendments, by striking out "of two-thirds" in lines 12 and 13 of the amendments

PRESIDENT BRODERICK. I now recognize Delegate Woodside. I know you have already spoken on this. Do you want to be recognized again?

DELEGATE WOODSIDE. I have not spoken to this before. All I did was introduce the amendment and said nothing about what it does or its purpose.

Mr. President, this amendment would provide that appointments made by the Governor to statewide courts should be confirmed by the Senate by a majority vote, rather than a two-thirds vote, by merely striking out the words "of two-thirds."

There are a number of reasons why I think the two-thirds provision in the Constitution would be unsatisfactory. In the first place, it gives a minority of 35 per cent the same right in the choosing of a judge as the majority of 65 per cent.

If there is a two-thirds vote required, I think all of you realize that in the last year of every governor's administration no appointments will be made to the appellate courts because the party out of power, having control of the situation, will refuse to confirm any appointment with a hope of a change of administration.

I merely call your attention to the fact that that happened in our national government not for a matter of months, but for a matter of years, and it is bound to happen in the Commonwealth of Pennsylvania.

It is bad enough that that provision should be in the Constitution relative to temporary appointments and I know that some of you say, well, it is in the Constitution now, we are not changing anything. But, the truth of the matter is, that it has very seldom been used for the simple reason that appointments have generally been made at a time when the Senate is not in session, but for a 10-year term this would not be possible and nobody could take office as a Superior or Supreme Court judge unless and until the Senate acted on the recommendation of the Governor. So that would mean that for a considerable time while the Senate was considering this the Supreme Court or the Superior Court would have a vacancy and would have to decide their cases on a course of an even number of 6. This is, indeed, a very unsatisfactory situation.

I think there is an even more serious matter, and that is the fact that the minority, whether they be Republicans or they be Democrats, are likely in the future to always want something in exchange for the action which they will take in reference to the appointments and, if there are two appointments, the minority, of course, will want an appointment. When the minority party, whichever it happens to be, says they want an appointment, they are going to pick their appointment and they are not going to let the majority have anything to say about who it will be and vice versa. The majority will insist on appointing theirs and not letting the minority have anything to say about who it ought to be.

It seems to me that by requiring a two-thirds vote we do two things, first, we very substantially delay for months, and in some instances I am sure for years, the appointments which should be made promptly and immediately and, in the second place, we probe the judges into politics under a much worse situation than in any other conceivable form.

I call upon you Democrats in this body not to think of the immediate situation of 3 years, because this Constitution, whether it be for 10 years, or 20 years, or 100 years, is at least going to be a very substantial length of time. This situation I say, unfortunately, will change over those years and sometimes you will be in the majority and you will face the same situation. I think that it is for the best interests of the Commonwealth of Pennsylvania that we should consider this matter.

The two-thirds provision in the law today is generally circumvented and not carried out by the appointments being made when the Senate is not in session, but this, as I say, cannot be done under the circumstances of this amendment.

I, therefore, urge the adoption of this amendment.

PRESIDENT BRODERICK. Of course, fellow delegates, we are now on the Woodside amendment to the Kauffman amendment and that is the question before the Convention. Does anyone else wish to be heard in connection with the Woodside amendment to the Kauffman amendment?

The Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, is it proper to ask Delegate Kauffman, the sponsor of the original amendment, for his comments as to why he has suggested two-thirds rather than a simple majority?

PRESIDENT BRODERICK. I am sure he will stand for interrogation. Will you please answer?

DELEGATE SCALES. Will you please explain to us

why your amendment calls for two-thirds rather than for a simple majority as in the Woodside amendment?

DELEGATE KAUFFMAN. The feeling was that it was necessary so as to insure minority representation in appointments. We wanted to be absolutely certain that by doing away with what we considered to be the evils of the selection panel method of selection of judges, we were not replacing it with something which was just as evil, if not more so, so we determined that we wanted to assure and insure minority representation in the appointments. Therefore, we provided for a two-thirds vote of the Senate.

I think we have to consider that together with the other provisions that the Judiciary Committee has recommended such as the merit retention of judges, and also the judicial inquiry review board. With this method of selection of judges presented, coupled with the judicial inquiry review board and the merit retention, we believe that we have a total package which will provide a method of selection of judges and service of judges, while on the bench which is as divorced from politics as you possibly ever could get, so long as you do not have computers making the selection.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I rise in opposition to this amendment. I think I have some knowledge on the methods used in the Senate in confirmations, since I have been a member of the minority since coming to the Senate. For almost two years I have had the responsibility of handling the executive nominations that the Democrats, in effect, pass on, because the Republicans never clearly had a two-thirds majority.

I want to say, first of all, on the responsibility of members of the Senate that I challenge anybody in this hall, or any place else in the Commonwealth of Pennsylvania, to show me one time, since I have been in the Senate, that the minority ill-used its privilege in passing on a nomination requiring two-thirds.

I challenge Judge Woodside, or anybody else, to show me where any office in the Commonwealth, judicial or otherwise, was impaired by that right which is granted to the Senate in the Constitution. It just does not exist. I do not appreciate the suggestion that it does, or that it ever will.

The thinking on this amendment becomes exceedingly fuzzy, however, when you place in your mind exactly what will happen if it passes as part of the Kauffman amendment. What Delegate Kauffman is suggesting is no longer a panel to review judges, but the outright appointment of them by the Governor, and you tell me what animal in this Commonwealth is any more political than the Governor, Democrat or Republican. It just does not add up.

If you are going to have the Governor appoint judges, and Delegate Kauffman's proposal, I admitted to him last night, is charming and interesting. I am interested in it, but if you are going to have the Governor appoint judges without the benefit of a committee to screen them, or recommendations from any special board, just out of his own desire to appoint judges, then you have got to have some kind of check and balance.

I have always felt that the finest government, the most efficient government, could be operated by a dictator. We are convinced in this country that we do not want that kind of government. We want a government of two parties or three parties. We want a minority, hopefully a militant minority, to make its feelings felt so that the majority does not run away with all the marbles, and this is a critical area.

Just a few minutes ago an amendment to put this whole matter to the electorate was defeated, and I submit to you, the minority in that issue was as big as the majority in numbers.

It just so happened that the burden of proof was on the minority, and they could not get over the hurdle. The vote was 75 to 75, and we have to have some respect for that minority, and for every minority, and I certainly think that in the interest of good government, if you are not going to elect judges statewide, if you are not going to accept the panel which was suggested by the Committee, if you are going to place the responsibility of naming appellate judges in the hands of the Governor, then please, please, leave some kind of check on what that political office will do by giving the Senate the right to review it and requiring, at least, two-thirds of the members of the Senate to approve those judicial appointments.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. I would like to interrogate Delegate Kline, if I may.

Delegate Kline, what do you think of Judge Woodside's observation that the Senate may deliberately withhold its approval for a long period of time?

DELEGATE KLINE. I do not think there is any validity in that suggestion and I do not think there is any cause for concern.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fleming.

DELEGATE FLEMING. Mr. President, I must find myself in sharp disagreement with the minority leader in the Senate of Pennsylvania in his statement that this has no effect on confirmation in the Senate. I for years and years have been very much an opponent of requiring two-thirds of the elected senators to confirm any appointment of the Governor.

It does, in effect, and I probably should apologize for using this term, it does, in effect, give a rather Russian veto to a minority.

Certainly, if the advice and consent of the Senate is to be a part of our legislative procedure, then we should follow that which is done in the United States Senate and require only a simple majority of the members elected of the Senate, regardless of the party affiliation, for confirmation. I have seen many instances where members of boards, and commissions, and in some cases—and probably this may have happened before the esteemed gentleman from Beaver County became a member of the Senate of Pennsylvania—when judicial appointments were held up for weeks, and weeks, and weeks, because we did have in many instances 26 or 27 votes, as the case may be, but we did not have the necessary two-thirds, which amounted to 34 votes to confirm. We had to go over and plead, conjole, and possibly negotiate in some areas, in order to get a minority to agree with the party in power. I am a great believer in that, that they should have the right to make appointments and, if the majority of a Senate body, which in this instance comprises 50

members, desires to vote for it, this should be done. I can cite to you, Mr. President, instances of commissions—and I can name you a couple of them right in my own senatorial district—where for a two-year period we waited for almost that length of time in order to get the seven necessary votes from the other side of the aisle in order to confirm an appointment of the Governor of Pennsylvania.

I would submit to you, Mr. President, that if the advice and consent of the Senate of Pennsylvania, regardless of which party is in control, means anything at all, make it a simple majority or abolish it completely, and let the gubernatorial or the executive department have the appointing power. Let us accept what they have.

I can think of no amendment offered in this Convention to this particular judicial article which embraces far greater fields, than now embraced by just what it is purported to do than the amendment offered by Judge Woodside to abolish, at least, lay the groundwork, if you please, for a course which this Commonwealth of Pennsylvania should pursue where a majority of the elected members of the Senate of Pennsylvania can approve or can reject any gubernatorial appointment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I would like to call to the attention of this Convention for just a brief moment that so far we have gone through exactly the deliberative procedure that the Committee went through in coming out with Proposal No. 7.

We first determined an election was not to be had.

In this Convention we have now narrowly defeated it, so we determine that whatever selection system is now to be accepted, it is going to be done privately and it is going to be done with no direct reach into it by the electors of this State, except through the various means of the executive, and I dare say, so far as the executive is concerned, this is a small moment in an election campaign.

We have come full passage now to the consideration of appointment by the Governor. If we require two-thirds, this is a combination of either bipartisan logrolling in order to get the office filled or inordinate, and unnecessary delay in postponing it.

If we go to the majority, as suggested by Judge Woodside, we get into the area of political domination or, if there is a division of between the Governor and the Senate, more inordinate delay.

Where does that leave us?

We are back to the selection panel, like it or not, just what the committee on Proposal No. 7 went through.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I intended to take the microphone first, but my good friend, Senator Fleming, got there first.

I wholeheartedly endorse the amendment being offered by Judge Woodside and support in toto the comments of Senator Fleming with reference to the difference between a two-thirds vote of the Senate and the advice and consent of the majority.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gouger.

DELEGATE GOUGER. Mr. President, being unlearned in the law, I confess that I have some difficulty in understanding the workings of the legal mind when it sets forth persuasively and eloquently a plea that politics be taken out of the selection of the judiciary, and then I hear the same people say, but abolish the two-thirds, make it by a simple majority, so that the Governor and the ruling party in the Senate may approve. I was a little startled to hear Judge Woodside make this statement, it gives a minority equal voice with the majority.

Mr. President, I submit to you in plain cow country weaseling that that is exactly what we are attempting to do. We are attempting to keep the majority of any party from making political appointments to the judiciary or controlling those appointments. We are attempting to take politics out of it, if I may use Judge Woodside's own persuasive argument, on the one hand, and by this fundamental process, we do, indeed, give the minority an equal voice, and thus go as far, in my judgment, as it is humanly possible to go to insure bipartisan appointment of the judiciary.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, I must say that the reason I voted "no" on the last vote is because I feel that a careful study of the Federal system of selection of judges has proven that it has been a most effective system, in that our Federal judiciary has not come under criticism, has not come under challenge. Rather, on the other hand, we probably have one of the finest benches anywhere in the world at any time in the history of western civilization in our Federal courts in this nation. I think it is most important for us to analyze that.

If there is not a two-thirds confirmation by the Senate, as Senator Kline has so eloquently expressed, there will be no opportunity for a check and balance in the selection of judges. We have this in the Congress of the United States, and just in the last decade a President, whose brother was the Attorney General, whose brother was the junior Senator from his State, sent a name to the Senate for a district court judgeship in their State. This nominee was rejected, notwithstanding all that power.

I think it is incumbent upon us to look to this as a model, to look at this as a guide, and, if we approve the Woodside amendment—let me state parenthetically that there is no man on the bench and in this delegation for whom I have greater respect and admiration than Judge Woodside, but in this area I must disagree.

I do not think Pennsylvania can permit one party to select a man for the bench for four years and now with a two-term governorship for eight years. We need to have this check. I think deliberation in the Senate among 50 of the finest men is a necessity. This, in my mind, is the best selection panel we could have. These people are elected, these people must return to the electorate. These people must be responsive and must stand on what they vote for when they take their positions.

It seems to me the only fair way is to have a two-thirds, not a 50 per cent, because a 50 per cent would permit a strong Governor, who can dominate his party, to be able to name whoever he chooses, whenever he chooses. We cannot afford to permit this to happen in our selection of judges.

There was a mention here of delays. It may be a delay

for deliberation's sake. We have to deliberate here. We have been accused of delay, we are thinking.

As Delegate Barron said, I think this is wonderful, the Committee went through the same deliberation process we are going through, and I think it is important that we are going through the same intellectual process, because if we did not go through this process we would not be doing our job here on the floor.

Therefore, I must urge this delegation to stand up and be counted, as I have, and vote this amendment down.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, we have been told that both systems bring politics into play. I, personally, have no objection to politics, because its definition is the art of government.

Let us visualize what will happen. Let us assume a Governor appoints someone who is totally unqualified. We have a 51 per cent confirmation rule. Either 25 Senators voting for it—as our President has ruled on one occasion—or 26, as other people contend. The Governor appoints someone, and let us assume he has influence with the majority party in the Senate. It goes through. There is no time for debate. There is no time for consideration. How about if we have the two-thirds rule and the man is totally unqualified? Well, the minority there, the 24, they will see something to hit the Governor on the head with, they will do it, they will talk in the newspapers about it, they will give speeches and they will make sure the public knows every fact about that candidate. They have the power to delay this appointment, they will do so and that is their job. It is the job of the minority party to be the opposition, to point out to the majority party where the executive has made his mistakes. If they try to play politics with this, I am sure the newspapers will jump all over them. No one is going to make any political mileage by opposition for its own sake by opposing someone who is obviously qualified. Any minority that does that is foolish.

I, therefore, suggest that the way to take politics out of it, to force the appointment of qualified men—and it really matters not to me if a man happens to be qualified and he happens to be active in one political party. On the contrary, I think political activity should be considered in some of these appointments. He understands what is going on in the Commonwealth and we do not get ivory towers.

I would, therefore, urge you to vote for the two-thirds. This will assure we have qualified judges and will not permit the Governor to ram some appointment through the Senate.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I rise to ask the delegates to this Convention in a sense of fairness not to adopt this particular proposal. In my opinion, it is the most partisan proposal that has yet been offered in this Convention.

I do not think it is any secret among those who know what transpired on the question of reapportionment that the present setup of the Senate under the existing reapportionment act is calculated to give one party almost everlasting control of that chamber. It will take an unusual set of circumstances, national or otherwise, to break down that contemplated result. Now, to place in the hands of one party the right to appoint judges to the appellate court is a gross violation of everything that represents fairness. That is precisely what will happen if we adopt this amendment.

Not too many days ago we heard Delegate Hocker stand on this floor and condemn any device which will result in the possibility of a court being packed. He said we all knew how this packing process had, in fact, been in existence and he decried and deplored that kind of situation. Judging by the vote that was taken on the amendment then before us, the delegates to this body subscribed to that viewpoint.

I am saying to you, if this amendment passes, there can be packing of that court. I think it is important—and I know that Delegate Devlin shares this view with me because we discussed it—that there be an equal division of philosophies on the appellate court in this State. This is where the philosophies of government are put into play and the law can be bent to accommodate any kind of viewpoint, any kind of direction which the justices want to travel. It is manifestly unfair to have either men who are all liberal in their thinking or men who are all conservative in their thinking sitting on the appellate courts and making philosophies of government by interpreting cases that come to them on appeal from the lower courts. This setup would allow such an end result.

I am afraid Judge Woodside has played a little bit of the numbers game here today. He said it is unfair that 35 per cent of the make-up of that body should have any voice in controlling who shall go on the appellate court bench and he would prefer to have a situation where perhaps 35 per cent of the make-up of that body shall have no voice in the make-up of our appellate courts.

If there have been any kind of shortcomings that have ensued as a result of the two-thirds requirement, they have been minimal in nature. The appointments have always been worked out. This checking right in the minority has not been abused, but if this right to call a stop to whatever name is submitted willy-nilly to that body for confirmation is abrogated, then there will be packing of the appellate courts in this State. You will see only one kind of philosophy of government being expressed in those appellate courts, not a sprinkling of various kinds of philosophies. You will see only a conservative type of philosophy, as things now stand, because of the way we reapportioned that Senate chamber, you will see only a conservative type of philosophy appearing in that court.

I say to you when these appellate courts are handling matters of labor legisation, when they are handling matters of unemployment compensation, matters of workmen's compensation, there has to be more than just one kind of philosophy on that bench. There has to be men on there who represent the spectrum of every kind of thinking.

I say this is the most unfair proposal that has yet to come before this Convention. I would urge the members of this Convention out of a sense of fairness to defeat this proposal.

DELEGATE BALDRIGE. I move we vote.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Devlin. For what purpose does the gentleman rise?

DELEGATE DEVLIN. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE DEVLIN. I would like to correct a statement Delegate Fineman made about me which is incorrect, and I would like to make this very clear.

I said I could never vote for Delegate Kauffman's amendment so long as it had a two-thirds vote on it for the reasons that Delegate Woodside stated. I said I could be for the system we are now living under and exercising our vote for statewide offices. I, in turn, told you that I would support Delegate Jirolanio, which I did, to the best of my ability, because I thought that was the proper thing to do. I could not and will not support Delegate Kauffman's amendment, which I told you very candidly.

I can evision on the Supreme Court level a vacancy existing for a number of years. If, for instance, there was a vacancy of a Democrat on the court now and a Republican Governor wished to appoint a fifth Republican, the State Senate, with the numbers it now has, could very easily say we are not going to give you that fifth Republican, we just will not confirm him. I think that is bad government from top to bottom. I just want to correct my views. I am for the Woodside amendment. I am not for the two-thirds, as my dear friend from Montgomery County has proposed as a way of solving this problem.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. I would like to ask Delegate Devlin whether he was not the one that suggested that the way to prevent one political party from dominating the other was to have a two-thirds vote in the Legislature at such time as the Legislature would change its own apportionment. Am I wrong about that?

DELEGATE DEVLIN. I do not think this question is germane to the problem we are voting on or talking about. I raised a question on a point of personal privilege and I would like to leave it at that.

DELEGATE AMSTERDAM. I do not think the question has been answered. I wonder whether it should be. It might be helpful in our voting.

PRESIDENT BRODERICK. The delegate indicates he does not care to answer that because he does not think it is germane. There is no way the Chair can force an answer.

DELEGATE FINEMAN. I wonder if I may interrogate Delegate Devlin?

PRESIDENT BRODERICK. Would you stand for interrogation, Delegate Devlin?

DELEGATE DEVLIN. No, sir, I will not, but I would be very happy to have Delegate Fineman make his point and I will reply to it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I became considerably disturbed at the partisan sensitivity that there is in this assembly. I want to assure you, Mr. President, when I endorsed Senator Fleming's comments, I endorsed them because they had no smack of partisanship whatsoever. When I endorsed the amendment offered by Judge Woodside, I endorsed it for the same reason, because in Judge Woodside's opinion—and mine—it is the best way to achieve the results which the Kauffman amendment is asking for and to get on with the business of the Commonwealth in due time without excessive delay, by approving his amendment. I am sorry, too, that an irrelevant statement has been made bringing up the situation as far as the State Senate is concerned, and this hurts me and I must speak on it.

Mr. President, I served on the reapportionment committee for two years. Every time the Senate of Pennsylvania came to an agreement on reapportionment. There was no partisan domination in that. It was not in that chamber where we failed, it was in the House where we failed. We had our understanding and agreements. I challenge contradiction to that particular fact, because I know the facts. I lived with it night and day.

May I say to you further, Mr. President, insofar as we stand now, we must remember that it is possible throughout the next 50 or 75 years that you may have a Democratic Governor and a Republican Senate, or a Republican Governor and a Democratic Senate, who can foretell the future, but if you have a demand of two-thirds in this particular amendment, God knows how long you will go until you have an appellate court.

PRESIDENT BRODERICK. The Chair recognizes Delegate Clinger.

I am not trying to cut you off, Delegate Clinger. I just want to say that we had Delegate Baldrige making a motion to close the debate before, but that motion was not seconded.

DELEGATE WOODSIDE. May I have two minutes?

PRESIDENT BRODERICK. Yes, but we already have Delegate Clinger here now. The Chair will recognize you afterwards.

DELEGATE CLINGER. I have a very brief comment. Having listened to this debate at some length, it underscores to me the necessity for having a judicial qualifications commission in this area. We have listened to the legislative leaders on both sides of the aisle arguing and haggling over this method of selection within the Senate. I suggest that if the political situation was reversed at the present time, we would have heard arguments on the other side from people who are arguing on this side. This really bears out the point that either method, the majority of the Senate or two-thirds of the Senate, keeps judges in politics, keeps them in the political arena, and I say to you that this debate underscores to me the necessity for the judicial nominating commission.

PRESIDENT BRODERICK. You have a closing on this, you know, Delegate Woodside. You will only be able to speak twice, so do you want to hold it to your closing?

QUESTION OF PERSONAL PRIVILEGE

DELEGATE WOODSIDE. I just want to say two or three things before a motion is made.

May I rise to a question of personal privilege that has nothing to do with this matter before us?

PRESIDENT BRODERICK. State your point of personal privilege.

DELEGATE WOODSIDE. Mr. President, for 13½ days I have listened to people from all over this country tell us how to run the judiciary. I think this body ought to listen to the people of this Convention and hear out the debates on these problems. I think there ought to be no motion for a previous question at any time until everyone

is sure that every point has been met, and I do not believe that that has been done in the past.

I am not saying it just because I want two minutes now. I thought it was a terrible thing that Judge Braham the other night was prevented from giving a 10-minute talk on something he had spent his last 10 or 15 years in thinking about, studying about and reading about. We denied him the right to say it. I do not agree with nine-tenths of the things he would have said in that speech, but I think he should have had the right to say it and I think we are moving the previous question when there is still argument to be advanced on these questions by people who have spent a lifetime in considering them. I think we ought to hear the delegates out.

PRESIDENT BRODERICK. The Chair wants to say that the Chair does not cut off debates. Last night it was a motion that was passed by this Convention and they have, under the rules, the right to move the question. That depends on how they vote on the motion.

DELEGATE WOODSIDE. I hope no one here takes what I said as a criticism against the President. It is not. You have been extremely fair and you have tried in every way, I think, to carry out the principle which I have just laid down as one, I think, of importance. I think, however, the body without due consideration has too frequently moved the previous question and refused someone the right to finish.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Fleming. For what purpose does the gentleman rise?

DELEGATE FLEMING. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE FLEMING. Mr. President, I am not quite sure at this moment whether or not I rise to a question, a statement of personal privilege or whether I rise to make a comment.

I have been somewhat cooled off by Judge Woodside's remarks. I believe, and I say this as moderately as I can, that I somewhat resent the statement of Delegate Clinger in which he casts aspersions on the legislative leaders for attempting to lay before the Convention the viewpoint of their respective parties.

I do not believe for one moment Senator Kline or Delegate Fineman tried to lay before this Convention that viewpoint, and I am serious about this, Mr. President, I think they believe in what they said.

I have for 15 years long before, long before, members of this Convention, long before this Convention was ever authorized by the people of Pennsylvania have been an ardent opponent of a two-thirds vote for any confirmation in the Senate of Pennsylvania.

The considerations of whether or not it benefits a Republican Governor at this time, Mr. President, had no affect at all on what I said a moment ago and what I said at this microphone, and I resent any man implying I had any other motive at all in that which I said at this Convention.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldrige. For what purpose does the gentleman rise?

DELEGATE BALDRIGE. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BALDRIGE. Mr. President, I resent the remarks made on my motion to close the debate. The delegates here seem to think we have six more months to finish this Convention, and we do not. Most of us have made up our minds and we campaigned on some of these issues, although I realize there are delegates who probably have things they could tell any of us, but somehow or other we have to get through this and that is why I made my motion.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I do not rise in resentment against anything that has been said. I do tip my hat to Judge Woodside and I do endorse what he said. I think I probably would have been in disagreement with Judge Braham, too, and I regret we cut him off. I think we need to hear these debates.

I rise, Mr. President, to point out what I think has been pointed out before, but I rise to underline it. Let us not fool ourselves and let us not go out of this delegate body assuring that we have washed our hands, we have cleansed them of politics, because we have not.

When we decided not to elect judges statewide, we did not remove politics from the election or selection of statewide judges, we merely narrowed the political arena, and that is all we did.

What we are now saying is, we will make political assessments of men, we will have the Governor make those political assessments and we are going to decide whether or not the political Senate will join in that assessment, or veto it.

If we are content to let the executive make these decisions, then we are wasting our time talking about a majority or two-thirds. We ought to be honest and simply say we trust the executive power to make the selection of the judiciary. If we follow Judge Woodside's suggestions, that is precisely where we shall be.

Any strong Governor, be he Republican or Democrat, has powerful influence in the House and powerful influence in the Senate. Any Senator would think two or three times before he opposes a Governor of his own party, so if a Democratic Governor sends over to the Senate controlled by the Democrats a nomination for an appellate court, it is practically the same as selection. Though there may be some rumblings and there may be some dealings underneath, it is practically the same as a selection. And the same is true with a Republican Governor and a Republican controlled Senate.

What Delegate Fineman said here at this microphone was realistic, and let us again be honest with ourselves. What we are saying, if we are going to engage in politics in the selection of the judiciary, let the minority party have a say in it, because judges ought to be selected as broadly as possible, in my opinion, and we have now narrowed the point down to practically a selection by the executive. I do not think any executive can be trusted that far as to let his selection be the final say and, if you make it a simple majority you have practically done that to a strong executive. If, however, you make it, make it two-thirds of the Senate, he has a much more difficult

time. Again, I am not so much interested in making the task easy for the selection of judges as I am in trying to make it as fair as possible. That is the reason I object to Judge Woodside's amendment and that is the reason I shall vote in the negative.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I shall be very brief.

May I say, first, the committee did consider specifically the two-thirds majority, debated it extensively and rejected it.

Secondly, I say to Delegate Gerber, what we are attempting to do here is provide exactly the same as I understand the Federal system is, in other words, a majority of the Senate.

Thirdly, may I say to Delegate Fineman, in 1970 there will be a new reapportionment of the Senate.

Lastly, may I say, there seems to me to be four methods of choosing statewide judges and they are one, election, one through the panel method, one through the appointment of the majority and, fourth, the appointment with two-thirds of the Senate.

In my own personal experience of those four, the worst is appointment by two-thirds of the Senate.

On the question,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—61

Baldrige	Fohl	Markley	Sebastian
Barron	Goldman	McGeary	Shively
Benedict	Griffith	Meyer	Shoemaker
Broderick	Hannum	More	Strickler
Butera	Hatter	Nelson	Stroup
Cain	Heyburn	Orban	Thomson
Corey	Himes	Pasquerilla	Van Sant
Cortese	Keller, J.	Pelletier	Waldron
Croop	Keller, M.	Pott	Warman
Curran	Krill	Powell	Welsh
Desmond	Laputka	Reynolds	Westerberg
Devlin	Leach	Richter	Whittum
Erwin	Lee, K.	Rovner	Wilcox
Fawcett	Lee, L.	Sahli	Wilmarth
Feather	Leonard	Scott	Woodside
Fleming			

NAYS—81

Aberman	Cunningham	Jirolanio	Quiles
Allison	Dailey	Johnson	Rappaport
Amsterdam	Dumbauld	Kauffman	Rea
Bagenstose	Fagan	Kelly	Redick
Baldus	Fay	Kline	Roberts
Banes	Filson	Leinbach	Ruth
Barry	Fineman	Levin	Scales
Benfield	Forster	Mangery	Shapiro
Bloom	Fortney	Mattioni	Sharp
Braham	Gabreski	McGlynn	Shettig
Brennan	Gehrlein	Michener	Shrager
Brown	Gerber	Miller, D.	Silverman
Buck	Goldstein	Miller, R.	Solomon
Bunting	Gouger	Moorhead	Sprogell
Burkholder	Harding	Murray	Stout
Camardella	Henderson	O'Donnell	Tate
Caputo	Hocker	Orbin	Thornburgh
Caron	Hook	Otto	Tomascik
Casey	Huggins	Popil	Tully
Clinger	Irvis	Prendergast	Woodring
Cosetti			

NOT VOTING—21

Aurentz	Donolow	Lane	Pechan
Baldwin	Gray	Manderino	Percey
Bashoff	Horne	Michael	Scarlett
Clark	Hostetler	Morton	Scranton
Conley	King	Musselman	Swope
Donaldson			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I should like to speak very briefly against the Kauffman proposal. I must echo the observations of Delegate Barron a few minutes ago. The Judiciary Committee has been all through this backwards and forwards and has considered every form of selection of a judge known to mankind, two-thirds, simple majority confirmation, judicial panel, election, selection, retention, screening, not less than three nor more than six, and how many others.

The problem is a very simple one, it strikes me, and that is how do we recruit and find competent people to serve on the highest courts of our State?

The problem with the Kauffman proposal as it strikes me is that it tends to close the door of the barn after the horse has left.

The problem is not so much as to what should be done with the gubernatorial appointment once it has been made, the problem is, rather, how to get a proper gubernatorial appointment in the first place.

More succinctly, it is perfectly obvious that the Governor of Pennsylvania must take into consultation many different people. The only difference between what exists now and what has been proposed by the Judiciary Committee is, now the public will be entitled to know the names of the persons whom he consults.

Those who have argued against the panel and against the Judiciary Committee have set up a strawman. They have said, this is a panel which will be under the control of the Bar Association. Nothing could be further from the facts, because we have seen to it that it cannot possibly get under control of the Bar Association because it was forced out of the Judiciary Committee.

There is a provision here that the selection panel be a bipartisan panel. There is a provision here that its lay members be appointed by governors on a standard basis. I think it is unfair to the Judiciary Committee and to its proposal to go and categorize it as some of the speakers have done.

The fact of the matter is that the Judiciary Committee has come full circle on this.

The difficulties of selecting a judge by election were realized, the difficulties of appointing with confirmation by the Senate were fully realized, and we have finally come around to this method. Does this method take away from the hands of the people the right to have a hand in the selection of their statewide judges? It does not. In fact, it puts into the hands of the people more of a right than that which they have today.

Consider this. The Governor of Pennsylvania can make an appointment for three months up until the next election of a justice of the Supreme Court, after which, by party selection, he will serve 21 years in office.

Here, under the Judiciary Committee proposal the Governor will make a probationary appointment for two years, giving the people a full two-year opportunity to judge that person on his own merits. This is not just a sham, because when the people of Pennsylvania vote yes

or no, I am sure the delegates will recall, he will not have been placed on the bench in association with a political party at all. He will not already have a band of partisans supporting him.

Is the proposal of the Judiciary Committee novel? Yes, it is.

Is the proposal of the Judiciary Committee an experiment? Yes, it is.

The question of course before this body is, are we Pennsylvanians afraid to experiment?

We have seen on this floor the problem with the forces of time breathing down the backs of our neck. Haste here has made waste. Haste here is making history, and I fear to some extent that haste is writing a Constitution.

We are making an error. This matter has been before the Judiciary Committee for two months and this is the result of the best thinking of that entire committee.

I for one am not afraid to experiment. When my forebearers came over here in the 1840s when they ran out of potatoes, they were not afraid to experiment. I suggest to you the forebearers of every delegate in this room were people who were not afraid to experiment. As a matter of fact, our great State of Pennsylvania has been referred to as the Noble Experiment, and I see no objection to it.

The only difficulty with an experiment is that it requires two qualities, and those qualities are courage and fortitude, in plain language, guts. It is a question of whether our forefathers, who had a contempt for the safe and secure feeling and a willingness to experiment, should be emulated by us, and I think they should. I submit to you that we still have Pennsylvanians and Americans who are willing to, as Delegate Irvis said the other day, put their money where your mouth is.

I read a headline the other day "United States Marines Are Inching Ahead In Bitter Battling." This is the kind of thing that has made the United States a force in the world today, because we have not been afraid. We have not been timid, and I think, in the main, a great deal of what I have heard in this constitutional convention has indeed been afraid, and has been timid and has cautioned against making any experiment or, indeed, any change. We have become, in effect, the victims of what one might really call the "Fifth Horse of the Apocalypse." The fifth horse counsels fear and counsels an unwillingness to take a chance and an unwillingness to turn over to the future better than what we got.

I say to you that the report of the Judiciary Committee deserves the fullest consideration in this body.

I respectfully submit this Convention will steer a fine course between the fallacy of hasty amendments to this judiciary article, on the one hand, and crest fear, on the other hand. Let us vote to support the Judiciary Committee here and now and get out by February 29th. The faster we vote down these amendments to the Judiciary Committee proposal, the faster we shall leave.

Mr. President, on that point of fear, I would like to remind this body, at the very depths of World War II in which I had the privilege to serve, a very famous statesman, Winston Churchill, said, "We have not journeyed all this way across the centuries, across the oceans, across the prairies because we are made of sugar candy." I, for one, am willing to try this experiment for the future of Pennsylvania.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, I would like to ask certain questions of Delegate Kauffman, the proposer of this amendment.

PRESIDENT BRODERICK. He will stand for interrogation.

DELEGATE SCALES. Delegate Kauffman, there were three statements made by Delegate O'Donnell that somewhat disturbed me. The first of those statements was that the committee recommendation was the best result of two months of committee work. Is it not correct that at one time the standing committee on Judiciary voted in favor of a system other than the panel selection system?

DELEGATE KAUFFMAN. That is absolutely correct. There was a vote taken by the standing judiciary committee that did approve a method of selection of judges. It did not include any panel whatsoever.

DELEGATE SCALES. Delegate O'Donnell also stated here that, in his opinion, the panel itself would not be under the control of the Pennsylvania Bar Association. Can you tell us, please, exactly under whose control that is? Who does select the panel?

DELEGATE KAUFFMAN. Actually, I think the panel that has been proposed by the standing committee here is much more susceptible to evils than the panel which was proposed by the Pennsylvania Bar Association. The panel which we have in the present proposal would be composed of four non-lawyers and three lawyers. The four non-lawyers would be appointed by the Governor. However, their terms would be staggered, so that no Governor could ever really influence the panel until at least his second term.

The only individual, or body, that would have continuous and pervasive control over this selection commission would be the Supreme Court which would, of course, continue as the judges continue in office over a great many years. Judges of the Supreme Court appoint three members of this panel and you get into the very interesting situation where you have the judges of the Supreme Court appointing the panel which will appoint and select the judges of the Supreme Court, which will appoint the panel, and it becomes a self-perpetuating type of thing which I do not think any of us in this body would like to have. I think this could lead to tremendous evils, and I do not mean to criticize any members of the Supreme Court.

As we heard time and time again, we are planning not for this year or next year, we are planning for the next 100 years. If you go through 100 years of permitting the Supreme Court to appoint the panel that selects the Supreme Court, you are going to have an elite that I think is the complete antithesis of everything that democracy stands for and something that none of us really want to accomplish. I think everyone in this room ought to understand thoroughly and completely how this panel and how this commission is going to be appointed and how it is going to be controlled.

I am also disturbed by Delegate O'Donnell's comments on experimentation.

DELEGATE SCALES. Is it possible to experiment with a panel system without having it locked into the Constitution forever?

DELEGATE KAUFFMAN. I think it was tremendously significant that Delegate O'Donnell conceded that this is

experimental. I think that we should not experiment with a constitutional mandate. I think it is clear—and I know that Governor Scranton has done this himself—that the Governor could either in his campaign platform or at any other time voluntarily set up a panel which could recommend names to him exactly in the manner that the panel which has been proposed by the standing committee could do, but to constitutionally mandate an experiment, I think would be dangerous beyond belief. I think for us to do that would be as wrong as we could possibly be in a constitutional convention.

We must provide for the Governor to appoint, put the responsibility where the power is, and, if the Governor wants on his own to appoint the panel, he certainly could do it. However, he would still be the person who has been elected by the people who would be responsible for that appointment. He could not shirk his responsibility by saying, I had to appoint from a list of 10 names submitted to me by a panel.

Now, I think it is clear—we have had testimony from people from other states—that when you require the Governor to appoint from a list of from 10 to 20, or from any minimum number to any maximum number, you are usually going to get the minimum number.

For anyone to contend that any panel could reasonably and rationally on objective grounds find 10 most highly qualified lawyers to the exclusion of all others of the more than 10,000 members of the Bar of Pennsylvania without doing it on an arbitrary basis, then it just seems to me that I completely misunderstand the panel method of selection.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President, throughout this Convention, and while I have been on the floor of it, I have listened long and hard to many comments made by many people about the powers of the judiciary, particularly about the powers of the Legislature, but there has been very little said about the powers of the executive, except in an antipathy thereto.

So far I have never made a comment on the floor of this Convention concerning the executive, frankly, because I thought I was at least partially prejudiced in this, having served in that capacity. Although I have been in the Congress of the United States, I have never been in the State Legislature, and I have never been in the judiciary, but because a great many people in the committee itself, and others, have asked me to do this, and because I think it is of extreme importance in this particular issue, I would like to talk to you for a few minutes about my own experience with regard to the selection of judges.

There has never been a Governor in the history of Pennsylvania so far that has had so much experience in appointing judges as I have, and I do not mean that boastfully, because I did not especially enjoy it. I have appointed far more judges than any other Governor, almost 60 in this State, and I can assure you, first and foremost, that this is a tremendous problem for any Governor.

It takes somebody who is responsible—and I assume that all the Governors are—it takes a tremendous amount of time of those around you, and others, to ascertain who should go in the judicial system of our government, and this is proper, because it is an extremely important appointment.

I had the experience of almost all of these methods, and it is for the reason of my experience, as well as philosophy, that I feel so strongly about what the Judiciary Committee has finally recommended.

Yes, it is absolutely true that the committee went through this, and went through it just as you have been going through it in the last two days, only we took even longer and went even more deeply into it. It is true that several different votes were taken at several times, and finally it came around to what we have presented to you. Just as you are now faced with the decision to make as to whether you want the type of operation that Delegate Kauffman has suggested—and a finer member of our committee we do not have—or the suggestion of the Judiciary Committee that is a majority, a bare majority of them has suggested.

In essence, the difference between these two is that one is, in essence, although not identical, the Federal system, and the other is one which is presently being practiced. It is not experimental. It is presently being practiced in 15 different states in this Union on various bases, some only in the lower courts, some only in the statewide courts, some altogether in all of them.

It is true that we have come up with a slightly different system than any of the others have in the make-up of the panel, and partly that is due to my experience, only partly, and I am now speaking for myself and not for the committee.

I think the intention of this Convention should be, and their objective should be, to try to do their level best to take the judiciary out of politics all up and down the line. I am not talking, and I admit this openly, only of partisan politics, although that is keen, but also of all other kinds of politics, Bar Association, or whatever.

All right. Now, what was my experience in this, and why do I feel so strongly about it? You have heard in the discussion on the Jirolanio amendment a number of people, including the sponsor himself, say that the Federal system is political, that it is entirely different because it brings up different subjects than occurs in the state. This is true, and you have just even more importantly heard the argument on all sides concerning the two-thirds or the majority rule of consent by the Senate. Every single member who spoke on that one said this was clearly political, and indeed, it is, as to who is going to have the power, whether the minority should be involved in it, or whether they should not, and I can assure you from my experience that this is precisely the case.

Now, what is the Federal system and how does it differ? First of all, you are appointing judges for life, or until their retirement, and, secondly, there are Federal questions which Delegate Jirolanio pointed out, which are really far afield from those that ordinarily come out in state courts, diversity, etc.

There is a Judiciary Committee of the Senate of the United States which has a very long tradition of determining the calibre of persons appointed there, and there are two Senators from every state. Frequently they are of different parties, which helps, but I say to you, and you can look up the figures, all the modern ones, and most of the ancient ones in the history of our State, almost every judge that is appointed by any President is of his party, at least, it is overwhelmingly so, and in this it is, I may say, obviously political.

Likewise, I say to you, whether it be by two-thirds or by majority of the Senate, or any other focus you want to put on to it, from my own experience, and you look at it intelligently and objectively yourselves, it is just as clear that any Governor sitting over there, that they make such fun of the front office about, and even those, if there are such, that make deals on such things as this—and pardon me for making a boastful statement at the moment, in not one of the judges that I appointed did I ever make any kind of an arrangement with any Senator or, for that matter, anybody else about votes on any other subject, because I have a very high regard for the judiciary and the importance of it, and I would not let it reach that kind of level.

May I also say to you, and I mean every word of what I am saying, that I had the experience with a panel system. It was one appointed by me. There were two things wrong with it. One was that it necessitated the consent of the Senate, and so this made it at least partly political. The other was that there were too many members of it who were moguls of the Philadelphia Bar Association. This made it partisanly political with respect to the Philadelphia Bar Association, and I have so stated, not only to them personally, which I did, but openly to the public many times, and I think we have learned our lesson on this.

Nevertheless, I say to you, and I mean every word of it, that the judges that were appointed by that system are as fine a group of five judges as have ever been appointed at one time in Philadelphia, and I defy anyone to get up and say otherwise. I point out to the experience that we have had with them and the variations in the type of their backgrounds and in the work that they are presently doing there.

Now we have arranged it so that Governors cannot appoint bar association, or any other type of moguls to run the panel for that very reason, because we do not approve of it.

I say to you in no uncertain terms, we have studied what they have done—yes, in Missouri, but that was only true in St. Louis and Kansas City; and yes, in Colorado, where it is all over the State; yes, in many other places. This is the coming way of operating the judicial appointments, particularly on a statewide basis, where the public really has no jurisdiction over who is selected. If you want to remove politics from it—and this is the test—then I say to you, did you make it possible for a Governor to appoint somebody from a panel which is non-political? Because, otherwise, in the Federal system or in our present system in this State—and I have experienced this—if he must get the confirmation of the Senate, or more important, if he is of one party and has no way to say to that party, "I have a good method of appointing somebody from another party," other than by making a deal, then I say to you that you should accept this method, because every other appointment I made, as every other Governor before me, was primarily from a panel of suggested names that was made to him from a few political leaders. Yes, he can get the finest and highest caliber men he can possibly find, but he was beholden to them and the Senate to make sure, and he needs the votes of all the people on his side of the Senate to do it. I am speaking bluntly now, but this is the truth, you are really choosing between one type of panel and an outrageously political one.

Yet I say to you, if you will do what the Judiciary Committee did—or many of them—and study how this has worked, and then make the choice that was always before me, you will come to the right decision.

DELEGATES BANES. May I interrogate Governor Scranton for just one question?

PRESIDENT BRODERICK. Yes, Delegate Banes. He will stand for interrogation. You may proceed with your question.

DELEGATE BANES. Governor, during your term of office you stated you appointed 60 judges?

DELEGATE SCRANTON. Not 60, almost. The exact number, I do not remember.

DELEGATE BANES. Could you tell us the number in each respective party who were appointed? Do you recall?

DELEGATE SCRANTON. No, but there were not many Democrats. In the arrangement that was made concerning Philadelphia when we opened two new courts there, there were half of them Democrats and half Republicans. In the panel arrangement that we had, from the panel list I got, two of them were Democrats.

DELEGATE BANES. But the balance?

DELEGATE SCRANTON. The balance in the State, I do not remember another Democrat.

DELEGATE BANES. All Republicans.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I would like to speak to that last particular point.

As part of the arrangement, as I understand it, that was made by Governor Scranton, there were six appointments in the court of common pleas and I believe four in our county courts. The Governor is quite correct. The appointments he made from the panel were excellent ones and are excellent ones. I may have my facts wrong, I see the Governor standing up.

DELEGATE SCRANTON. May I correct him, sir?

PRESIDENT BRODERICK. Surely.

DELEGATE SCRANTON. The 10 appointments to which you are referring were not selected by the panel.

DELEGATE RAPPAPORT. I am aware of this.

DELEGATE SCRANTON. They were selected by me from the panel.

DELEGATE RAPPAPORT. The previous group was from a panel, am I correct?

DELEGATE SCRANTON. That is correct, the five.

DELEGATE RAPPAPORT. I am saying those five are all excellent judges, everyone of them. But I also say that the subsequent 10—and I do not say this because one of them is a former law partner of mine—are all excellent judges and they include in the group former counsel to the Republican City Committee and former counsel to the former Democratic City Council Committee in the group of six common pleas court judges.

DELEGATE SCRANTON. May I interrogate?

DELEGATE RAPPAPORT. I will yield most willingly to the Governor.

DELEGATE SCRANTON. Is it not true that the reason this was so arranged was because we were opening two new courts and is it not also true that even, I think, with the high caliber of appointments that I made in most places in the State, out of the 57 judges the rest of them were of my party?

DELEGATE RAPPAPORT. I am not speaking to that

point and I am not aware—I must confess to being very parochial as to what went on in the rest of the State. I am talking about the results of this very partisan selection in Philadelphia. I am saying that these 10 men are as qualified, without question, as the five judges who were appointed from the panel.

I would, therefore, suggest that we are not discussing which system brings about a higher caliber of man, we are talking about the method of selection and whether both parties will have a say in it. I think we run our government by the two party system and, perhaps, the initial appointment of judges might be considered the same way.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Reynolds.

DELEGATE REYNOLDS. I would like to ask the Governor a question.

Governor Scranton, is there anything in the article being presented by the committee to prohibit the next Governor from, if he chose to, appointing a panel of his own to help him out?

DELEGATE SCRANTON. No, there is nothing to prohibit him from so doing. As I pointed out to you, when I had this opportunity—or when any Governor would—if this particular provision is not passed, he must nevertheless get the consent of the Senate and this makes it a difficult political decision. It keeps politics in it.

DELEGATE REYNOLDS. One other question. If the panel should not give him the caliber of persons that he thought he should have, would it be his prerogative to ask them under this article to go back and bring in another person?

DELEGATE SCRANTON. No. Under the article he has a group of no less than 10 nor more than 20, which, for one decision, seems to me to be adequate. From my experience, I think it is adequate.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sprogell.

DELEGATE SPROGELL. Several delegates have asked me to ask Governor Scranton if he will just finish off by saying in one sentence exactly what he is for and what he is against.

DELEGATE SCRANTON. Well, I am sorry I wasted 10 minutes.

I say to you in no uncertain terms that I fully support the committee suggestion on the selection of judges statewide. I may also add that I supported their suggestion locally because I do not think that Pennsylvania is yet ready for the selection of judges on that plan locally unless the voters so desire it. Statewide I not only think we are ready for it, but I think we must have it in order to minimize political interests.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, Delegate Scranton is most persuasive and I say this not to flatter him, but to praise him. If we have a Governor like Bill Scranton in there, if we were to continue to have that caliber of man, I would not fear the commission system and I would not fear it if we were going to get on the commission men who were nonpartisan.

But we are not going to have, always, that caliber of man as the chief executive and, if the Governor is permitted to appoint four of the seven members and if the Supreme Court is permitted to appoint the other three, it becomes capably obvious that a politically motivated Governor could appoint three of his own party and toss a sop to the minority party by appointing the fourth from that party and the Supreme Court could appoint two of the majority party and toss a sop to the minority party and appoint one for the minority. This would give a clear-cut majority of five votes to one particular political party.

I again point out to you that if you think there is any way to divorce judges from politics, you are greatly mistaken. You may reduce the size of the political arena, but politics is going to be involved in the selection or appointment of judges. I suggest that the best way we now have before us is to make certain that the minority party, whichever party it be, will have some sort of veto on the appointive power of the executive.

Under the committee's proposal there would be no power to veto whatsoever. Whatever the Governor said would be it. I am opposed to handing him this sort of power. I fear it. Perhaps it is the way for the future, but I fear it very greatly. I strongly support what we have presently before us, the amendment to permit the Governor to nominate, with the advice and consent of two-thirds of the Senate. It will be difficult, I know, but I think it is safer to have it difficult than it is to make it too easy for a highly partisan Governor to have his own will with statewide jurists.

DELEGATE SCRANTON. May I correct something?

PRESIDENT BRODERICK. Yes. The Chair now recognizes Chairman Scranton.

DELEGATE SCRANTON. I am sorry to speak again, but I must correct the gentleman.

Under the provision of the Judiciary Committee the members of the commission shall serve for terms of seven years, staggered so that one member shall be selected each year and no more than four of the members at any time of the commission—I am adding "at any time," but that is obviously what is intended—shall be members of the same political party.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Butera.

DELEGATE BUTERA. Mr. President, I rise in support of the amendment. I do so with mixed feelings. For me, this has been the most difficult decision of this Convention. One of the reasons is that I realize that Governor Scranton and I differ in our opinions on this issue. My brief tenure in public office has been during what I like to refer to as the Scranton era in Pennsylvania. My political philosophy has been largely molded by that man. It is also difficult, because I do not view this as the political issue that so many others have seemed to convey to you throughout this debate.

Rather, I view it in a broader sense, I think, as to what I feel the responsibilities of the office of Governor are. I feel very strongly that judges at the statewide level should be appointed by the Governor. The question that arises is, how shall he appoint them? I think Governor Scranton is the best evidence that he can appoint them—that is, the Governor can appoint judges, competent judges, himself. He can utilize the panels, if that is his wish. He can utilize Bar Associations. He can utilize politicians, and, let us face it, they are not all bad. And he can—and

most people will agree he did—appoint good judges. I do not think you can separate politics, as Delegate Irvis explained, from any appointment, judicial or otherwise, provided a politician is making the appointment.

But I say that that politician—in this case, the Governor—should make that appointment in the open. He should not be protected by a panel. He should not be protected by an executive committee of a political party in the case of election of judges. But the decision should be made by an elected Governor and it should be approved by an elected Senate and this Governor, when he is running for office, should, as one of his major issues should this proposal pass this convention, set forth to the people how he will exercise this power. Both candidates should. Both candidates will, I submit. If that particular candidate wants to insulate himself from the political bosses or the political leaders, he can do so very easily by putting them on notice that he is going to use "X" or "Y" methods, which may very well be a panel similar to this or similar to that which Governor Scranton used. But he can do it voluntarily, and we have seen it done in this State in recent years.

I think one of the disappointing things I have experienced at this Convention—perhaps, the only disappointing thing, because I think, contrary to many reports, that it has been a good Convention and it has been a good debate throughout—is the feeling of distrust among this body of politicians and the feeling of distrust has come out in many different ways. One is by restricting the Legislature by, in fact, legislating in writing this constitution. I think that emanates from a basic distrust for the Legislature. I think we are seeing it now in the distrust of the executive. We do not trust the Governor, we are saying—those of us who do not support this amendment—to appoint the judges. We want to, therefore, insulate him and give him some kind of select panel. But we trust them. I do not know what the difference is.

I submit to you that throughout our continued debate, the more restrictions we place on the politicians, on the elected people who run this State, the more we will perpetuate the very weaknesses which we fear in our system. I say, give the responsibility to the people who are willing to run for office and accept it. Once you give it to them and once you see to it that the right people are elected, they will use that power well and they will use it the way it was intended to be used in our system.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, the most essential element of judicial action is finality of action. I move the question.

PRESIDENT BRODERICK. Do you wish to put that in the form of a motion, that we close debate and that we vote on the pending question? Is that your motion?

Delegate Solomon, I take it you are moving we close debate and put the pending question, is that correct?

DELEGATE SOLOMON. Yes, close debate.

PRESIDENT BRODERICK. Does anyone want to second it?

DELEGATE BAGENSTOSE. I will second it.

PRESIDENT BRODERICK. Delegate Bagenstose seconds that motion.

On the question,
Will the delegates agree to the motion?
It was agreed to.

PRESIDENT BRODERICK. We are ready. We will unlock the voting machine. The question is, will the Convention agree to the Kauffman amendment? All those voting "yea" will vote to support the Kauffman amendment, all those voting "nay" will vote to reject it.

On the question,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—67

Aberman	Fawcett	Jirolanio	Prendergast
Allison	Fay	Kauffman	Quiles
Baldrige	Fineman	Keller, J.	Rappaport
Banes	Fleming	Kelly	Redick
Barry	Fohl	King	Scales
Brennan	Gehrlein	Kline	Shapiro
Brown	Gerber	Lee, L.	Shettig
Butera	Goldman	Levin	Shoemaker
Camardella	Goldstein	Mangery	Silverman
Caputo	Gouger	Mattioni	Solomon
Corey	Griffith	McGlynn	Stroup
Cunningham	Hannum	Miller, D.	Tomascik
Curran	Harding	Murray	Tully
Dailey	Henderson	Orban	Waldron
Desmond	Heyburn	Orbin	Westerberg
Dumbauld	Hocker	Otto	Whittum
Fagan	Irvis	Pott	

NAYS—79

Amsterdam	Devlin	Meyer	Scott
Bagenstose	Erwin	Michael	Scranton
Baldus	Feather	Michener	Sebastian
Barron	Filson	Miller, R.	Sharp
Benedict	Forster	Moorhead	Shively
Benfield	Fortney	More	Shrager
Bloom	Gabreski	Nelson	Sprogell
Braham	Hatter	O'Donnell	Stout
Broderick	Himes	Pasquerilla	Strickler
Buck	Hook	Pelletier	Tate
Bunting	Johnson	Popil	Thomson
Burkholder	Keller, M.	Powell	Thornburgh
Cain	Krill	Rea	Van Sant
Caron	Laputka	Reynolds	Warman
Casey	Leach	Richter	Welsh
Clark	Leinbach	Roberts	Wilcox
Clinger	Leonard	Rovner	Wilmarth
Cortese	Manderino	Ruth	Woodring
Cosetti	Markley	Sahli	Woodside
Croop	McGeary	Scarlett	

NOT VOTING—17

Aurentz	Donolow	Huggins	Musselman
Baldwin	Gray	Lane	Pechan
Bashoff	Horne	Lee, K.	Percey
Conley	Hostetler	Morton	Swope
Donaldson			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

WIFE AND FAMILY OF DELEGATE WELSH WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. I think now might be the time to ask the Delegates and the President for a pause that refreshes. I would like to introduce my wife and three of our older children and would like to ask them to rise. My wife, Kathleen, our oldest daughter Kate, Ann and Tom.

PRESIDENT BRODERICK. I am sure I reflect the opinion of the fellow Delegates when we say that that was a

very refreshing pause and we are very happy to have you with us.

WIFE AND DAUGHTER OF DELEGATE LAPUTKA WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka.

DELEGATE LAPUTKA. I would like to introduce my wife, Audrey and my daughter, Dolores.

PRESIDENT BRODERICK. I want to say again that we are very happy to have Mrs. Laputka with us and we just want you to know Delegate Laputka is doing a great job.

GUESTS OF DELEGATE MICHENER WELCOMED

PRESIDENT BRODERICK. The Chair now recognizes our Secretary, Delegate Michener.

DELEGATE MICHENER. For an unusually refreshing note, last week I was asked to address a group of students from Stroudsburg who came here and, in the course of it, I said, "If you want to get a good view of government in action, why don't you come here and spend a day with me?" Well, they came. I have in the back of the room two delightful girls, Jill Anderson and Wendy Wells and, if they will stand up, you can see what happens when you give invitations.

PRESIDENT BRODERICK. We are very happy to have you with us.

DELEGATE MICHENER. Mr. President, you do not know it yet, but they will be with you for breakfast tomorrow morning.

PRESIDENT BRODERICK. Well, that is a pleasant surprise. Where are we going to have that breakfast?

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Buck. For what purposes does the gentleman rise?

DELEGATE BUCK. I rise to a question of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BUCK. I was in my seat. I am not sure my vote was recorded on that last vote.

PRESIDENT BRODERICK. Delegate Buck, we will check the record.

Delegate Buck, you were recorded as voting.

DINNER OF LOCAL GOVERNMENT COMMITTEE

PRESIDENT BRODERICK. We will recognize Delegate Baldrige.

DELEGATE BALDRIGE. While we are on the pause that refreshes, I would again like to ask the Delegates—especially those of the Local Government—to kindly give me their answer if they are attending the dinner tomorrow night and, also, for the gala night which will take place next Wednesday night.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. May I ask the Chair how many more amendments there are on this precise same issue? I seem to have one again by Delegate Kauffman, which is perhaps some "combination-flavor" of what we just discussed and I wonder how many others we have pending?

PRESIDENT BRODERICK. The Chair will be happy to answer your question as soon as we call in the outfield here and get instructions.

I am advised we have three more after this on Section 11, which would, I think, if my count is correct, mean that we now have a total of four to work on.

KAUFFMAN AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE KAUFFMAN offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, line 4, by inserting after "appointment": and may fill the vacancy

Amend Sec. 1 (Sec. 11), page 5, lines 6 and 7, by striking out "Such appointment shall not" in line 6, all of line 7, and inserting: In the event the Governor appoints a person other than those listed by the commission, such appointment shall require the consent of two-thirds of the Senate. If the Governor appoints a person from the commission's list, such appointment shall not require the consent of the Senate.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman for a statement on behalf of his new amendment.

DELEGATE KAUFFMAN. Mr. President, as advance notice, this is the last amendment—at least, that I have—with regard to the selection panel. However, I feel very strongly about this. What this amendment does, in summary, is to provide a safety valve that I was talking about before.

What this amendment provides is that there will be a judicial qualification panel as proposed by the standing Judiciary Committee. The judicial qualification panel will submit a list of 10 to 20 names to the Governor, and the Governor will consider that list and, if he feels that it is a good list, that there are people on there who he would, in good conscience, appoint to a court of statewide jurisdiction, he will make the appointment.

However, the safety valve feature of this particular amendment is that in the event that the Governor, in his

conscience, does not feel that any of the names—any of the 10 to 20 names that are submitted to him—are worthy to be appointed to a court of statewide jurisdiction, he may disregard those names, appoint someone on his own, and that appointment will require the consent of two-thirds of the Senate. In the event that he appoints from the list submitted by the panel, no Senate consent will be required.

I think it is important to remember and to keep in mind that the deliberations of this qualifications commission are going to be in secret, behind closed doors. No one will know the qualifications that they consider, and I cannot emphasize enough that the Governor does not—and I repeat and emphasize—does not have the right to ask for a second list under the present proposal. The Governor must appoint from one of the 10 names submitted to him, or he cannot possibly find anyone else to fill the appointment. He has no choice. Even if he does not like any of the names for legitimate reasons, he cannot disregard the list. This amendment permits the Governor to disregard the list, but there is again the safeguard of the consent of two-thirds of the Senate.

This, as I say, provides the safety valve against the very things that we talked about in the debating of the last amendment. I submit it for your consideration.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Will Delegate Kauffman permit a question, please?

PRESIDENT BRODERICK. Yes, he will. You may proceed.

DELEGATE STROUP. Delegate Kauffman, you may have answered my question, although I did not hear you quite clearly enough, so I direct it to you this way: It has been my understanding all along that the commission system of recommending qualified judges to the Governor would require the Governor to select one out of the 10 or 20—and, if he did not, if he, say, stepped out of that, then such appointment as he would make if this proposal were adopted by the electorate would be unconstitutional.

DELEGATE KAUFFMAN. That is absolutely correct. He would have no choice, he must select one of those names submitted to him by the judicial qualifications commission.

DELEGATE STROUP. One more question, Delegate Kauffman. If I understand you, in your amendment you are now providing the Governor with an escape clause from the commission's recommendation, is that correct?

DELEGATE KAUFFMAN. Yes. He would affirmatively have to disregard and explain his reason for disregarding the recommendations of the panel. I am sure that any Governor would be very certain not to do that unless there were perfectly legitimate reasons for doing it.

DELEGATE STROUP. Another question, if you will.

This, in effect, destroys entirely, the panel system or the commission system which is recommended by the committee?

DELEGATE KAUFFMAN. No, I do not think it destroys it at all. I think as a practical matter, it preserves the concept virtually intact. The only thing it does is provide a safety valve against a body not directly responsible to the people in any way, shape or form, selecting a group of names that the Governor in his own conscience could not find a qualified person to appoint as a judge. In the event that he in his own conscience found that the list was inadequate, under the present proposal he has no choice but to appoint from that list. However, under the amendment he would have to consider the list submitted to him by the panel, but he would have the escape valve if he wanted to appoint someone outside that panel, to submit the names to the Senate and it would have to be confirmed by two-thirds of the Senate. I assure you the Governor would have to explain to the people why he was doing what he was doing. I submit the Governor would not do that, except in very extraordinary, exceptional circumstances. It may never happen, but this is a safety provision that I feel would preserve the concept that the Governor should have the responsibility as well as the power. This would prevent the diffusion of responsibility and place it where it belonged, with the Governor.

DELEGATE STROUP. Thank you for the very extensive response. You have clarified the point in issue in the amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I would like to interrogate the Co-Chairman of the Judiciary Committee, Governor Scranton. I wonder whether he would consent to be interrogated on this point?

DELEGATE SCRANTON. Yes, but you scare me.

PRESIDENT BRODERICK. Would you repeat that?

DELEGATE O'DONNELL. Mr. President, I merely asked if Co-Chairman Scranton of the Judiciary Committee would consent to be interrogated on this point.

PRESIDENT BRODERICK. I am sure he will stand for interrogation. Proceed.

DELEGATE O'DONNELL. Does this amendment have the support of the Judiciary Committee, Governor Scranton?

DELEGATE SCRANTON. To the best of my memory, although Delegate Kauffman's memory is sometimes better than mine, this did not come up in the Judiciary Committee meeting, in my opinion. Did it?

DELEGATE KAUFFMAN. No, Mr. President.

DELEGATE SCRANTON. In my opinion, this literally kills what we have just tried to do, because it then gives, on one hand, the Governor an "out" to be political, but, on the other hand, it also gives the political parties an "in" to the Governor and, frankly, I would sincerely hope that the people in this Convention would not temporize with what we have done by literally killing this possibility, which this amendment would do.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, without inflicting too much punishment on Governor Scranton, I would like to—you do not have to take the podium, Governor. Sit down and take it easy. As a matter of fact, this need not be controverted.

In our judicial section this was discussed at length, one of the features of the Scranton appointments of these five judges in Philadelphia, and, by the way, they did not repeat their performance. It was an excellent performance at that time, was this, that for the third time in the history of the American Bar this appointing panel by a

Governor or a mayor was used. The essential feature then was that the appointing power appointed the panel.

The other feature, and our Governor used it, he demanded the right to select additional panels, if needed, and he further charged the panel to come up with additional names.

I believe that in the committee the Governor did say that this panel came up with the nomination of five judges. I believe eight names were only submitted the first time, and he requested further names.

Delegate Kauffman's proposal, this amendment, would do no violence to the selection proposal. In my opinion, it takes some of the ache out of the mandatory selection.

Just three weeks ago, or less than three weeks ago, if we have the record of the Judiciary Committee, Delegate Curran read into the record the proceedings that took place in Mineola, New York, and I want you to listen to this.

In that county a judicial panel was created. This panel attempted to select a judicial nominee. It turned down a man and stated that he was unqualified. To Governor Rockefeller's credit, he made his own examination and actually selected the man that the panel had turned down.

This was known and was made known to every member of the judicial selection committee. This does give, in the instance, where the panel has come up with a name that the Governor does not want, really a chance to send it back to the panel.

At the outset of this Convention, at a first show of hands in our Judiciary Committee, I believe I was the only one who spoke, or at least raised my hand and indicated that in the appellate court system I—and I spoke not necessarily as a citizen or not necessarily as representing anyone, but as a lawyer—would be satisfied with the appointment of the appellate court judges by the Governor without any strings.

Now, I am asking you to help stop breaking our backs. Vote for this amendment. Let us get this off the board. I would like to be able to go home on the 29th without feeling I was either a deserter or absent without leave. I urge you to go ahead and vote on this. There is not anything wrong about it, much of it is right.

PRESIDENT BRODERICK. The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. I am going to ask that you vote against this amendment so that we can support this judiciary proposal and get out of here.

PRESIDENT BRODERICK. Do you want to be heard, Delegate Barron?

DELEGATE BARRON. Yes, Mr. President, I would like to use, if I may again appear in the role of a minor prophet, you can select Amos or Micha or whatever the pleasure of the delegates may be, this is but another attempt to rework materials which were discussed time and time again in this committee. I would be the last to deny to this delegation the right to debate and discuss this fully, and I will defend your right to speak upon it.

Please notice carefully, it does violence in two areas, one of which I hold no brief for, the other of which is something to be carefully thought about.

The question is very simple on the first one, the two-thirds rule, which was considered in the last consideration submitted by Delegate Kauffman. The other is whether or not this group wishes to have the Governor have a second list submitted to him. These are the issues. I would ask your earnest, careful consideration of them, and consider that this committee has worked on it very carefully, and I believe you will see in what area your determination should lie.

PRESIDENT BRODERICK. Are the delegates ready for the question?

Do you want to close?

DELEGATE KAUFFMAN. I think Governor Scranton has something to say.

DELEGATE SCRANTON. I would like to make one point.

We had a lot of discussion in the committee about the numbers that should be presented by the panel to the Governor. In the panel that I had in Philadelphia we were selecting five judges—I want the whole story to come out. They had submitted 10 names, which I felt was not enough, and I asked for another 10. We were then selecting five judges.

This is for only the selection of one judge, and we are asking for a minimum of 10 names and a maximum of 20 and, frankly, from my experience, I think this is absolutely adequate.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Ruth.

DELEGATE RUTH. First of all, Mr. President, I would say that if we have to take an appointive type system, this is acceptable, but I want to direct your attention primarily to what we just finished a few hours ago and, being so strong for the election system, I have to draw this to your attention.

The vote was 75 to 75, and what did that indicate as far as the feeling of this body? It indicated there are 75 delegates who are in favor of election of judges, and there are 75 who are in favor of appointment in some method. A percentage of those 75 are in favor of either the Governor appointing, with certain approval, and some percentage are in favor of appointment with a panel. Neither of those by themselves would have a majority. The majority interest in this Convention is the election of judges, and I tell you that if you buy even an acceptable appointive system and sacrifice the election system, you are compromising when you should not have to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman to sum up.

DELEGATE KAUFFMAN. Mr. President, please, please carefully consider this amendment.

I submit to you that it does not do violence in any way, shape or form, with the concept of the proposal submitted by the committee; the only thing it does is provide a safety valve. It provides a safeguard against the panel submitting to the Governor a list of names of all unsatisfactory people, and it could happen in the next hundred years.

We are writing a constitutional mandate which takes away the right of the Governor to appoint and, also, takes away the responsibility of the Governor for appointing.

What this does is to put it back in focus where the responsibility lies. It also permits the Governor, when he in good conscience feels that he must go beyond the list submitted to him by the panel, to so state and to so do.

Let me ask you this, what would a Governor do under

this constitutional provision as it is now proposed by the standing committee if a list of 10 names was submitted to him and none of them were satisfactory to him? What would the Governor do? I do not think anyone can answer that question.

The purpose of this amendment is give the Governor a safety valve. He must, let me emphasize, he must affirmatively state to the public and state to the Senate why he has rejected the proposed list by the nominating commission. He would not do that unless there were compelling reasons why he should and, if there are those compelling reasons, Mr. President, I submit that the Governor should have that power.

On the question recurring,
Will the Convention agree to the Kauffman amendment?

The roll was recorded as follows:

YEAS—61

Aberman	Dumbauld	Heyburn	Prendergast
Baldrige	Erwin	Himes	Quiles
Barry	Fagan	Irvis	Rappaport
Benedict	Fawcett	Johnson	Reynolds
Brennan	Fay	Kauffman	Richter
Brown	Fineman	Kelly	Rovner
Butera	Fleming	Krill	Ruth
Cain	Fohl	Leonard	Scales
Camardella	Gerber	Levin	Shettig
Caputo	Goldman	Mattioni	Shoemaker
Corey	Goldstein	McGlynn	Silverman
Cortese	Gouger	Meyer	Solomon
Curran	Griffith	Murray	Tully
Dailey	Harding	Otto	Warman
Desmond	Hatter	Pott	Whittum
Devlin			

NAYS—75

Amsterdam	Forster	Michael	Sharp
Bagenstose	Fortney	Michener	Shively
Barron	Gabreski	Moorhead	Shrager
Benfield	Gehrlein	More	Sprogell
Bloom	Hannum	Nelson	Stout
Braham	Hocker	O'Donnell	Strickler
Broderick	Hook	Orban	Stroup
Buck	Jirolanio	Orbin	Swope
Bunting	Keller, J.	Pasquerilla	Tate
Burkholder	Keller, M.	Pelletier	Thomson
Caron	Kline	Popil	Thornburgh
Casey	Laputka	Rea	Tomascik
Clark	Leach	Roberts	Welsh
Clinger	Lee, L.	Sahli	Westerberg
Cosetti	Leinbach	Scarlett	Wilcox
Croop	Manderino	Scott	Wilmarth
Cunningham	Mangery	Scranton	Woodring
Feather	Markley	Sebastian	Woodside
Filson	McGeary	Shapiro	

NOT VOTING—27

Allison	Donaldson	King	Pechan
Aurentz	Donolow	Lane	Percey
Baldus	Gray	Lee, K.	Powell
Baldwin	Henderson	Miller, D.	Redick
Banes	Horne	Miller, R.	Van Sant
Bashoff	Hostetler	Morton	Waldron
Conley	Huggins	Musselman	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

QUESTION OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope. For what purpose does the gentleman rise?

DELEGATE SWOPE. I rise to a question of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SWOPE. Mr. President, I was absent by official excuse this morning, but I am here now. Had I been here this morning, I would have voted against both the Jirolanio and the Kauffman amendments, and I would have supported the committee report.

I hope that that is registered in the Journal.

PRESIDENT BRODERICK. Yes, your remarks will be placed on the record.

GERBER-WOODRING AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment we will refer to is the Gerber-Woodring amendment. The clerk will read the amendment.

Amend Sec. 1 (Sec. 11), page 5, line 24 by inserting after "serve.": At any municipal or general election in a judicial district in which the matter has been placed on the ballot in the manner provided by law, the qualified electors of any judicial district may, by a majority vote of those voting on the question, elect to have the judges of their district elected on a non-partisan basis. When the qualified voters of any judicial district have elected to elect judges on a non-partisan basis, the names of the candidates at any such municipal election, shall appear on separate judicial ballots or in a separate column on voting machines and in either case without party designation. The names of such candidates shall be placed on the ballot at the municipal election by petition as provided by law without appearing in any primary election.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber to speak on behalf of his amendment.

DELEGATE GERBER. Mr. President, the purpose of this amendment is to provide an alternative in each of the state judicial districts for the voters to determine whether or not they would like to select their common pleas court judges either on the present method of election by party, or whether they would like to elect their judges on a nonpartisan basis as individuals.

The purpose, therefore, is that the voters in each district would have the opportunity, then, to elect judges who would not be running on party lines in a year with the county commissioners, the district attorney, city councilmen, borough councilmen, or township commissioners, or supervisors, who would be up for office, and they would have the opportunity to focus their attention upon those individuals who are seeking the office of judge in their judicial district.

It seems to me that this amendment is fair in that the electors in the respective judicial districts would have the opportunity to determine for themselves whether or not they would like to have a partisan election of judges or nonpartisan election of judges.

This would only give to the people of each judicial district the opportunity, first, to determine in a referendum and, if they so choose, to select their judges in their district as individuals on their merits as lawyers, on the basis of their integrity as human beings, on the basis of their achievements through their whole lives, rather than to have the individuals be pulled in on a straight party vote.

It seems to me this amendment is consistent with the

arguments put forth on behalf of the Ruth amendment of a day or so ago. It would give the people of each judicial district, who claim they know the people they are voting for, the opportunity to truly vote for an individual for the high office of judge.

I would ask support for this amendment on the basis that we are honestly voting for people for judges in separate judicial districts and not by party line. I would also ask for support of this amendment because all it does is give the people of the respective judicial districts the opportunity to determine for themselves whether or not they want to elect by people or by party line. If the voters of the respective judicial districts choose to retain the present system, they may so do. If, on the other hand, they would rather not be bound to vote by party line and have their vote follow the vote of county commissioners, the district attorneys, and the rest of the row officers, they would have an opportunity to do so.

I, therefore, urge each and every delegate here today, if you who voted for the Ruth amendment, and if you want the people in each of the judicial districts to know who they are voting for and claim they really know the individual, this is the amendment that gives the respective voters of each judicial district an opportunity to do so.

I, therefore, ask you to vote in favor of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, I appreciate the spirit in which this amendment is being proposed. My reaction is, we are cluttering up the judicial article with too many things for the public to absorb. Here is an amendment which will be passed on to the people again, the question of them having to determine how the ballot will be, whether the judge shall be on the primary ballot or whether it should be a nonpartisan ballot, or what. I think it is too much at this time at this constitutional Convention to consider an amendment of this sort. I think we have made a lot of reform with the committee proposal and I think, therefore, this amendment should not be supported.

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera.

DELEGATE BUTERA. I rise in opposition to the amendment. I cite this as another example of what I just spoke about, here we go again. Let us peck away at the system, let us distrust the politicians, let us not assume the responsibility of seeing to it that the politicians are good and they put good people on the ballot. Instead, take the power away from them. I think it is patently wrong. Let me give you an example of what happened here in the House of Representatives last year. We passed a bill to provide for non-partisan election of school directors. The bill is presently lodged in the Senate. The day after we passed the bill a group formed in the southeastern part of the State calling themselves a political party for the election of non-partisan school directors. My point is, regardless of how good it sounds, it cannot be done.

We cannot afford the luxury of taking partisan politics out of elective office, and I urge everyone to oppose this amendment because it just does not do what it is intended to do.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I am going to be very brief because we have been debating much too long and much too repetitious on the various subjects.

I have noticed, however, on the debate of the judiciary article there are two principal points in which the delegates are vitally interested. The one is that the people should have the right of franchise and should have the right to vote for their judicial nominees. The other point is that we ought to take judges out of party politics. With both of these propositions, I agree 100 per cent.

I happen to live along the Delaware River, the eastern boundary of our Commonwealth. Just across the river in the State of New Jersey, some of the officials of the various municipalities are elected on a nonpartisan basis. The candidates do not run with any party designation, they are not elected on a regular election day, and let me tell you from personal observation, the system works and works well. It has divorced party politics from those particular offices.

The delegates here have spent a day, one full day convincing each other and themselves that they want to remove the judiciary, the judicial selection for party politics and want the people to vote. Here is the method in which it can be done. I think it is a good amendment and I am going to vote for it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. On behalf of the Judiciary Committee, let me state that this matter was considered by the subcommittee on selection of judges and it was rejected so overwhelmingly that it was never brought to the floor of the standing committee and was never considered by the standing committee.

In the interest of time, let me summarize what the discussion was in the subcommittee by reading to you some excerpts from pages 111 and 112 of our reference manual on the judiciary.

The only reason I read is because it summarizes much better than I could without, but the conclusion was that the nonpartisan ballot system would lower the quality of judicial personnel by making it possible for unqualified persons to run entirely on their own, even though they could never get party support, and they could be elected by means of aggressive campaigning.

Under the nonpartisan system, there is no process of screening the qualifications of candidates before they appear on the ballot. Candidates who would never be considered by a political party may be elected by irrelevant factors such as having a large campaign fund, a pleasing television image, or the proper place on the ballot, and we have seen in recent years just how important it is to have a proper place on the ballot. These factors may be more influential on the outcome of the election than the usual qualifications of character, legal ability, judicial temperament or public service.

I want to point out and emphasize Pennsylvania has, in fact, attempted to use the nonpartisan method of selection of judges and it has failed. The nonpartisan ballot was used for the first time in Pennsylvania for the election of judges for the new municipal court in Philadelphia. Over 40 candidates entered their names in the primary for the six judgeships to be filled, but the dominant political party quickly adjusted to the plan. The late Chief Justice Schaffer of the Pennsylvania Supreme Court re-

ported that a very potent leader of the dominant political party privately selected the names of his favorite candidates for the six judgeships. These names were distributed on several ballots. Despite the prohibition of over-endorsement by a political party and despite the control of Philadelphia's government by a reform administration at the time, five of the dominant party's selections were elected.

Critics of the nonpartisan ballot contended that candidates were plunged more than ever into politics. Deprived of open party support, the candidates were required to create their own campaign organization or to seek clandestine support within the party. The nonpartisan primary encouraged a multitude of publicity-seeking candidates and made an informed choice almost impossible. The Pennsylvania Non-Partisan Election Act was repealed in 1921.

I must urge on behalf of the Committee on the Judiciary that you defeat the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Mr. President, I think we have been discussing this at great length and I think that Delegate Gerber should be permitted to summarize, so I move the question.

PRESIDENT BRODERICK. Are we ready to vote? We will unlock the voting machines. The question is, will the Convention agree to the amendment offered by Delegates Gerber and Woodring? All those voting "yea" will vote to support the amendment, those voting "nay" will vote to reject it.

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—22

Banes	Dumbauld	Michael	Sprogell
Barron	Gabreski	O'Donnell	Swope
Bunting	Gerber	Powell	Whittum
Casey	Goldstein	Rea	Wilcox
Clark	King	Ruth	Woodring
Dailey	Kline		

NAYS—105

Amsterdam	Erwin	Laputka	Scales
Bagenstose	Fagan	Leach	Scarlett
Baldrige	Fawcett	Lee, L.	Scott
Baldus	Fay	Levin	Scranton
Barry	Feather	Manderino	Sebastian
Benedict	Flison	Markley	Shapiro
Benfield	Fleming	Mattioni	Shettig
Bloom	Fohl	McGlynn	Shively
Braham	Forster	Meyer	Shoemaker
Brennan	Fortney	Miller, D.	Shrager
Broderick	Gehrlein	Miller, R.	Silverman
Brown	Goldman	Moorhead	Stout
Buck	Griffith	Murray	Strickler
Burkholder	Hannum	Nelson	Stroup
Butera	Harding	Orban	Tate
Cain	Hatter	Orbin	Thomson
Caputo	Heyburn	Otto	Thornburgh
Caron	Himes	Pasquerilla	Tomascik
Clinger	Hocker	Popil	Tully
Corey	Huggins	Pott	Van Sant
Cortese	Irvis	Prendergast	Waldron
Cosetti	Jirolanio	Reynolds	Warman
Croop	Kauffman	Richter	Welsh
Cunningham	Keller, J.	Roberts	Westerberg
Curran	Keller, M.	Rovner	Wilmarth
Desmond	Kelly	Sahli	Woodside
Devlin			

NOT VOTING—36

Aberman	Fineman	Lane	Musselman
Allison	Gouger	Lee, K.	Pechan
Aurentz	Gray	Leinbach	Pelletier
Baldwin	Henderson	Leonard	Percey
Bashoff	Hook	Mangery	Quiles
Camardella	Horne	McGeary	Rappaport
Conley	Hostetler	Michener	Redick
Donaldson	Johnson	More	Sharp
Donolow	Krill	Morton	Solomon

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BARRON AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BARRON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, lines 20 and 21 by striking out "the failure of an elected judge" in line 20, all of line 21 and inserting a comma

Amend Sec. 1 (Sec. 11), page 5, lines 24 to 28 by striking out "Whenever in any such judicial district a judge" in line 24, all of lines 25 to 27 and "13." in line 28

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron for a statement in connection with his amendment.

DELEGATE BARRON. The purpose of this amendment Mr. President, is to remove the present merit retention of elected judges. I say again, the purpose is to remove the present merit retention proposal for elected judges. In presenting this proposal, I wanted this issue of the mode and form of retention to be clearly presented to the Convention for its approval or disapproval.

I am in favor, to be quite frank, that if the present elective system is to be retained, as it now seems clear, considering that the Gerber amendment was just recently defeated, that the form of retention of county common pleas judges should remain as it is now. I would like to suggest to you that many of you from the large cities and suburban areas do already have in force a political principle known as the sitting judge. I candidly admit I do not have a sufficient wealth of experience in this area to be able to make an intelligent comment on whether or not the sitting judge principle is as effective upstate as I understand it to be. I say, however, to those of you who come from the smaller and more rural areas, at least in my own county and the counties within the district from which I have been elected, there is no such principle. As a matter of fact, it is the only effective way of defeating a judge who is unsatisfactory to the general public.

I point out to you that the reasons for this are very simple. One, in all of those counties which have but one judge and there are, according to my last count, 29 or 30

of them of the 59 judicial districts, there is no truly effective mode for the bar association to oppose the sitting judge, even on a secret referendum, without incurring the wrath of that judge. No individual attorney can stand up and escape the retribution which a judge so inclined can exact from him.

We are not in the happy position, if Judge A refuses a particular petition or a particular motion out of a sense of retribution, that we can go down the hall and consult with Judge B. We are stuck with whomever we have and we are obliged to appeal from that if we do not like the result. The point being made is simply this, that merit retention is a wonderful concept wherever you have strong enough organizations to permit it to work. However, where you do not have such as a pre-condition to the situation, merit retention is, if I may use the vernacular, is like shoveling smoke. There is no way that effective opposition can be given to the judge other than in the person of someone who can stand up in a clearly understood situation that the judge may be opposed, and this is in the form of a re-election process.

I commend this thought to you for your very careful consideration. I urge you to adopt it so that those counties which wish to continue using the sitting judge principle may continue to do so. Those counties such as my own, which never had that proposition and do not know it as part of our political life, may continue to use the contested mode that we are most comfortable with.

I will suggest one caveat and, since the section is not under immediate discussion, I will have to come back to you with an amendment of Delegate Fohl to Section 13.

However, since we have limited our consideration at the present time to this, this is the place where we can indicate whether or not we ought to have an effective means of making a re-election contest meaningful, or whether we are going to be met with a smoke screen form of alleged merit retention.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the Judiciary Committee voted on this toward the end of January, and at that time the vote was unanimous in favor of the retention election because it was felt to be a very essential part of the effort to keep the judiciary out of the political arena. I might say there were later attempts to overthrow this and the retention election was retained, although not unanimously, but there were some votes to the contrary at a later time.

I might say the provisions for retirement removal, suspension and compulsory retirements of judges takes care in some degree of the various problem Delegate Barron indicates.

Also, I might point out that this has not been tried in the form in which we have it in the State of Pennsylvania, and we feel that this type of retention election will give the persons voting in each of the districts an opportunity to do exactly what Delegate Barron mentioned, mainly, to vote out the judges who do not suit the persons in the judicial district that have their judge, that particular judge, running on a retention election.

We recommend very strongly the Convention turn down this amendment and approve the portion of the judiciary article that provides for retention election.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. I wonder if the Co-Chairman of the Judiciary Committee will consent to be interrogated for one question?

PRESIDENT BRODERICK. I am sure he will, and you may proceed with your questioning.

DELEGATE O'DONNELL. Mr. Chairman, is it not a fact that if this amendment were to be approved it would cut the vitals out of another key item in the judiciary proposal?

DELEGATE AMSTERDAM. I did not hear you.

DELEGATE O'DONNELL. Is it not a fact that if this amendment were approved it would serve to cut the vitals out of another key section in the Judiciary Committee proposal?

DELEGATE AMSTERDAM. It would cut the vitals out of the very part of the proposal I indicated, there is no question about it, and that is why we recommend strongly it be retained and not amended.

PRESIDENT BRODERICK. The Chair will recognize Delegate Orban.

DELEGATE ORBAN. I would like to interrogate Delegate Amsterdam.

PRESIDENT BRODERICK. He will stand for interrogation. You may proceed with your question.

DELEGATE ORBAN. Delegate Amsterdam, I did not hear your entire explanation because I was conversing with one of the delegates.

What effect would this have on a judge who is presently in office, let us say, who would run next year?

DELEGATE AMSTERDAM. We have provided for judges in office at the present time and they would continue in office. You are talking about a judge whose term of office, after he has served a full term, is terminated following the adoption of the constitution, is that correct?

DELEGATE ORBAN. Let me put it this way. A judge who has completed his term would be required to come up for reelection, let us say, in 1969, since I understand this would come into effect January 1, 1969?

DELEGATE AMSTERDAM. That is correct.

DELEGATE ORBAN. Would that judge run on a yes-no ballot?

DELEGATE AMSTERDAM. Yes, he would run on his record.

DELEGATE ORBAN. Mr. President, I am in favor of this amendment for the reason that with the system set up by the committee you will freeze in office any judge which the community might want to vote out.

In addition to this, I refer you back to last week when I labeled this, and many others have labeled it, as the Russian ballot. I am not in favor of a Russian ballot in this Convention. I am not in favor of imposing a Russian ballot on the people. Therefore, I oppose the committee's report and vote for the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michael.

DELEGATE MICHAEL. Mr. President, Governor Scranton earlier pointed out that one of the important considerations of the judiciary is keeping out partisan politics. Now, we have left in in our proposal the original election of judges in the common pleas judicial districts on a partisan basis. However, the committee pro-

posal does give us this choice of a judge on his retention or of his being tossed out of office on the basis of merit. I would like to justify this by one example that was earlier given to us by Delegate Fay. He cited a number of judges in Luzerne County who he felt were good judges. I do not think any of us have argued here on the floor that we have bad, incompetent, or corrupt judges in Pennsylvania. We are merely trying to insure that we can get men of merit to keep running for the position of judge, that we can retain good men and get rid of bad men.

The question is, do these judges want to run on a partisan basis? Would they prefer to be retained or put out of office on a merit basis? Let me just give you one statement that came before the Judiciary Committee in the testimony in December, a statement that was made by a member of the Woodside Commission. Harriet McGeehan, who is a member of the American Association of University Women—when she said 12 years ago—we asked one of the older judges from the Luzerne County bench to come and talk to us about it. She states, "He told us then that he did not favor it because he did not think there has been enough experience. We then said to him, how did he feel about the pressures put on him as a jurist in Luzerne County? Was he ever subjected to these pressures? He spent 20 minutes telling us, first of all, how deeply he resented being ordered to be on the platform of every political rally during certain elections, of being told what he was to contribute to the party, not in an election in which he ran, but in every election, and the threat being made in every area of his life, including that of a bank where he happened to be on the board of directors."

Mr. President, partisan pressure on the judges does not give us the system that we really want. These men, when they are running, should be running on merit and should be running on their record, and this is not a Russian ballot. We can say, yes, this man has done a good job and we want to retain him, or we can say, no, he has not done a good job and we would like to see him removed from office and then another judge, if we remove him from office, is appointed and in two years the voters again have the option to say yes, he is a good man, or no, he is not. All of us, you who have contested that election of judges is the best system, say if the voters are informed they can do this. I think we ought to give the voters the chance to decide on their judiciary, and I think we ought to give the judge a chance to run on a merit basis rather than continuing to run on a partisan basis.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, I rise in support of this amendment. The merit retention system is also affectionately known as the "till death do us part" proposal. There is merit, as some of the delegates agree, but when we say we are taking something out of politics, we are also saying we are taking the people out of government. Certainly, the people can make an informed decision at the elections, provided they have a choice, but they have no choice under this particular system. This is the painful part.

I can tell you this, in our small county we have had two judges unseated in the last two terms and I believe for good and valid reasons. They were unseated in a contested election where someone could say what their performance was. It is all well and good to say, well, we all know whether or not Judge X did perform well during the last 10 years, but as a perfectly practical matter let us face it, only the people who have appeared before Judge X and the bar association that appears regularly before him are going to be able to go out and speak.

In a large bar—for example, the Philadelphia Bar or the Allegheny Bar—there is not a threat of reprisal because you spread out the problem of reprisal. But in a small bar of 20, 40, 60, how many of those lawyers do you honestly think, in a county where you have one or two judges, will stand up and say Judge X simply is not qualified or Judge X has forgotten that he is a human being?

I say to you, though the courts must be independent, by the same token they must never lose sight of the fact that they, too, are responsible—not responsive, necessarily, but responsible—to the people. They cannot assume that they have become a "gudge." That is a judge who thinks he is God.

So I say to you that I favor this amendment and urge your support for it. I also say that if I could be assured in my county that the judge we presently have was going to remain and that we would always have judges like him, I probably would favor this system. But I do not have that guarantee and, therefore, I fear this "till death do us part" proposal.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, I hesitate at this late hour to stand here and say things to you which have been quite obvious. I tried to keep my temper, I tried to keep the patience that the President has exercised here. All I heard is nonpolitical. Let me challenge you members of this delegation. A vast majority of you—at least 99 per cent—are here because your name appeared upon a ballot with a party affiliation in back of it. Remember that, please, when you are talking about nonpolitical. If these were not political parties whose names appeared on the ballot, what were they?

I, for one, would like to stand up and be counted and be called a politician. For 40 years I labored in the vineyards of politics. I never had a job that paid me a dime or a salary. I do not expect any. This is the first one in which a contribution towards expenses has been made. I see no objection to these terms and to the two-party system that we have in the State of Pennsylvania. I was one of those platform members in the City of Pittsburgh who opposed the nonpartisan school director proposition because I did not think it was practical and I did not think it was workable. I had many in high places who did not agree with me. My thoughts were not carried, but may I say to you, if you take politics out of the system of American government, you are going to take out the foundation of that we have been born to and from which we have risen to the heights that we are at today.

I believe in this two-party system. I think it is good. It is as fundamental in the checks and balances in which we labor, as are the three systems of our national government. There is always a place for a minority party to be seen and heard. There is a chance for the majority party to do the best they do. I have said to many of my constituents in my party, be sure you always elect the good candidates. If you do not, you should be defeated by the other party. This is my political philosophy, and I think

this goes for every single office to which anyone ascribes. Also I think the judgeships are just as susceptible to this as anybody else.

That is one of the reasons I wanted to take their selection back to the people, because my observance of the people is that they are pretty careful who they select for judges and they exercise their rights, perhaps, many times better than we do. I think they have a confidence. I see no harm in these dirty words that some people want to talk about—politics and political. To me they are the foundation of our system of government.

I urge the support of this amendment and the getting away from all this nonpartisan talk. It does not make sense to me. I have not been able to see it.

PRESIDENT BRODERICK. Delegate Barry, you are recognized.

DELEGATE BARRY. Mr. Chairman, I rise briefly to oppose this amendment. I so rise not only for the reasons already advanced by other people, but for another reason. I believe this system will work better than the two-party system now in effect as to retaining elected judges.

There was an instance in Allegheny County where there was a judge who was actually censured by the Supreme Court of Pennsylvania. This judge was up for reelection several years later and both parties supported this judge. I think they were in a postion where they did not want to jettison the party policy of supporting sitting judges. I submit that the article here, as presented by the committee, will give another alternative. It would give people a chance to express themselves for or against a particular judge and there would not be a sitting judge principle to intervene and prevent it from being done.

Therefore, I oppose the amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Brown.

DELEGATE BROWN. Mr. President, I have not spoken before because I felt if I waited long enough I would have most of my questions answered. However, right now I only have one thought. I would like to speak on the principle alone of giving up the opportunity to vote in whatever situation you happen to be in.

Are you going to again give up your vote? It is going to be easier each time you do it. I heard a lot of manly emotion here this afternoon and I will not bore you with any womanly emotion.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caputo.

DELEGATE CAPUTO. Mr. President, I will be very short because most of my arguments have been covered by some of the other speakers. I do want to call your attention to one thing that has not been mentioned in connection with the reference to the Russian ballot. I want to say to you that I am not convinced we are not adopting a Russian ballot, for this very reason. Surely, you can vote against an indivdual who may be occupying the bench, but what alternative do you have when you do vote against him? You simply say to them, "Give me another name," and vote him down. You have no choice of persons, you have no choice of individuals to vote on. You simply say to the man on the bench, "I don't want you," but you have another name for which you may vote. Consequently, this is a Russian ballot and you simply vote for or against the individual and not for one individual against another individual.

PRESIDENT BRODERICK. The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. Chairman, I wonder if the proponents of this amendment realize that at the district level a judge who has been appointed by a governor with the advice and consent of two-thirds of the Senate to fill an interim term and who then has run on a partisan ballot and has been elected on a partisan ballot to a 10-year term would then be required again and again to run on a partisan ballot to keep his seat on the bench?

I rise in opposition to this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron for his closing statement, unless someone else wishes to be heard.

DELEGATE BARRON. Mr. President, just briefly, if you notice, our respective delegates, O'Donnell and Amsterdam, indulged in something I call batting practice. Delegate O'Donnell was fishing and Delegate Amsterdam endeavored to knock the thing out of the ball park. You noticed, however, they came up with no recommendation for protection, as I asked them to do. What we are trying to do here is embalm the sitting judge in his position. Naturally, a judge himself, once there, wants to avoid competition. I suggest to you, however, that there is no effective testing of alleged merits because there is no effective clash of opinion as to the judge's merit.

I conclude with this, there is no true testing time when there is no true adversity.

PRESIDENT BRODERICK. Now we are ready for the question. Will the Convention agree to the amendment being offered by Delegate Barron? The voting machine is now unlocked. All those voting "yea" will vote to support the Barron Amendment, those voting "nay" will vote to reject it.

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—57

Aberman	Fawcett	Keller, J.	Otto
Bagenstose	Fay	Kelly	Pott
Baldrige	Filson	Kline	Prendergast
Banes	Fineman	Krill	Redick
Barron	Fleming	Markley	Ruth
Benedict	Fohl	Mattioni	Scales
Benfield	Gerber	McGlynn	Shettig
Brennan	Goldman	Miller, D.	Stroup
Brown	Hatter	Miller, R.	Tully
Cain	Henderson	Moorhead	Van Sant
Camardella	Hostetler	Murray	Waldron
Caputo	Irvis	Nelson	Westerberg
Croop	Jirolanio	Orban	Wilmarth
Dalley	Kauffman	Orbin	Woodring
Dumbauld			

NAYS—81

Amsterdam	Feather	Levin	Scranton
Baldus	Forster	Manderino	Sebastian
Barry	Fortney	Mangery	Shapiro
Bloom	Gabreski	McGeary	Sharp
Braham	Gehrlein	Meyer	Shively
Broderick	Goldstein	Michael	Shoemaker
Buck	Gouger	Michener	Shrager
Bunting	Griffith	More	Silverman
Burkholder	Hannum	Morton	Sprogell
Caron	Harding	O'Donnell	Stout
Casey	Heyburn	Pasquerilla	Swope

Clark	Himes	Popil	Tate
Clinger	Hocker	Powell	Thomson
Cortese	Hook	Rea	Thornburgh
Cosetti	Huggins	Reynolds	Tomascik
Cunningham	Keller, M.	Roberts	Warman
Curran	King	Rovner	Welsh
Desmond	Leach	Sahli	Whittum
Devlin	Lee, L.	Scarlett	Wilcox
Erwin	Leonard	Scott	Woodside
Fagan			

NOT VOTING—25

Allison	Donaldson	Laputka	Percey
Aurentz	Donolow	Lee, K.	Quiles
Baldwin	Gray	Leinbach	Rappaport
Bashoff	Horne	Musselman	Richter
Butera	Johnson	Pechan	Solomon
Conley	Lane	Pelletier	Strickler
Corey			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

WOODSIDE AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE WOODSIDE offered the following amendment which was read by the clerk:

Amend Sec. 1, (Sec. 11), page 6, line 30, by inserting after "courts": with seven or less judges shall be the justice or judge longest in continuous service on their respective courts. The President Judges of all other courts

On the question,

Will the Convention agree to the amendment?

DELEGATE WOODSIDE. Mr. President, I assume that every member of this Convention has sometimes—and often, many times—been frustrated. The greatest frustration I have had at this Convention has been my inability to persuade the Judiciary Committee to accept the method that has been used in choosing the Chief Justice of the Commonwealth of Pennsylvania for 200 years and has been followed throughout the state in determining the President Judgeship, for almost as long. This Amendment provides that in the Supreme Court, the Superior Court, and in all other courts having seven or less judges, the present system shall be retained and that the Chief Justice and the President Judges shall be those who have been longest in continuous service on their respective courts.

I have long been interested in this. We discussed it at great length in the commission in 1959. Chief Justice Stern and I were both members of that commission. We had no doubt of the position which should be taken in reference to this. The rest of the Commission seemed to agree fully that we should retain the method which had been used over the years.

Since that time, everything that happened has convinced me even more that I have been right. Now what happens in a court? Well, when a man first goes into court—take an appellate court as an example, although it is pretty much the same in other courts—he votes first and answers the knock on the door during a conference. He slowly becomes acquainted with the procedures of the court and with the type of petitions that are presented to the President Judge and disposed of by him. These petitions relate to a great number of subjects. Eventually, when two or three of the judges are away on vacation or become ill, he may be the third or fourth ranking judge and he has the experience then of acting as the President Judge or the Chief Justice for a matter of a few days or a few weeks. By the time he becomes the oldest member in point of service on that bench, he has more knowledge about that court and its business than any other judge. He not only has more knowledge about that court but he has more knowledge about each one of the judges on that court. In other words, he is the most experienced and the most knowledgeable in the two things that a presiding judge ought to be experienced and knowledgeable about.

Now, why do I say that you should limit this method to courts of seven and less?

Well, because the advantages that are applicable to a small court are not applicable to large courts. The advantages of electing President Judges in the large courts overshadow the advantages of having the judge longest in service act as presiding judge. It seems to me to be proper to elect the President Judge in the large courts.

Now what has happened in Pennsylvania and elsewhere where the law provides for election of President Judge. There is one court in the Commonwealth of Pennsylvania that elects its President Judge. It is the County Court of Philadelphia. I have known the President Judges of that court personally, as many of you people have. Every one was a close personal friend of mine. They were very personable and likeable people, but I ask you delegates from Philadelphia who know under what circumstances they were chosen, were they chosen because they could best administer that court or were they chosen because of other reasons?

What have we done here?

We have provided for competitive votes, introducing a factor of individual contests and factualism which should not be permitted to enter the court.

Now, what has happened in other states. There are a few states in which the courts elect their presiding judge, not the majority of states by any means, but there are a few. What has happened in those states?

Well, I talked to a judge from Missouri who was in here, and I asked him about it, and he said, "Well, we ignore the constitution. Our Supreme Court has arranged another system whereby they pass the chief justiceship around." In other words, it works so poorly in that state that the Supreme Court itself circumvented the constitution in order to adopt a new and different plan.

In Illinois one of the justices was asked about this and he said, "Oh, well, it works pretty well. Of course, when the Republicans are in control, there is a Republican Chief Justice, and when the Democrats are in control, there is a Democratic Chief Justice."

Is that the kind of situation that we want to adopt in Pennsylvania?

The proposed system has not worked well here, and it has not worked well in other states.

It is like having the vice-presidents of a corporation elect the president, then after he is president for awhile they will take him out and put another one in as president, and the president goes back to being vice-president.

What happens to the Chief Justice after he moves up and becomes Chief Justice and becomes acquainted with the administration of the court? What happens to him when he has to step down from the chief justiceship and becomes an associate justice of that court? In many instances in other states that judge seeks to get off that court. An able judge, an experienced judge—often times the best and most experienced justice on that court—steps off the bench, because he considers it demeaning to step down from the chief justiceship to an associate justiceship, so he tries to get a federal appointment, or he resigns to practice law.

Who wants this method? Do any of the justices on the Supreme Court want it? Do any judges of the Superior Court want it? Do the judges of the various county courts want it? Does the Bar Association want it?

Let me just give you some of them that do not want it. The Bar Association of Pennsylvania. The American Bar Association. The judges of the courts. The Institute of Judicial Administration. The American Judicature Society and the 1949 Pennsylvania Commission.

Mr. President and members of the Convention, I may have been wrong in criticizing this Convention for moving previous questions. I may be wrong in the many opinions I have written, and I am sure a lot of lawyers here think I was, but if I was ever right in anything in my life I am right in the amendment I am here offering.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I wonder if I might ask Judge Woodside two questions?

PRESIDENT BRODERICK. I am sure Judge Woodside will stand for interrogation.

DELEGATE RAPPAPORT. Judge, is it your intention to have this apply to the courts, the individual 10 courts of common pleas of Philadelphia County, and to the traffic court of Philadelphia?

DELEGATE WOODSIDE. No. It is my intention to have the length of service designating the president judge and the chief justice in those courts which have seven or less.

In Philadelphia, with a large court as they have there, or in Pittsburgh with the large court they have there, this principle should not be applicable. I keep all of the material which is in the proposal of the Judiciary Committee, every bit of it, except that I do not make it applicable or take the applicability away from the Supreme Court, the Superior Court and all other courts having seven or less judges.

DELEGATE RAPPAPORT. Then, sir, assuming the traffic court in Philadelphia has six members, it would apply to the traffic court of Philadelphia?

DELEGATE WOODSIDE. If there is no other provision in the Constitution to the contrary, I assume that it would.

DELEGATE RAPPAPORT. Thank you, sir.

DELEGATE WOODSIDE. But I understand that there is another provision in the Constitution—that this is not applicable, the election is not applicable, and, therefore, this would not be applicable because of the other provision in the Constitution.

Because, if the present provision of the report of the committee is applicable, then I think they would have to be elected, but there is a specific provision, as I understand it, related to them which takes them out of this provision which I have amended and, therefore, in that respect it would be my opinion that it would not be applicable.

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. I would like to ask Judge Woodside a question.

PRESIDENT BRODERICK. Proceed. I am sure he will stand to be interrogated.

DELEGATE WELSH. Judge Woodside, I am in favor of what you say with regard to the courts of seven members, or less. I am agreed to the way you have it.

My question is this, the way I read the last sentence, or the last part of your sentence, in the amendment it could mean that you might possibly intend that the committee proposal with regard to all other courts, that they should be selected every five years.

Did you intend that? Do you see where it says the president judges of all other courts? Did you intend by that to follow along with the committee proposal, or did you intend that this specific amendment only applied to courts of seven members, or less?

DELEGATE WOODSIDE. Maybe I could best explain it by reading the section as it would be if my amendment were adopted.

The chief justice and president judges of courts with seven or less judges shall be the justice or judge longest in the continuance of service in their respective courts. Now, that provision would relate solely to courts having seven or less judges.

Now, I go on to the other courts. The president judge of all other courts—and that would mean courts of more than seven—shall be selected for five-year terms by the members of their respective courts, except that the president judge of the traffic court of the City of Philadelphia shall be appointed by the Governor. Then the chief justice and the president judge may resign such position or remain as a member of the court, which would apply to everybody. And in the event of a tie vote, and it would apply only to the places where they are elected, and so on.

DELEGATE WELSH. Is it not true, then, that this amendment is really two amendments as distinguished from one amendment?

DELEGATE WOODSIDE. No. I do not understand it to be two amendments.

DELEGATE WELSH. At least, to me it is. I gather that you intend that in courts that have seven members, or less, the president judge shall be the judge with seniority, and all other courts shall be by election.

DELEGATE WOODSIDE. That is right, except that there is a provision in here—except that the president judge of the traffic court of the City of Philadelphia shall be appointed by the Governor.

DELEGATE WELSH. So you have two questions in this one amendment?

DELEGATE WOODSIDE. I do not see that.

DELEGATE WELSH. For example, some of us who favor seniority in all courts, not only in those of seven members, or less, might want to put an amendment in on this and put it in for all courts.

My question to you is this, is this an amendment which I could favor if there were seven judges, or less? But

then, there is no other reference to any other court, perhaps the Court of Allegheny or Philadelphia, or wherever it might be.

DELEGATE WOODSIDE. It was my intention to have the committee's report govern the larger courts for the reason which I stated. I felt that it was necessary under those circumstances.

DELEGATE WELSH. You also intend that the committee's report elect their president judges, also in the lower trial court level, is that what you intend?

DELEGATE WOODSIDE. Of seven or more judges.

DELEGATE WELSH. Seven or more judges?

DELEGATE WOODSIDE. Yes. Where they have seven or more judges. If they have seven, or less, judges, they do not elect. If they have eight or more judges, they would elect under this amendment.

DELEGATE WELSH. Then that might make a difference, for example, in Delegate Barron's county where he might have one or two judges. You would go for the seniority system in that case, and then when we get to Allegheny County, where we have 30 judges, or Philadelphia where you might have 80—by the time we get finished with this Convention, I mean—you go for the election method. If that is the intention of your amendment, then I am against it, because I think that as far as the present judges of all the courts in Pennsylvania, I am for the seniority method.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President, I just want to give the committee's comments about this.

First of all, there is nothing in this provision that prevents the judges of any court from deciding on the seniority system. It does not say that they will be elected, it says that they will be selected, and we purposely did it that way so that the judges themselves could decide how they wanted to do it, and in that respect Judge Woodside is incorrect.

Secondly, the main purpose of this particular provision was the fact that we have now changed the system of courts in Pennsylvania by having the unified court system, and in it we have given to the courts a tremendous amount of administrative work and power.

For example, in Illinois, where they also have the unified court system, they soon discovered that some of the older judges did not want to administer and, as a consequence, they resigned as chief justices—not as a justice—and the other younger ones were given the job of doing the administration.

This provision allows all that flexibility. It allows the courts that want to use the seniority system to use it; it allows a court that does not want to use it because of administrative problems not to use it. Therefore, we feel very strongly that it not only takes care of Judge Woodside's problem, but it also takes care of the new problems that will come into the courts.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I speak in opposition to this amendment. You have on your desk an amendment that bears my name which I will offer in the event that Judge Woodside's amendment is defeated, because I, too, for many of the same reasons, but not all of the same reasons as Judge Woodside, have been concerned about the possibilities that might occur under the committee's recommendation with respect to the election of the chief justice and chief judges of our courts.

Take, for example, the Philadelphia situation. We will have as of this month 56 judges in our new consolidated court and if the schedule is approved we will have 66 judges and we may well have more before we have less. In the event the committee proposal is approved, these 56 or more judges will elect their chief judge each five years. In my opinion, the larger the court the greater the possibility for extreme factualism and favoritism within the courts.

Take, for instance, the situation where you have a family court division, as we will have in Philadelphia, where all juvenile matters are heard, as well as other family type matters, and where a chief judge might permanently or for a long period appoint a judge who might not care to hear cases of that type, since many judges, as we well know, do not like to sit on them.

In recent weeks in Philadelphia we have had three judges who have been sitting just for a matter of months, not long years, in juvenile court who have been asked to be relieved for reasons of their own health and mental stability, because they feel that the pressures of the juvenile court are so great that no man should be expected to sit there for extended periods of time.

In my opinion, the opportunity for a chief judge to create factualism and favoritism within his courts is so great in a court of this size, and in many courts of a lesser size, that the judges ought not to be asked, to elect one of their own peers to serve as chief judge.

I am, however, not attracted by the seniority system. It has, as we know, worked well in many cases in Pennsylvania, but it also has tended to keep judges in senior positions when they really were in advanced years and should not have been so retained. It has, also, from time to time I am advised had judges not necessarily of senior years, but judges who were not necessarily of the best administrative talent.

I, therefore, intend to submit to this body, if this Woodside amendment is defeated, a third alternative which you have before you, which, in essence, gives to the statewide executive and the Supreme Court, depending on which court you are talking about, the appointive power for the chief judges.

In the case of the statewide courts, Supreme, Superior and Commonwealth, the governor, with the advice and consent of two-thirds of the Senate, would have the right to appoint, and in all other courts the majority of the Supreme Court, which already has extensive administrative powers under the committee proposal that we have approved, would make the appointment of the chief judge in each judicial district. In my opinion, the third alternative is the best of the three.

Therefore, I urge this body to defeat the Woodside amendment, after which I will submit my own amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Will counsel to the Committee please look at page 7, line 2, and tell me if that should not be president judge? Has that been corrected?

PRESIDENT BRODERICK. Yes, we corrected that two days ago.

The Chair recognizes Delegate Sprogell.

DELEGATE SPROGELL. Mr. President, I would like to say on behalf of the sub-committee that when we considered this we felt we did not want to limit the choice of the chief justice or the president judge to amend solely on the critera of his length of experience. We thought there might be many attributes which would be very valuable to that position and we hoped this way we could enlarge the scope of choice.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, in this Convention I have not often had the opportunity to join with Judge Woodside in something, but in this instance I have, Judge. I might say to Delegate Welsh that I have prepared an amendment which provided for the seniority system to apply in all courts. At the meeting last evening, in order to consolidate things, we got together on the proposition and Judge Woodside's experience in the larger cities of our community, compared with my complete lack of experience in this area, persuaded me to join him in this particular effort.

If I may speak on the main issue, I have found in what little experience I had with judges, whether they be justices of the peace or justices of the Supreme Court, they are men of great capacity. They are also men of ego, they are men of combativeness and these are not qualities to be decried. As a matter of fact, it is these very qualities that got them to the exalted position they hold and permit them to continue to discharge their duties.

We have talked lengthily about how, how, how, we wish to take our judges out of politics, so, of course, we turn around and, in order to be a judge on any of our courts, where there is more than one judge, we put them back into the political concept of the very court on which they sit and at the very closest terms in their antagonism if any there may be between one another.

I urge support of the Woodside amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scott.

DELEGATE SCOTT. Mr. President, may I interrogate Delegate Woodside?

PRESIDENT BRODERICK. I am sure he will stand for interrogation. Proceed.

DELEGATE SCOTT. Delegate Woodside, for a point of information. Your amendment reads, "with seven or less judges shall be justice or judge longest in continuous service on their respective courts. The president judges of all other courts." This would include Superior Courts of seven and the Supreme Court of seven, and this would not include the County Court of Allegheny which has six, and the Juvenile Court of Allegheny which has two. Would this include the appellate courts also when they revise the schedule?

DELEGATE WODOSIDE. Mr. President, if we adopt this proposal, then these courts will all be unified and, of course, we have gotten by the point on the second reading of this. All of these courts will be united into one court and in this case the president judge will be elected. You are talking about the division of the court. The president judge of the division of the court of less than seven, which seems to me under this language would be the senior in service.

DELEGATE SCOTT. That would be the oldest member or the one whose commission expires first?

DELEGATE WOODSIDE. Yes.

DELEGATE SCOTT. I rise in support of this amendment.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh. For what purpose does the gentleman rise?

DELEGATE WELSH. I rise to a parliamentary inquiry. I suppose my question should be directed to the counsel or possibly to you, Mr. President. My question is this, if we vote in favor of this amendment, does that also mean that we have, in effect, adopted and voted upon favorably the rest of Sub-section (g) on this Section 11?

PRESIDENT BRODERICK. I think the answer to that question is, if you vote in favor of this, it only changes this much of the language in that proposal that you have in your hand.

DELEGATE WELSH. I understand Judge Woodside to intend by this that all other courts, meaning Allegheny, Philadelphia, etc., would, in effect, have a five-year elective process. So my question is, if we voted in favor of this, we also might be voting in favor of the five-year elective process and then, if there is an amendment concerning those courts, it will have to come up on reconsideration as distinguished from an amendment?

PRESIDENT BRODERICK. At this time we are only voting on the language here being offered by Delegate Woodside and we are not approving anything else.

DELEGATE WOODSIDE. I do not think there is any question about the fact that you are right in your ruling. If you vote for this, all you vote for are these three lines, or two and a half lines, that are on this proposal here of mine, and all of the rest of the section, or the sub-section, would certainly be before this body to do anything with it that they want to do.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry. For what purpose does the gentleman rise?

DELEGATE BARRY. I have another parliamentary inquiry. Would a vote in the affirmative to this amendment prevent a later amendment to include Pittsburgh and Allegheny in the same provision?

PRESIDENT BRODERICK. It would not.

The Chair recognizes Delegate Otto.

DELEGATE OTTO. Mr. President, during discussions today we were told that the people could not be trusted to vote for certain judges because they did not particularly know what they were doing, or they did not know the candidate. Now I take it we are being told that the judges of the Supreme Court and the judges of the Superior Court cannot be trusted to select their own leader.

I certainly do not feel this is so and, because of this, I feel that we should have trust in the members to make a selection if they want to. If they want to go by seniority, it is perfectly up to them.

I, therefore, urge the membership to defeat this proposed amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Unless the chairman of the committee wishes to make a final summary, I would like to move for the question.

PRESIDENT BRODERICK. I see standing Delegate Sebastian.

DELEGATE SEBASTIAN. I have been instructed by the co-chairman of my sub-committee that I had better get up and say that when this was discussed in the sub-committee the majority of us felt it should stay as it is now written, because it is just possible you may have as your oldest judge in service the man whose mind is beginning to fail more strongly than that of the others. In that case we want to give the judges an opportunity to name the one they think can do the best job.

PRESIDENT BRODERICK. Has everybody been heard that wants to be heard?

Do you want to sum up?

DELEGATE WOODSIDE. No, Mr. President.

PRESIDENT BRODERICK. Are we ready for the question? We are ready for the question.

Did the Chairman of the Committee want to make a statement?

DELEGATE SCRANTON. No. I want to point out it is "select" and not "elect."

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—89

Aberman	Flison	Keller, J.	Rovner
Baldrige	Fleming	Keller, M.	Ruth
Baldus	Fohl	Kelly	Scales
Banes	Forster	Krill	Scott
Barron	Fortney	Laputka	Shettig
Barry	Gehrlein	Leach	Shoemaker
Benedict	Gerber	Leonard	Shrager
Brennan	Goldman	Mangery	Silverman
Brown	Goldstein	Mattioni	Solomon
Butera	Griffith	McGlynn	Stroup
Cain	Hannum	Meyer	Swope
Camardella	Harding	Michael	Thomson
Caputo	Hatter	Miller, D.	Tully
Casey	Henderson	Nelson	Van Sant
Corey	Hocker	Popil	Waldron
Cortese	Hook	Pott	Warman
Cosetti	Hostetler	Prendergast	Welsh
Curran	Huggins	Rappaport	Westerberg
Dailey	Irvis	Rea	Whittum
Devlin	Jirolanio	Redick	Wilcox
Erwin	Johnson	Reynolds	Wilmarth
Fawcett	Kauffman	Richter	Woodside
Fay			

NAYS—51

Amsterdam	Cunningham	Miller, R.	Scranton
Bagenstose	Desmond	Moorhead	Sebastian
Benfield	Fagan	More	Shapiro
Bloom	Feather	Morton	Sharp
Braham	Gabreski	O'Donnell	Shively
Broderick	Gouger	Orban	Sprogell
Buck	Heyburn	Orbin	Stout
Bunting	Himes	Otto	Strickler
Burkholder	Lee, L.	Pasquerilla	Tate
Caron	Levin	Pelletier	Thornburgh
Clark	Manderino	Roberts	Tomascik
Clinger	McGeary	Sabli	Woodring
Croop	Michener	Scarlett	

NOT VOTING—23

Allison	Donolow	Kline	Musselman
Aurentz	Dumbauld	Lane	Pechan
Baldwin	Fineman	Lee, K.	Percey
Bashoff	Gray	Leinbach	Powell
Conley	Horne	Markley	Quiles
Donaldson	King	Murray	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

SHOEMAKER AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHOEMAKER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 7, by inserting between lines 8 and 9: (h) Whenever there is an appointment, selection or election to fill a vacancy on a court of common pleas or orphans court division thereof, such election, selection or appointment shall be to that division in which the vacancy exists and the judge appointed, selected or elected shall serve thereon.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, let me state at the outset that this proposal is, I hope, noncontroversial.

I have talked to Delegate Amsterdam about it and he referred me to Delegate Scranton, who said—I do not want to misquote him, he may correct me if I am wrong—that this was not contrary to the basic intent of the committee proposal and it was something that had been raised, but not necessarily felt necessary to include it, I feel, as have a number of other persons who have endorsed this, that this kind of a provision is necessary and I would like to state why.

As some of you may recall, in a written poll conducted by the Pennsylvania Bar Association the lawyers of the State of Pennsylvania voted three to one for the retention of the separate selection of their judges who were experienced in the practice and administration of the extremely specialized law of decendents estates, and trusts. Of course, this should convince us that it would be grave error for us in Pennsylvania to curtail the quality of candidates for judicial office.

I have no personal axe to grind. I am probably more like one of Delegate Benfield's shrubs than judicial timber. However, I do have a deep interest in the continuation of Pennsylvania's leadership in the nation in the efficient administration of specialized fields of law.

Under the proposed article, with courts such as the orphans' court being a division of the court of general jurisdiction, lawyers who have devoted their legal careers to estate work—and they are legion—will refuse to be candidates for judicial office when they are subjected to the risk of assignment to other divisions in which they are not experienced. By the same token, lawyers experienced in criminal and civil matters are frequently adverse to the detail and accounting of estate work. The same risk of assignment to a court whose work is distasteful will cause such lawyers to refuse consideration for the bench. We

have observed this result in state after state which has consolidated all courts.

A few years ago in its judicial reorganization New York state thoroughly studied the problem and decided to retain its separate surrogates courts.

As an experiment in York County, five members of our bar whose expertise in estate work particularly qualified them as leading judicial candidates for orphans' court were asked if they would be candidates without legal assurance that they would preside in estate matters. Without exception, all five said that they would not be interested.

As everyone in the profession will admit, it is presently most difficult to secure qualified judicial candidates due to the reduced compensation compared to legal practice. The committee's proposal will compound that difficulty if it remains as written for the reasons I previously stated.

The recent criticisms of the abuses of probate courts in leading periodicals relate to the many states which have consolidated such courts. It is no accident that such abuses rarely occur in Pennsylvania.

Our former constitutional provisions making them autonomous courts with specialized judges have made Pennsylvania eminent in the most prompt, efficient and economical system for the settlement of estates and the administration of trusts.

It may well be true that a small minority of courts have case loads too small. However, in at least 80 per cent of such separate orphans' courts the judges are working at peak capacity to keep abreast of an ever increasing case load. I believe we should not now sacrifice efficient estate administration, especially for a few inequities that may be corrected. I would point out to you that under the unified system this proposal that is before you would not prohibit the crossover assignment of judges where they had time but would merely guarantee to the lawyer who is willing to be selected—or elected, whatever this Convention decides—to the bench that if he were a specialist, if his desire was to be on the bench in a particular field, that would be his prime assignment. It would not prohibit the crossover assignment for special occasions in the routine administration of the court, and I believe this is essential.

I would ask that you consider it carefully and give it your support.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. I should like to ask of Delegate Shoemaker whether this section does not violate what we have provided for in the single unified judicial system?

I heard him say he did not intend to do this, but I am wondering, perhaps, if it ought to be the general counsel who answers this, and whether the words at the end of his amendment reading, "and the judge appointed, selected or elected shall serve thereon," do not mean that the judge is required to serve in the specific division to which he is either selected, elected or appointed. It seems to me, if it does that, it is completely violative of what we have gone through now for two days and have tried to set up as a unified system.

DELEGATE SHOEMAKER. I do not believe, Mr. President, that it does that. I did not intend it to do so. It is intended specifically to allow a candidate for judicial office to know in advance the kind of function that he will be serving on the bench so that a practitioner in the estate field would not suddenly find himself thrust or juggled into a vacancy elsewhere in the unified system.

Under this amendment it is my intention, when a vacancy occurs in a division of the unified system, the person who would be a candidate would know that he would fill the vacancy in that division. This would not be contrary to the other language which would allow his assignment over to fill in gaps elsewhere under the unified system.

DELEGATE AMSTERDAM. I wonder whether under those circumstances a word like "primarily" might not be inserted, so we would know this was definitely intended not to be violative of the system as a whole and the right of the president judges and the chief justices to move judges as needed from place to place in the system?

DELEGATE SHOEMAKER. I have no great pride of authorship here and I would be happy to have Style and Drafting, or the committee, or anyone else, amend the language so that it is clearer to the point I am making. I just feel strongly about the basic point. I agree with your concept. I am not trying to destroy the unified system.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti.

DELEGATE COSETTI. Mr. President, if the intent of the proposer of this is to have the judge candidate at least name the court he is to sit in primarily, I am not sure I would disagree with that. But that is not what this language says. The vacancy would exist in some division, perhaps, but this language almost fixes the existing distribution of judges by the divisions which now exist. I do not think this language accomplishes this purpose at all.

PRESIDENT BRODERICK. I was asked a question by the chairman of the committee as to what the opinion of counsel for the Convention, as well as the counsel for the committee, was in connection with the language. They have stated it to me just as you have stated it, Delegate Cosetti, in other words, that the language does not accomplish what Delegate Shoemaker has explained he wished to accomplish.

WITHDRAWAL OF SHOEMAKER AMENDMENT

DELEGATE AMSTERDAM. Under the circumstances, might I suggest that we table or that Delegate Shoemaker withdraw for the time being his amendment so it can be corrected in the language that does accomplish what he wants and we can have it presented again?

DELEGATE SHOEMAKER. I would so move.

PRESIDENT BRODERICK. May I suggest it would be easier to withdraw your amendment, because you would not recall this one from the table. You will have another one prepared. Is that agreeable?

DELEGATE SHOEMAKER. I am willing to do that, yes.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I wish to serve notice that in my opinion this amendment should be entirely rejected. I do not believe we should take any steps looking to the fixing of lines of jurisdiction within the common pleas court. We have now one court, and to

allow judges to be elected into a division of that court breaks it all up and we will be back in the old difficulty.

DELEGATE BUTERA. I believe the gentleman has withdrawn his amendment.

PRESIDENT BRODERICK. The amendment is withdrawn.

DELEGATE BUTERA. I would suggest there be no more debate on the amendment.

PRESIDENT BRODERICK. There is no more debate on the amendment.

MOTION TO RECESS

The Chair recognizes Delegate Roberts.

DELEGATE ROBERTS. In order to give fair consideration to the other amendments before us, I would move that we recess until 8:00 o'clock this evening.

PRESIDENT BRODERICK. I just want you to know, if you are putting that in the form of a motion, we will vote on the motion. Has it been seconded?

DELEGATE REYNOLDS. I will second it.

PRESIDENT BRODERICK. Moved by Delegate Roberts, seconded by Delegate Reynolds, that we recess until 8:00 p.m. All those in favor please signify by saying "aye." Those opposed say "nay."

The "nays" have it so it looks as though we will have to continue to work for a while.

DELEGATE BRAHAM. Might it not be well to have a roll call? We had better begin getting one another on the line here. We are not going to get through, if we do not. I would like to have a roll call. Put the names up on the wall.

PRESIDENT BRODERICK. Does anyone else want a roll call? Let us call a roll call and eliminate the doubts.

The motion is that we adjourn until 8:00 p.m. All those voting "yea" will vote in favor of the motion to recess until 8:00 p.m., those voting "nay" will vote to reject the motion.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—24

Amsterdam	Broderick	Croop	Orbin
Barron	Brown	Fawcett	Otto
Barry	Bunting	Krill	Roberts
Benfield	Camardella	Lee, L.	Scott
Bloom	Clinger	McGlynn	Shively
Braham	Cosetti	Michael	Solomon

NAYS—105

Bagenstose	Fortney	Mangery	Scarlett
Baldrige	Gabreski	Mattioni	Scranton
Baldus	Gehrlein	McGeary	Sebastian
Banes	Gerber	Meyer	Shapiro
Benedict	Goldman	Michener	Sharp
Brennan	Goldstein	Miller, D.	Shettig
Buck	Gouger	Miller, R.	Sprogell
Burkholder	Griffith	Moorhead	Stout
Butera	Hannum	More	Strickler
Cain	Harding	Morton	Stroup
Caputo	Henderson	Murray	Swope
Caron	Heyburn	Nelson	Tate
Casey	Himes	O'Donnell	Thomson
Corey	Hocker	Orban	Thornburgh
Cortese	Hosteller	Pasquerilla	Tomascik
Curran	Huggins	Popil	Tully
Dalley	Irvis	Pott	Van Sant
Desmond	Jirolanio	Prendergast	Waldron
Devlin	Keller, J.	Rappaport	Warman
Erwin	Keller, M.	Rea	Welsh
Fagan	Kelly	Redick	Westerberg
Fay	Laputka	Richter	Whittum
Feather	Leach	Rovner	Wilcox
Fineman	Leonard	Ruth	Wilmarth
Fleming	Levin	Sahli	Woodring
Fohl	Manderino	Scales	Woodside
Forster			

NOT VOTING—34

Aberman	Donolow	King	Pelletier
Allison	Dumbauld	Kline	Percey
Aurentz	Filson	Lane	Powell
Baldwin	Gray	Lee, K.	Quiles
Bashoff	Hatter	Leinbach	Reynolds
Clark	Hook	Markley	Shoemaker
Conley	Horne	Musselman	Shrager
Cunningham	Johnson	Pechan	Silverman
Donaldson	Kauffman		

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom. For what purpose does the gentleman rise?

DELEGATE BLOOM. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BLOOM. I do not want to be the perpetual adjourner here, or to ask for recesses, or anything like that, but I believe, in all fairness to us over 70, we should have some consideration, especially those who are under the care of doctors and should get nourishment every three hours, approximately. To ask us to stay here for a five- or six- or seven-hour stretch is against our health. I do not think you would do that to an animal. I just want to be classified as a cat or a dog, and then you can give me my biscuits.

BARRON AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BARRON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, lines 28 to 30; page 6, line 1, by striking out "Whenever a vacancy occurs for any other reason in the" in line 28, page 5, all of lines 29 and 30, page 5, and all of line 1, page 6, by striking out all of said lines and inserting: Whenever a vacancy occurs for any other reason in the office of judge in such judicial district, the Governor shall fill the vacancy by appointment in accordance with the provisions of Article IV, section 8 of this Constitution.

If such vacancy occurs during the session of the Senate, such appointment shall be with the advice and consent of two-thirds of the Senate.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Dele-

gate Barron for a statement in connection with his amendment.

DELEGATE BARRON. I present this amendment, Mr. President, to a Convention which I sense to be restless and, to a degree, ill at ease. Unfortunately, I also have to confess that I am not entirely sure it has not been covered, but I have searched the careful record which I tried to keep of the amendments and with our change to election, as evidenced by our vote yesterday, at least, in the district court, the clear or plain copy which was on our desk this morning seems to omit completely a provision for filling vacancies as a result of the termination of office in any fashion other than the end of a given term.

As I say, I have checked this over carefully. I am sure the Parliamentarian or counsel for the Convention may have some thoughts on this. I endeavored to do my own research as carefully as possible. I prepared this amendment to rectify the oversight. I would like to claim pride of authorship, but I cannot, because the language is extracted in such a fashion as to put us into the category that was just recently revised.

The primary election called this Convention by way of an amendment to Article IV, Section 8, of the Constitution and, accordingly, my proposal is that the appointment to vacancies as provided for all other elected offices as set forth in Article IV, Section 8, be included. I must confess I did indulge in, perhaps, a surplus of language by adding the last paragraph so it would be crystal clear to those who might not have a copy of the Constitution. I dare put in that if the vacancy occurs during the session of the Senate the appointment should be with the advice and consent of two-thirds of the Senate, which is clearly the language incorporated in Article IV, Section 8.

This comes, perhaps, under the heading of minor matters. Since we are going to have something whole and concise that we can look at in a clean printed form in the morning, I am offering it at this time to try and give us that help. If a conflict occurs, it will be spotted, I am sure, in the revision.

PRESIDENT BRODERICK. Does anyone wish to be heard on the Barron amendment?

PARLIAMENTARY INQUIRY

The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Point of parliamentary inquiry, Mr. President.

I believe this is a matter which was expressly covered in the Ruth proposal as amended yesterday. I think that there is no oversight. I think an interim vacancy is not filled in accordance with the numbered sections of the Constitution, but is expressly required by a two-thirds confirmation of the Senate and was passed upon here yesterday. This would be a clear change, and I believe it would require a motion to reconsider.

PRESIDENT BRODERICK. With the question you raised, we are of the opinion that you are correct. Yes, it was, I understand. The Ruth amendment and the O'Donnell amendment to the Ruth amendment, according to the Parliamentarian—

DELEGATE BARRON. Where does this appear in the copy which we got on our desks this morning?

PRESIDENT BRODERICK. I am advised it is on page 6 under Section (b).

WITHDRAWAL OF BARRON AMENDMENT

DELEGATE BARRON. In order to save the time of the Convention, I would like to withdraw the amendment to reconsider at this time and see if it does as I suggested.

PRESIDENT BRODERICK. We can consider the Barron amendment withdrawn.

IRVIS AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE IRVIS offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, line 7, by inserting after "Senate.": In no event shall the Governor make an appointment to the Supreme or Superior Court that results in more than four of the justices or judges of said courts being from the same political party.

On the question,

Will the Convention agree to the amendment?

DELEGATE IRVIS. Mr. President, the amendment, I think, speaks for itself. Once it is distributed, I think most of us can make up our minds very quickly as to whether we shall vote "yea" or "nay."

What I am simply attempting to do is to make certain that no governor, by any device, shall be able to pack the court with members of his own political party. I have not addressed myself to the problem of the commonwealth court, but have limited the amendment to the Supreme Court and the Superior Court.

I think nothing further need be said as the proponent of the amendment and, unless someone has a point in debate, I would move the question.

PRESIDENT BRODERICK. Does anyone wish to be heard on the Irvis Amendment? How about the committee chairman? The Chair now recognizes Chairman Scranton.

DELEGATE SCRANTON. To the best of my recollection, Mr. President, I do not remember that this occurred in the course of the committee. At least, I do not remember a vote on it. I hestitate to be the co-chairman that comments on this for the reason that I gave in my earlier speech this afternoon, viz., that I was a governor once and I do not think you should put this kind of curtailment on his powers to this degree.

I really am apologetic for being the person to speak up on this. I sincerely hoped that someone else would. Since I am the only former member of the executive arm of the government, I think this is distinctly an infringement upon their prerogatives and powers and I do not think it wise, just as the legislative members have spoken up innumerable times to the same degree on things that seemed to bother them.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Lest anyone think there is political partisanship involved, I am of Mr. Irvis' party and I think it is abominable.

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera.

DELEGATE BUTERA. I agree with the Governor on this for an additional reason. Why, if a person is qualified to become a judge, should he be kept off the bench because in his year, let us call it, there happened to be an imbalance as it pertained to his registration? I think it has nothing at all to do with whether he is capable of serving on that bench and whether he should be appointed in that particular year.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. I am getting tired, and perhaps not hearing accurately, but I just want to get the record straight. Did Mr. O'Donnell say he belonged to the same political party as I and that it is abominable, or does he mean my amendment is abominable?

PRESIDENT BRODERICK. I think the Chair can straighten that language out. Was that your summing up, Delegate Irvis?

Delegate Irvis said he summed up, so I take it we are ready for the question. The question before this Convention is: Will the Convention agree to the Irvis amendment? We will now unlock the voting machines and proceed to vote. Those voting "yea" vote to support the Irvis amendment, those voting "nay" vote to reject it.

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—35

Aberman	Dailey	Hook	Murray
Amsterdam	Fagan	Hostetler	Popil
Banes	Fay	Huggins	Prendergast
Barry	Filson	Irvis	Rappaport
Camardella	Fineman	Jirolanio	Ruth
Caputo	Gehrlein	Kelly	Shettig
Casey	Gerber	Kline	Shrager
Cosetti	Gouger	Mattioni	Silverman
Curran	Hocker	Miller, D.	

NAYS—102

Bagenstose	Fleming	McGeary	Scott
Baldrige	Fohl	McGlynn	Scranton
Barron	Forster	Meyer	Sebastian
Benedict	Fortney	Michael	Shapiro
Benfield	Gabreski	Michener	Sharp
Bloom	Goldman	Miller, R.	Shively
Braham	Goldstein	Moorhead	Stout
Brennan	Griffith	More	Strickler
Broderick	Hannum	Morton	Stroup
Brown	Harding	Nelson	Swope
Buck	Henderson	O'Donnell	Tate
Bunting	Heyburn	Orban	Thomson
Burkholder	Himes	Orbin	Thornburgh
Butera	Johnson	Otto	Tomascik
Cain	Kauffman	Pasquerilla	Tully
Caron	Keller, J.	Pelletier	Van Sant
Clark	Keller, M.	Pott	Waldron
Clinger	Krill	Rea	Warman
Corey	Laputka	Reynolds	Welsh
Cortese	Leach	Richter	Westerberg
Croop	Lee, K.	Roberts	Whittum
Cunningham	Lee, L.	Rovner	Wilcox
Desmond	Leonard	Sahli	Wilmarth
Devlin	Levin	Scales	Woodring
Erwin	Manderino	Scarlett	Woodside
Fawcett	Mangery		

NOT VOTING—26

Allison	Donolow	Lane	Powell
Aurentz	Dumbauld	Leinbach	Quiles
Baldus	Feather	Markley	Redick
Baldwin	Gray	Musselman	Shoemaker
Bashoff	Hatter	Pechan	Solomon
Conley	Horne	Perzey	Sprogell
Donaldson	King		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

STATEMENT BY PRESIDENT BRODERICK

PRESIDENT BRODERICK. I want to state for the benefit of the delegates who have amendments in here that several of the amendments which have been offered have raised questions that the Chair has not had an opportunity to sit down with the Parliamentarian and discuss. They have raised serious questions as to whether these matters have been determined by the Convention, and I can tell you that the Chair is going to need time to go over these amendments to make the decision because there are serious decisions involved.

WELSH AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE WELSH offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 7, lines 1 to 4, by striking out "be selected for five-year terms by the members of their" in line 1, all of lines 2 and 3, and Governor." in line 4 and inserting: be the justice or judge longest in continuous service on their respective courts.

Amend Sec. 1 (Sec. 11), page 7, lines 5 to 8, by striking out "In the event of a" in line 5, all of lines 6 to 8.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Would you want to make a statement in order to save time? We will not vote until they are distributed.

DELEGATE WELSH. Mr. President, my amendment is really something that I spoke to you about before when Judge Woodside put in his amendment several amendments ago. Basically, it deals with Section 11, page 7. It is concerned with Section 11, Subsection (g). Now, I will read it as to how the adoption of my amendment would read with regard to Section 11, Subsection (g): "The chief justice and president judges of all courts shall be the justices or judges longest in continuous service on their respective courts. The chief justice or president judge may resign such position and remain a member of the court."

In effect, this is the maintenance of the seniority system in all of the courts of the Commonwealth, no matter whether we have one judge or 66 judges, and it is in opposition to the committee proposal with respect to elections within the courts. I speak against that because I

do not feel that my courts in Allegheny County or, possibly, any court in the State, should be subject to internal rambling, internal politicking, internal elections, or internal campaigning. I have that philosophy, no matter whether it is for the Pennsylvania Supreme Court, Superior Court, Commonwealth Court, or the common pleas court, in any county of this Commonwealth.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President, I apologize for bothering the Convention again with the committee thinking on this, but I think it is extremely important, particularly at this level. You are putting into Pennsylvania for the first time a unified judicial system, and the main point of the unified judicial system is to make sure that you have good administration.

Where they have done this in other jurisdictions, they have discovered that, instead of this provision creating wrangling, frankly, it has helped materially because the older judges find that they do not like the added burden of administration. When you get in an enormous court like Allegheny, or Philadelphia, or whatever, it is an enormous job.

Frankly, I did not have the major opposition to Judge Woodside's thought that I have to this one, because it is not of such prominent importance to the Supreme Court and the Superior Court, as they will have an administrator in the Supreme Court and there is relatively little administration in the Superior Court, but on the common pleas level administration is now of paramount importance in comparison to the past.

Might I say to you, if you are worried about Joe Blow or Pete Smith, who as of now may be a judge, he may be maintained by what the committee has said. They have not said that they must be elected. They have said they shall be selected for that very reason.

May I also state to you, it also means that in the future we can have the kind of administration that we ought to have and I think, as soon as the present judges have some experience with this new system, they will find that they will appreciate what the committee has done, those who are so deeply concerned at the moment about their seniority can take care of it by the fact that we have put "selected" in here.

I sincerely hope for the future administration of our system you will think in terms of the committee thinking, which was the opinion of the subcommittee, the opinion of the full committtee, after a great deal of looking into the unified judicial systems in other places.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. I rise in support of this amendment offered by Delegate Welsh. I have to confess this is a case of "death bed repentance," because I voted in the committee for the committee's suggestion, but I have had a change of mind and I may as well explain my reasons to see if they are valid.

I think the committee's proposal works well on paper. It should be the younger, more aggressive judges, those that the other judges want that are able to administer the new judicial system. However, in talking to people that have been judges, such as Judge Woodside and Judge Fortney—he is a former judge, a man of few words, but when he says them, he knows what he is talking about—and other judges, and that great bunch of lobbyists, the present courts of the commonwealth, who have probably talked to all of us, I think they are right. I talked to the proponent here of the Supreme Court and the Superior Court. I think he is right.

I do not think the administration of the courts is going to be by the judge elected or selected. It will be by someone else. I think there is still a provision that the chief justice, however he had been selected, elected or appointed, is going to be able to resign. I think the experience of the judges themselves should guide us here to tell us whether or not we have made a mistake in the committee, whether or not we should support their ideas.

I am compelled by their expression of opinion, because sometimes it is against their best interests. There is a younger judge that says this is the way it should be. He is not invoking a seniority principle, he is almost invoking senility principle.

I still say you are going to have politics. I am convinced I was wrong in the committee. I make this "death bed confession." I say to Chairman Scranton that I think it is fallacious to say this is a selection process. If this is left up to the judges they are going to get rid of it one way or another. They will change their policy and adopt something else. It is either one thing or the other. I feel now that I was wrong and that the committee should be overruled.

DELEGATE SCRANTON. I am very pleased with Delegate Barry's presentation and appreciate it very deeply. I must say to you that, first of all, the judges he talked to have not served under a unified judicial system.

I say to you secondly, and I hate to be personal about this, but as a former Governor of this State I have some very definite reasons for making this statement. The seniority system does not keep out internal wrangling from our courts.

DELEGATE BARRY. I have never been a judge or governor, of course, and I do not think we are going to prevent wrangling, but you will prevent some of it by keeping the seniority system. I feel the advice of your judges on this ought to be observed.

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh for a summation.

DELEGATE WELSH. In summary, Mr. President, I would like to say two things.

No. 1 is, I have not spoken to Judge Joe or Judge Blow and, just to really set the record straight and call a spade a spade, I have not spoken to Judge Musmanno. I have not spoken to Judge Ellenbogen. I have learned and heard that a Supreme Court judge has called several delegates, but I am quite happy to say that he did not speak to me. I am also quite happy to say that Judge Ellenbogen, who is the President Judge of the Common Pleas Court of Allegheny County, has not called me, spoken to me, or sent me any kind of letter or telegram.

Therefore, I am, in effect, saying to you that this amendment is honestly presented and is not in favor of anyone except my own conscience.

No. 2 is, if we adopt this theory, I think that, in effect, says the president of General Motors cannot be anyone with any kind of seniority in General Motors Corporation. The same with the Ford Motor Company and, possibly, the same might be said for any corporation which you men and women might have some connection with.

Therefore, I favor the adoption of this amendment. I think it is fair and I think it prevents internal politics to the courts. I think it is something with which the citizens of Pennsylvania would be well proud.

PRESIDENT BRODERICK. All right, we are apparently ready for the question.

The question is: Will the Convention agree to the amendbeing offered by Delegate Welsh?

Those voting "yea" vote to support the Welsh amendment, those voting "nay" vote to reject it.

On the question recurring,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—35

Bagenstose	Fagan	Jirolanio	Richter
Barry	Fay	Kauffman	Ruth
Brennan	Fineman	Kelly	Scales
Brown	Fleming	King	Shettig
Butera	Fortney	Mattioni	Shrager
Camardella	Gerber	Popil	Tully
Caputo	Hostetler	Prendergast	Waldron
Cosetti	Huggins	Rappaport	Welsh
Dailey	Irvis	Rea	

NAYS—98

Amsterdam	Feather	Lee, L.	Roberts
Baldrige	Filson	Leonard	Rovner
Barron	Fohl	Levin	Sahli
Benedict	Forster	Manderino	Scarlett
Benfield	Gabreski	Mangery	Scott
Bloom	Gehrlein	McGeary	Scranton
Braham	Guldman	McGlynn	Sebastian
Broderick	Goldstein	Meyer	Shapiro
Buck	Gouger	Michener	Sharp
Bunting	Griffith	Miller, D.	Shively
Burkholder	Hannum	Miller, R.	Sprogell
Cain	Harding	Moorhead	Stout
Caron	Henderson	More	Strickler
Casey	Heyburn	Morton	Stroup
Clark	Himes	Murray	Swope
Clinger	Hocker	Nelson	Tate
Corey	Hook	O'Donnell	Thomson
Cortese	Johnson	Orban	Thornburgh
Croop	Keller, J.	Orbin	Tomascik
Cunningham	Keller, M.	Otto	Van Sant
Curran	Kline	Pasquerilla	Warman
Desmond	Krill	Pott	Wilcox
Devlin	Laputka	Powell	Wilmarth
Erwin	Leach	Reynolds	Woodring
Fawcett	Lee, K.		

NOT VOTING—30

Aberman	Donatucci	Markley	Redick
Allison	Donaldson	Michael	Shoemaker
Aurentz	Dumbauld	Musselman	Silverman
Baldus	Gray	Pechan	Solomon
Baldwin	Hatter	Pelletier	Westerberg
Banes	Horne	Percey	Whittum
Bashoff	Lane	Quiles	Woodside
Conley	Leinbach		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BARRY AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BARRY offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 6, line 30, by inserting after "courts": except in the County of Philadelphia

Amend Sec. 1 (Sec. 11), page 7, lines 1 to 4, by striking out "be selected for five-year terms by the members of their" in line 1, all of lines 2 and 3, and Governor." in line 4 and inserting: be the justice or judge longest in continuous service on their respective courts.

Amend Sec. 1 (Sec. 11), page 7, lines 5 to 8, by striking out "In the event of a" in line 5, all of lines 6 to 8

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I move we adjourn until tomorrow morning at 9:00 o'clock.

DELEGATE IRVIS. Second the motion.

PRESIDENT BRODERICK. Moved by Delegate Hocker, seconded by Delegate Irvis, that we adjourn until 9:00 o'clock tomorrow morning.

I am going to open up the voting machine. All those in favor of the motion to adjourn until tomorrow morning at 9:00 o'clock will vote "yea" and those who are not in favor of the motion will vote "nay."

The motion was agreed to and (at 6:40 p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 **Wednesday, February 21, 1968** **Number 48**

The Convention was called to order at 9 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND BYRON K. HORNE, Delegate from Lititz, Pennsylvania, offered the following prayer:

God, our Father, we who are limited in Thy sight come to Thee, Thou who are eternal and ever the same. Thou has entrusted to the children of men the duties and responsibilities of citizenship and of government. We bless Thee and we praise Thee for those in the past who have discharged those duties and responsibilities in a worthy manner. We have entered into their labors, we have entered into their opportunities. We pray now that we may with the same diligence discharge our duties and our responsibilities. Lift us, we pray, above all pettiness, enable us by Thy grace to see our responsibilities as sacred, sacred before our fellowmen and sacred before Thee, Thou who art the Lord of Lords and King of Kings.

Bless us now and today. May we think only of our Commonwealth and its welfare and its people in all of our deliberations. Amen.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. There are no Journals to be approved this morning.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

DELEGATE MICHENER. Mr. President, I want to submit the following requests for leaves of absence:

The delegate from the 13th District, A HUGH FORSTER, for February 22 and 23, to go to Washington;

The delegate from the 18th District, RALPH A. CLARK, for February 23, for business;

The delegate from the 6th District, MARTIN W. BASHOFF, for February 21 for father's illness.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Erwin	Laputka	Rovner
Amsterdam	Fagan	Leach	Ruth
Aurentz	Fawcett	Lee, K.	Sahli
Baldrige	Fay	Lee, L.	Scarlett
Baldwin	Feather	Leinbach	Scott
Banes	Fohl	Leonard	Scranton
Barron	Fortney	Levin	Sebastian
Barry	Gehrlein	Mangery	Shapiro
Benedict	Gerber	Markley	Shettig
Benfield	Goldman	Mattioni	Shively
Bloom	Goldstein	McGeary	Shoemaker
Braham	Gouger	Meyer	Shrager
Brennan	Gray	Michael	Silverman
Broderick	Griffith	Michener	Solomon
Brown	Hannum	Miller, D.	Sprogell
Buck	Harding	Miller, R.	Stout
Bunting	Hatter	Moorhead	Strickler
Burkholder	Henderson	Murray	Swope
Cain	Heyburn	Nelson	Tate
Caputo	Himes	Orban	Thomson
Casey	Hocker	Orbin	Thornburgh
Clark	Hook	Otto	Tomascik
Clinger	Horne	Pasquerilla	Tully
Corey	Huggins	Peiletier	Van Sant
Cortese	Jirolanio	Popil	Waldron
Cosetti	Johnson	Pott	Warman
Croop	Kauffman	Powell	Welsh
Cunningham	Keller, J.	Prendergast	Westerberg
Curran	Keller, M.	Rappaport	Whittum
Dailey	Kelly	Rea	Wilcox
Desmond	King	Redlek	Wilmarth
Devlin	Krill	Roberts	Woodring
Dumbauld			

PRESIDENT BRODERICK. The electric roll call tabulator indicates that 129 delegates have recorded their presence.

The Chair also notes the presence of the following delegates:

Allison	Fineman	Manderino	Richter
Bagenstose	Fleming	McGlynn	Scales
Baldus	Forster	More	Sharp
Butera	Gabreski	Morton	Stroup
Camardella	Irvis	O'Donnell	Woodside
Filson	Kline	Reynolds	

INQUIRY REGARDING RESOLUTION ON PLEDGE OF ALLEGIANCE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Reynolds.

DELEGATE REYNOLDS. A few days ago one of our delegates introduced a resolution to have the pledge of allegiance to the flag as part of our opening services, and nothing has been done. I do not think anything can be more important during these troublesome times to let the world know how we feel about our American heritage and our love and patriotism than to give the allegiance from the floor during our opening services. I understood that morning you referred it to the Rules Committee. If the Rules Committee are too busy to do it, I think we can do it here.

I would like to have your ruling on what has been done and what you expect to be done about it.

PRESIDENT BRODERICK. Delegate Reynolds, that resolution was referred to the Rules Committee. I know the Rules Committee had a meeting and at that meeting they did not have a quorum. Yesterday I talked to the Chairman of the Rules Committee and they agreed they were going to call a meeting. I am not positive, but I think they said they would call a meeting today. So the matter will be taken care of, I am sure, because we have a very efficient Rules Committee.

DELEGATE REYNOLDS. I like their efficiency, but I like their action better.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Van Sant. For what purpose does the gentleman rise?

DELEGATE VAN SANT. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE VAN SANT. Mr. President, I would only suggest that perhaps the Rules Committee is afraid to report out the pledge of allegiance because of the amendments that might be added.

PRESIDENT BRODERICK. I understand that remark.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Otto. For what purpose does the gentleman rise?

DELEGATE OTTO. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE OTTO. Mr. President, two weeks ago this Convention passed on to the Style and Drafting Committee, Committee Proposals Nos. 1 and 2 with respect to reapportionment. They have not reappeared. I think some explanation should be given at this time as to what the status of these two important proposals are.

PRESIDENT BRODERICK. I think either one of the chairmen would be happy to report to you.

The Chair will recognize Chairman Pelletier.

DELEGATE PELLETIER. Mr. President, it seems appropriate that this body should continue to debate the second reading of proposals and, when the business of this Convention on second reading has been completed, obviously, if it is your will, Proposals Nos. 1 and 2 will be reported by the committee. They are ready to be reported.

DELEGATE OTTO. May I ask the delegate a question? Will these No. 1 and No. 2 proposals be the first ones to be reported?

DELEGATE PELLETIER. I do not feel I can answer that with any assurance. No. 1, No. 2 and No. 6, I think, are probably going to be reported on the same day.

PRESIDENT BRODERICK. The Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. I would like to comment on that. I think it would be a very fine process for these bills to appear on the calendar. It shows the status of all of the bills as they should be on the calendar. When these calendars are passed out to the public, it does not show the status of these bills. I think they ought to appear every day on the calendar and ought to be reported out as soon as possible.

REMARKS BY THE CHAIR

PRESIDENT BRODERICK. The Chair would like to make a comment before we take up our calendar. I say sincerely, in my personal opinion, and it is purely a personal opinion, we should, if possible, complete the amending process in connection with the Judiciary Article today, because if we do not in the time scheduled—and I went over that last night and again this morning with our officers—we will be behind schedule. I suggest today for your consideration—I am not trying to make the decision—and I want you to think about it, that today we will recess for lunch at appoximately 12:30 and come back at approximately 2:00 o'clock, that we go to dinner this evening at approximately 5:30 and come back about 7:00 and work for a couple of hours tonight. This would seem to be more in keeping with the desire of some of our younger delegates who get hungry around 5:30 or 6:00 o'clock, the younger men like Delegate Bloom. I say, of course, if we can finish the amending process at 5:00 or 6:00 o'clock today, that will be fine and there would be no necessity of having a night session. The Parliamentarian says, what is wrong with 4:00? Frankly, I do think we have to get on because we only have this week and a part of next week, and one of the jobs I know you want to do is complete on time. We just have to complete on time.

CALENDAR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 7, Printer's No. 20, entitled:**

A Proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

PRESIDENT BRODERICK. We will go right over to the calendar. The first item on the calendar this morning is an amendment by Delegate Barry. Was that read last night? That was read and distributed when we got the motion to adjourn. The Chair will now recognize Delegate Barry in connection with his amendment.

BARRY AMENDMENT TO PROPOSAL No. 7

DELEGATE BARRY. Mr. President, yesterday we approved the Woodside amendment, which provided that the selection of president judges in courts of seven or more be by the seniority method. Delegate Welsh just before we adjourned introduced an amendment whereby this same procedure would be followed in all the courts of the Commonwealth. This was voted down, although the Woodside amendment was approved.

Now, my amendment would provide that in all the courts, except in the County of Philadelphia, the seniority method should prevail. We have an anomaly here. We have the Supreme and the Superior Court selecting their judges and justices by seniority, while in the other courts of the Commonwealth we have a different system.

Therefore, I believe, if Philadelphia wants to be treated differently than the other courts of the Commonwealth, so be it. But Allegheny, I feel—and I defer to my fellow delegates from Allegheny County, if they have anything to say on this subject—should be included within the Woodside amendment. I already expressed myself, as has Governor Scranton last night, and I will say no more.

PRESIDENT BRODERICK. Chairman Scranton.

DELEGATE SCRANTON. I think it is clear to all of you, because you were all here yesterday, what the committee feeling is about this. We feel very strongly that, particularly in the common pleas area, when you have a unified judicial system—which we have never had before in Pennsylvania—it is absolutely essential that the administration of it be as good as possible. In fact, for the first time we are giving them full jurisdiction over administration of the judiciary, which is, I think, quite proper and correct, but it is something that they had not been handling before to the degree that they will now.

Consequently, it is most important that they be given the opportunity, particularly on the common pleas level to select the judge that is not only best equipped to do this kind of thing, but also is most willing. The experience in Illinois, for example, where they have had this system for about four years, has been that the older men find they do not enjoy doing this much additional work. It does not, as I explained yesterday three times, deprive the local common pleas group from selecting the senior judge, or even from taking as a principle that they always will, because it is a selection and, if that is what they want and a majority of them want it, they can continue to have it.

I sincerely hope that you will uphold the committee in this effort so that we can have the finest type of administration possible.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fleming.

DELEGATE FLEMING. Mr. President, I rise in answer to Delegate Barry's statement that he would like to hear from some other Allegheny County delegates. I subscribe completely to the Barry amendment. As Delegate Welsh so eloquently put it yesterday—and I know you do not want a repetition of that but at least, I feel, and a number of delegates from Allegheny County and I am sure quite a number of the judges of our courts in Allegheny County—feel, that the Barry amendment would work to the best benefit of Allegheny County.

PRESIDENT BRODERICK. Now let me ask if we are ready for the question on this?

Delegate Otto.

DELEGATE OTTO. Mr. President, as a layman delegate and in answer to Delegate Barry's request, I can only report from what I have seen happen in Allegheny County. I know there is a great deal of contention among the judges in Allegheny County about the present setup, and a number of them have displayed their unhappiness with the present method of selection of the president judge in the common pleas court.

I, for one, am opposed to the Barry amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Mr. President, being from Allegheny County, I say let the judges decide whether they want to go by the old system or a new system.

I am opposed to the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, I rise in support of the Barry amendment. For some weeks we have been discussing the judiciary from many, many aspects and, if we want to support the principle of taking politics out of the judiciary—even in the inside workings of the boards of judges—I want to heartily and strongly recommend and support this particular amendment so that the judge longest in seniority will have the office of president judge.

PRESIDENT BRODERICK. Delegate Brennan.

DELEGATE BRENNAN. Mr. President, I am in favor of the Barry amendment.

PRESIDENT BRODERICK. We recognize Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I speak against the Barry amendment. I speak against it for one reason, the sentence, "except in the County of Philadelphia." We need justice in the County of Philadelphia the way the rest of the Commonwealth needs it. I see absolutely no reason why the County of Philadelphia should be treated any differently. If seniority is good enough for the rest of the State, we will live with seniority. If the rest of the State wants to elect the president judges, we will live with that. But we wish to be treated the same as anyone else. We are not second class citizens.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I have had some contact with the courts of Allegheny County over the past 15 to 20 years. There has been some slack about the present system of selecting the president judge. I think that merely reflects some personality conflict among strong-willed and intelligent men. I do not think it amounts to very much.

I, personally, favor the seniority principle and rise in support of Delegate Barry's amendment.

PRESIDENT BRODERICK. I understand that Delegate Barry is willing to waive his summation.

Are we ready for the question?

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Barry?

The roll was recorded as follows:

YEAS—52

Baldus	Fagan	Johnson	Richter
Banes	Fay	Kauffman	Ruth
Barron	Fleming	Keller, J.	Scales
Barry	Fohl	Keller, M.	Shettig
Brennan	Fortney	Kelly	Shrager
Brown	Gabreski	Leinbach	Solomon
Butera	Gerber	Markley	Swope
Caputo	Gehrlein	Mattioni	Tomascik
Casey	Harding	McGlynn	Tully
Cosetti	Henderson	Orbin	Waldron
Croop	Huggins	Pott	Welsh
Dalley	Irvis	Prendergast	Westerberg
Dumbauld	Jirolanio	Redick	Whittum

NAYS—79

Amsterdam	Fawcett	Levin	Rovner
Aurentz	Feather	McGeary	Sahli

Baldrige	Filson	Meyer	Scarlett
Baldwin	Goldstein	Michael	Scott
Benedict	Gray	Miller, D.	Scranton
Bloom	Griffith	Miller, R.	Sebastian
Braham	Hannum	Moorhead	Shapiro
Broderick	Hatter	More	Sharp
Buck	Heyburn	Morton	Shively
Bunting	Himes	Murray	Shoemaker
Burkholder	Hocker	Nelson	Sprogell
Clark	Hook	O'Donnell	Stout
Clinger	Horne	Orban	Strickler
Corey	King	Otto	Thomson
Cortese	Krill	Pasquerilla	Thornburgh
Cunningham	Laputka	Popil	Warman
Curran	Leach	Powell	Wilcox
Desmond	Lee, K.	Rappaport	Wilmarth
Devlin	Lee, L.	Rea	Woodring
Erwin	Leonard	Reynolds	

NOT VOTING—32

Aberman	Conley	Kline	Percey
Allison	Donaldson	Lane	Quiles
Bagenstose	Donolow	Manderino	Roberts
Bashoff	Fineman	Mangery	Silverman
Benfield	Forster	Michener	Stroup
Cain	Goldman	Musselman	Tate
Camardella	Gouger	Pechan	Van Sant
Caron	Hostetler	Pelletier	Woodside

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

CORTESE AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment to come before the Convention is an amendment being offered by Delegate Cortese.

AMENDMENT WITHDRAWN

DELEGATE CORTESE. Mr. President, I withdraw the amendment.

FLEMING AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Fleming.

DELEGATE FLEMING. Mr. President, I read in place and present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE FLEMING offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, lines 1 to 30, page 6, lines 1 to 30, by striking out "(a) Whenever a vacancy occurs for any" in line 1, all of lines 2 to 30, page 5, all of lines 1 to 29 and "(g)" in line 30, page 6 and inserting: (a) Justices, judges and justices of the peace shall be elected by the qualified electors of the State or districts as the case may be.

(b) Any vacancy happening by death, resignation or otherwise, in any court, shall be filled by appointment by the Governor, to continue till the first Monday of January next succeeding the first general election, which shall occur ten or more months after the happening of such vacancy.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair will recognize Delegate Fleming for a statement in connection with his amendment.

DELEGATE FLEMING. Mr. President, my statement will be very brief, one of the briefest ones that has been made.

I think we are all cognizant of what my fellow sponsors and myself are attempting to do, and this is to have all the judges elected by the people generally. I think our minds are pretty well made up on our positions on it. I certainly do not want to cut anybody off, but at this moment that is all I have to say.

PRESIDENT BRODERICK. I see Delegate Scarlett at the microphone.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Scarlett. For what purpose does the gentleman rise?

DELEGATE SCARLETT. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SCARLETT. Mr. President, it seems to me we are just prolonging the debate on all of these so-called changes. If one does not fly, another one comes in. I think it is about time we consider what our President said a few minutes ago, that we consider accepting the proposals made by the Committee.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. Mr. President, for the second time in as many days I am confused on a point of parliamentary inquiry.

Is this not precisely the matter which we have voted upon time and again in the last couple of days? Specifically, to raise this point again, does it not require a motion to reconsider the same matter for the third time?

PRESIDENT BRODERICK. To answer your point of parliamentary inquiry, the Chair had considerable difficulty with this amendment. It appears it is not precisely the same matter that we have voted on before, it is somewhat different in some respects. Therefore, the Chair determined that we would submit the amendment rather than requiring a vote to reconsider.

This is a matter that is in the hands of the delegates, but the Chair does think that it is somewhat different than the other proposals.

DELEGATE O'DONNELL. Mr. President, I do not challenge the Chair's point of view, but I am unable to find the ways in which it is different—even somewhat. Would the Chair mind advising the body in what ways it is different and, particularly, whether it is different in any substantial way?

PRESIDENT BRODERICK. I just want Delegate O'Donnell to know that the Chair went over this in great detail after the close of our session last evening, and it was determined that there was a difference between this and the Jirolanio amendment. You can get the Jirolanio

amendment and see the differences in the language. I will tell you that it is a close decision.

DELEGATE O'DONNELL. Mr. President, may I then ask the Chair whether it has been considered that the material here concerned is not covered, at least, insofar as the judges in district courts are concerned, that is to say, in the judicial district, entirely by the Ruth amendment, as amended.

PRESIDENT BRODERICK. Delegate O'Donnell, I can say that consistently the Chair has been ruling, where we have had an amendment that has been considered by this Convention, that it would require a vote to reconsider if the amendments were, in effect, identical and so similar as to be identical.

This, after comparing it with the Jirolanio amendment and the Ruth amendment, was determined to have sufficient difference to present it to the Convention without requiring a vote to reconsider. This is something that is within the jurisdiction of this body to change, but this is our determination.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes. For what purpose does the gentleman rise?

DELEGATE BANES. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BANES. Unless Delegate O'Donnell asks for an appeal from the ruling of the Chair, I respectfully suggest that he is out of order.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Scranton.

DELEGATE SCRANTON. May I just comment to Delegate O'Donnell without losing my right to comment again on this amendment?

PRESIDENT BRODERICK. Yes, indeed, because I think this is a point of parliamentary inquiry that we are discussing now.

DELEGATE SCRANTON. One of the things that has disturbed me about this Convention is the fact that at times people try to get super-technical about parliamentary things, and I think the Constitutional Convention is above that.

May I say to you that I see no substantive change in this amendment from the Jirolanio amendment at all, and I do not think anybody else does either, but there is some language change, and, if the general counsel of the Convention considers that adequate to make advisable a reconsideration of the Jirolanio amendment, I think we should accept his ruling.

DELEGATE O'DONNELL. I do not question that. I was merely trying to bring to the attention of this Convention, for practical purposes, that it is the identical same thing which was defeated twice yesterday. I think the sub-committee, the Judiciary Committee, ought to be supported.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. May I interrogate Senator Fleming?

PRESIDENT BRODERICK. Senator Fleming I am sure will stand for interrogation.

DELEGATE SHAPIRO. Mr. President, under this amendment, if it passes, will the Senate have an opportunity to pass upon the appointments of the Governor?

DELEGATE FLEMING. If I may, I have to have the advice of counsel now.

PRESIDENT BRODERICK. While Delegate Fleming is conferring—he is ready.

DELEGATE FLEMING. It is my understanding it will not, sir. I did not have a copy of the bill.

DELEGATE SHAPIRO. After a period of 10 months service, does the candidate then run in a partisan election? Is that the purpose here?

DELEGATE FLEMING. I would say that would be correct, yes, sir.

DELEGATE SHAPIRO. I have one more question.

After the term of elective tenure, does the candidate then run for re-election, if he so chooses, in a regular partisan election, or in the retention form of election?

DELEGATE FLEMING. That depends largely on what we do with the rest of the Judiciary article. At the moment I would say he would run again.

DELEGATE SHAPIRO. He would run against an opponent?

DELEGATE FLEMING. That is correct.

DELEGATE SHAPIRO. Does this amendment have that effect?

DELEGATE FLEMING. I think if you fit it in with Proposal No. 7, it would, sir.

PRESIDENT BRODERICK. Delegate Shapiro, have you had your question answered?

DELEGATE SHAPIRO. I do not know whether I got an answer, or not. Senator Fleming seems a little uncertain about the last answer. He seems to be still looking up the effect of this amendment.

PRESIDENT BRODERICK. Perhaps, we could pass over this and come back to it. We will pass over it and come back to it, if it is all right.

The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I think we have the answer to Delegate Shapiro's question.

PRESIDENT BRODERICK. Would you proceed to give the answer.

DELEGATE IRVIS. Mr. President, I was not paying strict attention, and I apologize to you for that. If your question is whether or not Section 13 (d) on page 8 would be affected by this amendment, that is the section, sir, which refers to the retention of a judge, it would not be so affected by this amendment.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I think after some three and a half days of working on the Judiciary article we ought to sort of take a look at what we have done.

I think, by and large, that the Judiciary Committee has been justified in its many weeks of agonized labor, because in most of the important instances the items which have been presented to this Convention have been approved.

Even in the case, particularly, of the unified court system it has been strengthened to some degree by what happened on the floor here.

In only one instance, and that is in the instance of a choice of judges in the various judicial districts, where we

had provided for a local option to determine whether they might be selected by the panel system as against election, was that changed by this Convention.

I point out, however, that in the case of statewide judges this was an item that was immediately considered and approved by the Judiciary Committee, because of the fact that statewide judges could not possibly be known in the various parts of the State as intimately as the local judicial district judges could be known. For that reason it was determined very early that the appointment by the Governor, with panel selection, although there were a lot of questions as to the type of panel, how many members should be presented, and so on, would be included as an item that should be presented to this Convention. This was done. I might say, also, as Governor Scranton indicated yesterday, this is very much the way of the future. In 14 states around the United States now this is a way of trying to pick judges in a manner that will ensure the best judges in the judicial system.

It has been the feeling of the delegates in the Judiciary Committee that the courts are for the people. They are not for the judges, they are not for the lawyers, and, therefore, it is of the utmost importance that the finest judges, regardless of whether they are chosen by their individual Republican or Democratic committeemen, or whether they are chosen by members of the Bar Association, none of these things are determinative of what should be done.

The important thing is to determine what is the best way to get the finest members of the Bar on the court, members of the various bars of the judicial districts on the statewide courts. Whether they come from the smallest judicial district in the State or whether they come from Philadelphia or Allegheny County, it is quite important that our statewide courts have those who are best qualified.

For that reason it was determined that a qualifying commission, the duty of which would be to study all of the qualified people in the State of Pennsylvania, would have the duty of presenting to the Governor a list of at least 10, not more than 20, names for each and every opening. This was the best way to ensure that our statewide courts would have the finest judges, regardless of whether they were chosen by the political leaders of their individual community, or not.

It is for this reason we are very vehemently trying to suggest to you that the Judiciary Committee's suggestions in this regard be affirmed.

I might say, also, that although a vote was taken on this yesterday and it was defeated, the amendment was defeated by a vote of 75 to 75, I do point out to you that if we are going to reopen each one of these votes because we are dissatisfied with what has happened, it is going to result in our being here long beyond the deadline that has been fixed. I urge upon you that when we have completed a discussion, and then vote, the vote should stick.

I have had a number of delegates who have requested that I join with them in reopening the vote which we had on the matter of local option in the various judicial districts. I have advised very strongly that that not be reopened again, although I am thoroughly in favor of it, on the ground that it has been decided once by this Convention and ought not to be brought up again.

I request at this time that you vote overwhelmingly against this amendment and in favor of the work of the the Judicial Committee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth.

DELEGATE RUTH. Mr. President, first, I would like to comment that I, too, am basically for this amendment.

Delegate Amsterdam pointed out that we have gone over certain areas before and we should not uproot them, and I agree. I do not think the vote we had yesterday, 75 to 75, is indicative of anything which we have done in other areas, where there was at least some majority. I would like to take a minute or two to refer to some of the things that have gone on here before.

Delegate Buck, for whom I have the greatest respect, a few days ago indicated a history of appointments and he referred to the Federal system, and so forth, and I would draw every delegate's attention to the Judiciary Manual that was supplied to every delegate. From pages 88 through about 93 there is a history set forth about election of judges. I think it is rather interesting that in 1850, the people of Pennsylvania decided by a referendum they wanted to elect their judges, and they made the decision. In 1873, the last time they had a convention, they could not change this, the convention did not decide to change this. In this book it tells you they considered plans that are similar to the Missouri Plan, they considered appointive methods, they considered a compromise of having appointed judges on the State level and keeping the elected judges on the lower level, and they denied that compromise.

I say to you, the people and the representatives before have decided this. This is what they want, so history would be in favor of election of judges.

I also would refer you to the fact that in July of 1967 Mr. Robert Sidman, President of A Modern Constitution for Pennsylvania, Incorporated, at a Preparatory Committee Hearing, said, "On the whole, we have been among the nation's leaders in exemplary judicial conduct," which is quoted on page 4 of his written statement. "In addition, former Superior Court Judge, Honorable Robert E. Woodside, who was the chairman of the original commission to study the needs for constitutional revision, stated at the Preparatory Committee's Hearing on July 27, 1967, that the Pennsylvania appellate courts are tops in the United States and the judges of these courts are competent judges and that all the United States respects Pennsylvania's decisions. In addition, former Judge Woodside pointed out that he did not recommend that the Supreme Court appoint prothonotaries or president judges, indicating this gets 'too political for the Supreme Court.' If appointment of prothonotaries or president judges is too political for the Supreme Court, then it necessarily follows that the appointment of judges in general is 'too political.'"

This month we celebrated the birthday of Abraham Lincoln and tomorrow we will celebrate George Washington's birthday. As Abraham Lincoln once said, "No man is so good as to govern without consent of those governed."

I submit, no man is so good as to judge without consent of those to be judged.

PRESIDENT BRODERICK. The Chair recognizes Delegate Horne.

DELEGATE HORNE. Mr. President, I think we have

heard, in substance, all that can be said and all that will be said on this subject. I, therefore, move the question.

PRESIDENT BRODERICK. Delegate Horne moved the question. Is there a second?

The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. I would like to just make a very short statement, if I might. Is that in agreement?

PRESIDENT BRODERICK. I think this will be agreeable to the body.

DELEGATE SCRANTON. Yesterday afternoon we had in the morning and the day before we had a long discussion in detail and in depth on this subject. I point out to you that you have now gone through precisely what the committee did over many weeks of time.

If you continue to want to upset debates and, indeed, votes that you have previously taken, yes, at some time or other they can be upset, because at one time or another somebody is not here or is here that voted some other way.

Yesterday afternoon we had the fairest vote we have ever had on this floor. There were 150 people who voted, which is the greatest number we have ever had. You will remember there was an original vote, then you remember Delegate Thomson was not here and came in, and then you remember that Delegate Irvis raised a question about the vote. Then you remember it was validated, and then you remember it was reopened, and then you remember that it was left open for a long period of time. I have just checked purposely with the roll call clerk and there are two people here today who were not here yesterday, and we welcome them both, Delegate Swope and Delegate Aurentz. There are 15 people not here, many of whom were here yesterday.

All I am trying to say to you is this, do you want to every hour on the hour try and figure out who is here and who is not here, upset votes that have been taken after a long debate, after the committee has gone into it thoroughly and after the Convention floor has before it an amendment which is not yet clear what it does. The sponsor could not even indicate whether it did get rid of "yes" or "no" retention, or whether it did not.

This is precisely the kind of thing that happened in our committee many times, where once you suddenly decide on a new amendment. You find out after you voted on it that it is different than you can see if you have not thoroughly looked into it.

We certainly thoroughly went into the Jirolanio amendment which, in essence, does the same thing. I therefore sincerely hope, and, you remember, nobody on our side of the fence ever upset anything that was asked for parliamentarily yesterday or today and, if I have anything to do with it, I never shall, because in my opinion a Constitutional Convention is something different than a Legislature or indeed a Tammany Hall determination of work politics. It is on a higher level and it is more important than that.

I sincerely hope that you will vote as your conviction is, but, remember, we did it all yesterday and now you have an amendment in front of you which you are not sure what it will do.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro. For what purpose does the gentleman rise? rise?

DELEGATE SHAPIRO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHAPIRO. Mr. President, I asked the question and I got an answer, and it is my impression the answer is not strictly accurate. I wonder if we can have a ruling from counsel for the Convention?

It appears to me that although Section 13 is preserved, what is now (b) of Section 11, which created the exception which, in turn, brought Section 13 into play, would be stricken by this amendment. This amendment applies to all vacancies, and part of the language which it strikes out stated that when a statewide judge has been appointed under Section 11 (a), or when a district judge who has served a full elective term files a retention nominating paper, then under those circumstances Section 13 (a) comes into play. But 11 (b), which creates that situation, is being stricken by this amendment, and I question, therefore, whether or not the retention election would apply. If it does, we have at least got conflicting provisions if we pass this amendment.

PRESIDENT BRODERICK. I will immediately ask counsel for the Judiciary Committee and counsel for the Convention to formulate a reply to your inquiry and have the reply given to you through the chairman, or one of the chairmen, of the Judiciary Committee. I will ask them if they will please do that.

The Chair recognizes Delegate Casey.

DELEGATE CASEY. Has the question been moved and was that motion seconded?

PRESIDENT BRODERICK. No, that has no been formally put. I am ready for it.

DELEGATE CASEY. I would like to be heard before the motion is put.

PRESIDENT BRODERICK. It is up to the body. You may proceed. We have not voted on the motion.

DELEGATE CASEY. Mr. President, I have been sitting here for several days now listening patiently and with great interest to the many arguments that have been advanced on both sides of this very difficult question. I must say this is one of the most difficult questions for me to resolve in my own mind, as I am sure it is for all of the delegates at this Convention, but there comes a time when all of us have got to search our minds and our consciences and decide what is the right thing to do.

A number of basic things have got to be pointed out with regard to this amendment. As I understand it, if this amendment is defeated, judges at the local level will continue to be elected. The reach of this amendment only applies to the statewide appellate courts in Pennsylvania and, if I am incorrect in that understanding, I wish someone would advise me.

I rise not only as one who is vitally interested in the subject matter of this amendment, but also as an officer of this Convention. I have sat in my seat day after day and seen some of the most significant actions we have taken at this Convention reconsidered the next hour or the following day. It seems to me the integrity of this Convention is now at stake. All of us have lost on votes in this Convention. I have been on the losing side about 99 per cent of the time, but, if you lose, you have to take

your licking and go on to the next question. It seems to me the people of this State have a right to expect from us that once an issue is settled we accept the vote and move on to the next subject.

For this reason, which I regard as a fundamental principle as far as the integrity of this Convention is concerned, I rise to oppose this amendment.

I oppose it for a second reason. If I was convinced that the people of this State honestly and really, in reality, have the determining voice in the selection of judges at the statewide level, I would oppose the panel selection of judges, because I believe in letting the people decide. But I submit to you, as one who is just as active in politics and probably more so than anyone in this room, this is not the case. This simply is not the fact, and I think we all have to recognize it. Secondly, if I really believed in my heart that the panel selection would result in discrimination against minority groups, I would be against the panel selection, but I do not believe that that is the fact. I think the panel selection will give us a thorough on-going systematic search for the best judicial talent we can find in Pennsylvania without regard to what party they belong, that is the kind of judicial system we need in this State and that is why I am opposed to this amendment.

I ask all of you to search your conscience and to do the right thing.

DELEGATE WILCOX. I move the question.

PRESIDENT BRODERICK. Delegate Wilcox has moved the question. Do we have a second to this?

It has been seconded by Delegate Woodring.

We have, at the microphone, Delegate Irvis. I will recognize you.

DELEGATE IRVIS. Does the moving of the question prevent those who are proponents from closing the argument?

PRESIDENT BRODERICK. Let me say this, Delegate Irvis, if they vote to close debate and move the pending question, it would preclude any further debate, including the closing.

What the Chair has tried to do in these situations in an attempt to be absolutely fair has been to ask whoever it is that is moving the question if they would give the proposer of the amendment an opportunity for a short closing. That will be up to this body and is not up to the Chair. If we have a motion on the floor to close debate and that motion is carried by this Convention, that means we vote immediately and cannot hear anyone else. Is that clear?

I am, therefore, going to ask the proposer of the motion, who is Delegate Wilcox, if he wishes to place in his motion an opportunity for Delegate Fleming to have a short closing.

On the question,
Will the Convention agree to the motion?

MOTION TO CLOSE DEBATE

DELEGATE WILCOX. I wish to move to close debate. I think we heard it all before.

PRESIDENT BRODERICK. Is there a second to that motion?

DELEGATE WOODRING. Seconded.

PRESIDENT BRODERICK. It has been seconded by Delegate Woodring.

We now have a motion on the floor. It has been moved and seconded that debate be closed and that the pending question be put. This means that no one else can speak on this matter, I would say, including the proposer of the amendment, who is Delegate Fleming.

Are we ready for the question? I will unlock the voting machine on this to see how the delegates feel. We have a motion on the floor. The motion is to close debate and put the pending question. All those in favor of doing that will say "aye," those that are opposed to doing that will say "nay."

The roll was recorded as follows:

YEAS—79

Amsterdam	Forster	Michael	Sebastian
Aurentz	Fortney	Michener	Shapiro
Baldwin	Gabreski	Miller, D.	Sharp
Banes	Gehrlein	Miller, R.	Shively
Benedict	Goldstein	Moorhead	Shoemaker
Bloom	Gray	More	Shrager
Braham	Hatter	Morton	Solomon
Brennan	Henderson	Murray	Sprogell
Brown	Himes	O'Donnell	Stout
Casey	Hook	Orbin	Swope
Clinger	Horne	Popil	Tate
Cortese	King	Powell	Thomson
Croop	Krill	Rappaport	Thornburgh
Cunningham	Leach	Rea	Warman
Curran	Leinbach	Reynolds	Welsh
Desmond	Leonard	Roberts	Whittum
Devlin	Levin	Rovner	Wilcox
Erwin	Manderino	Sahli	Wilmarth
Fawcett	McGeary	Scarlett	Woodring
Fay	Meyer	Scranton	

NAYS—64

Aberman	Fagan	Kauffman	Pelletier
Baldrige	Feather	Keller, J.	Pott
Baldus	Fineman	Keller, M.	Prendergast
Barron	Fleming	Kelly	Richter
Barry	Fohl	Kline	Ruth
Broderick	Gerber	Laputka	Scales
Buck	Griffith	Lee, K.	Scott
Bunting	Hannum	Lee, L.	Shettig
Burkholder	Harding	Mangery	Silverman
Butera	Heyburn	Markley	Strickler
Caputo	Hocker	Mattioni	Stroup
Clark	Hostetler	McGlynn	Tomascik
Corey	Huggins	Nelson	Tully
Cosetti	Irvis	Orban	Waldron
Dalley	Jirolanio	Otto	Westerberg
Dumbauld	Johnson	Pasquerilla	Woodside

NOT VOTING—20

Allison	Camardella	Filson	Pechan
Bagenstose	Caron	Goldman	Percey
Bashoff	Conley	Gouger	Quiles
Benfield	Donaldson	Lane	Redick
Cain	Donolow	Musselman	Van Sant

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—63

Aurentz	Fagan	Kline	Rappaport
Baldrige	Fay	Leach	Reynolds
Baldwin	Fineman	Markley	Richter
Banes	Fleming	Mattioni	Rovner
Barron	Fohl	McGlynn	Ruth
Barry	Gerber	Meyer	Scales
Benedict	Goldstein	Miller, D.	Sebastian
Brennan	Henderson	More	Shettig

Brown	Hocker	Murray	Shoemaker
Caputo	Hostetler	Orban	Solomon
Cortese	Huggins	Orbin	Stroup
Croop	Irvis	Otto	Tully
Dailey	Jirolanio	Popil	Waldron
Devlin	Keller, M.	Pott	Warman
Dumbauld	Kelly	Powell	Westerberg
Erwin	King	Prendergast	

NAYS—81

Aberman	Forster	Leinbach	Scranton
Amsterdam	Fortney	Leonard	Shapiro
Baldus	Gabreski	Levin	Sharp
Bloom	Gehrlein	Manderino	Shrager
Braham	Gray	Mangery	Shively
Broderick	Griffith	McGeary	Silverman
Buck	Hannum	Michael	Sprogell
Bunting	Harding	Michener	Stout
Burkholder	Hatter	Miller, R.	Strickler
Butera	Heyburn	Moorhead	Swope
Casey	Himes	Morton	Tate
Clark	Hook	Nelson	Thomson
Clinger	Horne	O'Donnell	Tomascik
Corey	Johnson	Pasquerilla	Thornburgh
Cosetti	Kauffman	Pelletier	Welsh
Cunningham	Keller, J.	Rea	Whittum
Curran	Krill	Roberts	Wilcox
Desmond	Laputka	Sahli	Wilmarth
Faweett	Lee, K.	Scarlett	Woodring
Feather	Lee, L.	Scott	Woodside
Filson			

NOT VOTING—19

Allison	Camardella	Goldman	Percey
Bagenstose	Caron	Gouger	Quiles
Bashoff	Conley	Lane	Redick
Benfield	Donaldson	Musselman	Van Sant
Cain	Donolow	Pechan	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

RUTH-JIROLANIO AMENDMENT TO PROPOSAL No. 7

DELEGATE RUTH. After talking to Delegate Jirolanio, an amendment which we had given to the Drafting Service is being withdrawn.

PRESIDENT BRODERICK. The Chair thanks the gentlemen.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. I am not disturbed at the vote which just took place and which was just recorded. I am, however, greatly disturbed at the motion that was made at that time. The reason why I am disturbed is this, Mr. President, up until then the Chair has always been kind enough to allow—as a matter of fact, if I remember correctly, it was stated by the Chair that the proposer of an amendment would always be given the right to close. On several occasions when the Committee on Judiciary was opposed to something, I have noticed that on more than several occasions members of that committee have been up on their feet, and in spite of the fact that the proposer, or the one whom he has so designated to speak in his behalf, has not been given the opportunity to make closing remarks.

I believe this Convention should establish a rule—and I will make a motion to that effect—that the proposer of an amendment shall be given the last opportunity to speak on that particular thing. As a matter of fact, I believe it is so listed in our rules. "Debate—Limitations," page 46. That rule was never suspended. Therefore, this Convention is going contrary to all the rules that we have in our book of rules.

PRESIDENT BRODERICK. On the part of the Chair, Delegate Jirolanio, I wish to state that when we have a motion to close off the debate the Chair has always—unless we had a vote to the contrary—permitted the proposer of the amendment to close.

Today we had a motion, the other day we had a motion, and the Chair asked if they would change their motion to include that. Today the motion was not changed. Convention voted. According to the Parliamentarian, when there is a motion to close debate, that cuts off the proposer. In other words, the Convention has decided.

The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. May I address myself to the comments of Delegate Jirolanio, with the permission of the Chair and of the body?

The delegates are obviously getting a little bit tired and getting a little bit irritable. This is understandable. All of us are human and all of us suffer from these ailments. But I would suggest that in the future it would be wise on the part of any delegate to extend the courtesy of permitting the proponent of an amendment to speak.

In the last situation, two opponents—two very persuasive opponents—spoke powerfully against Senator Fleming's proposal. Senator Fleming, it seemed to me, out of simple courtesy, regardless of parliamentary procedure, should have been granted the same privilege and the same right.

I, too, get tired of hearing speeches and hearing people say over and over again what they said over and over again before. I get tired of hearing myself saying over and over again what I said over and over again before. But I quite agree with Governor Scranton that a Constitutional Convention is not a legislature, it is not a temporary thing, it is not a battle of parliamentary procedure, and it is not a nit-picking affair. These are important decisions which we are making. It does not seem to me, in making such a decision, that we have saved our conscience or our time very much when we are discourteous to the proponent of an amendment to the point of sealing his mouth. I regret that it was done. I trust that it will not be done again, whether I am in favor of or against an amendment.

MOTION TO RECONSIDER VOTE

PRESIDENT BRODERICK. The Chair recognizes Delegate Cortese.

DELEGATE CORTESE. I move to reconsider the vote by which Amendment 5 to Proposal No. 7 was defeated. I voted in the majority. That is the so-called Kauffman amendment, Amendment 5 to Proposal No. 7.

PRESIDENT BRODERICK. Would the gentleman just remain at ease a second until we get that amendment?

The Chair recognizes, again, Delegate Cortese. Would you state again your motion to reconsider?

DELEGATE CORTESE. Mr. President, I move that the

vote re Amendment 5 to Proposal No. 7 offered by Delegate Kauffman be reconsidered. I voted for the defeat of that amendment and my vote was in the majority vote.

PRESIDENT BRODERICK. Now the Chair recognizes a seconder—do we have one?

DELEGATE WARMAN. I second it.

PRESIDENT BRODERICK. How did the delegate vote?

DELEGATE WARMAN. I voted "yea."

PRESIDENT BRODERICK. How did the delegate vote?

DELEGATE WARMAN. Well, is this not the vote on the 75-75—

PRESIDENT BRODERICK. No, it is not.

DELEGATE WARMAN. Then I voted on the other one "nay," as far as I recall.

PRESIDENT BRODERICK. We will have to check the record on the delegate's vote.

DELEGATE REYNOLDS. I voted "nay" and I second the motion.

PRESIDENT BRODERICK. We will take the second by Delegate Reynolds, "Nay." The "nays" were the prevailing side. You voted "nay," Delegate Cortese voted "nay."

The motion before the Convention is to reconsider the vote by which the Kauffman amendment of yesterday was defeated.

The Chair wants to know if all the delegates know the amendment we are talking about. It was distributed, of course, yesterday. Do we have any additional copies?

DELEGATE HOOK. Was that the proposal that was defeated 63 to 79?

DELEGATE AMSTERDAM. No, 67 to 79.

DELEGATE HOOK. I am sorry, sir.

PRESIDENT BRODERICK. Unless the delegates have copies, we better have it reproduced so that we will be able to vote intelligently on the motion to reconsider. Then, of course, if it carries, the question would recur on the Kauffman amendment.

The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, just so I can be clear, is this not the matter yesterday which was voted "yea" 61 and "nay" 75? Or am I looking at the wrong sheet and the wrong amendment?

PRESIDENT BRODERICK. I just want to say, Delegate O'Donnell, that I am asking the clerk to get the official vote tally and I will announce it. We are sending for the official tally sheet on this so we can announce to the delegates exactly what the vote was.

Also, there is some question—not considerable, I might add, but some people want it checked—as to how Delegate Cortese and how Delegate Reynolds voted.

We now have prepared additional copies of the Kauffman amendment in question.

I am looking at the official roll call tally, and it shows this was designated for the purpose of roll call as Amendment No. 5, the Kauffman amendment, and the vote was, yeas 67, nays 79.

We have also checked and Delegate Cortese and Delegate Reynolds voted with the prevailing side.

I understand the vote that Delegate O'Donnell referred to was on another Kauffman amendment, not this one.

Would the Delegates kindly take their seats, because we are going to vote now. There is a motion to reconsider and, if anybody wishes to be heard, they can be heard, but let us please take our seats, so we can expedite this matter.

Are all the Delegates ready? Please take your seats, because the question that we have before us is a motion to reconsider the vote by which the Kauffman amendment failed, and copies, I understand, have been distributed. You should have the amendment in front of you. The Chair wants to know, does anybody wish to be heard in connection with this motion to reconsider?

The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I urge your reconsideration of this amendment. I will not speak at length because we discussed this fully yesterday, all of the arguments pro and con.

Simply, this amendment would provide for appointment of judges of statewide jurisdiction by the Governor with the consent of two-thirds of the Senate. What this would do would be to vest the responsibility in the hands of the person with the power.

What it would do would be to have officials elected directly by the people selecting your judges, and not a group of people meeting in secret behind closed doors responsible to no one selecting your judges.

This is, in effect, quite similar to the system being used very successfully in the Federal judiciary in New Jersey and Hawaii. It has worked well there, and I submit it will work well here.

I urge you to consider this, together with the other reforms in the Judicial article. This cannot be considered in a vacuum. We have the method of selection, coupled with merit retention once the judge is appointed. He, to all intents and purposes, unless he does not serve well, is in for life. We have provided in this article, as I said, for merit retention. We also have provided for a Judicial Inquiry and Review Board, which will be a constant safeguard against inefficient, ineffective, dishonest judges.

So when you consider all of these factors in a total package, we have a reform that we need not be ashamed to go to the people with. This is reform. It is not anti-reform, and it does not present the dangers, the inherent dangers, of putting into the hands of a selection panel the job and responsibility of selecting your judges of statewide jurisdiction.

So I urge you please to reconsider the vote of yesterday.

PRESIDENT BRODERICK. Now, the Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. I know that you all will be glad to know that I do not intend to reiterate the 10 minute speech I made yesterday afternoon on this subject. That was intended, as all of you know, to make clear to you the position of the Governor, which I experienced for four years in this field, but I do say to you in no uncertain terms that the description of this method made by the previous speaker is not my understanding of how it works.

What you are really deciding now once again on the reiteration of the same problem is whether you want a political panel made up of the party leaders of the Governor's party to inform him of the persons that they think are eligible for this job from which he selects one, or whether you want a nonpolitical panel to do the same thing of 10 to 20 names.

What happens with the system in the Kauffman amendment is, the Governor no longer has any out with his

party to possibly ever appoint somebody from another party, and as a result he must make all of his appointments so that he gets the consent of all of the party members in the Senate of his party. That is precisely what I did, except in two extraordinary circumstances when we were establishing two new courts, and so we got about 45 additional Republican judges.

I think this is wrong, and I do not think it works correctly. It is precisely, also, what happens in the Federal government, because every president appoints, except for a handful of the opposite party, an overwhelming proportion of his own party.

I think this makes for politics in the judiciary, and there would be a great deal more of politics if we were on the other basis. I have explained to you what happened on the other basis where we did have five men appointed of five different types and groups, and none of them were bar members of the big law firms that everybody is so worried about, not one of them was a member of any of them.

I point out to you very succinctly, and as strongly as I can, if you really want independent selection of judges by the Governor, he is the one who does it, rather than the constant pulling on his coat to have it be a political one, this is the way to do it. I sincerely hope you will turn down this amendment so that Pennsylvania can join 15 other states in contrast to two under the Kauffman theory that are now being operated under that theory. There are 15 states using this one. It is the modern progressive way of doing it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sharp.

DELEGATE SHARP. Mr. President, I believe the phrase that we are at a turning point is a hackneyed phrase in this Hall and, at the risk of being redundant, I am going to say that, instead of being a turning point, we are at a fork in the road.

I, myself, personally do not find the Kauffman amendment so repulsive that I do not think it could not successfully work in Pennsylvania. It so happens, as a matter of personal preference, I prefer the selection of the committee proposal, but I fear that we are treading on very dangerous ground here in that we are imposing upon the people of this Commonwealth as to the credibility of this Convention if we again reverse that which we have so recently done.

I am reliably informed that the vote on the Kauffman amendment was, I believe, 67 to 79, and I do not believe that within those 12 votes such an important issue as this can have either a positive affirmation of truth or a negative of denial. The very fact that this Convention had voted so closely on this question, it seems to me, shows that the question is meritorious on both sides. I believe that by reversing ourselves, as we have done several times previously in this Convention, we terribly, terribly weaken the work of this Convention in the eyes of the press and in the eyes of the public.

As I said before, I believe this Commonwealth of Pennsylvania could very well live with the Kauffman amendment, but I am not certain that this Convention can live with the voice of the people if we keep reversing ourselves and vacillate from day to day.

I, therefore, urge that this reconsideration be disapproved and that we come to a matter of finality here and let this rest with the people to either sustain our judgment or to impose their better judgment on the 23rd of April.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I rise to oppose the reconsideration.

When we started this Convention on December 1st and the committees were appointed, we had various proposals offered and brought forth before this body. One of the ones I was completely disturbed with, and I am a member of the Local Government organization and not of the judiciary, I was immediately concerned with this question of the judicial nominating commission.

The Bar proposal, which was Proposal No. 1,000, I read through completely, and I did not like their proposal pertaining to the selection of the panel. At this point I went and secured all the Constitutions of the United States of every state and reviewed them all.

If you will check, you will note what this committee has done is adopted the proposal that I put into the committee itself, and I used a format of four laymen and three lawyers to compose this panel. Being a lawyer myself, I was not afraid of what these laymen would do. I believe it is very important that lay people look at attorneys and make their judgments. We are judged by what our clients think of us, and not by any other measure.

I believe the four lay people on this committee has been established by this Commission, and the panel would do the job and protect the people of the Commonwealth of Pennsylvania.

Many delegates come to me and state, "Well, there is still going to be control." Yes. At the same time, they will act back and they will give us something that I think we will be very proud of and some reform that I think is needed in the judiciary.

What is going to be the result of the Kauffman amendment? At the present time there are 27 Republicans and 22 Democrats in the Senate. This is going to mean, in order to get a judicial man approved, there is going to have to be a deal made.

Now, is that in politics or is that out of politics? I will let you be the judge of that. The same thing will occur time and time again, that is, you are going to put the judiciary into the position of having to be dealt with by the public at all times, and this is not what we want. We do not want that to occur.

I speak to this group to vote against reconsidering this motion of Delegate Kauffman's.

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, I rise in opposition to reconsideration and I can possibly put it quite simply by saying it would come down to a real issue here as to whether the judges are going to be political or whether they are not.

I think if you look at the vote yesterday you might be able to find the answer. I would like to state the ex officios at this Convention voted yesterday seven in favor of this amendment and one against it.

I, therefore, stand in support of the President of this Convention who voted "nay." I stand with him and I am in opposition to making the judges political.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, I must rise in support of the position taken on the previous vote by my colleague and Vice President of this Convention, Delegate Casey of Scranton.

I do so in exactly the same position that he does. Like him, I have lost a vote in this Convention by tie votes and made no move for reconsideration. In fact, I was approached for reconsideration and refused to sign the document that would have brought it back for reconsideration, because I trust in the judgment of the delegates here assembled. If they fail to sustain something that I desperately wanted which was, if you remember, the mandated referendum on community courts, I have to abide by that decision.

I speak like Delegate Casey as an officer of a marvelous group of people who are trying desperately to hold themselves together for a good purpose, and I am telling you that we cannot protect ourselves in every point from a flash reconsideration. We just cannot do it, and we are lucky this morning we have a full body here. What is going to happen late some afternoon if Senator Casey and I want to spring a quickie on you, when half of you have gone and we have calculated which half and prized an advantage which is not ours, we will reverse this great assembly with a handful of voters or by a change in things. We cannot protect ourselves from those tactics and we should judge what we want, then hold to it.

Finally, I must associate myself with Delegate Casey's remarks and extend them to this extent. I am not here defending the Judiciary Committee's point of view on anything, we are past that. This is now your point of view and my point of view, and I no longer care what Amsterdam and Scranton want on this.

We have established what we want and I am speaking to our conscience. Let us defend what we have decided.

So, for those reasons, I must strongly oppose reconsideration of this proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldrige.

DELEGATE BALDRIGE. Mr. President, I respectfully rise in support of this motion. I think I object to extra rehashing just as much as any other delegate in this Convention, but, remember, Mr. President, the Judiciary Committee itself on these recommendations reversed itself many times. We who are delegates certainly have the right to think twice about anything, and especially something like this which is the most revolutionary, wild, far-out change we have even suggested in this Convention be made in our own present Constitution.

This is something which puts in the power of seven men elected by nobody appointed by no elected official. The majority of them are appointed by the Governor, an elected official, but three of them by the Supreme Court which, although they are elected, we do not consider them really elected officials, and certainly they are nonpolitical.

No matter what you do to improve things, there are always advantages and disadvantages on both sides of the fence. It seems to me to put such a terrific power in the hands of seven people who are not themselves elected —the people cannot select them—the power to say that no one except one of those 20 persons appointed can even aspire to a statewide judgeship, is something that is going to be pretty hard, at least for me, to sell to the people of my district.

I certainly think on something as important as this a second look is not necessarily bad.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. President, as a nonlawyer delegate to this Convention and with apologies to the many candidates for judgeship, I move the question.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman. For what purpose does the gentleman rise?

DELEGATE FINEMAN. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE FINEMAN. When this motion was put, there was frankly some indecision in my mind as to which way I would go, not because I did not sympathetically share the view of Delegate Kauffman, but rather because there is some indecision as to the question of reconsidering once again something that had been past-completed business.

Delegate Welsh, and this is why I rise to a point of personal privilege, has made up my mind for me and I am going to wholeheartedly support this motion for reconsideration, and I would urge the delegates in this Convention chamber to support this motion for reconsideration.

I think it takes a lot of temerity on the part of Delegate Welsh to point out the ex officio members voted in one particular way on this thing, as if to infer that by so doing there was something evil in their vote, that there was a stigma on their vote.

I know it is a fact that Delegate Welsh has been in the mainstream of political life for some time, and why does he ascribe to his viewpoint any more integrity and any better motivation than those things that cause me to vote in any particular way. The fact that I am a delegate ex officio makes my judgment no less valid than that of Delegate Welsh, nor does it ascribe to my vote any evil, any greater evil, than perhaps motivates Delegate Welsh. I think it was manifestly unfair of him to infer that because ex officio delegates to this Convention cast their vote in a certain way, there was no evil involved and there was politics involved. If you get yourself to believe for one moment that there will not be politics involved in this commission, I say you are just utterly naive.

I ask the delegates to this Convention to support this motion for reconsideration.

PRESIDENT BRODERICK. The motion has been made by Delegate Thomson and has been seconded by Delegate Scarlett. If I may state the motion, the motion is, as I understand it, that we close debate and put the pending question on the motion to reconsider the vote by which the Kauffman amendment went down. Now we have that motion.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Welsh. For what purpose does the gentleman rise?

DELEGATE WELSH. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE WELSH. The point is in answer to the previous speaker, and that is that I did not intend, and I am sure he quite well knows that, to decry the way that any delegate to this Convention voted. The only thing I said to this delegation was a fact. I stated a fact and we have come down to a clear issue, in my opinion, whether we are going to have the statewide judges elected or appointed with the consent of two-thirds of the Senate, or whether we are going to have them according to the judiciary article and recommendation. I maintain that the latter is less political.

PRESIDENT BRODERICK. The Chair is going to put the question on the motion right now. Remember it again, this is on the motion that was placed by Delegate Thomson to close debate.

On the question,
Will the Convention agree to the motion to close debate?

The roll was recorded as follows:

YEAS—133

Aberman	Fay	Lee, K.	Roberts
Allison	Feather	Lee, L.	Rovner
Amsterdam	Filson	Leinbach	Ruth
Aurentz	Fineman	Leonard	Sahli
Bagenstose	Fleming	Levin	Scales
Baldrige	Fohl	Manderino	Scarlett
Baldus	Forster	Mangery	Scott
Baldwin	Fortney	Markley	Scranton
Banes	Gabreski	Mattioni	Sebastian
Barry	Gehrlein	McGeary	Shapiro
Benedict	Goldstein	McGlynn	Sharp
Benfield	Gray	Meyer	Shettig
Bloom	Griffith	Michael	Shively
Braham	Hannum	Michener	Shoemaker
Brennan	Harding	Miller, D.	Shrager
Broderick	Hatter	Miller, R.	Silverman
Brown	Henderson	Moorhead	Sprogell
Buck	Heyburn	More	Stout
Burkholder	Himes	Morton	Strickler
Butera	Hook	Murray	Stroup
Cain	Horne	Nelson	Swope
Camardella	Hostetler	O'Donnell	Tate
Clark	Irvis	Orban	Thomson
Clinger	Jirolanio	Orbin	Thornburgh
Corey	Johnson	Otto	Tomascik
Cosetti	Kauffman	Pasquerilla	Tully
Croop	Keller, J.	Pelletier	Waldron
Cunningham	Keller, M.	Popil	Welsh
Curran	King	Powell	Westerberg
Desmond	Kline	Rappaport	Whittum
Dumbauld	Krill	Rea	Wilcox
Erwin	Laputka	Reynolds	Wilmarth
Fagan	Leach	Richter	Woodring
Fawcett			

NAYS—11

Bunting	Gerber	Kelly	Solomon
Caputo	Hocker	Pott	Woodside
Casey	Huggins	Prendergast	

NOT VOTING—19

Barron	Dailey	Gouger	Quiles
Bashoff	Devlin	Lane	Redick
Caron	Donaldson	Musselman	Van Sant
Conley	Donolow	Pechan	Warman
Cortese	Goldman	Percey	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. Pursuant to that motion, the Chair will now state that the question is, will the Convention agree to the motion to reconsider the vote by which the Kauffman amendment failed?

On the question,
Will the Convention agree to the motion to reconsider?

The roll was recorded as follows:

YEAS—84

Aberman	Devlin	Johnson	Pott
Allison	Dumbauld	Kauffman	Powell
Aurentz	Erwin	Keller, J.	Prendergast
Bagenstose	Fagan	Keller, M.	Rappaport
Baldrige	Fawcett	Kelly	Reynolds
Baldwin	Fay	Kline	Richter
Banes	Fineman	Lee, K.	Rovner
Barry	Fleming	Lee, L.	Ruth
Benedict	Fohl	Leinbach	Scales
Benfield	Gerber	Levin	Sebastian
Brennan	Goldman	Mangery	Shapiro
Brown	Goldstein	Markley	Shettig
Butera	Griffith	Mattioni	Shoemaker
Cain	Hatter	McGlynn	Shrager
Camardella	Henderson	Meyer	Silverman
Caputo	Himes	Miller, D.	Solomon
Corey	Hocker	More	Stroup
Cortese	Hostetler	Murray	Tully
Croop	Huggins	Orbin	Waldron
Curran	Irvis	Otto	Westerberg
Desmond	Jirolanio	Popil	Whittum

NAYS—64

Amsterdam	Forster	McGeary	Scranton
Baldus	Fortney	Michael	Sharp
Barron	Gabreski	Michener	Shively
Bloom	Gehrlein	Miller, R.	Sprogell
Braham	Gray	Moorhead	Stout
Broderick	Hannum	Morton	Strickler
Buck	Harding	Nelson	Swope
Bunting	Heyburn	O'Donnell	Tate
Burkholder	Hook	Orban	Thomson
Casey	Horne	Pasquerilla	Thornburgh
Clark	King	Pelletier	Tomascik
Clinger	Krill	Rea	Welsh
Cosetti	Laputka	Roberts	Wilcox
Cunningham	Leach	Sahli	Wilmarth
Feather	Leonard	Scarlett	Woodring
Filson	Manderino	Scott	Woodside

NOT VOTING—15

Bashoff	Donaldson	Musselman	Redick
Caron	Donolow	Pechan	Van Sant
Conley	Gouger	Percey	Warman
Dailey	Lane	Quiles	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

The question recurs,
Will the Convention agree to the amendment?

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. I understand it has been moved by Delegate Jirolanio, seconded by Delegate Fineman, that we close the debate and vote on the question. Now, we will take a vote. We are going to open up the voting machine and vote on that question as to whether we close debate and vote on the Kauffman amendment. We unlock the machine and those voting "yea" will vote to close off debate, those voting "nay" will vote to hear debate.

On the question,
Will the Convention agree to the motion to close debate?

The roll was recorded as follows:

YEAS—92

Aberman	Fagan	Johnson	Otto
Allison	Fawcett	Kauffman	Popil
Aurentz	Fay	Keller, J.	Pott
Bagenstose	Filson	Keller, M.	Reynolds
Baldrige	Fineman	Kelly	Richter
Baldwin	Fleming	King	Roberts
Banes	Fohl	Krill	Rovner
Barry	Forster	Lee, K.	Ruth
Benedict	Fortney	Lee, L.	Scales
Benfield	Gerber	Leinbach	Scarlett
Brennan	Goldman	Levin	Scott
Brown	Gray	Mandarino	Sebastian
Cain	Griffith	Mangery	Shapiro
Camardella	Harding	Markley	Shettig
Caputo	Hatter	Mattioni	Solomon
Clark	Henderson	McGlynn	Strickler
Corey	Heyburn	Meyer	Swope
Croop	Himes	Miller, D.	Tomascik
Cunningham	Hook	Miller, R.	Tully
Curran	Horne	Moorhead	Waldron
Desmond	Hostetler	More	Westerberg
Dumbauld	Irvis	Murray	Whittum
Erwin	Jirolanio	Orbin	Wilmarth

NAYS—50

Amsterdam	Feather	Nelson	Shrager
Baldus	Gabreski	O'Donnell	Silverman
Barron	Gehrlein	Orban	Sprogell
Bloom	Hannum	Pelletier	Stout
Braham	Hocker	Powell	Stroup
Broderick	Huggins	Prendergast	Tate
Buck	Kline	Rappaport	Thomson
Bunting	Laputka	Rea	Thornburgh
Burkholder	Leach	Sahli	Welsh
Butera	McGeary	Scranton	Wilcox
Casey	Michael	Sharp	Woodring
Clinger	Michener	Shively	Woodside
Cosetti	Morton		

NOT VOTING—21

Bashoff	Donaldson	Leonard	Quiles
Caron	Donolow	Musselman	Redick
Conley	Goldstein	Pasquerilla	Shoemaker
Cortese	Gouger	Pechan	Van Sant
Dailey	Lane	Percey	Warman
Devlin			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. Mr. President, do I understand that the effect of what has happened in this room in the last few moments is that we at first have agreed to reconsider the question of the Kauffman amendment and have now agreed not to consider it at all, not even to permit it to be discussed, but to jam it right to a vote here and now, to overturn what was done yesterday?

PRESIDENT BRODERICK. The Chair says that right now we are going to vote on the Kauffman amendment. That was the feeling of the majority of this body, and we now unlock the voting machine.

The question is, will the Convention agree to the amendment offered by Delegate Kauffman. The voting machine is now unlocked and the delegates will proceed to cast their vote. Those voting "yea" will vote to support the Kauffman amendment, those voting "nay" will vote to reject the Kauffman amendment, and that is the question.

The question recurs,

Will the Convention agree to the Kauffman amendment?

The roll was recorded as follows:

YEAS—78

Aberman	Erwin	Keller, M.	Pott
Allison	Fagan	Kelly	Powell
Aurentz	Fawcett	King	Prendergast
Bagenstose	Fay	Kline	Rappaport
Baldrige	Fineman	Krill	Richter
Baldwin	Fleming	Lee, K.	Rovner
Banes	Fohl	Lee, L.	Ruth
Barry	Gerber	Leinbach	Scales
Benfield	Goldman	Levin	Sebastian
Brennan	Griffith	Mangery	Shapiro
Brown	Harding	Markley	Shettig
Butera	Hatter	Mattioni	Shoemaker
Cain	Henderson	McGlynn	Shrager
Camardella	Himes	Meyer	Silverman
Caputo	Hocker	Miller, D.	Solomon
Corey	Hostetler	More	Tully
Croop	Irvis	Murray	Waldron
Curran	Jirolanio	Orbin	Westerberg
Desmond	Kauffman	Otto	Whittum
Dumbauld	Keller, J.		

NAYS—65

Amsterdam	Forster	Michener	Sharp
Baldus	Fortney	Miller, R.	Shively
Barron	Gabreski	Moorhead	Sprogell
Benedict	Gehrlein	Morton	Stout
Bloom	Gray	Nelson	Strickler
Braham	Hannum	O'Donnell	Stroup
Broderick	Heyburn	Orban	Swope
Buck	Hook	Pasquerilla	Tate
Bunting	Horne	Pelletier	Thomson
Burkholder	Huggins	Popil	Thornburgh
Casey	Johnson	Rea	Tomascik
Clark	Laputka	Roberts	Welsh
Clinger	Leach	Sahli	Wilcox
Cosetti	Mandarino	Scarlett	Wilmarth
Cunningham	McGeary	Scott	Woodring
Feather	Michael	Scranton	Woodside
Filson			

NOT VOTING—20

Bashoff	Devlin	Lane	Quiles
Caron	Donaldson	Leonard	Redick
Conley	Donolow	Musselman	Reynolds
Cortese	Goldstein	Pechan	Van Sant
Dailey	Gouger	Percey	Warman

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MURRAY AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, I rise to offer an amendment to Committee Proposal No. 7.

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATE MURRAY offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 7, by inserting between lines 8 and 9: (h) No member of this Constitutional Convention shall be eligible for appointment to any court of this Commonwealth for ten years following the adoption of this article.

On the question,
Will the Convention agree to the amendment?

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. Mr. President, I would like to ask whether an amendment to this would be in order, to insert at the end thereof "except any delegate who is an attorney-at-law and holds the title of dean of a law school." Would that be in order?

Further, Mr. President, looking at this amendment, I do not believe I asked for a ruling by the Chair whether or not this comes within the call of the Constitution. I do not think so. If it does not, it does violate the provisions in Article I.

PRESIDENT BRODERICK. You know the Chair thought that this job as I went along as presiding officer would get easier as the days drew closer to the 29th. I want you to know that the Chair has been wrong. The job is not any easier. This is a difficult decision that the Chair has to make. The Chair has had—I will recognize you, Delegate Murray—to consider this amendment with counsel for the Convention. Based on the ruling given to the Chair by the counsel for the Convention, the Chair right now is required to rule that this particular amendment offered by Delegate Murray is not within the authority of the Convention because, in the opinion of counsel, it would violate the Bill of Rights.

I want to say that in the opinion of the Chair even lawyers have rights. Frankly, I think we came here to strengthen our judiciary article and not to weaken it by depriving the people of Pennsylvania of some of the best legal minds that have ever been assembled under one roof. Therefore, the Chair rules that this is not within the authority of the Convention.

I now recognize Delegate Murray, who has every privilege to take an appeal.

DELEGATE MURRAY. If this amendment deprives any individual of his right to run for election, I would agree with you. But this deals with appointments, political appointments, in effect, appointing people to positions which they, as delegates, helped to create. Let me state, also, that it does not deal with prior appointments. Judge Hannum, for example, would not be affected. It would only deal with appointments after the adoption of this article.

I would like to study the decision of the Chair and I reserve my right to appeal, which I intend to do.

PRESIDENT BRODERICK. You have a right, of course, to take an appeal and we will await your decision.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella. For what purpose does the gentleman rise?

DELEGATE CAMARDELLA. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE CAMARDELLA. I must disagree with the Chair again, Mr. President. After what happened in the last couple of days, I can wholeheartedly agree with Delegate Murray's proposal here. With all the jockeying, I think we should put a saddle on what has been going on in the last couple of days.

COMMITTEE MEETING

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. May I remind the members of the Committee on Style and Drafting that there will be a luncheon meeting this noon in Room 500 of the North Office Building.

SHOEMAKER AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. I have an amendment, Mr. President, to Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SHOEMAKER offered the following amendment which was read by the Clerk:

Amend Sec. 1 (Sec. 11), page 7, by inserting between lines 8 and 9: (e) Whenever there is an appointment, selection or election to fill a vacancy in a court division, such election, selection or appointment shall be to that division in which the vacancy exists and the judge appointed, selected or elected shall serve primarily thereon.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker, who is standing forward in connection with his amendment.

DELEGATE SHOEMAKER. Mr. President, yesterday, you will recall, I submitted basically the same proposed amendment and then withdrew it. The reason that it was withdrawn was to add some additional language suggested by Delegate Amsterdam on the part of the committee and, hopefully, to make it more acceptable to the committee and to the unified judicial system.

I point out again and call to your attention that I have no intention of attempting to destroy in any way the unified judicial system as it is proposed under this proposed article, Proposal No. 7. However, I do feel quite strongly that we should recognize several basic points. It is at this that I aimed this amendment.

First of all, the Bar Association, that is, not the Association, but the lawyers of Pennsylvania, did vote on a written ballot three to one in favor of having some distinction between general practice on the bench and specialization on the bench. They favored this kind of specialization in order to get more qualified judicial timber. Pennsylvania currently has leadership in these United States in the estate field, especially, and you will find that

treatises on this subject such as how to avoid probate find very little fault with the Pennsylvania bench. I am specifically concerned with the idea that a candidate for judicial office to fill a vacancy which may be in a division, either an orphans' court division of a common pleas bench or a trial division of a common pleas bench, should be the most qualified man available. I think this is the desire of all of us.

I submit to you the only way we can get a successful practitioner out of the practice of law and on to the bench is to give him some assurance—if not a guarantee—that when he leaves a successful estate practice or a successful trial practice to fill a vacancy in a division then open, he would be in that division where his specialty lies.

I do not intend, nor is this aimed at, prohibiting the cross assignment by the president judge of any court of common pleas to fill a gap, on a temporary basis or on a permanent basis, if it is merely a cross assignment by virtue of filling an empty gap—a need—in the workings of the court. But I do strongly feel that we should promote the removal from the practice of specialists to fill the specialties on the bench. I think we get better qualified judicial timber this way.

I re-emphasize that this does not destroy the unified judicial system, it is not so intended, and I have no desire to do so. It does not prohibit the transfer of judges within divisions, or even cross divisions. It is merely aimed at allowing a candidate for the bench to know which division he will primarily serve.

I call to your attention that if you compare this amendment with the amendment submitted yesterday and withdrawn, you will see the insertion of the word "primarily," which was at the behest of Chairman Amsterdam. I understand the committee cannot back this proposal per se because they feel differently than I do, and I suppose Chairman Amsterdam will make his position clear. I do, however, ask your support. You will notice that there is a substantial number of us who have endorsed this concept.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. We have been whittling away at the proposal which was brought to the floor by the committee, and I must confess I have been among the whittlers on most of these issues. I think, if we adopt this amendment, we will cut so deeply into one of the basic concepts that has so far survived, that is, a unified court system, that it will be a tragic mistake. We are now trying to do with this amendment what we would not let a qualifications committee do in selecting judges, what we do not want the electors to do in electing judges, and we now say what we want the Governor to do in appointing judges, that is, to make a determination as to the type of person who should be appointed to fill a judicial post.

I do not think you ought to do that or try to do it in the Constitution. If you want a qualifications committee to do it, let them do it. If you want the Governor to do it, let him do it. Certainly, any time a judge is appointed, this kind of thing would be considered by the Governor. But it should not be a compelling point so that we lock in whoever is making the appointments. I think this is contrary to one of the basic principles of the committee proposal which we have accepted and I would, therefore, suggest that it does not belong in the Constitution and that it should be defeated.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Senator Kline said it so well that I hate to take up additional time with this amendment, but I feel you ought to know that members of the Judiciary Committee who discussed this feel that this does do violence to the concept of the unified judicial district which we had hoped would be the justification, in large part, for all the hard work we have done here. As a matter of fact, the Judiciary Article itself does not provide for divisions except in connection with courts that may be created hereafter. However, in the schedule which we have set up, we do provide that in the various common pleas courts there shall be division and the very fact that we did provide that point indicates that the Supreme Court, the top of the judicial system, and the various president judges are to have the authority to move judges from place to place in order to make it the most efficient system possible.

It was for that reason that we suggested it and I believe, if it has any meaning—frankly, I am not at all sure how it applies or what its meaning is, but if it has any meaning, it does prevent the president judges and the chief justice of the Supreme Court from moving judges around to the degree necessary to make the courts most efficient.

Therefore, we recommend strongly that this be defeated as an amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. Chairman, I rise very briefly to support this amendment. There are provisions in the judiciary article right here and now, which have not been disturbed, which permit the Supreme Court through its court administrator to assign or reassign judges as they may be required. That is not disturbed by this Shoemaker amendment.

Secondly, there is a provision in the judiciary article that permits the Supreme Court to assign and reassign classes of cases from one court or division to another and that is not disturbed in any respect by the Shoemaker amendment.

Thirdly, one of the finest arguments in support of the unified judicial system contemplates a person filing a case in the wrong court, and up until now that could mean that your case could go on for a year or so before the court found it did not have jurisdiction. Now that these are merely divisions of the Court, it is a matter of childish simplicity for the court simply to transfer the case, as they do now, from the law side to the equity side, or from the equity side to the law side, or to transfer it from one division to another.

Consequently, I believe that the Shoemaker amendment retains every piece, every vestige, of the best features of court unification and retains, as well, the notion of specialized cases before specialized judges. That is the aim of this Convention and the aim of the judiciary article.

I think this amendment advances that aim substantially, and I speak in favor of it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, on this point I believe we have settled that the point to be obtained by this Convention was not specialized courts, but specialized judges.

We will understand this problem better if we consider the meaning of the language that the judicial power of the Commonwealth is lodged in certain named courts. That means that once a case gets within the orbit of the courts it is a part of the judicial system and is under the control of the courts, and the modern theory is that that is true even as against the Legislature. Once we get that concept that these matters within the court are to be controlled by the court, interference from the outside is vexatious and unwise.

For convenience there is reference in the new plan to divisions of the common pleas court, but the common pleas court is supposed to be the general court of jurisdiction in every judicial district. Anything we do to set up barriers, lines, in between there is unwise. It is unwise because it promotes appeal.

One of the difficulties and demerits of the present judicial system, and one of which the public is greatly aware, is the many appeals necessary on the question of jurisdiction. Once you have an elected judge of the orphans' court division, you will have questions on appeal as to what court has the right.

Allow me to point out where some of the distinctions may be. The orphans' court as it now stands has jurisdiction over estates. They also have jurisdiction over trusts. They have jurisdiction over petitions, if it arises out of a will, where as the court of common pleas has jurisdiction if it arises out of a contract, the orphans' court has jurisdiction in questions under the Price Act if it arises out of a will and the common pleas court has jurisdiction if it arises out of a grant.

The orphans' court now has jurisdiction over the estates of persons of unsound mind, and yet the power to gain treatment for that is in the common pleas court.

Everything we do to the end of accentuating these distinctions between the divisions will promote more appeals, more and more appeals, and will have to go to the Supreme Court. That does not mean anything except to the lawyers. I think it is of the utmost importance that we defeat this proposal.

PRESIDENT BRODERICK. The Chair recognizes Judge Woodside.

DELEGATE WOODSIDE. Mr. President, I think there is one point that has not yet been considered either by this body or by the committee itself in the determination of this question now before us, and that is this:

There may be a vacancy in what is now the orphans' court. There may be a lawyer who is particularly well versed in the practice that is carried on in the orphans' court who may know all of the intricacies of the problems of the orphans' court, which I assure you are quite different than those of the common pleas court, and he may run for that office. If he is not elected or running for a specific division, there may at the same time be a vacancy in the court of common pleas and, if there is no division between these two, you may elect to the orphans' court division one who would be very good in the common pleas court, because the orphans' court lawyer will have to run against two instead of only one.

Both the Republicans and the Democrats may put up a very good orphans' court man, but, if he has to run against two or three vacancies on the common pleas at the same time, he will not have the same opportunity, and the people will not have the same opportunity to select one good orphans' court man out of it.

I know way back in 1904 the cliche came about for the first time that we wanted specialized judges, but not specialized courts, but since 1904 when that statement was first made the experience generally has been away from it, because we have gone more and more into specialized courts for one reason. We found that by having specialized courts you have specialized judges, and this gives us an opportunity to have all of the advantages of a unified court and still have all of the advantages of a specialist in the court and in the field with which he has to deal.

I very strongly urge this delegation to vote in favor of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President, I am badly torn by this particular amendment. As you know, an overwhelming majority of the committee, and I think of the Convention, feel very strongly about the unified system. On the other hand, everybody also knows in the field of legal areas that it is helpful to have specialist people, but what bothers me terribly about this particular amendment is that I have already received five different interpretations as to what it may or may not mean, and how or how not the Supreme Court might interpret it if you put it in the Constitution, and I just think this is a mistake under those circumstances.

I think if you are going to put more and more verbiage in the Constitution, which is questionable in legal entity minds—I am not of that caliber, I do not know enough about the law to say so, but I have talked to our counsel and I have talked to the counsel for the Convention, and Delegate Shoemaker and I just heard Judge Woodside, for all of whom I have tremendous respect, but I say to you that I think this particular provision is going to be contentious, and Supreme Court contentious for some time to come. We are not now knowledgeable of precisely what it will mean permanently, and I, therefore, hope you will not put it into the Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker for the purpose of summing up.

DELEGATE SHOEMAKER. May I merely say in summing up that I suggest that under the unified judicial system, where the Supreme Court of Pennsylvania is the supreme power in determining jurisdiction and in interpreting the Constitution, that I am sure they will interpret it in the fairest light for the unified system, as well as in the fairest light to preserve the specializations of the courts, where it will be promoted to the ends of justice. I have the utmost confidence in the court, the Supreme Court of Pennsylvania, in so interpreting this provision. I apologize for any poor verbiage therein, but I tried to get the consensus of both sides to make this acceptable.

I again request strongly your support and, if I have it, I will be satisfied.

PRESIDENT BRODERICK. Then I take it that we are ready for the question, and we will now unlock the voting machine.

The question is, will the Convention agree to the amendment being offered by Delegate Shoemaker.

The question recurs,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—59

Aberman	Desmond	Kauffman	Sebastian
Aurentz	Devlin	Keller, J.	Shettig
Baldrige	Erwin	Keller, M.	Shively
Baldus	Fleming	King	Shoemaker
Banes	Fohl	Leonard	Solomon
Barron	Griffith	Mattioni	Sprogell
Barry	Harding	Michael	Stroup
Benedict	Hatter	O'Donnell	Swope
Buck	Henderson	Otto	Tate
Cain	Hocker	Pelletier	Tomaselk
Camardella	Hook	Popit	Tully
Caputo	Horne	Rappaport	Welsh
Casey	Huggins	Redick	Whittum
Corey	Irvis	Rovner	Woodside
Cortese	Jirolanlo	Ruth	

NAYS—69

Allison	Fagan	Leach	Rea
Amsterdam	Fawcett	Lee, L.	Reynolds
Bagenstose	Feather	Leinbach	Richter
Baldwin	Filson	Levin	Sahli
Benfield	Forster	Manderino	Scales
Bloom	Fortney	McGeary	Scarlett
Braham	Gabreski	Meyer	Scott
Brennan	Gerber	Miller, R.	Scranton
Broderick	Goldman	Moorhead	Sharp
Brown	Hannum	More	Shrager
Bunting	Heyburn	Morton	Silverman
Burkholder	Himes	Murray	Stout
Clark	Johnson	Nelson	Strickler
Clinger	Kelly	Orban	Thornburgh
Cosetti	Kline	Orbin	Wilcox
Croop	Krill	Pasquerilla	Wilmarth
Cunningham	Laputka	Powell	Woodring
Curran			

NOT VOTING—35

Bashoff	Fineman	Markley	Quiles
Butera	Gehrlein	McGlynn	Roberts
Caron	Goldstein	Michener	Shapiro
Conley	Gouger	Miller, D.	Thomson
Dailey	Gray	Musselman	Van Sant
Donaldson	Hostetler	Pechan	Waldron
Donolow	Lane	Percey	Warman
Dumbauld	Lee, K.	Pott	Westerberg
Fay	Mangery	Prendergast	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

DELEGATE SHAPIRO. Am I entitled to vote, or has my vote been recorded?

PRESIDENT BRODERICK. I understand that we have already decided that you were tardy in connection with this, but your remarks will be spread on the record here.

DELEGATE SHAPIRO. I would like my remarks to be that I would vote against this if I were permitted to vote.

PRESIDENT BRODERICK. The record will show your remarks.

BARRON AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I offer an amendment to Proposal No. 7.

On the question recurring,

Will the Convention agree to the the proposal on second consideration?

Delegate Barron offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, lines 28 to 30; page 6, line 1, by striking out "Whenever a vacancy occurs for any other reason in the" in line 28, page 5, all of lines 29 and 30, page 5, and all of line 1, page 6, by striking out all of said lines and inserting: Whenever a vacancy occurs for any other reason in the office of judge in such judicial district, the Governor shall fill the vacancy by appointment in accordance with the provisions of Article IV, section 8 of this Constitution.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I believe this is under the category of good housekeeping, although it may stir up a matter of philosophy and, of course, if this is the case, we will consider that as well.

As I now read the clean copy, which is on our desks today, we have provided generally in case of a vacancy that the vacancy may be filled by the Governor with the consent of two-thirds of the Senate.

The problem arises thusly, however, if the Senate is not in session? Under the most recently adopted set of amendments, those which were passed at the same primary in which it was determined that we should have this Constitutional Convention, the following language was expressed and adopted to cover the situation. I consider this very important if our Senate and House of Representatives ever get back to the idea that they will rise in April, or May, or June, and not continue throughout the entire year as occurred last year. As our language now reads, "should the Senate and House arise in April, there would be a vacancy for a full eight months," which would be impossible for the Governor to fill without reconvening the Legislature. Of course, if they arise in June, the situation of six months arises and so on down to the end.

The language which I propose to incorporate by this reference is in Article IV, Section 8, of the Constitution as amended last spring, which reads this way:

"Except as may now or hereafter be otherwise provided in this Constitution as to appellate or other judges," he may, and I will interpolate, referring to the Governor—during the recess of the Senate fill vacancies happening in offices to which he appoints by granting commissions expiring at the end of its session and fill vacancies happening in the office of Auditor General or State Treasurer or in any other elective office he is authorized to fill.

"If the vacancy happens during the session of the Senate, except as otherwise provided in this Constitution, he shall nominate to the Senate, before its final adjournment, a proper person to fill the vacancy."

Then the language goes on to provide concerning terms that in the case of a vacancy in an elective office a person shall be elected to the office on the next election day appropriate to the office, unless the vacancy happens within two calendar months immediately preceding the election day, in which case the election shall be held on the second succeeding election day appropriate to the office.

This is now Constitution language, and I suggest there are many circumstances, particularly in counties such as my own where there is but one judge, where there is a positive and vital need for interim appointments.

I think the concept has been very carefully considered by the drafters of the amendments which passed last spring's primary. I would propose to keep the system uniform for everyone falling into the general category of offices as covered in Article IV, Section 8, of the Constitution.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. I have a question, Mr. President. I believe last evening this was ruled to require a motion to reconsider, inasmuch as it is in direct contravention of the language of Delegate Ruth's amendment, as amended. Am I correct in that?

PRESIDENT BRODERICK. Let me say that my understanding is that Delegate Barron withdrew this amendment last night. I do not recall that we ruled on it. I think he withdrew it. Is that correct?

DELEGATE BARRON. My recollection is that we had a discussion and a conflict seemed to come up. We were anxious to get out of here and I withdrew it.

PRESIDENT BRODERICK. If you are raising a question in connection with this, we will be at ease and we will review it again.

Delegate O'Donnell, the Chair has consulted with counsel and, based on counsel's opinion, we do not feel that a motion to reconsider would be necessary in connection with this amendment, because this amendment concerns itself solely, as I understand it, with the interim appointments. We have not voted for or against interim appointments as such.

DELEGATE O'DONNELL. May I speak against the amendment then, sir?

PRESIDENT BRODERICK. You may speak against the amendment.

DELEGATE O'DONNELL. This amendment flies in the face of everything, it seems to me, that was decided in the last couple of days, even if it is possible to figure out what that is.

As of this morning we said the Governor will fill statewide offices with the advice and consent of two-thirds of the Senate.

As of the day before yesterday, we said in judicial districts, that is to say, as opposed to statewide offices, the Governor would require the advice and consent of two-thirds of the Senate.

This amendment would permit the Governor to make appointments with the advice and consent of nobody at all, but to simply wait until the Senate got out of session, then get his appointment without the "yes" or "no" of anyone whatsoever.

I think that is in opposition to everything that has been decided on this floor, and I strongly urge the defeat of this amendment.

PRESIDENT BRODERICK. I just want to say that Delegate Barron asked for recognition, and he can only speak twice. He may wish to hold his comments.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron. For what purpose does the gentleman rise?

DELEGATE BARRON. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BARRON. If I may rise to a point of personal privilege in connection with this, the distinguished delegate, Delegate O'Donnell, is in error. I would suggest as a point of order that counsel might wish to clear up the matter of Delegate O'Donnell's suggestion as to what can happen while the Senate is in session. I believe he stated that erroneously.

PRESIDENT BRODERICK. We will have counsel report to the Chairman of the Judiciary Committee, and they can report to the body as to the effect of the Barron amendment.

The Chair now recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I would like to ask the sponsor of this amendment a couple of questions for clarification.

PRESIDENT BRODERICK. Yes, indeed. He will stand for interrogation.

DELEGATE KLINE. Mr. President, does this provision apply to the judicial vacancies on both the statewide appellate courts and also the local courts?

DELEGATE BARRON. Since we have gone to a system of gubernatorial appointments this morning and this amendment language was drafted yesterday, it would be my quick curbstone opinion that, no, it does not apply to appellate courts, but it does apply to elective offices.

The language throughout Subsection (a) of Section 8 of Article IV, and also of Subsection (b), which is the portion I read in length, related to elective offices.

DELEGATE KLINE. Thank you.

DELEGATE BARRON. Do I make myself clear? This is curbstone advice, I frankly recognized it as such when I gave it to you in light of what has transpired this morning.

I firmly believe I am correct, but, of course, that is the reason you bring in a second doctor to consult with when the operation is imminent.

DELEGATE KLINE. With all due respect to Delegate Barron, who is probably a pretty good curbstone lawyer, I would suggest that we not put any curbstone law in the Constitution. I suggest we settle this matter and clearly understand precisely what type of judicial appointments this provision covers, because it is a very serious matter. If it does not refer to interim appointments on the appellate courts and his position about the urgency of filling vacancies is valid, then we should, perhaps, address ourselves to that.

I am concerned about this kind of language, and I just want to know exactly what it does.

PRESIDENT BRODERICK. Delegate Kline, I have requested counsel for the Judiciary Committee, as well as the counsel for the Convention to get together again with the chairman of the committee so that the chairman can report an answer to the two questions that have been

raised, one by Delegate O'Donnell and one by Delegate Kline.

MOTION TO TABLE

DELEGATE SCRANTON. Mr. President, may I suggest that we table this amendment until that is done, because, quite frankly, a number of us are a little up in the air as to precisely what it now does in view of the Kauffman amendment and two other things that the Convention has recently done.

PRESIDENT BRODERICK. I only ask the question now of the chairman whether he thinks we should table it, or can we just be at ease for a few minutes to get the answer? Would you rather this be placed on the table?

I just want to point out that this is the last amendment we have to this section.

DELEGATE SCRANTON. May I say to you that I would be glad to move that we go on to the next section with the understanding that we will come back only to this amendment, if that would be agreeable, but I would like it tabled because of the fact that there is now discussion between several attorneys who do not agree.

PRESIDENT BRODERICK. May I ask, is there an objection to tabling the Barron amendment?

I guess not, so we will declare that your motion to be, pursuant to that request that was unanimously accepted by the body, that it be placed on the table and that it be recalled from the table just as soon as we can get the answer to some multiple legal problems that have come up.

DELEGATE SCRANTON. Yes. Good, we can move on to other things.

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro. For what purpose does the gentleman rise?

DELEGATE SHAPIRO. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHAPIRO. Did I understand Governor Scranton's motion to foreclose any further amendments to this section?

PRESIDENT BRODERICK. No, I do not think that would foreclose any further amendments.

DELEGATE SHAPIRO. I am about to prepare one.

PRESIDENT BRODERICK. I think he made a motion that we all agreed to that this be placed on the table.

DELEGATE SHAPIRO. All right.

PRESIDENT BRODERICK. That is the Barron Amendment.

I will say this, if anybody has any amendments, I sincerely plead with you to get them in, because we want to conclude the amending process to this Judiciary Article today if we can, and I think we can.

PROPOSAL No. 7, SECTIONS No. 13 AND 14

PRESIDENT BRODERICK. We will now recognize Chairman Amsterdam with the understanding that he will give a brief discussion on Sections 13 and 14 of the Judicial Article.

DELEGATE AMSTERDAM. It seems to me that the matter of tenure of judges, which is Section 13, and the matter of later sections are so clear that it really requires very little in the way of explanation. I am wondering whether, in light of what we said previously today, in order to save time, why we cannot go directly into any suggestions for amendments that there may be. We had gone into this in a very general way at the time we presented the entire article to the Convention.

PRESIDENT BRODERICK. Yes, indeed, and I think it is an excellent suggestion. In the interest of conserving time and expediting our conclusions, I will ask if the amendment committee we have, Vice President Casey and Vice President Orban, will come forward and see what amendments we have that we are ready to take up. I urge any fellow delegates, if you have any amendments, or are thinking about amendments to the judiciary, please come up with them so that they will be considered by the committee.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. For what purpose does the gentleman rise?

DELEGATE SHOEMAKER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHOEMAKER. I would like to have an explanation of Rule 19, the first paragraph thereof, on pages 15 and 16 of the rule book that was distributed.

PRESIDENT BRODERICK. What is your particular question? I will try to have the Parliamentarian answer the question. We will either distribute the answer or give it to you now.

DELEGATE SHOEMAKER. My understanding from the way—

PRESIDENT BRODERICK. I just want to ask the gentleman here. You know, it is difficult enough to have to rule on these things quickly during the heat of debate, but when we have an opportunity to stop and consider, we would appreciate the opportunity to do so.

DELEGATE SHOEMAKER. As I understand this rule, in order to be absent from voting, you must have an excuse to do so. If you do not vote and you are in the hall, or if you are here, you are voted "no." Is that correct or incorrect?

PRESIDENT BRODERICK. I will have the Parliamentarian look into that question, and we will give you an answer.

DELEGATE SHOEMAKER. While you are considering that, Mr. President, I think a definition of the term "necessarily prevent" might cure the problem one way or the other.

PRESIDENT BRODERICK. I am endeavoring to obtain an answer, but I understand the Parliamentarian says that we will not get the answer immediately, but he will get it to you later on.

SCRANTON-AMSTERDAM AMENDMENT

PRESIDENT BRODERICK. We now have an amendment which is labeled the Scranton-Amsterdam amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

Delegates Scranton and Amsterdam offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 13), page 8, line 17, by inserting after "any" where it appears the first time: Statewide

Amend Sec. 1 (Sec. 13), page 8, line 17, by striking out "of Statewide jurisdiction"

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes either Chairman Scranton or Chairman Amsterdam to speak on this amendment.

DELEGATE AMSTERDAM. Mr. President, this is simply an amendment of a technical nature that is required by the fact that we have been careful heretofore to use the term "statewide court" as distinguished from "statewide jurisdiction." This is simply to provide in the case of so-called statewide courts they are the ones to which the various tenure provisions shall apply and are not courts of statewide jurisdiction, but statewide courts.

I do not believe there is any objection.

On the question recurring,
Will the Convention agree to the amendment offered by Delegates Scranton and Amsterdam?

The roll was recorded as follows:

YEAS—119

Allison	Erwin	Krill	Roberts
Amsterdam	Fagan	Laputka	Rovner
Bagenstose	Fawcett	Leach	Ruth
Baldrige	Fay	Lee, L.	Scales
Baldus	Feather	Leinbach	Scarlett
Baldwin	Filson	Leonard	Scott
Barron	Fineman	Levin	Scranton
Barry	Fohl	Manderino	Sebastian
Benedict	Forster	Mangery	Shapiro
Benfield	Fortney	Mattioni	Sharp
Braham	Gehrlein	McGeary	Shettig
Brennan	Goldman	McGlynn	Shively
Broderick	Goldstein	Meyer	Shrager
Brown	Griffith	Michael	Silverman
Buck	Hannum	Michener	Solomon
Bunting	Harding	Miller, D.	Stout
Burkholder	Henderson	Moorhead	Strickler
Butera	Heyburn	Morton	Swope
Cain	Horne	Murray	Tate
Camardella	Hostetler	O'Donnell	Thomson
Casey	Huggins	Orban	Thornburgh
Clark	Irvis	Orbin	Tully
Corey	Jirolanio	Otto	Van Sant
Cortese	Johnson	Pasquerilla	Welsh
Cosetti	Kauffman	Popil	Westerberg
Croop	Keller, J.	Powell	Whittum
Curran	Keller, M.	Prendergast	Wilcox
Dailey	Kelly	Rea	Wilmarth
Desmond	King	Reynolds	Woodring
Devlin	Kline	Richter	

NAYS—0

NOT VOTING—44

Aberman	Donolow	Lane	Quiles
Aurentz	Dumbauld	Lee, K.	Rappaport
Banes	Fleming	Markley	Redick
Bashoff	Gabreski	Miller, R.	Sahli
Bloom	Gerber	More	Shoemaker
Caputo	Gouger	Musselman	Sprogell
Caron	Gray	Nelson	Stroup
Clinger	Hatter	Pechan	Tomascik
Conley	Himes	Pelletier	Waldron
Cunningham	Hocker	Percey	Warman
Donaldson	Hook	Pott	Woodside

The majority having voting in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. Mr. President, I would like the record to reflect my vote as "aye" on this amendment.

PRESIDENT BRODERICK. We will have the record show you have voted "aye."

TATE AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 14), page 10, line 2, by striking out "years." and inserting: or as shall be provided by the General Assembly.

On the question,
Will the Convention agree to the amendment?

WASHINGTON'S BIRTHDAY SESSION

PRESIDENT BRODERICK. I have been advised that I should announce that tomorrow is Washington's Birthday and we will all be here to celebrate. There will not be any special ceremonies, but I understand the cafeteria will be open to accommodate us.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, may I ask all the delegates to look at their Printer's No. 20 on which we are working, at the top of page 10? The pending amendment which I am offering deals with a very important committee proposal in, perhaps, a minor way, but I think it makes an improvement. This deals with the question of mandatory retirement at age 70 for judges.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam. For what purpose does the gentleman rise?

DELEGATE AMSTERDAM. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE AMSTERDAM. May we assume that there are no other amendments to original Section 13 on tenure and that is why we are going on to Section 14?

PRESIDENT BRODERICK. I understand we cannot make that assumption.

DELEGATE AMSTERDAM. Are we going out of order? Is that what we are doing at the present time?

PRESIDENT BRODERICK. Our understanding was that we were discussing 13 and 14 together and, in order to save time, we were just moving ahead.

DELEGATE AMSTERDAM. We will ask the other co-chairman to come up. We thought we were just taking Section 13.

PRESIDENT BRODERICK. Will the other co-chairman come up and confer with Chairman Amsterdam, because, if it meets with the approval of the Convention, I would like to move the amendment. This happens to be the next one ready, and we still have two on 13. We will go back to it as soon as they are ready.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. We could go back to the top of page 10 of our Printer's No. 20. This deals with the first two lines of that page and deals with the question of mandatory retirement at age 70.

I am in favor of a mandatory retirement age, as long as it is coupled with the committee proposal and that is coupled with the post-retirement service. I think the committee has done an extraordinarily good job on this entire subject.

This amendment would add one element of flexibility to this which, I think will be a good addition. It would permit, in addition to mandatory retirement at age 70, the Legislature, the General Assembly, to make such changes in that mandatory retirement age as it might deem appropriate from time to time. There are two questions, I think, which might arise here in the future. None of us knows sitting here today what medical science may be able to do with our longevity. It may be that age 70 will be entirely unrealistic 30, 50, or 75 years from now.

In addition, there are many who feel it might be dictated by experience that it would be wise to make a different retirement age, for instance, for the appellate court than for the trial courts, after we leave this mandatory retirement age for a little while. Therefore, rather than have to go through the cumbersome task of a mandatory process, I would like to open the door for the Legislature to make some changes here. I do not want to throw the thing completely into the laps of the Legislature, because they might not act in this situation or might not feel it was necessary to act promptly. Therefore, I would like to see the retention of the age 70 as it stands in the committee proposal, but I would like to see this additional door opened, this additional flexibility, by the addition of the words shown in the amendment.

Therefore, I urge your support of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, speaking for the sub-committee on Retirement, this committee considered this for a long time and we went over all the other states that have similar provisions, a lot of them were 70 and some of them were 80, but they are almost all mandatory.

We felt we should make it mandatory in the Constitution and not leave it to the Legislature for the simple reason that, when a man runs for judge, or is appointed a judge, he wants to know how long he is going to be in there. If the Legislature can change it to 60, 65, or 75, he does not know what his plight is before he runs.

Secondly, we feel this is in line with business with the military forces, where they have a definite retirement age. There are a lot of good men who have to retire. All in all, considering age, a lot of them cannot function properly after 70. We feel the Constitution should state that specifically. There is a grandfather clause in the schedule which provides that those that are now serving a term can continue on until the end of the term or to such other time as this Convention may decide. I think the Judiciary Committee, the main committee, also considered this and we are practically in full accord with the sub-committee's recommendation that we do not leave this matter up in the air for the Legislature.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. President, in view of the fact that I celebrated my 78th birthday this week, I, at least, have to make a token endorsement of Delegate Tate's amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Filson.

DELEGATE FILSON. Mr. President, in accordance with the remarks of General Strickler, I might add that this was debated very vigorously and it was unanimously conceded by the sub-committee that the age of 70 was an age at which the best of any judge would be given to the public. The best years that he could conceivably contribute would be from whatever period he might be elected up to the age of 70 years. We did take into consideration the fact that men who have attained 70 may be, both physically and mentally, extremely competent and may conceivably give something of everlasting significance to the judiciary. In accordance with this, the committee recommended that these judges who are over 70 years of age, although they were retired, could be used by the Supreme Court on temporary assignments throughout the Commonwealth.

In addition to this, I might say that this has become an extremely important area where the Supreme Court might be able to call upon judges who can sit from time to time in areas where the press of business is very severe. We also took into consideration the fact that the longevity of people, while the age has been raised, has been raised because of the fact that infant mortality has been overcome to a large degree, a lot of drugs, and that sort of thing, which are on the market, have allowed people to live for a longer period of time, but, generally, the life span of people is really no longer than it was 150 or 200 years ago. We believe that there will not be any changes within the next hundred years which might conceivably bear upon the figure that we have set out for mandatory retirement of judges in all the courts of the Commonwealth.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Redick.

DELEGATE REDICK. Mr. President, I rise to support the committee's proposal, being one of the committee members, and the only one, opposed to the report from the committee. Since that time I have given considerable

consideration to this report and now I apologize to the committee and wish to join the committee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. I think this is a relatively simple matter to decide upon and I move the previous question.

PRESIDENT BRODERICK. We do have Judge Woodside up. Do you want to second the motion?

DELEGATE WOODSIDE. One half minute.

PRESIDENT BRODERICK. Yes.

DELEGATE WOODSIDE. I thought the delegates might be interested in what happened in New York. I just learned this very recently. New York submitted to the electorate in 1966 two proposed amendments to change the 70 age limit. One of them passed, the other one did not. But the necessity of doing so indicates that there is change in a matter that might well be dealt with by Legislature instead of special constitutional amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. The reason I favored the mandatory retirement at 70 is that I fear the present tendency to reduce the age of retirement. Delegate Redick had the idea of retirement at 67. The difficulty with that sort of thing in the law is that it takes a man so long to get started. If we begin limiting his time from the top, then it does not leave enough time.

Senator Croop has another idea that I think is important on this point. I wanted to see 70 retained as the bottom limit. I would not object to having it 70, and above.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Just a brief word. I think I am now probably speaking in favor of this amendment for this reason, it seems to me that we are saying to all prospective candidates for judgeships in the future that if you are in the realm of 60 years, or more, you are eliminated because you could not serve a full term.

I find, as you look at the judges who are presiding throughout the Commonwealth, many, many of them are doing their best work and rendering their best decisions in this realm between 60 and 70.

It is a rather discouraging note to a lawyer who is coming on, who has made a good career and who is in the shadows of 60, to have said to him, you are eliminated from running because you will only be able to serve for half a term, or three-quarters of a term, or something like that.

In view of this, I think some provision should be made. I believe this is the Tate amendment that I speak in favor of.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, I have two things.

No. 1, the committee, as Delegate Filson made clear, allows any judge who wishes to, after retirement, to continue to actively participate as a judge, which takes care of those people who are concerned about the fact that there are a lot of people after the age of 70 that are still competent, and willing and able.

No. 2, the point about the Legislature that is being made by Delegate Tate, I think, is not in the least well taken. For many, many years the Legislature has been unwilling to put a period of time in here, any time. One of the reasons, as Senator Kline just reminded me, is because a lot of them feel that, by statute, this is a discriminatory type of thing to do and they are anxious to have it in the Constitution, where I think it properly belongs, much as I am opposed to numbers generally. But this is one of the basic reasons the Legislature has never moved on this subject and why we have so many comparatively elderly judges now.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla. For what purpose does the gentleman rise?

DELEGATE PASQUERILLA. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE PASQUERILLA. I did make a motion, Mr. President.

PRESIDENT BRODERICK. You did.

We have a motion by Delegate Pasquerilla that we close the debate and put the pending question.

On the question,

Will the Convention agree to the motion?

It was agreed to.

I think we are ready for the question.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Tate?

The roll was recorded as follows:

YEAS—39

Allison	Erwin	Kauffman	Shapiro
Bagenstose	Fineman	Kelly	Shoemaker
Baldwin	Gerber	Krill	Shrager
Bunting	Goldstein	Mattioni	Sprogell
Butera	Griffith	Murray	Tate
Cain	Hatter	Popil	Thomson
Corey	Henderson	Prendergast	Westerberg
Cortese	Hook	Reynolds	Whittum
Croop	Irvis	Rovner	Woodside
Devlin	Jitolanio	Ruth	

NAYS—94

Aberman	Dalley	Leinbach	Redick
Amsterdam	Desmond	Leonard	Richter
Aurentz	Fagan	Levin	Roberts
Baldrige	Fawcett	Manderino	Sahli
Baldus	Fay	Mangery	Scales
Banes	Feather	McGeary	Scarlett
Barron	Filson	Meyer	Scott
Barry	Fohl	Michael	Scranton
Benedict	Forster	Michener	Sebastian
Benfield	Fortney	Miller, D.	Shettig
Bloom	Gehrlein	Moorhead	Shively
Braham	Goldman	More	Silverman
Brennan	Hannum	Morton	Solomon
Broderick	Heyburn	Nelson	Stout
Buck	Horne	O'Donnell	Strickler
Burkholder	Huggins	Orban	Swope
Camardella	Johnson	Orbin	Thornburgh
Caputo	Keller, J.	Otto	Tully
Casey	Keller, M.	Pasquerilla	Van Sant
Clark	King	Pelletier	Welsh
Clinger	Kline	Pott	Wilcox
Cosetti	Laputka	Rappaport	Wilmarth
Cunningham	Leach	Rea	Woodring
Curran	Lee, L.		

NOT VOTING—30

Bashoff	Gabreski	Lee, K.	Powell

Brown	Gouger	Markley	Quiles
Caron	Gray	McGlynn	Sharp
Conley	Harding	Miller, R.	Stroup
Donaldson	Himes	Musselman	Tomascik
Donolow	Hocker	Pechan	Waldron
Dumbauld	Hostetler	Percey	Warman
Fleming	Lane		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SCRANTON-AMSTERDAM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment to be considered is the amendment referred as to the Scranton-Amsterdam amendment to Proposal No. 7.

On the question,
Will the Convention agree to the proposal on second consideration?

DELEGATES SCRANTON and AMSTERDAM offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 14), page 10, line 2, by inserting after "Former": and retired

Amend Sec. 1 (Sec. 14), page 10, line 7, by inserting after "A": former or

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes one of the proposers of the amendment, that will be either Chairman Amsterdam or Chairman Scranton.

DELEGATE AMSTERDAM. Delegate Filson, who was the co-chairman in the sub-committee, will speak on it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Filson.

DELEGATE FILSON. Mr. President, this proposal is introduced for the purpose of clarifying line 2 on page 10 of Proposal No. 7, Printer's No. 20.

On the second line, without this amendment, the article would read: "Former justices, judges and justices of the peace shall receive such compensation as shall be provided by law."

Throughout the State there were apparently some judges who felt that this did not take care of those judges who might conceivably retire voluntarily at the age of 68, or 67, or younger. In order to include that particular category of judges, it was suggested that this language be changed. In accordance with the committee's desire, this particular proposal was formulated so that it would now read, this is line 2, page 10, "Former and retired justices, judges and justices of the peace shall receive such compensation as shall be provided by law."

The second would be on line 7, which is subsection (c), actually, which would then read after the amendment, "A former or retired justice or judge may, with his consent . . ."

There is no substantive change actually in respect to this. It just gives the assurance that those judges who retired voluntarily before they reached the age of 70 would be under these provisions in the Constitution, and the committee recommends its endorsement by the delegates.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Whittum.

DELEGATE WHITTUM. May I interrogate the sponsor of this amendment?

PRESIDENT BRODERICK. Yes. Proceed with your question.

DELEGATE WHITTUM. May I ask how this amendment and the proposal would affect judges who have been defeated for election or removed from office for incompetency?

DELEGATE FILSON. In Section (c) under the new amendment, which would read, "A former or retired justice or judge may, with his consent, be assigned by the Supreme Court to render such temporary judicial service as may be prescribed by the rules of the Supreme Court," it seemed that it would be self-evident that the rules of the Supreme Court should take care of any situation wherein someone who was defeated for election might want to be used in this category.

DELEGATE WHITTUM. So we can make it a part of the record, can we assume that the rules of the Supreme Court would not allow the service of a defeated judge or an incompetent judge?

DELEGATE FILSON. I can say this for the record, in connection with the sub-committee's proposal, this was very definitely the intention of the sub-committee, that judges who were defeated for re-election should not be used to sit on the bench again by way of appointment on temporary duty.

PRESIDENT BRODERICK. The Chair recognizes Delegate Clinger.

DELEGATE CLINGER. Mr. President, just to reiterate, the sub-committee used the word "retired" only because we thought that this would eliminate those who got on the bench or who ran for the 10 years and were defeated for re-election. However, there does seem to be some confusion on the part of many judges who feel that by not including the word "former" a man who ran and then did not choose to run again would be excluded from this provision.

I think it does clarify it and I think the Supreme Court rules would prevent a man who had been defeated or removed from being assigned to judicial services.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. I think it should be said, additionally, in answer to Delegate Whittum's question that the present Constitution adopted by referendum about a year or two ago specifically excludes judges from additional service who have been defeated. That is already a constitutional provision, also implemented by Act of Assembly.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. I would ask Delegate Filson whether he does not feel some concern about this provision using the word "former" without anything to clearly indicate in the language that it is not to include defeated judges or justices who have been removed?

DELEGATE FILSON. It is our feeling that they would not be used, but we left this to the wisdom of the rules which would be promulgated by the Supreme Court.

On the question recurring,

Will the Convention agree to the amendment offered by Delegates Scranton and Amsterdam?

The roll was recorded as follows:

YEAS—121

Aberman	Cunningham	Kelly	Rea
Allison	Curran	King	Redick
Amsterdam	Dailey	Krill	Reynolds
Aurentz	Desmond	Laputka	Richter
Bagenstose	Erwin	Leach	Sahli
Baldrige	Fagan	Lee, K.	Scales
Baldus	Fay	Lee, L.	Scarlett
Baldwin	Fawcett	Leinbach	Scott
Banes	Feather	Manderino	Scranton
Barry	Filson	Mangery	Sebastian
Benedict	Fineman	Mattioni	Shapiro
Benfield	Fohl	McGeary	Sharp
Bloom	Forster	Michael	Shettig
Braham	Fortney	Michener	Shively
Brennan	Gabreski	Miller, D.	Shrager
Broderick	Gehrlein	Moorhead	Silverman
Brown	Goldman	More	Solomon
Buck	Goldstein	Morton	Sprogell
Bunting	Griffith	Murray	Stout
Burkholder	Hannum	Nelson	Strickler
Butera	Hatter	O'Donnell	Swope
Cain	Henderson	Orban	Tate
Camardella	Hook	Orbin	Thomson
Caputo	Horne	Otto	Thornburgh
Casey	Huggins	Pasquerilla	Tomascik
Clark	Irvis	Pelletier	Tully
Clinger	Jirolanio	Popil	Van Sant
Corey	Johnson	Pott	Welsh
Cortese	Kauffman	Powell	Westerberg
Cosetti	Keller, J.	Prendergast	Wilmarth
Croop			

NAYS—3

Meyer	Whittum	Wilcox

NOT VOTING—39

Barron	Gouger	Leonard	Roberts
Bashoff	Gray	Levin	Rovner
Caron	Harding	Markley	Ruth
Conley	Heyburn	McGlynn	Shoemaker
Devlin	Himes	Miller, R.	Stroup
Donaldson	Hocker	Musselman	Waldron
Donolow	Hostetler	Pechan	Warman
Dumbauld	Keller, M.	Percey	Woodring
Fleming	Kline	Quiles	Woodside
Gerber	Lane	Rappaport	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

FOHL AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. Mr. President, I offer an amendment to Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

Delegate Fohl offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 13), page 8, lines 28 to 30, page 9, lines 1 to 21, by striking out all of said lines

Amend Sec. 1 (Sec. 13), page 9, line 22, by striking out "(e)" and inserting: (d)

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl for a statement in connection with his amendment.

DELEGATE FOHL. Mr. President, the thrust of this proposed amendment is very direct and not the least bit oblique. It would eliminate the merit retention plan for all judges.

The merit retention plan is known as the "yes-no" vote. I have heard it referred to as the Russian ballot and many other accolades. In most instances in this Commonwealth most counties currently abide by the sitting judge principle. There is, however, occasionally a rare case where what we refer to as a sitting judge is thought to be by many an unsatisfactory judge and he should thus be removed.

Under the merit retention plan, he could be removed by a vote of "no." I can think of some instances in recent years where I am not sure that that unsatisfactory judge would have, indeed, been removed on a straight "yes-no" vote.

I would just close this brief presentation by saying that if we have a judge who is not properly doing the job and we do want to remove him at the end of his term, I would hark back to the old political saying of, "You can't beat somebody with nobody." I submit that an alternative must be presented at the same time, rather than just a "yes-no" vote.

I urge adoption of this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Burkholder.

DELEGATE BURKHOLDER. The sub-committee on tenure discussed this matter very carefully and was almost unanimously of the opinion that in order to preserve and implement the sitting judge principle, the merit retention plan—that is the "yes-no" vote—should be adopted. If the pressures that can rise against a judge—which are of a political nature—are to be mitigated or reduced, then the "yes-no" vote is the way to remove those pressures.

We had the testimony of various people from other states where they used this system and they were unanimously of the opinion that it worked, that it was effective and that it reduced political influence on the judges who were in office.

The Committee is against the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. I rise in support of this amendment and I would like to suggest to my fellow delegates the reasons for my rising in its behalf.

For the last couple of days—perhaps, for this entire week—we have been involved in questions of whether or not people know our judges. We were involved with the question of whether or not people should be permitted to continue to elect their judges. It seems ridiculous in this day and age to continue having them elected by the people when they do not really know who they are. We have, by the effect of the proposals that we have put through, eliminated the right of the people to vote for their judges. However, in the merit plan we are again asking our people in the election of their judges to say "yes" or "no" as to whether or not a candidate or a judge has been good or bad.

I raise the question that if the people do not even know

the man's name, how will they know whether he has been good or bad? The merit system in this respect is just absolutely ridiculous. If you do not know his name, how will you know whether he has been good or bad. That is No. 1.

No. 2, we come to the question of how are they possibly going to know whether he is good or bad when you have nothing to compare him with? Let us give the voters of Pennsylvania a little bit of credit for having some intelligence and let us afford the voters of Pennsylvania the right to make a choice between two candidates. Let us just not simply say is this man good or bad, but let us say is he good or bad by comparison with someone else. That is the whole thrust of this amendment, as I see it. Let us permit the voters to have a choice.

I support the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I rise in favor of the committee proposal and against the amendment.

This was discussed extensively in the committee and I just want to bring to light one method of judging judges on their past record that the person from Missouri told the committee. The bar that practices before the judge is polled and the lawyers who practice before him are asked what kind of a judge he is and whether they favor his retention. This poll is given wide publicity in the newspapers, so that the public is informed as to what the members of the bar think of this judge. According to the reports that we got, the poll of the bar carries great weight. I do not know whether this is done in other counties—in Philadelphia right now I do not believe this is done—but I think this would be a valuable tool to the voter in deciding whether a certain judge ought to be retained.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sharp.

DELEGATE SHARP. I should like to add only one thing to what has been said here. I rise in opposition to this amendment. Although I have other thoughts concerning the selection of judges, let me say it seems to me that a judge who is initially in politics in order to get his commission is in a much different position than he who, having been on the bench, must still engage in politics to retain his commission.

It is much like the old saying of taking a boy out of the country and taking the country out of the boy. It seems to me if this amendment were adopted, what you would be doing is permitting judges, or forcing judges, to continue in political activity, while it seems to me that the lesser of two evils—by far the lesser of two evils—is to permit the judge to engage in the hurley-burley of politics and first be elected, but, under all circumstances, once he is elected do not make the pressures of politics such that he must continue in political activity and must engage in partisan politics.

I, therefore, urge that this amendment be defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I hope this body feels that it has now emasculated the committee proposal sufficiently on the selection of judges.

Therefore, I urge the defeat of the amendment and move the question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I would not rise if I did not think that this was an extremely important part of the Judicial Article.

There is a phase of this whole question that has not been presented to this body, as far as I am concerned. This is the practical way in which judges are initially selected under the elective system at the local level and the practical way by which they run for re-election under the present system. I think it goes to the independence of the judiciary in Pennsylvania, it goes to the integrity of the judicial system in Pennsylvania, and it goes to the confidence, or lack thereof, that the people of Pennsylvania have in their judges.

Consider the plight of a lawyer who is practicing law and has a fairly lucrative and successful practice. Is he going to want to aspire to judicial office if he knows that 10 years hence he must submit his fortunes once again, not only to the people—and this does not particularly concern me too much—but to both political parties?

What effect does this have on a judge in office who may have a large family, who may have substantial financial commitments of a family nature, who knows as his term draws to an end he must go hand in hand to the chairmen of both parties and get their blessings?

Let us assume, further, that the chairman who was in that position when he first ran is no longer there. What does he do then? His fortunes are subject to the arbitrary whim of the leaders of both parties.

I have no objection to the working of the political process of the two-party system in Pennsylvania or in the United States, but I think it is misplaced when applied to this particular context. Consider a case of a lawyer who does not get organization support for re-election. He then must go out and raise money, he must go to lawyers, or they, who practice in his court must come to him and make contributions to his campaign. Does this make for the integrity and the independence of the judiciary? It does not. Does this make for confidence of the people for the judicial system in this State? It does not. These are very practical reasons which, in my judgment, argue in favor of the retention system.

I rise to strongly oppose this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, Vice President Casey has stated so well my sentiments that I see no reason why I should repeat them here. I oppose the amendment.

PRESIDENT BRODERICK. Is this body ready for the question?

We have Delegate Fohl, who is the sponsor of the amendment.

DELEGATE FOHL. I just want to reiterate one thing that Delegate Goldman touched on. The very same people who yesterday and in previous days were telling us that the people are not knowledgeable enough to vote for their judges are now telling us that they are knowledgeable enough to vote "yes" or "no" a short time later. That line of reasoning I just cannot buy, and I do not think that the

great overwhelming majority of good, competent judges would be affected by this. I think they would be retained under the sitting judge principle we have.

I again sincerely urge your adoption of this amendment.

On the question recurring,
Will the Convention agree to the Fohl amendment?

The roll was recorded as follows:

YEAS—25

Banes	Fohl	Nelson	Redick
Barron	Goldman	O'Donnell	Scales
Benfield	Griffith	Orban	Solomon
Caputo	Jirolanio	Orbin	Stout
Corey	Kelly	Otto	Tully
Croop	Miller, D.	Pott	Westerberg
Fay			

NAYS—105

Aberman	Dailey	Laputka	Roberts
Allison	Desmond	Leach	Sahli
Amsterdam	Devlin	Lee, K.	Scarlett
Aurentz	Erwin	Lee, L.	Scott
Bagenstose	Fagan	Leinbach	Scranton
Baldrige	Fawcett	Levin	Sebastian
Baldus	Feather	Manderino	Shapiro
Baldwin	Filson	Mangery	Sharp
Barry	Fineman	Mattioni	Sheltig
Benedict	Forster	McGeary	Shively
Bloom	Fortney	Meyer	Shrager
Braham	Gabreski	Michael	Silverman
Brennan	Gehrlein	Michener	Sprogell
Broderick	Goldstein	Miller, R.	Strickler
Brown	Hannum	Moorhead	Swope
Buck	Hatter	More	Tate
Bunting	Henderson	Morton	Thomson
Burkholder	Heyburn	Murray	Thornburgh
Butera	Hook	Pasquerilla	Tomascik
Cain	Huggins	Pelletier	Van Sant
Camardella	Irvis	Popil	Welsh
Casey	Johnson	Powell	Whittum
Clark	Kauffman	Prendergast	Wilcox
Cortese	Keller, J.	Rea	Wilmarth
Cosetti	King	Reynolds	Woodring
Cunningham	Krill	Richter	Woodside
Curran			

NOT VOTING—33

Bashoff	Gouger	Kline	Quiles
Caron	Gray	Lane	Rappaport
Clinger	Harding	Leonard	Rovner
Conley	Himes	Markley	Ruth
Donaldson	Hocker	McGlynn	Shoemaker
Donolow	Horne	Musselman	Stroup
Dumbauld	Hostetler	Pechan	Waldron
Fleming	Keller, M.	Percey	Warman
Gerber			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

GERBER AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment which we have ready is referred to as the Gerber amendment to Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE GERBER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 14), page 10, line 2, by striking out "seventy" and inserting: seventy-two

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Since Delegate Gerber, the sponsor of the amendment is not here, the Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. May I suggest this be postponed until Delegate Gerber returns?

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. We think Delegate Gerber ought to forfeit on this amendment.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti. For what purpose does the gentleman rise?

DELEGATE COSETTI. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE COSETTI. Did we not vote previously affirmatively on age 70?

PRESIDENT BRODERICK. My understanding was that we had no amendment on that, it was part of the proposal.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka. For what purpose does the gentleman rise?

DELEGATE LAPUTKA. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE LAPUTKA. My question was the same as Delegate Cosetti's. I thought we considered this before and are we not under reconsideration?

PRESIDENT BRODERICK. We did not consider the age 70 specifically before. Frankly, I want the Convention to know that this is the last amendment we have to this section.

We have the Barron amendment, which was placed on the table and, if we could, it would be nice to get them out of the way, but I do not want to deprive Delegate Gerber if he wants to speak on it.

MOTION TO PLACE ON TABLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. I do not see Delegate Gerber here. While I am opposed to this amendment, may I suggest as a courtesy to Delegate Gerber that this amendment be placed on the table and give him the right to have it called up when he returns. The Gerber amendment, I think, will be taken care of by another amendment which I intend to propose to the schedule.

This problem is primarily directed to the people who presently sit in court who may not be 70 when their next term arises.

I think the proper place, if the chairman of the committee will agree with me, would be to deal with this entire problem as part of the schedule. This does not relate to an attempt to raise the mandatory retirement age, but attempts to resolve the problem of the people who are now justices. I would ask on that basis it be tabled and be considered at the same time as my amendment to the schedule.

I would ask the Governor and Delegate Amsterdam whether they would consider it in that manner.

DELEGATE SCRANTON. I have no objection. I think Judge Woodside knows better. I think Judge Woodside knows Delegate Gerber meant this to be in the Constitution.

PRESIDENT BRODERICK. Is Delegate Gerber in the vicinity?

DELEGATE MICHENER. I can speak for Delegate Gerber without his knowledge.

Delegate Gerber has a group of very beautiful women from his home district here. He has been very eager to provide them with a luncheon. I was supposed to go to that luncheon, but I begged out because of the debate here. He is in a state of frenzy right now trying to cover his tracks, and he should be excused at this moment.

PRESIDENT BRODERICK. Is there any objection to tabling the Gerber amendment until after lunch?

There does not seem to be any objection, so we will table the Gerber amendment.

DELEGATE BUTERA. I think the record should point out, in view of Delegate Michener's remarks, that Mr. Gerber's wife is with that group of lovely women.

PRESIDENT BRODERICK. The Chair has no comment.

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton. For what purpose does the gentleman rise?

DELEGATE SCRANTON. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SCRANTON. Are there any more amendments to Nos. 13 and 14? They come in at the last gasp and get all mixed up. Has anybody any other amendments forthcoming other than the Gerber amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Is Governor Scranton referring to old No. 14 or new No. 14? The numbers have all been changed. I have amendments to a section formerly numbered 15 and now numbered 14.

DELEGATE SCRANTON. I am referring to the tenure of judges, justices, justices of the peace and to the compensation and retirement of judges, justices and justices of the peace.

DELEGATE SHAPIRO. I think I have no amendments to that.

BARRON AMENDMENT TAKEN FROM TABLE

PRESIDENT BRODERICK. The next amendment we are going to take up is the amendment that we had on the floor a couple of times and it is back on the floor again. That is known as the Barron amendment and I want you to know that it is being reproduced, but in the interest of saving time, with the consent of Delegate Barron, perhaps, he would not mind talking on the amendment and we will have it distributed before anybody votes on it.

The Chair now recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, the reason for the reproduction is that at the behest of counsel in the course of the discussion as to the legal intent here, counsel suggested that we change the language in the second line of the underlined language from "judicial district" to "Provide other than in a statewide court." Frankly, after seeing the words judicial district three times, at least, in that section as it is now amended, I thought that the words "judicial district" were commensurate with the occasion, but I bow in deference to learned counsel.

Let me just briefly review what we are trying to do here and, also, what we are not trying to do. On the appellate level, so far as appointment is concerned, as now adopted in the Kauffman amendment, this proposal of mine does not attempt to upset that in any way whatsoever. It seems to me to be manifestly clear that whether the Senate is in session or not, when there is an appellate court vacancy, it will have to await for final confirmation upon the reconvening of the Senate and the recuring of a two-thirds vote of the Senate on the Governor's appointment. On the district or local court level only, I propose that if the Senate is in session, as is now in Article IV, Section 8, of the Constitution adopted last spring, the Governor must submit during that time before the Senate rises a name and secure two-thirds approval. If he fails to do so and the Senate rises, no appointment.

The alternative is, if the Senate is not in session—this was really my purpose, and the problem I wanted to get at, because I related that if we ever go back to the idea that the Senate and House will rise in April, May or June, it, for particularly one-judge counties, creates a long period of vacancy in an office, and is most difficult to handle. This vacancy, actually, if it occurs two months before an election can create a vacancy for as long as 26 months.

I do know of one occasion where there was a vacancy for 15 months in an adjoining county to mine and the situation was terrible, despite the effort of two very able judges to pinch hit and fill in.

Let me point out that if you will look at the clean copy that is on your desk, on page 6 in Section 11 (b), including Delegate Kauffman's amendment, if the judge is appointed under the provisions that I now hope to insert in the Constitution, and generally, of course, if the city judge fails to file a declaration of intent, there must be an election. By virtue of the Governor's vest pocket appointment, in the event there should be such, this person could not be perpetuated in office merely on a retention ballot.

The language is in the alternative. It says if there is a vacancy in office, or if there is a failure to file a certificate by the district court judge, there must be an election.

If I have left anyone completely mystified, it is unintentional, and I would stand for such interrogation as may be appropriate, Mr. President.

PRESIDENT BRODERICK. Now, does anyone wish to be heard? Delegate O'Donnell.

DELEGATE O'DONNELL. I have had problems with this before, Mr. President, and I would ask Delegate Barron if he would kindly try to clear up some of the things that are bothering me.

I now have in my hand Article IV, Section 8, of the Constitution, at least, as it is reproduced in 1967, and in it it would indicate that if there is a vacancy in a judicial office—in a judicial office, of course, I understand you ex-

cept out "other than in statewide courts"—if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate before their final adjournment a proper person to fill said vacancy.

First of all, may I ask, Delegate Barron, suppose a vacancy occurs two or three days before the Senate shall go into recess, what happens under your proposal?

DELEGATE BARRON. I understand, of course, that there has been no case law on this newly adopted section. My interpretation is that it will be a very unfortunate circumstance, but the Governor will be unable to appoint.

DELEGATE O'DONNELL. Consequently, the office could continue to go vacant indefinitely, is that correct?

DELEGATE BARRON. It could, sir.

DELEGATE O'DONNELL. Let me put another case to you, suppose the Senate were not to recess, or were not scheduled to recess, perhaps, for two or three weeks, would that not mean that the post would have to be filled with phenomenal haste, before, for example, the local bar association, or anyone else, could be consulted on the qualifications of the candidate?

DELEGATE BARRON. This is entirely possible. I would suggest that the filling of the vacancy in this situation is a whole lot better than the present situation as proposed in the language we now have before us in Section 11 (b) where the same situation would have to occur and, if it should have to be filled when the Senate has risen, there could be no filling of the vacancy.

DELEGATE O'DONNELL. Mr. President, again returning to Article IV, Section 8, it would seem to me that it spells out very clearly here that he requires two-thirds of the Senate, that is to say, the Governor requires two-thirds of the Senate, and that is of all of the members of the Senate, to appoint the Secretary of the Commonwealth, the Attorney General, the Superintendent of Public Instruction and certain other persons.

We wander down through Article IV, Section 8, and it says that he shall nominate to the Senate, if the vacancy occurs during their session, a name to be filled. Is there anything in the following language that indicates after he nominates to the Senate a candidate for a judicial office that it requires the two-thirds?

DELEGATE BARRON. I would say that in sub-Section (b) the answer is, no.

However, it is clearly, in my humble judgment, provided in sub-Section (a), because it says in the lines which I have here "of such other officers as may be specified by law, shall be subject to consent of two-thirds of the members elected to the Senate."

Surely, the Constitution is a part of the law, as would be any other office, and it would be required to be filled in such a manner as provided in sub-Section (a) of Section 8, Article IV.

DELEGATE O'DONNELL. So, then, sir, my final question is this:

Under the new rules, as it were, in which the Senate does not really meet just every two years, but is considered to be continuous—and I do not have my finger on that at the moment, but I understand that is one of the effects of one of the recent amendments—when is the Senate out of session specifically under your proposal?

DELEGATE BARRON. Mr. President, my answer to you on this subject is, whether or not the State Senate as a continuing body has, in my humble judgment, not been settled by law. In the event that it is a continuing body and that such law is satisfied, so long as its continuance is in existence and it is in session—note the emphasis on the word session—the situation would apply as mandated here, and that would require the two-thirds consent of the Senate, in addition.

If, on the other hand, the law as is, as it has been heretofore in my humble judgment, that when the Senate or House rise their life expires at that time, it would permit the interim appointment.

DELEGATE O'DONNELL. Mr. President, I have one final question, if I may.

There is no doubt in the gentleman's mind, I do not think, or much doubt in anyone else's, that the Senate hereafter will be in session most of the year every year, is that not correct?

DELEGATE BARRON. My crystal ball is cloudy. Let us face it. We have seen a most difficult situation this past year and the past several years. Certainly I am optimistic enough to hope for some improvement as to the length of time consumed. However, I am satisfied, in any event, that we have provided with reasonable security to all persons' interest a good method of filling interim appointments by this proposal.

DELEGATE O'DONNELL. Well, Mr. President, my problem recurs and that is this:

If the Senate is going to be in session, and I think it will be in session most of the time, does it not then create the odd situation in which a vacancy which occurs while they are in recess, but which would be filliable while they are in session, is treated in a special category, whereas all other vacancies in judicial office require two-thirds of the Senate?

Your proposal would require none at all, is that correct?

DELEGATE BARRON. For an interim appointment when the Senate is not in session, your answer is exactly correct.

However, may I point out to you this marked difference, the alternative is in the appellate courts. There we have now adopted this morning a situation where there will be an initial appointment by the Governor to be confirmed by two-thirds of the Senate. I do not provide for any interim ideas in this area, because I feel that none are necessary.

My reasons are these, I think it would be ludicrous to have the Governor propose what I would call a vest pocket or interim appointment, have the Senate come back and refuse his appointee.

I further point out that the likelihood of more than two vacancies occurring at any one time is, in my judgment, extremely remote, and the usual situation will be there will be only one. Five judges or six judges, have in the past and can in the future, carry on the work of the appellate courts.

DELEGATE O'DONNELL. My question was, and I will put it more directly, your entire amendment is pegged on when the vacancy occurs, not when the appointment is made, is that not correct?

DELEGATE BARRON. Yes, sir, that is right, because the use of the timing of the appointment has been subject to some criticism in the past.

DELEGATE O'DONNELL. All right.

DELEGATE BARRON. I think that the fact should not be debatable in any way that when a judge dies a

vacancy occurs, when a judge resigns, a vacancy occurs, and when he is retired, or whenever he may be disqualified under the provisions we are about to come to, the vacancy occurs as of a given day.

DELEGATE O'DONNELL. Then, if a vacancy should occur in any judicial office on January 1, 1969, let us say, when the Senate does not happen to be in session that day, but they are in session the following day, that would give the Governor the privilege to go ahead and make the appointment to fill the vacancy that occurred on January 1st without consulting the Senate at all?

DELEGATE BARRON. As I understand this, Mr. President, you are confusing recess and the end of a session. A session continues, as the sessions of this Convention have continued from day to day, to day to day, and we have recessed overnight, very shortly overnight on recent days, but, nonetheless, we have been in recess. We have, however, in my humble judgment, and I believe it is the opinion of counsel, been in continuous session since December 1, 1967, and presumptively will be as such until February 29, 1968.

DELEGATE O'DONNELL. Would it then follow that the Senate by simply, instead of adjourning altogether, by recessing for a period of a month or six weeks could then defeat the purpose of your amendment?

DELEGATE BARRON. Yes, it would, as it does today.

DELEGATE SCRANTON. Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. After that interlocutory intermission, I think everybody is utterly confused at this point, at least, a number of the people around here are. I would like to try, with Delegate Barron, to straighten this out. My understanding is it is a very simple thing, really.

With the result of the Kauffman amendment, the whole committee's thinking concerning this particular issue no longer pertains and, therefore, it is up in the air to do with it as you wish. Under the Kauffman amendment the statewide judges would be selected by the Governor, confirmed by two-thirds of the Senate, and that is it.

Consequently, it seems very clear to me that there should not be an interim appointment of statewide judges under those circumstances, because, obviously, you want the Senate to have their two-thirds, and this is proper under that kind of an arrangement, and Delegate Barron's statement does not change that at all.

What it does do—you can interrupt me, Dave, if I am wrong—it gives the Governor an interim appointment on local judicial district judges in the event that the Senate adjourns in a given year.

It is true that in this last year, and recently, they have been in session for a considerable length of time, but, heaven only knows, in the next hundred years I sincerely hope they will change that system, as they have in New York State, which is a state that has just as much business for the legislature as we do here in Pennsylvania. They normally have their sessions over in New York, because they do all their committee work ahead of time, by the middle of May. If this were to occur, you would have a long period of time without a judge in a judicial district.

I say openly to you, I think this proposal of Delegate Barron's, in view of the Kauffman amendment and in view of what you now have decided, is very much in order.

I sincerely hope you will support it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I would like to interrogate Delegate Barron, please.

PRESIDENT BRODERICK. He will stand for interrogation. You may proceed.

DELEGATE SHAPIRO. Mr. President, is the Senate in recess at present?

DELEGATE BARRON. I am not aware of the Senate's affairs. I have been kept busy enough in this Convention.

PRESIDENT BRODERICK. I do not think he heard your question. You had better repeat it.

DELEGATE SHAPIRO. I am informed that the Senate is presently in recess, reliably informed, and I, therefore, ask you, if during this period while the Senate is in recess a vacancy occurs in a judicial office, in a judicial district office, the Governor could then appoint to fill that vacancy without any consent from the Senate, is that correct?

DELEGATE BARRON. You are asking me a question of technical expertise, which I frankly do not have at my command.

My entire thrust in this endeavor was to follow the law as it has existed heretofore and has just recently been redrafted and rephrased. Should you wish an inquiry of that nature, consult someone with the expertise required on this subject. I cannot give you the answer to that.

DELEGATE SHAPIRO. Let us assume for the moment that the answer to my question is, yes, that the Governor can appoint. The question I was leading up to is, how long does that appointment last?

DELEGATE BARRON. As it is now provided, the appointee shall be elected to the office on the next election day. If it would happen today, in 1968, the term would terminate, and I believe judge's terms terminate on the first day of January of an even year, and the election for the office would be held in the municipal year of 1969.

DELEGATE SHAPIRO. As I understand Section 8, it reads, he may during the recess of the Senate, fill vacancies happening in offices to which he appoints by granting commissions expiring at the end of its session. Would not such a judge's commission expire at the end of the Senate session?

DELEGATE BARRON. Just be careful, you laid as a predicate the suggestion which I took from you to be law in an area I frankly did not know, and that was, I assumed that you considered the present session of the Senate in recess, a period wherein there could be an interim appointment, and, of course, this is not the suggestion that you are now making in response.

DELEGATE SHAPIRO. It is my understanding that the Senate is presently in recess. I got that understanding from Senator Van Sant, who says it is in recess.

If it is in recess and an appointment is currently made—and let us not tie my question to Senator Van Sant's answer—if an appointment is made while the Senate is not in session, while the Senate is in recess—I am reading the language of Section 8 (b) of Article IV, it says "During the recess of the Senate the Governor may fill vacancies happening in offices to which he appoints by granting commissions expiring at the end of the session."

Is that applicable here? Is that language applicable to this situation under your amendment?

DELEGATE BARRON. I, frankly, think you have two things confused. I think that is the reason for your suggestion about recess. As I understand it, the session still has life but has not risen without a day. Consequently, it is my personal judgment, but I do not suggest this as an opinion on the law, that at this moment the Governor could not make an interim appointment. I may be utterly in error, but I do not believe I am. I believe, to the contrary, that you are in error.

DELEGATE SHAPIRO. Let me take another illustration.

After the session adjourns this year for the year, if a vacancy then occurs and the Governor makes an appointment, how long would the appointee hold office?

DELEGATE HOOK. While this discussion is going on, is a motion for recess until 2:15 in order so that these two men can get together and compare their facts?

PRESIDENT BRODERICK. I think a motion for recess is in order.

DELEGATE SHAPIRO. I withdraw that question.

I have one other question to ask Delegate Barron, which is not a difficult question of law.

Delegate Barron has stated, in answer to a prior question, that he did not include statewide courts in this amendment because he felt the work of a court of seven judges would not be hampered by a vacancy of limited duration which gave the court only six judges. May I ask Delegate Barron whether he would amend his motion so that it does not apply to courts which have seven or more judges?

I should like to point out in support of this that I think his principal concern is with the counties or judicial districts that have a limited number of judges. I think he is overlooking the effect this would have, particularly in Philadelphia, where an interim appointment is given and has the effect, by reason of bar association practices, of virtually assuring the appointee's reelection even though he has not been confirmed by two-thirds of the Senate. There is no distinction in Philadelphia, as I understand it, in the bar's treatment of a judge who has been appointed to office without the confirmation of the Senate. There is no difference in that situation from the one in which he has been confirmed by two-thirds of the Senate. Therefore, I ask Delegate Barron whether he would limit his amendment to courts which have seven or less judges.

DELEGATE BARRON. I have not given your problem sufficient study at this time. I am frankly interested in providing a general concept, and at this particular moment I cannot accept your amendment. I certainly would be happy to consider it and discuss the problem with you further.

ANNOUNCEMENT BY THE CHAIR

PRESIDENT BRODERICK. Before you leave, the Chair wants to make this request:

This afternoon we are going to consider Sections 15 and 16 of the judiciary article and anyone that has an amendment in connection with Sections 15 and 16, I request you, sincerely, to bring it forward, because we have asked the staff to stay so those amendments can be prepared and so that we can proceed to terminate discussion on the amendment process in connection with the Judiciary Article this afternoon.

COMMITTEE MEETING

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Style and Drafting has a meeting at lunch. They should have an opportunity to be a bit longer, so that is why I make the motion for 2:15 p.m.

RECESS

PRESIDENT BRODERICK. The Chair has heard two motions for a recess. Unless there is objection, we will recess until 2:15 p.m.

The Chair hears none, and the Convention is now in recess until 2:15 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

WIFE OF DELEGATE GERBER AND GROUP OF FRIENDS FROM PLYMOUTH TOWNSHIP WELCOMED

PRESIDENT BRODERICK. Mrs. Gerber is now present and I am going to ask her to stand so the delegates can give her a warm, cordial welcome.

With her are a group of friends from Plymouth Township, which I can tell you is the garden spot of Pennsylvania. Will you stand up and we will give all those ladies a cordial welcome.

Before we return to the amendment under discussion before we left for lunch, I would like to call on Delegate Gerber for a statement in connection with his amendment.

GERBER AMENDMENT WITHDRAWN

DELEGATE GERBER. Mr. President, pursuant to the amendment that was drafted with my signature, I have had an opportunity to review the issue to which I had addressed myself there, which was to be able to avoid doing any injustice to the incumbents of our present appellate court, with particularity to the Superior Court of Pennsylvania.

I have been advised that this problem could more easily, and more properly, be achieved in the schedule rather than freezing certain language in the Constitution itself.

Therefore, Mr. President, I ask permission to withdraw the amendment at this time and proceed on that issue at the time of the schedule, in order that we do not do any inequity to our incumbents in the Superior Court.

PRESIDENT BRODERICK. Therefore, we can consider the amendment withdrawn?

DELEGATE GERBER. Yes, Mr. President.

BARRON AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. Before the luncheon recess, we had under discussion the Barron amendment. I suppose we should continue discussing the Barron amendment, and I now recognize a man standing right at that same place before lunch, Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I wonder if the proponent would take time out. I realize he is all-knowing, but it would be appropriate if he would again read the last sentence in Section 8, sub-Section (b), Article IV, of the present Constitution which relates to the situation of a vacancy in elective office.

I am in favor of this amendment provided the proponent will take a little time and explain it.

DELEGATE BARRON. I would be happy to, Mr. President.

The last sentence of sub-Section (b) of Section 8, Article IV, of the Constitution, as amended May 16, 1967, provides as follows:

"In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office, unless the vacancy happens within two calendar months immediately preceding the election day, in which case the election shall be held on the second succeeding election day appropriate to the office."

PRESIDENT BRODERICK. The Chair recognizes Delegate Scott.

DELEGATE SCOTT. Mr. President, may I have the privilege of interrogating Delegate Barron?

PRESIDENT BRODERICK. He will stand for interrogation. You may proceed.

DELEGATE SCOTT. Delegate Barron, does this apply to local courts only? I think this should be clarified for some of the delegates who do not understand it clearly.

DELEGATE BARRON. Yes, sir. Every intent I made in this direction this morning and now this afternoon is meant toward that, and only that.

DELEGATE SCOTT. If the Senate failed to act on this appointment, would this postpone this interim appointment for approximately three months to 28 months or to the next municipal election under 11 (b)? Am I correct in thinking this?

DELEGATE BARRON. If the vacancy occurs while the Senate is in session, the answer is, yes. If the vacancy occurs when the Senate is not in session—and I am now as a result of some homework prepared to define that—the answer is, no.

DELEGATE SCOTT. This seat could be vacant anywhere from three to 28 months, in other words, is that correct?

DELEGATE BARRON. 28 is a little long. My own calculation is, because it is pinned down to two months ahead of election, that it would be up to 26½ months.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, it is my impression that there is now being prepared an amendment to this amendment to limit the application of this to those jurisdictions to which the problem is real, that is to say, in those jurisdictions in which there are five or fewer judges. I ask that that amendment to the amendment be distributed before action is taken on the amendment proper.

PRESIDENT BRODERICK. I understand your impression is probably correct, that there is an amendment to the amendment being prepared. The Chair has not received it or seen it as yet.

The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. Chairman, are we going to await the presentation of the amendment to the amendment? If so, I will refrain from speaking at this time.

PRESIDENT BRODERICK. As far as the Chair is concerned, the Chair would like to urge you to continue your discussion on this so we will not lose any time, because, if I may say at this time, this morning I suggested that we go to lunch at approximately between 12:30 and 2:00 p.m., and I also suggested that we have a recess for dinner at about 5:30 p.m. I have had many, many delegates come up to me and say that because of a dinner that had been scheduled this evening, they would prefer to work until around 7:00 o'clock and then recess for the day.

Frankly, this is something that is entirely up to the delegates. I only say, if we move on and accomplish our work by that time, we are that much further ahead of the game. So we will just work along to see how far we can get, and then it will be up to you to make a decision.

The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Is the answer to my question "yes" or "no?" Are we proceeding with this amendment, or will we wait for the amendment to the amendment to come out?

PRESIDENT BRODERICK. We are proceeding with this amendment, unless I hear to the contrary.

DELEGATE SHAPIRO. If we are proceeding with this amendment, I would like to speak against the amendment.

I am sure Delegate Barron's county, and other counties, have a problem that needs a solution. On the other hand, the same problem does not exist in many other counties and the solution which he proposes for all counties would work an injustice in some of the larger counties. In those counties in which the number of judges is—for example, as in Pittsburgh and Philadelphia—so numerous that the loss of one judge is not quite so serious, we already have other provisions of the Judicial Article. Under the new unification of the courts, it would be permissible and possible for the judges of the Supreme Court or the administrative judges to assign other judges into the courts and relieve that problem to some extent.

But what happens if we pass Delegate Barron's amendment is that it is entirely possible for the Governor to make appointments for vacancies that occur—I do not know whether the term used is recess, or adjournment, whatever it is, but it is possible for the Governor to make appointments under certain circumstances without any consent or advice from the Senate. It seems to me this body has voted overwhelmingly several times to add a two-thirds consent of the Senate to any appointive power on the part of the Governor with respect to judges.

In Philadelphia other provisions of this article of the Judiciary Committee's proposal will provide for the selection of a large number of judges for Philadelphia to take office on the effective date of this constitutional revision. It certainly is possible under those circumstances for those appointments to be made by the Governor without the consent of the Senate. In Philadelphia it has been our experience that once judges are appointed to the bench, if they hold office for a few months, the Bar seems to treat them in the same category as if they had held office for many years and treat them as sitting judges if they pass a plebiscite among lawyers. I think the evil to be done in Philadelphia and some of the other counties where

there is no such need far exceeds the advantage that is to be gained from the smaller counties.

If the amendment I heard about is to be prepared and if it would take Philadelphia and some of the other larger judicial districts out of this amendment, or make them unaffected by this amendment, then, certainly, I would be for the amendment, but as it presently stands, I must urge all of you to vote against this amendment.

PRESIDENT BRODERICK. Does anyone else wish to be heard?

The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Mr. President, I should like the opportunity to interrogate the proposer, Delegate Barron.

PRESIDENT BRODERICK. I am sure he will stand for interrogation. He has not disappointed us yet.

DELEGATE MANDERINO. Mr. President, as a result of the homework you did, may I ask, in Section (b) of Article IV what does "recess" mean and what does "until the end of the session" mean? Is it that the qualification is good until the end of the session?

DELEGATE BARRON. Let me answer the latter first, if I may.

The qualification "until the end of the session" means a situation where there are officers who are commissioned on that basis. I realize in discussing it this morning I may have lent some confusion unnecessarily. That does not apply to judges.

DELEGATE MANDERINO. What does "recess of the Senate" mean?

DELEGATE BARRON. May I say, Delegate Manderino, in deference to your position as Dean of the distinguished Duquesne Law School, I have carefully refrained from stating my opinion as a lawyer as compared with my advocacy as a delegate on a proposal, but I will drop that now and say that it is my legal conclusion that when the Senate goes into session it may recess from day to day and adjourn at the end of the day to a day. Until it adjourns sine die, it is in session and the Governor may not appoint during such period of time without the approval of two-thirds of the Senate. When the Senate adjourns sine die, the interim appointment situation comes into play.

DELEGATE MANDERINO. In other words, if the Senate were to take a week off, that is not a recess because they have not adjourned sine die?

DELEGATE BARRON. Yes, it is a recess, but it is not the end of a session until they adjourn sine die. During such recess the Governor may not appoint someone without the two-thirds vote of the Senate.

DELEGATE MANDERINO. I am still confused. This article does state, does it not, that appointments can be made during recess of the Senate and, if a recess is going home for a week, would there not be a recess?

DELEGATE BARRON. It is my informed opinion that the recess, as stated in the Constitution, refers to total and complete recess following adjournment sine die. There is case law—no citations of which I can give you here—to that point.

DELEGATE MANDERINO. Assuming that "recess" means only that period which follows adjournment sine die, is that correct?

DELEGATE BARRON. Yes.

DELEGATE MANDERINO. If that is so, another amendment to the Constitution, Article II, last year—

DELEGATE BARRON. Section 4.

DELEGATE MANDERINO. Yes, Section 4, stated that the General Assembly would be a continuing body during the entire term for which the Representatives and Senators are elected. Can there be such a thing as adjournment sine die if the Senate is a continuing body for the entire four-year term?

DELEGATE BARRON. Yes. In my professional opinion, and also as a delegate here, Delegate Manderino, I suggest if you continue reading Article II, Section 4, as it is now amended, it provides that the Legislature may be called into special session by the Governor on address of its members if he believes the public policy requires such. I suggest to you that it is my understanding—and I believe that it is sound—that the body is continuing for a period of two years during the term of the representatives. This means that in the first year of the term, an odd year, if there is legislation pending, it will be carried over to the even year, but in the even year, such legislation cannot be extended beyond that. However, the continuing body concept does not relate to the concept of continuing session. If this was the intent, there would be no reason whatsoever of providing in the same section for the Governor to call a special session as distinguished from a general session, convened, I believe, the first or second Tuesday of January.

DELEGATE MANDERINO. With that interpretation, might I ask this, if the Senate were in recess, as it has been defined, and there was a judicial vacancy, could not the Governor call the Senate back to Harrisburg to confirm his appointment?

DELEGATE BARRON. Yes.

DELEGATE MANDERINO. In other words, even under the present Constitution without this amendment there need not be any interim period without a judge. Once the Governor has made up his mind on the appointment, he could call the Senate back into session for one day to approve that appointment, could he not?

DELEGATE BARRON. He could. The wisdom of doing such a thing is questionable in my judgment, but that is a matter of debate.

JUDGE LEE F. SWOPE WELCOMED

PRESIDENT BRODERICK. I would like you to yield for just a second in order that the Chair may introduce what I consider a special guest, because he has two reasons to be introduced.

One, he just happens to be the President Judge of Orphans' Court of Dauphin County, and more than happenstance that he is, also, the son of our distinguished Delegate Swope, so I am going to ask Judge Swope if he would stand up and be recognized so that we can give him our warm cordial greeting.

I want you to know that we are very, very proud of your dad. He is doing a great job, and we are happy that he is with us.

BANES AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, I should like to offer an amendment to the Barron amendment here on the floor.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Barron to Committee Proposal No. 7?

DELEGATE BANES offered the following amendment to the amendment offered by Delegate Barron:

Amend page 1, line 6 of the amendments, by adding after "Statewide court,": in a judicial district having less than five judges,

On the question,

Will the Convention agree to the amendment to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. The dialogue which we just heard between Delegate Barron and Delegate Manderino points out the serious problems which are involved in the proposed Barron amendment. I am sure all of us appreciate the difficulties which our small counties have in the event there is a vacancy in the office of judge. The effect of the Barron amendment would be that if the Legislature was not in session it would circumvent completely the Kauffman amendment, which was adopted this morning by this body.

I should, therefore, like to offer an amendment at this time which would limit the effect of the Barron amendment to a judicial district having less than five judges.

PRESIDENT BRODERICK. In accordance with our procedures, we have to confine our discussion to the amendment to the amendment, in other words, to the Banes amendment to the Barron amendment, and we will vote on the Banes amendment first.

Now, is there anybody that wants to be heard either pro or con on the Banes amendment?

DELEGATE BLOOM. The only thing I want to say after listening to all the complicated arguments in connection with this amendment, it seems to me if you have a unified system such as we hope to have at the end of this Convention to offer to the people, that situation can be taken care of, because a neighboring judge, or a judge from some other district, can be sent in there at any time to take care of that particular situation. I think that we are just adding a lot of verbiage to the Constitution that need not be, and I am going to ask for the question.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. I understand what you are saying is that you want to close the debate and move the question in connection with the amendment to the amendment, which is the one under consideration?

DELEGATE BLOOM. That is right, Mr. President.

DELEGATE CROOP. Second the motion.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. I believe that Delegate Bloom's observations are germane, indeed, to the amendment as a whole, but clearly not germane to the Banes amendment.

PRESIDENT BRODERICK. He has made a motion and it has been seconded by Delegate Croop.

On the question,

Will the Convention agree to the motion?

It was agreed to.

On the question recurring,

Will the Convention agree to the amendment being offered by Delegate Banes?

The roll was recorded as follows:

YEAS—49

Amsterdam	Croop	Kelly	Scott
Aurentz	Dailey	King	Shapiro
Baldrige	Dumbauld	Kline	Shettig
Baldus	Fagan	Mattioni	Shively
Baldwin	Fay	Michael	Shoemaker
Banes	Fineman	Miller, D.	Shrager
Barry	Gerber	O'Donnell	Silverman
Brennan	Heyburn	Orban	Solomon
Brown	Hostetter	Prendergast	Sprogell
Bunting	Huggins	Rappaport	Swope
Camardella	Jirolanio	Redick	Tate
Caputo	Johnson	Scarlett	Woodring
Cosetti			

NAYS—80

Aberman	Feather	Leach	Reynolds
Allison	Filson	Lee, L.	Richter
Benedict	Fohl	Leinbach	Sahli
Benfield	Gabreski	Leonard	Scales
Bloom	Gehrlein	Levin	Scranton
Braham	Goldman	Manderino	Sebastian
Broderick	Goldstein	Mangery	Sharp
Burkholder	Gouger	Markley	Stout
Butera	Griffith	McGlynn	Stroup
Cain	Hannum	Meyer	Thomson
Casey	Harding	Michener	Thornburgh
Clark	Hatter	Moorhead	Tomascik
Clinger	Henderson	More	Van Sant
Corey	Himes	Morton	Waldron
Cortese	Hocker	Orbin	Welsh
Cunningham	Hook	Otto	Westerberg
Desmond	Kauffman	Pasquerilla	Whittum
Devlin	Keller, J.	Popil	Wilcox
Erwin	Krill	Pott	Wilmarth
Fawcett	Laputka	Powell	Woodside

NOT VOTING—34

Bagenstose	Forster	McGeary	Quiles
Barron	Fortney	Miller, R.	Rea
Bashoff	Fleming	Murray	Roberts
Buck	Gray	Musselman	Rovner
Caron	Horne	Nelson	Ruth
Conley	Irvis	Pechan	Strickler
Curran	Keller, M.	Pelletier	Tully
Donaldson	Lane	Percey	Warman
Donolow	Lee, K.		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment to the amendment was not agreed to.

BARRON AMENDMENT

PRESIDENT BRODERICK. We are now ready for the question on the Barron amendment.

MOTION

DELEGATE BLOOM. I move we close debate on the Barron amendment and put the pending question on the Barron amendment to a vote.

DELEGATE CROOP. Second the motion.

PRESIDENT BRODERICK. It has been moved by Delegate Bloom, seconded again by Delegate Croop, that we close debate on the Barron amendment and put the pending question on the Barron amendment to a vote.

On the question,
Will the Convention agree to the motion?
It was agreed to.

PRESIDENT BRODERICK. The question before the House is will the Convention agree to the Barron amendment?

On the question recurring,
Will the Convention agree to the Barron amendment?

The roll was recorded as follows:

YEAS—68

Baldrige	Fagan	Lee, L.	Scott
Baldwin	Feather	Leonard	Scranton
Barron	Fohl	Levin	Sebastian
Benedict	Goldstein	Mangery	Shettig
Benfield	Griffith	Markley	Shively
Broderick	Hannum	McGeary	Shoemaker
Butera	Harding	Meyer	Solomon
Cain	Hatter	More	Stroup
Corey	Heyburn	Morton	Thomson
Cortese	Hines	Otto	Van Sant
Croop	Hostetler	Pasquerilla	Waldron
Cunningham	Kauffman	Pott	Westerberg
Curran	Keller, J.	Powell	Whittum
Dailey	Kelly	Rappaport	Wilcox
Desmond	King	Rea	Wilmarth
Devlin	Krill	Reynolds	Woodring
Erwin	Leach	Richter	Woodside

NAYS—65

Aberman	Clinger	Jirolanio	Popil
Allison	Cosetti	Johnson	Prendergast
Amsterdam	Dumbauld	Kline	Roberts
Aurentz	Fawcett	Laputka	Sahli
Baldus	Fay	Leinbach	Scales
Banes	Filson	Manderino	Scarlett
Barry	Fineman	Mattioni	Shapiro
Bloom	Gabreski	McGlynn	Sharp
Braham	Gehrlein	Michael	Shrager
Brennan	Gerber	Michener	Sprogell
Brown	Goldman	Miller, D.	Stout
Bunting	Gouger	Moorhead	Swope
Burkholder	Henderson	Murray	Tate
Camardella	Hocker	O'Donnell	Thornburgh
Caputo	Hook	Orban	Tomasclk
Casey	Huggins	Orbin	Welsh
Clark			

NOT VOTING—30

Bagenstose	Forster	Miller, R.	Redick
Bashoff	Fortney	Musselman	Rovner
Buck	Gray	Nelson	Ruth
Caron	Horne	Pechan	Silverman
Conley	Irvis	Pelletier	Strickler
Donaldson	Keller, M.	Percey	Tully
Donolow	Lane	Quiles	Warman
Fleming	Lee, K.		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

WOODSIDE AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the last maneuver was so successful that I think we will try it again. Unless there are questions with regard to the articles under discussion, we will simply invite those that have amendments to put them in at this time.

PRESIDENT BRODERICK. I agree with everything the Chairman has stated except the term "maneuver." We are ready for the first amendment and that is the amendment offered by Delegate Woodside.

On the question recurring,
Will the Convention agree to the amendment offered by Delegate Woodside to Committee Proposal No. 7?

DELEGATE WOODSIDE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 15), page 10, line 26, by inserting after "salary": and expenses

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, this is a correction of language more than anything else. There is a reference on line 25 of page 10, "no justice, judge or justice of the peace shall be paid or accept for the performance of any judicial duty or for any service connected with his office, any fee, emolument or perquisite other than the salary provided by law."

There have been cases that have held that expenses are emoluments or perquisites. There are also cases which hold the other way.

Inasmuch as expenses may be considered emoluments and perquisites, certainly it was not the intent of the committee to cover expenses as part of the emoluments and perquisites, it seems clear the word "salary" should have added to it "and expenses," because there are many occasions where expenses of judges traveling in other districts are provided by law, and they, of course, should be permitted and paid. That is the purpose of it. It is very simple, it is nothing important.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran, who is representing the committee.

DELEGATE CURRAN. Mr. President, we would refer to Judge Woodside's past experience with expenses, and agree to this particular amendment as satisfactory.

The question recurs,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—125

Aberman	Devlin	Laputka	Richter
Allison	Dumbauld	Leach	Roberts
Aurentz	Erwin	Lee, L.	Sahli
Baldus	Fagan	Leinbach	Scales
Baldrige	Fawcett	Leonard	Scarlett
Baldwin	Fay	Levin	Scott
Banes	Feather	Manderino	Scranton
Barron	Filson	Mangery	Sebastian
Barry	Fineman	Markley	Shapiro
Benedict	Fohl	Mattioni	Sharp
Benfield	Gabreski	McGeary	Shettig
Bloom	Gehrlein	McGlynn	Shively
Braham	Gerber	Meyer	Shoemaker
Brennan	Goldman	Michael	Shrager
Broderick	Goldstein	Michener	Silverman
Brown	Gouger	Miller, D.	Solomon
Bunting	Griffith	Moorhead	Stroup
Burkholder	Hannum	More	Swope
Butera	Harding	Morton	Tate
Cain	Hatter	Murray	Thomson
Camardella	Henderson	Orban	Thornburgh
Caputo	Heyburn	Orbin	Tomasclk
Casey	Hocker	Otto	Van Sant
Clark	Hook	Pasquerilla	Waldron
Corey	Hostetler	Popil	Welsh
Cortese	Huggins	Pott	Westerberg
Cosetti	Johnson	Powell	Whittum
Croop	Kauffman	Prendergast	Wilcox
Cunningham	Keller, J.	Rea	Wilmarth
Curran	Kelly	Redick	Woodring
Dailey	Krill	Reynolds	Woodside
Desmond			

NAYS—0

NOT VOTING—38

Amsterdam	Forster	Lane	Quiles
Bagenstose	Fortney	Lee, K.	Rappaport
Bashoff	Gray	Miller, R.	Rovner
Buck	Himes	Musselman	Ruth
Caron	Horne	Nelson	Sprogell
Clinger	Irvis	O'Donnell	Stout
Conley	Jirolanio	Pechan	Strickler
Donaldson	Keller, M.	Pelletier	Tully
Donolow	King	Percey	Warman
Fleming	Kline		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

BURKHOLDER AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Burkholder.

DELEGATE BURKHOLDER. I also have an amendment to the proposal, Mr. President.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE BURKHOLDER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 15), page 10, line 23, by striking out "or" and inserting a comma

Amend Sec. 1 (Sec. 15), page 10, line 23, by inserting after "peace": or any officer serving process or enforcing orders, judgments or decrees of any court or justice of the peace

Amend Sec. 1 (Sec. 15), page 10, line 25, by inserting after "office,": or employment,

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus in connection with what we are referring to as the Burkholder amendment.

DELEGATE BALDUS. Mr. President, the purpose of this amendment is to broaden the scope and protections provided by Section 15 (c). This is in line with the amendment adopted by this body several days ago, the O'Donnell amendment, which was an amendment to Section 17 under judicial administration which included within the scope in the authority of the Supreme Court's administration and control, constables.

Section 15(c) states, "No justice, judge or justice of the peace shall be paid or accept for the performance of any duty or for any service connected with his office, any fee, emolument or perquisite other than the salary provided by law."

That is, all judges and squires must be paid salaries.

The purpose of this amendment is to expand the coverage of this requirement to include other important participants in the judicial process, particularly at the lower levels, that is, the man who serves the papers, the processes that are issued by the squires and, also, the men who execute on the judgments and enforce the orders of the squires. These constables are not constitutional officers, they are established by legislation and, in the same way the squires today are paid by fees, these men as well are paid by fees.

It is the purpose of this amendment to include the prohibition on fees to these individuals, because the way the situation now stands under the proposal it is unlawful to pay fees to squires, but the constables are permitted to be paid fees.

You may ask, why does this create a problem? The problem is that there are potentials for abuse and I will point to two of these potentials. One is, the difficulty with the fee is that the man will perform his judicial duty not because he believes that it is proper to do it, but to obtain the fee.

If you permit one person to remain in the minor judicial process who will benefit from the amount of business he gets, then you create the dangers we have in the present fee system. Furthermore, particularly with underprivileged people and people who cannot comprehend, the fee system is a potential for abuse, overcharging and mischarging. This amendment would upgrade the constables of our Commonwealth. It would require that the Legislature enact a salary for them and give them the same dignity and stature that we are attempting in this proposal to give to the entire minor judiciary. There is, I believe, widespread support for the reforms we are adopting for the minor judiciary to extend throughout the minor judiciary and to include the constables.

I believe this proposal, which would prohibit the payment of fees to any officer serving process or enforcing orders, judgments or decrees of any court, would accomplish that end. It does not abolish the constables, it increases their stature, and I ask for your support for this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. I will yield to Delegate Reynolds.

DELEGATE REYNOLDS. Mr. President, this was brought up in our Judiciary Committee at a late date, and it was suggested that we handle it directly on the floor by the co-chairman of the Committee, and that is why it is here now.

I am very much of the opinion, if we do not help to upgrade the constables, we are leaving a big hole in the gap so far as this Judiciary Article is concerned.

My experience of six years as a magistrate was that most of the criticism that was brought on the magisterial system was because of a few bad constables, and they were mainly made bad by the fees they were getting.

I am of the opinion, if these fees were paid directly into the state government, or the county government, or whatever place it should go, and they collect a salary commensurate with the work that they are doing, it will raise the standards of the constable and will do the entire jurisdiction of Pennsylvania great good. I do not take it that this is any reflection on the constables. I just think it is a bad system. If we are going to do away with the fee system, let us do away with it altogether and lift everybody up on a high standard.

Pennsylvania needs this branch to be lifted up, and I believe the constables will certainly share and fare better under this.

So I ask that we vote for this amendment to help again raise the standards of the judiciary in the State of Pennsylvania.

PRESIDENT BRODERICK. The Chair will recognize Delegate Tate.

DELEGATE TATE. Mr. President, this subject was brought to my attention some weeks ago. I was disappointed to find out when the Judiciary Committee reported, that it, apparently, had not included something on this subject in its proposal, and I hope it was just an oversight that might be corrected here now.

In Philadelphia and, perhaps, other parts of the State this situation has long needed correction. It is only within recent years, after some investigations we had in Philadelphia and with the greatly increased interest, much of it brought about by civic agencies and anti-poverty groups, that abuses of the constable system have been brought to general public attention.

We do know that we do need to upgrade the constable system, and I think this is one very good way to do it.

If I just might quote from an editorial which appeared in last evening's Bulletin on this very subject, quite timely and, coincidentally, I think, it might put in perspective what the situation is, at least, in Philadelphia and, perhaps, in other parts of the State. It says, "The activities of constables in Philadelphia in recent years make just as dreary reading as the history of the magistrates whose orders the constables execute. Constables serve 'paper'—subpoenas, warrants on scofflaws in traffic cases, eviction notices, they can sell a debtor's property up to the amount owed, all for a fee under a schedule written by the legislature. Some of these elected, quasi-law-enforcement officers ignore the schedule, charging whatever they can collect on the strength of their badges in neighborhoods where debtors and renters don't know their rights, hence are easy prey to threats and exploitation. In a '67 study the Philadelphia Housing Association said that much of this unwitting surrender to exploitation comes from the confusion in the slum-dweller's mind 'between the constable's public role as an attache of the magistrates' courts' in executing eviction notices and 'his private role as the rent collection agent of the landlords . . .' It is this confusion some constables have exploited to collect back rent for landlords, all the while presenting themselves as 'court officers on magistrates' business."

In my opinion, the record indicates that this is a correct assessment, at least, insofar as Philadelphia is concerned, and I hope very strongly that this body will adopt this very, very necessary amendment at this time.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, I do not quarrel with the statement that it is necessary in Philadelphia, or, perhaps, in Allegheny County and in Pittsburgh, or other large urban centers. However, certainly if I were to go home from this Convention with this kind of a penalty put on the taxpayers of the rural counties, I would hate to think whether I could live there. Many of our process servers, many of our constables, are local police officers who are under full salary from the boroughs or municipalities for which they work.

This is given to them as some extra-curricular activities to help raise their salaries as police officers. If we put all of these constables out in the rural area where they may have only one or two tasks a week, or even less, on a salary basis, we certainly would bankrupt the rural counties. They could not pay it, frankly. It is not possible or workable out in the rural counties. I have not talked to any of the delegates from the other rural counties, but I am certain my circumstance is no different than theirs and that this is an impossibility.

As I say, I have no question but what this may be a necessity in the larger urban centers, but certainly out in the rural counties we could not stand from a tax standpoint to pay the cost of these salaries. I speak against the amendment because it is too extensive and too broad. It takes in the entire state. It would be an impossibility for us to handle anything like this.

I do not want to go back to my county with some kind of burden composed of the salary of the constables in my small county, so I urge the defeat of the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, this particular matter I do not recall being discussed—or, at least, at any length—at any of the meetings which I attended in the Judiciary Committee. I would speak to it as it presently exists and would possibly be in favor of it if there was not this tremendous down-grading of the constables per se. Where we come from constables do perform the high office of being a peace officer. They have trouble getting constables, they do not run for the job. In the further discussion of this, if the horrible mess which you have in Philadelphia and the miserable conditions which exist in Allegheny County are not continuously brought to our attention, some of us will have to vote against it. I want to be for this, but I do think you overburden the easement, so to speak.

I know, if this becomes the law, we will have a body of peace officers in this State who will have no express emoluments and who must look to the Legislature. That is all right with me, but, after we leave this particular field of battle, we do not want to be left without our peace officers.

I am hoping that implementing this will be something in the schedule providing for the referral of salaries, perhaps, for our constables to the schedule, so that the Legislature may properly appropriate it. I am opposed to the fee system from top to bottom. I served as a district attorney, and I can tell you that even in those cities where they had a paid police department we depended upon our constables. Our state police—and we do have a major patrol located in our county—would be helpless without the present constabulary force that we have which is raised from among our citizens.

I am not speaking for an archaic system. We have had constables as long as I can remember, but I do think we should have spent a little time on this. I will be in favor of this amendment, but I will ask that the proponents of this amendment do a little more work and tell us before the vote is taken that they have taken care of us in the schedule.

At the same time I would like to say this to the body, much of the evil we talk about does not come from the office of the justice of the peace or the constable, it comes from the misery and the poverty of the people that they deal with. When a man is arrested on Saturday night, he is arrested on Saturday night. It is his miserable poverty that keeps him in jail over the weekend. He just cannot put up bail. If the Lord alone was the justice of the peace or the constable serving the law, he could not be helped very much under our present law.

Now, this is it. This is a misery court, but our constables are peace officers. I feel I can go back to Lawrence County and face a few fine men who serve in that office. We rout out our bad ones, they do not come back a second time to pick the pockets of the poor. That is the function of the lawyer up our way and not the layman constable.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Will Delegate Baldus stand for interrogation?

PRESIDENT BRODERICK. He will stand for interrogation.

DELEGATE J. W. KELLER. Did you and the other signatories to this amendment give any consideration to limiting the number of constables?

DELEGATE BALDUS. No, we did not. We figured this was a proper function for the Legislature, since the constables are presently a legislative office.

DELEGATE J. W. KELLER. Do you have any idea how many constables and deputy constables there are in the Commonwealth?

DELEGATE BALDUS. I believe there are constables elected in the same districts where squires are presently elected, and I believe there are deputy constables appointed by the constables in those districts. There are a great number in the Commonwealth today.

DELEGATE J. W. KELLER. This would be in excess, then, of the 4,500 JPs we have been talking about?

DELEGATE BALDUS. Yes, I believe it is. One of the difficulties in determining a number is that when the size and business of the magisterial districts will depend on the number of constables that will be needed to devote their time exclusively to the service of process and execution of judgments.

DELEGATE J. W. KELLER. Have you given any consideration to what kind of salary you are talking about in your amendment?

DELEGATE BALDUS. We discussed the question of salary and speculated on the possibility of putting that in the schedule, but again we decided, in contrast to the treatment of the squires, which are constitutional officers, it would be better to leave that to the Legislature.

I believe the Legislature, with a better comprehension and understanding of the classes of magisterial districts and the amount of work that would be involved in these jobs, would be more competent to make a determination of the proper and fair salary.

PRESIDENT BRODERICK. The Chair recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, I feel the same concern as was expressed by Delegate Croop. There is a vast number of constables. Some do a very excellent job and many do nothing at all. I do not know why they run for the office, but in my county there are only a few constables who are actually working. I am in favor of the salary system as opposed to the fee system, generally, but it seems to me that until we have some more definite information as to what kind of a burden we are imposing upon either the counties or the Commonwealth this amendment is fraught with a great deal of financial danger.

I oppose the amendment at this time and in this form.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I rise in support of this proposal for numerous reasons. One of the basic reasons is that we came to this Convention to upgrade the judiciary. One of the points that the committee did not consider was this problem of what to do with the constables. In every other area of the Constitution that we discussed on salaries and fees we determined to make everything on a fee basis. I, for one, have faith in the Legislature that they will take care of this matter and they will set the schedule.

I call your attention to the schedule that the Judiciary Committee has presented pertaining to the magisterial districts. They are only recommending for the time being how these JPs are to be paid. Actually, the Legislature itself will have the right to do that. I feel it is a mistake to consider this as a part of our Constitution. This should be put on a salary basis, as I feel it should be, and it is for us to sit down and mess with whether we will pay them one or two thousand dollars a year or what we will pay them. Let us put this up to the Legislature to handle and have faith that they will do it.

The reason I rise for this matter, I know in my county —a small country county—we have problems getting papers served. We have one constable in our whole county that will serve papers, and half the time you cannot find him. If you have a man on a salary, you know he will be there. We do use the sheriff's office in our county continually to serve papers.

At the same time, this is something else that should be discussed, whether or not we want to retain this in the sheriff's office in some of the rural counties rather than as a constable. This was not considered, either, and I do not think I will bring it up on the floor.

I would like to say, let us keep the salary and go along with this proposal and amendment as presented to this body.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I shall speak principally in support of some of the material already advanced. This was first called to our attention in the late days of the deliberations of our commission. I made a preliminary study of it. The first pressure upon us was to abolish the constables. We discovered that they are the general peace officers all over the county and it lies beyond the purview of this Constitutional Convention to change them. The only point at which we could bring the authority of this Convention to bear upon the constables is in cases where they act as servers of process in the judicial establishment.

I need not cover all the matters that were discussed, but there is one feature to which allusion must be made. A community court has been mandated for the City of Philadelphia. It is assumed that there will be commissioners —that is, the servers of process, the adjutants for the court—but there is nothing in the Constitution about that. Presumably, there will be nothing for them to do until the court is established and some functionaries are appointed. In the meantime, service must be made. The same thing is true about the offices of the JP as they are now in operation. If there will only be one-fourth as many, then no one can very well speak at this time as

to what the salary of the remaining JP necessary for the establishment should be.

Furthermore, we must remember that if salaries are fixed they will probably be fixed in connection not only with the services with respect to the judicial establishment, but in the manifold services as peace officers, for example, at the time of election day, and as guardians of public property, and that sort of thing.

It seems to me it is primarily a matter for the Legislature. The only authentic purpose to be served by this amendment, as I see it, is to call the attention of the Legislature to the necessity for overhauling this whole subject and make such provision for constables as may be necessary in view of the changes we have made in the judicial establishment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I would like to interrogate the sponsor.

PRESIDENT BRODERICK. I am sure the sponsor will stand for interrogation.

DELEGATE SHOEMAKER. Delegate Baldus, what effect would this amendment have on the constable and the fee that he receives for attending elections, primary and general, being at the polls?

DELEGATE BALDUS. It would have no effect whatever on his fee received for nonjudicial functions. The sole purpose of this amendment is to eliminate the fee of the constable only when he is in the process of serving a paper and enforcing an order.

DELEGATE SHOEMAKER. Does this amendment portend to place the constable within the framework of the unified judicial system and subject him to the same controls of the Supreme Court as are presently imposed under this article on the justices of the peace?

DELEGATE BALDUS. Yes. It intends to bring within the framework of the unified judicial system, the constable, with respect to his judicial functions only, and this Convention made that decision this week in adopting the O'Donnell amendment to Section 17 of the article.

DELEGATE SHOEMAKER. Then I would speak on the amendment, Mr. President.

It seems to me, Mr. President, that this is the only step necessary, outside of a few name changes, to revert the present system that we have in Pennsylvania to the community court. If that be the intent of this body, let us not play games with ourselves, let us name it the community court. Let us name the justice of the peace community court judge and let us name the constable as the commissioner, or what have you, attendant to that community court.

As far as I can understand, the only differences between the alternate, the community court and what we now have, if this amendment is adopted, would be that, instead of lawyers on the bench and calling them judges in the community court, we can have trained laymen or lawyers on that bench, and we have the name of justice of the peace rather than community court.

I am sure this amendment will have the same effect on the voters as putting community court on the ballot. We might as well go the whole way.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I am questioning this particular amendment because of the possibility of cost. I do not know how many constables there may be at the present time, or how many may be necessary throughout the Commonwealth of Pennsylvania, but if this amendment were adopted it would be necessary for a salary to be given to each constable, and it might run into a considerable sum of money. It might even get as high as what it costs to maintain our State Police.

In addition to that, I listened to a lot of what we have done here, and I am wondering whether the delegates are conscious of the cost of what we are doing in many of these areas.

I would have no opposition to this amendment, which I think has an excellent direction, if it were possible for the constables still to receive their emolument for the services which they render. I rest my case with that comment, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. May I ask the privilege to interrogate the sponsor?

PRESIDENT BRODERICK. He will stand for interrogation. Proceed with your question.

DELEGATE JIROLANIO. Mr. President, in my city the police serve process from the office of the justice of the peace. They serve the warrants and they also serve the complaints. What would happen under that particular set of facts?

DELEGATE BALDUS. I did not get the question, sir, What is that, the police serve the process, is that what you stated?

DELEGATE JIROLANIO. Yes. The policemen of my city, being the peace officers, have the right to serve the warrants, the search warrants and the complaint of the arraignment upon a defendant.

DELEGATE BALDUS. The police officer is salaried, I assume he is, and this amendment would in no way interfere with his present function.

DELEGATE JIROLANIO. Of course, they do that in addition to their line of work.

This is merely a question of inquiry. How about those who engage in process serving? I understand that you do have certain people that do serve process. What happens in that particular case?

DELEGATE BALDUS. Well, certainly, there are attorneys that serve process, and they are not paid for their work. Now, an individual would not be an officer of a court. For example, if an individual were hired by an attorney to serve a complaint of equity on another individual, he would not be considered an officer serving process within the meaning of this amendment.

DELEGATE JIROLANIO. You do say here "of any court or justice of the peace." It is in the alternative, if it be serving an order for the court or if it be serving an order for the justice of the peace. A state policeman in my area also served a lot of the process for the justice of the peace, warrants of arrest, search warrants, and so forth.

DELEGATE BALDUS. Is he paid a fee for that?

DELEGATE JIROLANIO. No, he is not entitled to receive any additional compensation.

DELEGATE BALDUS. Then this amendment, sir, would have no application at all.

DELEGATE JIROLANIO. What would happen if they

would stop serving in the community where you do not have enough constables? Like in my city of almost 82,000 people, we only have approximately two or three constables that are actually doing their work, or able to do their work, because the others are employed and do not have the time to serve process at the time when they should be doing it.

DELEGATE BALDUS. Delegate Jirolanio, I think you misunderstood me.

The amendment being offered would in no way interfere with the present role of the police officer as a process server in your community if he were paid no extra fee for that service.

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I hate to address this assembly on this issue, it has been discussed, but I think there is a salient point that has just not been brought out at all.

Delegate Reynolds properly said that the constables should be paid commensurate with their work. Well, that is the problem. Some work a great deal and some do not, so how is a salary going to achieve that laudable purpose?

Mercer Tate has pointed out that in Philadelphia frequently constables have demanded and gotten sums which were in excess of the fee prescribed by law, and that they have taken advantage of the ignorance and lack of education of those with whom they deal. Will a salary automatically prevent these people from demanding and getting fees in addition to a salary, as they are now demanding and getting fees in addition to the fees? Will the salary automatically keep these people from taking advantage of the ignorance of the people with whom they deal? I suggest to you, sir, that it will absolutely not do any of those things.

The problem with this amendment—and I have gotten a very interesting education at this university here in Harrisburg, I must say that, and the education I have learned is, do not fool around by putting a proposal into a committee and giving them time to think about it for two months, put it in at the last hour and sort of carry it on the general feeling of being in favor of good and against sin.

I am not speaking in favor of sin, but I am speaking in favor of trying to solve a surgical problem with a scalpel instead of a shillalah.

Our Supreme Court has now within its power the right to prescribe rules of practice and procedure and govern the conduct of these people. Let us see if that works. If that does not work, our Legislature has all the authority in the world not only to fix the number of constables, but fix their salaries and duties as well.

Let us approach this problem not on the shotgun-shillalah approach, but on the scalpel approach. I urge the defeat of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, I rise as an individual delegate and not as a member of a committee to remind the delegates that this matter did not come up with discussion in depth at the subcommittee or committee hearings and that, therefore, there is nothing really to report from the committee as a whole about this problem. I urge that you consider the words of Delegate O'Donnell, which I think are very well taken.

There has not been a study of this problem in such depth that we are prepared now to act on it. A constable is not a constitutional officer, at least, he was not until this Convention, at which time we placed him under the control of the Supreme Court and its rule-making powers.

I believe the proposal of Delegate Baldus and Delegate Burkholder is worthy of great consideration, and to take the constables out of the fee system would be a wonderful thing, but we do not know what the financial impact of this will have upon the judicial system of the Commonwealth and it is premature to decide one way or the other. They are still subject to the control of the Supreme Court, they still can be legislated on as far as their judicial functions are concerned by the Legislature.

We are not attempting to interfere with their other nonjudicial functions, but I think this thing should be deferred, left up to the Supreme Court, and its rule-making powers and left up to the Legislature to control it.

PRESIDENT BRODERICK. Are we ready for the question? I think we are.

Delegate Baldus, the sponsor of the amendment would like to close.

DELEGATE BALDUS. Mr. President, I would like to make a few remarks, and one is with respect to the cost. I anticipate the payment of the cost of the constables under this system to be the same as payment of squires, that is, the State Legislature will pay from the general funds the salaries of these men and, if this amendment passes, I will prepare for submission to this body a schedule which will require that the salaries for these men be paid by the State.

Second, with respect to the surgical problem, the surgical problem that the Legislature will face with broad expertise in the areas of constables is no more of a problem than was faced by the Judiciary Committee in reshaping and refashioning the magisterial districts for the minor judiciary in our present article.

I note it was Delegate O'Donnell who was one of the chief surgeons on the job of reshaping the magisterial districts and providing the framework for the new system of minor judges, and I submit that the Legislature has the competence and the ability to do the same job with respect to the constables.

I would also like to point out to the delegates that the prohibition of fees throughout the entire judicial process is one of the major items of reform that has been adopted in a number of states that have recently reformed their judiciary articles, and I believe that this can be handled by the Legislature. This is an important prohibition to place in the Constitution to provide the guidelines for later legislative reform, and I urge the adoption of this amendment.

The question recurs,

Will the Convention agree to the amendment being offered by Delegate Burkholder?

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. For what purpose does the gentleman rise?

DELEGATE SHOEMAKER. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHOEMAKER. Under Rule 19 I would like an explanation for all those not recorded as voting, which was evident before the machine was locked, and to ask for the explanation of those not recorded as voting and have them recorded as voting "no," with the exception, of course, Mr. President, of the three delegates whom I understand from the clerk have been excused formally from this Convention.

PRESIDENT BRODERICK. If there is any delegate who refuses to vote, he shall be deemed and recorded as a negative vote.

Is there any delegate present who has refused to vote?

DELEGATE SHOEMAKER. Before the machine was cleared, Mr. President, there were quite a number of empty lights on the board.

PRESIDENT BRODERICK. We will have the recorded statement here so we have not lost the recording. I just want to point out that the rules do say that any delegate who refuses to vote who is at his desk shall be deemed and recorded as a negative vote.

This has to be called to the Chair's attention and the delegate has to be interrogated, and I can only tell you that there is no other way for the Chair to recognize whether or not a delegate has been present and refused to vote.

The Chair recognizes Delegate Prendergast.

DELEGATE PRENDERGAST. I am in a quandry. I was asleep and nobody woke me up at the time the vote was taken. I was awakened after the vote by Delegate Shoemaker.

PRESIDENT BRODERICK. Delegate Shoemaker awoke you?

DELEGATE PRENDERGAST. Yes, he did.

DELEGATE SHOEMAKER. At least, I served one purpose.

PRESIDENT BRODERICK. Now, do I understand that you want to be recorded?

DELEGATE SHOEMAKER. No, Mr. President, I cast my vote.

PRESIDENT BRODERICK. I am referring to Delegate Prendergast. He stated that he was at his place and was asleep.

DELEGATE PRENDERGAST. Yes.

PRESIDENT BRODERICK. I think, since the vote has not been announced and since he was in his place, we will certainly record his vote.

Which way do you vote?

DELEGATE PRENDERGAST. I would like to be recorded as voting "aye."

The question recurs,

Will the Convention agree to the amendment offered by Delegate Burkholder?

The roll was recorded as follows:

YEAS—47

Amsterdam	Camardella	Leach	Rea
Baldrige	Caputo	Leinbach	Redick
Baldus	Casey	Leonard	Reynolds
Baldwin	Clinger	Manderino	Richter
Banes	Cosetti	Mattioni	Roberts
Bloom	Dailey	McGlynn	Solomon
Braham	Feather	Michael	Swope
Brennan	Goldman	Michener	Tate
Brown	Gouger	Morton	Thornburgh
Bunting	Henderson	Popil	Tomasetik
Burkholder	Hook	Powell	Welsh
Butera	Kauffman	Prendergast	

NAYS—76

Aurentz	Fineman	Krill	Scott
Barron	Fohl	Laputka	Scranton
Barry	Gabreski	Lee, L.	Sebastian
Benedict	Gehrlein	Mangery	Shapiro
Benfield	Goldstein	Markley	Sharp
Broderick	Griffith	McGeary	Shettig
Cain	Hannum	Meyer	Shively
Corey	Harding	Miller, D.	Shoemaker
Cortese	Hatter	Moorhead	Shrager
Croop	Heyburn	More	Sprogell
Cunningham	Himes	Murray	Stout
Curran	Hocker	O'Donnell	Stroup
Desmond	Hostetler	Orhan	Tully
Devlin	Irvis	Otto	Van Sant
Dumbauld	Jirolanio	Pasquerilla	Waldron
Erwin	Keller, J.	Pott	Wilcox
Fagan	Keller, M.	Sahli	Wilmarth
Fawcett	Kelly	Scales	Woodring
Filson	Kline	Scarlett	Woodside

NOT VOTING—40

Aberman	Fay	Lane	Quiles
Allison	Fleming	Lee, K.	Rappaport
Bagenstose	Forster	Levin	Rovner
Bashoff	Fortney	Miller, R.	Ruth
Buck	Gerber	Musselman	Silverman
Caron	Gray	Nelson	Strickler
Clark	Horne	Orbin	Thomson
Conley	Huggins	Pechan	Warman
Donaldson	Johnson	Pelletier	Westerberg
Donolow	King	Percey	Whittum

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. For what purpose does the gentleman rise?

DELEGATE SHOEMAKER. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHOEMAKER. Mr. President, I do not believe my point of order has been complied with, and I would request that it be so.

There is a total of 123 votes. There are three excused delegates from this Convention, and there are more than 123 people here who are on the floor, who are, according to the rules and my understanding, not duly excused or necessarily prevented from attendance and voting. I want the remainder of those delegates, the difference between 123 and 150, recorded as in the negative.

PRESIDENT BRODERICK. The Chair has ruled that it is necessary that these names be called to the attention of the Chair. I thought you were referring to Delegate Prendergast, who stated his reason for not having pulled the switch. If we have another like situation, it has to be called to our attention.

DELEGATE SHOEMAKER. There are 40 other situations, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, perhaps we need some clarification on this "no" vote. I think it refers, if I understand the rule, only to those who are in their seats at the time the roll is taken and do not vote, then they shall be recorded as voting "no."

If, for any reason, they shall be absent from the hall of

the Convention, or if they have been excused, then, of course, that does not pertain to them at all. Am I correct?

PRESIDENT BRODERICK. Yes, you are correct.

It also has to be called to the attention of the Chair if the delegate was in his seat at the time the vote was taken, then we will interrogate him and see whether he voted. We will check it, and if he refuses to vote, he will be recorded as a negative vote.

DELEGATE SHOEMAKER. If the Chair would supply me with a copy of what was on the board before the lights were turned out, I could certainly assist you.

I can say, as an example, for instance, that Delegate Silverman was in his seat and did not vote. I will be happy to stand corrected if that is not so, but, otherwise, I think he should explain his vote.

Either we ought to comply with these rules or dispense with them. I asked before to have them clarified and I do not think they are clear.

PRESIDENT BRODERICK. The Chair recognizes Delegate King.

DELEGATE KING. I recognize the fact that it is unusual for me to stand and say something other than move for the adjournment, but I have been sitting here for a number of days—perhaps "uncontentious"—not having much to say about anything.

I find, however, that I am one of the delegates who is probably culpable of not having cast a vote on this last amendment and having been in my seat. I ask for an explanation, the same as my brother delegate did earlier today, with respect to just what my position is if I choose not to vote.

My understanding of the rules, as I read them, indicates that if I do not vote, or if I do not choose to vote, I must stand and give some reason for not voting, whether it be ignorance of the issue, whether it be pecuniary interest, or whether it be some interest that might be contrary to the amendment itself. Then the Chair must rule on whether or not I have good and sufficient reason for not voting.

Now this is a matter that has passed already. I do not think my failure to vote, if added to the negative votes, will affect the amendment in any way, therefore, I would be willing to comply with my brother delegate's request that I be shown in the negative.

However, I would like to express the intention, if I read the rules correctly, that each time I decline to vote from this point on I shall rise and I shall address you, Mr. President, and ask whether or not I can be excused from voting.

Is my interpretation of the rules correct?

PRESIDENT BRODERICK. Your interpretation is correct, and then the body will pass on your excuse.

DELEGATE KING. The body will pass on my excuse prior to the roll being taken, is that right?

PRESIDENT BRODERICK. That is right, prior to it being announced. That is the reason the Chair has said to Delegate Shoemaker that we have to have this called to the attention of the Chair during and at the conclusion of the voting process before the vote is announced.

DELEGATE SHOEMAKER. I think I did so. I could go down this list and call out about 30 more people who were in attendance and in their chairs, or close to them, and did not vote.

I would be quite willing to leave this point of order if we would have some definite clarification and some definite understanding with regard to what attention will be called to those delegates who are outside of the door in the phone room, or in the rest room, outside. On several occasions I understand there has been no notice given and a number of delegates, I know, missed votes where they either sponsored or spoke in favor of or against certain amendments that were presented.

I think it is unreasonable for me to stand here and pursue the point of order, except if we can solve something. I would request the Chair at this time to make some definite commitment about ringing the bell, or sounding the gong, or doing something, so we know when these roll calls are taken and so we are called to be here.

Perhaps we ought to suspend Rule 19, the first paragraph, if we are not going to comply with it.

PRESIDENT BRODERICK. I just want to say for the benefit of Delegate Shoemaker, it is my understanding that the clerk will ring the bell to warn the delegates that a vote is about to be taken.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman. For what purpose does the gentleman rise?

DELEGATE SILVERMAN. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SILVERMAN. By way of explanation to Delegate Shoemaker, I was preparing an amendment and was not able to hear the discussion and understand the substance of the motion. Therefore, I refused to vote. If Delegate Shoemaker wishes me to vote without understanding the substance of the motion on the floor, he should say so.

I now understand the substance. If the vote has not been announced, I would vote in favor of that amendment.

PRESIDENT BRODERICK. The vote has been announced. Your remarks will be placed on the record.

I might say that in the future, if this occurs, where a delegate in his seat does not vote, any delegate can call it to the attention of the Chair and he will be interrogated as to why he did not vote, or he can voluntarily make his statement and then we will pass on his excuse.

The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Just one question of clarification.

I believe on page 16, "Excused from Voting," is all that is necessary. When someone in his seat desires to be excused he is to make the statement and the President can rule on that excuse, and not the Convention.

PRESIDENT BRODERICK. You are absolutely correct. It says "without debate."

I recognize Delegate Shapiro, who has been up.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro. For what purpose does the gentleman rise?

DELEGATE SHAPIRO. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHAPIRO. Mr. Chairman, a few moments ago we adopted an amendment presented by Delegate

Barron which Delegate Barron explained as being an amendment to provide for appointment of judges when the Senate was not in session. I have reread the amendment. I have discussed it with counsel for the Convention. I should like to have a ruling from counsel for the Convention as to the effect of this amendment on appointments made when the Senate is in session.

The language that was in the proposal prior to this amendment clearly indicated, or created, a constitutional requirement for a two-thirds consent of the Senate to an appointment under those circumstances. That language has now been removed and we are referred only to Article IV of the Constitution, which I submit is not at all clear.

I request that we be given a ruling as to whether or not the adoption of Delegate Barron's amendment has changed the situation with respect to confirmation by the Senate of appointments made when the Senate is in session.

MOTION TO RECONSIDER

PRESIDENT BRODERICK. Pursuant to your request, we will have counsel for the Judiciary Committee and the counsel for the Convention get together and prepare an answer to your question, which answer will be given through the chairman of the Judiciary Committee.

The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. With respect to Delegate Shapiro's request, I would, depending on the answer, ask to be recognized at that time to move for reconsideration. I, likewise, labored under the same misapprehension as Delegate Shapiro. I voted the prevailing side of that particular amendment.

PRESIDENT BRODERICK. In other words, when you hear the opinion of counsel, you want to be recognized?

DELEGATE RAPPAPORT. I am stating now that, depending on the answer from counsel, I would like to be recognized on a motion to reconsider. Otherwise, I will make it now, if the Chair desires.

PRESIDENT BRODERICK. We cannot give you an answer immediately. You have to give counsel an opportunity to look into the problem, naturally. If you are moving now for reconsideration, we will consider that. If you want to wait to hear counsel's opinion, we will do it then.

DELEGATE RAPPAPORT. I think, perhaps, we might. To obviate the necessity of counsel doing even more work, I would like to move to reconsider the Barron amendment. I was on the prevailing side and I would like one minute to explain it, if I have a seconder.

PRESIDENT BRODERICK. Moved by Delegate Rappaport that the vote by which the Barron amendment was adopted and accepted by this Convention should be reconsidered.

Does that have a second?

DELEGATE KING. I would like to second that, Mr. President. I voted with the prevailing side.

PRESIDENT BRODERICK. Delegate King states that he voted with the prevailing side.

According to the voting record, they are both recorded as having voted with the prevailing side.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline. For what purpose does the gentleman rise?

DELEGATE KLINE. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KLINE. On a point of order, so that all the delegates understand what we are doing, I would like to ask for a clear ruling from the Chair.

It is my contention—and I request a clear ruling on this—that in the debate that now follows the only issue is on reconsideration of the vote and reasons for reconsideration, and that the merits or demerits of the amendment, as such, are not debatable.

I bring that up because we have taken far too much time on these motions to reconsider by hashing over things we already discussed in the debate. I would not limit anyone, but I would like from the Chair a clear ruling as to precisely what the delegates may now debate on this motion to reconsider the vote by which the amendment failed.

PRESIDENT BRODERICK. I have been requested for a ruling.

Delegate Kline, the Parliamentarian has called attention to where it says when the question to be reconsidered is debatable, the entire question is opened to debate by the motion to reconsider.

The Chair so rules, according to the Parliamentarian that, therefore, the entire question is open to debate.

The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I must confess that the arguments presented by my learned friend, Delegate Barron, were very convincing.

However, I was under the impression that his amendment applied only to one-judge counties. I agree with him it could be a tremendous problem where there is only one judge to go without a judge for six or eight months. I understand that was one of the reasons why appointed judges were eliminated in the Constitution of 1838 and they required elected judges. I was unaware of the extreme ramifications and the possibilities of political control by a governor manipulating adjournments and the effect it would have on those multi-judge counties.

I would, therefore, ask for reconsideration.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. I would like to comment on that, since I am the only former Governor here. May I say to you, sir, in no uncertain terms that we have had this in the Constitution for many, many years under Republican and under Democratic governors, and governors do not manipulate the appointment of judges in the interim period for purposes of gaining votes in the State Senate.

There is nothing new, there is nothing different, about what the Barron amendment does than what is presently the case in this Commonwealth of ours, and has been for a very long time under both types of governors. I deeply resent your comment.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport. For what purpose does the gentleman rise?

DELEGATE RAPPAPORT. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE RAPPAPORT. Mr. President, I did not

in any way imply, nor did I intend to imply, that any present governor, or governor in this century, has ever done anything like that. I do not imply that they would. However, when I was able to study the amendment, I observed what I consider to be a hole in the amendment and it was something that would have convinced me to vote otherwise on the amendment.

I did not imply that Governor Scranton, or any other Governor, has ever done that. Governors, of course, are political animals.

We, in the first months of this Convention, lived through the finality of a fight on the budget. It took over a year, where one vote was very important, and I was not very careful how I cast my vote. I voted under a misapprehension, perhaps out of ignorance, and for that reason I ask for a reconsideration.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I want to say that I support the request for reconsideration of this proposal so that an opportunity may be given to give second consideration to the Barron amendment, with which I am not in agreement at all.

Time after time this delegate body in its collective judgment has indicated that there should be a measure of minority control by requiring two-thirds approbation of the Senate chamber to appointments by the Governor.

I view the Barron amendment as but a device to circumvent what has been the prevailing collective judgment of this delegate body, which I must say was a judgment rendered on a truly bipartisan basis without giving consideration to advantages that would accrue to one party or the other.

It was stated in support of this proposition, that we had to have some emergency procedure to put into effect in the event that a vacancy developed in a judicial post so that that particular judicial district would not be without a judge.

I wonder how valid an argument that was in view of the fact that the proponents turned down the amendment offered by Delegate Banes to except from the provisions of this proposal those judicial districts that had five or more judges, or six or more judges. Certainly, in those districts with multiple judgeships there never could be that single emergency which would arise through a vacancy developing in one or two judicial posts which would call into play the emergency such as the Barron amendment would seek to invoke.

It is for this reason I would ask this body to support this motion for reconsideration and then at the time of the vote to vote down the Barron amendment.

PRESIDENT BRODERICK. Does Delegate Barron wish to be heard?

DELEGATE BARRON. Mr. President, quite frankly, in this circumstance I am not amazed, by any measure, that there would be an effort to reconsider. Quite frankly, not intending to respond to Delegate Fineman, I was quite amazed that there was no debate on Delegate Banes amendment.

I was approached during recess for lunch by a number of delegates who come from the big cities. They told me, on the one hand, "This is the existing situation and it works all right." Some told me, on the other hand, "It does not work all right. Would you accept an amendment?" I said, "No, quite frankly I will not. I will neither oppose nor propose an amendment to what I suggested in regard to those areas which have larger courts, because I do not know sufficient about it either as to the judicial aspect of the thing or as to the political aspect of the thing."

Quite frankly, while it is time for true confessions here of late, Mr. President, I did not vote at all on the Banes amendment and, if I am called to give an explanation, I would give it. I heard no debate. I did not know what I was going to do on the situation. No one had convinced me either way and I took the position of calmly sitting in my seat not pulling the lever in any direction. If there has been any imputation, and I have not taken any offense certainly by it, that I was endeavoring to change the prior considered, and from my point, concluded position in regards to amendments and the requirement of the two-thirds majority of the Senate, my intent was not to disturb that in any way so long as the Senate was in session. But it was my intent to provide—and, perhaps, my inability in the area of legal draftsmanship, or particularly legislative draftsmanship, is wanting, and this very well may be true—I endeavored to compare against a clean copy what I thought was the language. I endeavored to compare it and put it in the frame of Printer's No. 20 to provide for an interim arrangement. It seemed to me that Article IV, Section 8, of the Constitution provides the happy situation.

If this body is not coming to the same conclusion, if this body feels I have failed because of my inability to accomplish my purpose, I suggest you reconsider it. If you believe I have accomplished a purpose and you still consider it worthy of merit, I urge you to vote that you do not.

DELEGATE SHAPIRO. Mr. President, I did not make a motion to reconsider. In the absence of a clear-cut ruling on Delegate Barron's amendment—the effect of Delegate Barron's amendment was not limited to the statement he just made—I rise in support of the motion for reconsideration.

I rise to support that motion because prior to the amendment we had this language in Proposal No. 7 with respect to appointments when the Senate is in session and with respect to appointments when the Senate is not in session. That language read, "Whenever a vacancy occurs for any other reason in the office of judge in such judicial district, the Governor shall fill the vacancy by appointment with the advice and consent of two-thirds of the Senate." That is quite clear.

As a result of Delegate Barron's amendment, we now have language which, instead of stating what is required, simply refers us to Section 8 of Article IV of the Constitution which reads as follows, Section 8 (a), "The Governor shall appoint an Attorney General, a Superintendent of Public Instruction and such other officers as he shall be authorized by law to appoint. The appointment . . ."

The Barron amendment surplanted the language I first read with, "Whenever a vacancy occurs for any other reason in the office of judge in a court, other than a statewide court, the Governor shall fill the vacancy by appointment in accordance with the provisions of Article IV, Section 8 of this Constitution."

Those provisions read, and I started to read them, "The

appointment of the Attorney General, the Superintendent of Public Instruction and of such other officers as may be specified by law, shall be subject to the consent of two-thirds of the members elected to the Senate." I stress, "such other officers as may be specified by law." It goes on, "except as may now or hereafter be otherwise provided in this Constitution as to appellate and other judges, he may, during the recess of the Senate, fill vacancies happening in offices to which he appoints by granting commissions expiring at the end of its session and fill vacancies happening in the office of Auditor General or State Treasurer or in any other elective office he is authorized to fill. If the vacancy happens during the session of the Senate, except as otherwise provided in this Constitution, he shall nominate to the Senate before its final adjournment a proper person to fill the vacancy. In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the vacancy happens within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office."

I submit that what that language means is not nearly so clear as the language we had previously with respect to appointments when the Senate is in session.

I, for one, do not know in the absence of a written ruling just what the language in Section 8, Article IV, does mean with respect to that issue. In view of that, I strongly urge that we reconsider the Barron amendment.

PRESIDENT BRODERICK. Does anyone else wish to be heard?

DELEGATE RAPPAPORT. I will, with pleasure, yield to my friend, Delegate Scott.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scott.

DELEGATE SCOTT. Mr. President, I speak in opposition to reconsider the Barron amendment. We have been handed a clear-cut mandate by a vote of 68 "yeas" and 65 "nays." I have listened to so much debate in the last three days that I think we ought to get on with the business.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, if I were convinced that this amendment cures the problem which it is alleged to cure, I would vote for it. I think, perhaps in haste, this amendment was drawn a little too broadly and I would like to see it drawn a lot narrower to cure the problem that has been raised.

However, in its present form it is much too broad and I ask it be reconsidered.

PRESIDENT BRODERICK. We are ready for the question.

DELEGATE RAPPAPORT. I move the question.

PRESIDENT BRODERICK. We just listened to Delegate Rappaport in summation. In accordance with our procedure—

DELEGATE BANES. I do not want to make a speech, I only want to inquire as to whether or not counsel has prepared the opinion requested, so that we may have that before we vote. I do not think this delegate body can vote intelligently unless we have a ruling from counsel.

PRESIDENT BRODERICK. Counsel has not been able to complete its opinion. That was evident, I thought, when Delegate Rappaport made his motion.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. Then I take it that counsel is not able to make up his mind that he is certain on what this amendment does or does not do, is that correct?

PRESIDENT BRODERICK. Counsel have not completed their opinion. I cannot tell you any more than that. We do not have it. The question is on the motion to reconsider the vote by which the Barron amendment was adopted. Those voting "yea," will vote to reconsider. Those voting "nay" will deny reconsideration.

ANNOUNCEMENT BY THE CHAIR

PRESIDENT BRODERICK. I think it is fair that the Chair announces at this time before I announce this vote that in the event we have the question of a delegate in his seat who asks to be excused from voting, the Chair wants you to know the only excuse that will be accepted, as far as the presiding officer is concerned, is a physical or mechanical inability to vote or having a conflict of interest.

On the question,
Will the Convention agree to the motion to reconsider?

The roll was recorded as follows:

YEAS—77

Aberman	Cosetti	Keller, M.	Rappaport
Allison	Dalley	Kelly	Rea
Amsterdam	Dumbauld	King	Redick
Aurentz	Fagan	Kline	Roberts
Bagenstose	Fay	Levin	Scales
Baldrige	Feather	Manderino	Shapiro
Baldus	Filson	Mangery	Sharp
Banes	Fineman	Markley	Shettig
Barry	Gabreski	Mattioni	Shively
Bloom	Gehrlein	McGlynn	Shrager
Braham	Gerber	Michael	Silverman
Brennan	Gouger	Michener	Solomon
Brown	Gray	Miller, D.	Stout
Buck	Himes	Murray	Swope
Bunting	Hocker	O'Donnell	Tate
Burkholder	Hostetler	Orbin	Tomascik
Camardella	Irvis	Otto	Tully
Caputo	Jirolanio	Popil	Van Sant
Casey	Johnson	Prendergast	Welsh
Corey			

NAYS—64

Baldwin	Fawcett	Leach	Scott
Barron	Fohl	Lee, L.	Scranton
Benedict	Forster	Leinbach	Sebastian
Benfield	Goldman	Leonard	Shoemaker
Broderick	Goldstein	Meyer	Spragell
Butera	Griffith	Moorhead	Strickler
Cain	Hannum	More	Stroup
Clark	Harding	Morton	Thomson
Clinger	Hatter	Orban	Thornburgh
Cortese	Henderson	Pasquerilla	Waldron
Croop	Heyburn	Pelletier	Westerberg
Cunningham	Hook	Pott	Whittum
Curran	Kauffman	Reynolds	Wilcox
Desmond	Keller, J.	Richter	Wilmarth
Devlin	Krill	Sahli	Woodring
Erwin	Laputka	Scarlett	Woodside

NOT VOTING—22

Bashoff	Fortney	Miller, R.	Powell
Caron	Horne	Musselman	Quiles
Conley	Huggins	Nelson	Hovner
Donaldson	Lane	Pechan	Ruth
Donolow	Lee, K	Percey	Warman
Fleming	McCoary		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

The question recurs,
Will the Convention agree to the amendment?

MOTION TO TABLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. It is quite obvious that many of us are not prepared to vote on the Barron amendment. I move it be tabled until we receive the proper legal opinion.

DELEGATE BANES. I second the motion.

PRESIDENT BRODERICK. A motion has been made by Delegate Pasquerilla, seconded by Delegate Banes, that the Barron amendment be tabled until we get a counsel opinion.

On the question,
Will the Convention agree to the motion?
It was agreed to.

PRESIDENT BRODERICK. The Barron amendment will be on the table until counsel for the Judiciary Committee and counsel for the Convention issue an opinion to the chairman of the Judiciary Committee, who will give the opinion to the body.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MICHENER. Mr. President, I rise to a point and I just do not know what to call it. I am sure the assembly will be sympathetic. I want to confirm the fact that in that last vote Delegate Prendergast did fall asleep. It is embarrassing for me to admit that the book he was reading was one I had written. I hope the minutes of this meeting can be so edited to mask that fact.

PRESIDENT BRODERICK. I do not know whether you are trying to sell more copies to the delegates, or not, by that statement.

BALDUS AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus.

DELEGATE BALDUS. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question,
Will the Convention agree to the proposal on second consideration?

DELEGATE BALDUS offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 15), page 10, line 11, by removing the comma after "duties" and inserting: and

Amend Sec. 1 (Sec. 15), page 10, line 12, by removing the comma after "law" and inserting: . Justices, judges and justices of the peace shall not

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus for a statement in connection with his amendment.

DELEGATE BALDUS. Mr. President, the purpose of this amendment is to give to the minor judiciary and the judges who serve in the minor judiciary the same protection and advantages that are enjoyed by the judges of the courts of record. If you will look at Section 15 under the caption, "Prohibited Activities," it states, "Justices and judges shall devote full time to their judicial duties, shall not engage in the practice of law, hold any office in any political party or political organization, or hold any office or position of profit in the government of the United States or of this Commonwealth or any municipal corporation or political subdivision of this Commonwealth, except in the armed service of the United States or of this Commonwealth."

You will note in reading Section 15 that the justices of the peace are not included in these prohibitions.

Before turning to the contents specifically of my proposal, I would like the delegates to think of the purposes behind Section 15 as it applies to courts of record. Why is it that the committee recommended that judges and justices may not hold any office in any political party or organization, or hold an office in a government of the United States or in this Commonwealth? This is the issue I am raising here. Why were the squires omitted from this?

The way to understand that is to understand the reason why judges are prohibited from these activities, and I am addressing myself to the political provisions in lines 13 through 17 of the clean copy that I have. The reason is that participation in politics to the extent of holding an office in a political party, or organization, or working for a public government, reduces the appearance that decisions are not affected by political consideration.

The committee was concerned that if judges became active promoters of the interest of one political party against another the appearance of impartiality on political questions and political considerations would be impaired. It was for this reason the committee adopted the provisions of Section 15. However, they omitted the squires from these protections and permitted squires to hold office in a political party, in a political organization.

This amendment I am offering will prohibit squires from holding office in a political party or organization but would not prohibit their participation in politics. It would simply prohibit what is prohibited a judge. It would also prohibit them from holding office or a position of profit in a Commonwealth or a political subdivision government. It would not prohibit a squire from engaging in the practice of law or engaging in another occupation.

It may be that in the large communities of the first class magisterial districts the squire's job in those districts will

be a full-time job, but in the smaller magisterial districts it will only be a part-time job.

Therefore, the squire must be able to have other work, and it is in recognition of this that the amendment merely prohibits the holding of an office in a political party, or organization, or employment by a state or local government.

I believe that these are important protections and, if the minor judiciary is not to be a second cousin in the judicial system, I believe the courts and the judges in that system need the very same protections on these important matters as do the judges in the courts of record, and I ask your support.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, I rise in support of the amendment, and I only want to point out what I think is an interesting fact.

The presentation made to the preparatory committee and to the Judiciary Committee by the Pennsylvania Magistrates Association called for the use of the canons of judicial ethics to govern the conduct of the minor judiciary.

At the hearing of the Judiciary Committee the representatives of the Magistrates Association appeared, and the committee questioned them closely about this matter, regarding particularly Canons 28 and 30 which relate to political activities of judges and justices of the peace if the canons were to be so applied. In both the testimony and upon questioning it was clear that the representatives of the association were in favor of imposing the same rules with respect to political activities to justices of the peace and judges. As Delegate Baldus pointed out, this is a somewhat lesser restriction, and I think deserves our very serious consideration in view of the fact that the Magistrates Association—I am sure that this surprises some of us—supported the imposition of the canon of judicial ethics upon the minor judiciary.

I would, therefore, urge that we honor their request and this proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. May I interrogate the chairman and inquire as to why the committee proposal came out in the words it did?

PRESIDENT BRODERICK. Yes, indeed. I am sure the committee chairman will stand for interrogation. Delegate Barry is now representing the committee.

DELEGATE GERBER. For the benefit of the rest of us who did not have the opportunity to participate in your deliberations, could you tell us why your committee reached the conclusion that it did in order that we hear your side as well, sir?

DELEGATE BARRY. I do not know what conclusion you are talking about.

DELEGATE GERBER. The conclusion that is in the proposal that Delegate Baldus seeks to amend. It seems to me that somebody must have been for it the way the proposal came out.

DELEGATE BARRY. Under Section 15(b) we specifically provide that the justice of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court, and we thought that was ample protection for setting such standards which could later be applied to the justices of the peace.

It was mainly to apply some inflexible canon rule right now which might not be appropriate under all circumstances or to all people.

DELEGATE GERBER. Is this flexibility that you attempted to achieve through your proposal still the feeling of yours, at least, and the committee?

DELEGATE BARRY. This was definitely the opinion of the sub-committee, and the sub-committee report was adopted in toto by the standing committee. This was discussed, although there was not a vote taken on it. This was the general consensus of the standing committee.

DELEGATE GERBER. I noticed that Chairman Amsterdam of the standing committee was nodding his head. Is this also the feeling of the standing committee in their deliberations, as well?

DELEGATE AMSTERDAM. Delegate Barry spoke for the standing committee and that was exactly the recommendation of the standing committee. Of course, it appears in Article V, as we brought it to the floor.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Keller.

DELEGATE J. W. KELLER. Mr. President, I recall that in the sub-committee's discussions one of the reasons why they did not include the justices of the peace within the blanket provisions of sub-Section (a) as this amendment would deal with, is because it does prohibit holding an office of profit in the government of the United States or this Commonwealth, and this has been construed by the courts to include being a janitor in a school or a school bus driver. When you are talking about the minimum salary which the Judicial Committee assumed would be granted in the smaller magisterial districts, this means that some men would not be able to hold some jobs, which surely has nothing to do with politics or government as such.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. May I just amplify what Delegate Keller and Delegate Amsterdam have said?

Mr. President, we have been trying to keep as much out of this Constitution as we have put in, which is a little difficult to do when everybody wants to put everything but the kitchen stove in it.

Frankly, as you know, we are making tremendous changes in the magistrate or justice of the peace system, and it was the general thinking, although we took no vote of the committee, that to keep putting in all these proscriptions with regard to the justices of the peace when we were changing their whole setup so tremendously was not in good order in the Constitution, particularly as they come under the Supreme Court and the canons and the ethics of the Supreme Court. Any rules the Supreme Court wants to set up, which was not the case before, would now pertain. As they go into this new system, the court would be able to ascertain what kind of things the justices of the peace should be able to do and what they should not do, rather than we proscribing it and writing it all out in a lot of sentences, which might not really pertain when they get the implementation of the new system going.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I wonder with this explanation if the proponents of this amendment are not satisfied and, if they are satisfied, we would ask, perhaps, that they withdraw their amendment.

PRESIDENT BRODERICK. The Chair recognizes the sponsor of the amendment, Delegate Baldus.

DELEGATE BALDUS. The proponents of the amendment would like the delegate body here to decide that question. We think this is an important provision and should be included in here, and we do not consent to its withdrawal.

PRESIDENT BRODERICK. Let me ask the body if we are ready for the question.

Do you want to sum up, Delegate Baldus?

DELEGATE BALDUS. Yes, Mr. President.

Mr. President, I have heard no reason given here this afternoon in this debate, nor before the Judiciary Committee have I heard any reason given, why the squires should be treated differently than the judges of the courts of record. I think the reason for the adoption of these articles applies equally well, in some instances with greater force, for the minor judiciary than to the courts of record.

Secondly, I would like to point out, as Delegate Thornburgh mentioned, the magistrates themselves have requested these protections and they themselves also asked that the canon of judicial ethics be applied to them, and even more stringent requirements and prohibitions against political activities are embodied in the canon of these judicial ethics. I think this is an important provision to insure that the minor judiciary is not a second class judicial system.

We are trying to create a unified system and the policies that we are enacting here to apply to the courts of record should be applied throughout the judicial system in conformity with the concept of the unified system, unless there is a good reason advanced why they should not be. I submit there has not been any reason advanced here today, or at any time advanced.

For that reason, I ask support for this amendment in applying these protections throughout the judicial system.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate King. For what purpose does the gentleman rise?

DELEGATE KING. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KING. Before I inquired of the Chair with respect to the rules concerning voting. Perhaps, I am a little slow, or I do not understand as well as the rest of the delegates. I understand, according to the rules, that if I am not in my seat, then there is no question about whether my vote will be recorded as negative, or not. I was standing in the back of the hall.

It is my understanding, then, since I am not in my seat, my vote will not be recorded in the negative, it will be no vote recorded at all. Is that interpretation a correct interpretation of the rules, Mr. President?

PRESIDENT BRODERICK. I do not know whether this is contributing to the writing of this Constitution.

DELEGATE KING. I do not mean to be an obstructionist, but I do not wish to vote on anything that I may not understand, and I do not wish to vote on something that I am not for or against.

PRESIDENT BRODERICK. My Parliamentarian has called to my attention that the beginning of the rule here says, "Each delegate shall be present within the Convention hall during the session of the Convention, unless excused or prevented, and shall be recorded as voting for or against each question stated."

Now, the interpretation of that is that if you are inside the Convention hall—

DELEGATE KING. That I am constrained to vote or, if not, recorded as voting in the negative, is that right?

PRESIDENT BRODERICK. That is right, or, if you ask to be excused, the Chair has already stated that as far as excuses are concerned I only will accept excuses based on a physical or mechanical inability to vote or a conflict of interest.

DELEGATE KING. Thank you very much, sir.

PRESIDENT BRODERICK. I just want you to know that the Chair is not trying to put Delegate King on the spot.

DELEGATE KING. I appreciate that.

On the question recurring,

Will the Convention agree to the amendment being offered by Delegate Baldus?

The roll was recorded as follows:

YEAS—51

Aberman	Clinger	Leinbach	Popil
Bagenstose	Cosetti	Levin	Prendergast
Baldrige	Dailey	Manderino	Rappaport
Baldus	Dumbauld	Mattioni	Rea
Bloom	Feather	McGeary	Shapiro
Braham	Forster	McGlynn	Shrager
Brennan	Gouger	Michael	Silverman
Brown	Henderson	Michener	Swope
Buck	Hook	Morton	Tate
Bunting	Hostetler	Murray	Thornburgh
Burkholder	Irvis	O'Donnell	Tully
Camardella	Kline	Otto	Welsh
Casey	Laputka	Pelletier	

NAYS—87

Amsterdam	Filson	Krill	Scott
Aurentz	Fohl	Leach	Scranton
Baldwin	Gabreski	Lee, L.	Sebastian
Banes	Gehrlein	Leonard	Sharp
Barry	Gerber	Mangery	Shettig
Benedict	Goldman	Markley	Shively
Benfield	Goldstein	Meyer	Shoemaker
Broderick	Gray	Miller, D.	Solomon
Butera	Griffith	Moorhead	Sprogell
Cain	Hannum	More	Stout
Caputo	Harding	Nelson	Strickler
Clark	Hatter	Orban	Stroup
Corey	Heyburn	Orbin	Tomascik
Cortese	Himes	Pasquerilla	Van Sant
Croop	Hocker	Pott	Waldron
Cunningham	Jirolanio	Redick	Westerberg
Curran	Johnson	Reynolds	Whittum
Desmond	Kauffman	Richter	Wilcox
Devlin	Keller, J.	Roberts	Wilmarth
Erwin	Keller, M.	Sahli	Woodring
Fagan	Kelly	Scales	Woodside
Fawcett	King	Scarlett	

NOT VOTING—25

Allison	Fay	Lane	Powell
Barron	Fineman	Lee, K.	Quiles
Bashoff	Fleming	Miller, R.	Rovner
Caron	Fortney	Musselman	Ruth
Conley	Horne	Pechan	Thomson
Donaldson	Huggins	Percey	Warman
Donolow			

Less than the majority having voted in the affirmative,

the question was determined in the negative and the amendment was not agreed to.

PHILIP STOUT WELCOMED

DELEGATE HOOK. Mr. President, I am pleased today to introduce the son, the oldest son, of my running mate who is here as a delegate, Philip Stout, who is the son of William B. Stout from Washington County. I would like Philip to stand up at this time in the back of the room.

PRESIDENT BRODERICK. Yes, indeed.

Philip, will you stand up so we can give you a cordial greeting.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick. For what purpose does the gentleman rise?

DELEGATE REDICK. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE REDICK. I would like to point out the fact that the electronic machine did not meet my approval. I am taking a beating for some reason, or another.

I must say that back on the Barron amendment I voted "yea" and I noticed on the electronic machine that there was no marking there for me whatsoever. There was no mark indicating whether I voted for it, or against it, or whether I was not voting. I just wonder what is going on with that machine.

I also want to bring to the attention of the Chair that I have voted on amendment No. 11. I voted on the "nay" side and the thing registered "yea."

Someone could be pulling a joke, but I do question this other roll call. I had no markings on it whatsoever.

PRESIDENT BRODERICK. I must say, Delegate Redick, that nobody has had an opportunity to tamper with this machine. I understand that there are occasions when the machine does not register, and any time a delegate sees that he is not registered, if he will immediately call it to the attention of the Chair, we will see that your vote is properly recorded.

DELEGATE REDICK. I am referring to the roll call sheet. It is not marked on the roll call sheet. I am not referring to the board.

PRESIDENT BRODERICK. You are referring to the roll call this morning?

DELEGATE REDICK. This is the Barron amendment. Mr. President, this is the written record of the roll call.

PRESIDENT BRODERICK. We will have it verified.

WIFE OF SECRETARY MICHENER WELCOMED

DELEGATE GERBER. Mr. President, I rise to note that in studying all of the journals that have been so ably kept by the Secretary, Mr. Michener, where he has inserted his humor at the expense of many of us, this grammarian has not yet brought to the attention, at least, for the purpose of the journal, the 164th Delegate to this Convention, his lovely wife, Lorene.

PRESIDENT BRODERICK. We will give her a cordial welcome. Mrs. Michener, I want you to know that we are happy to have you with us. We have seen you here practically every day. I think that is really great devotion both to our cause and to your good husband.

FAMILY OF DELEGATE THOMSON WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. I note the presence of the daughter and grandchildren of a gentleman whom I became very fond of since I have been here, Delegate Thomson.

PRESIDENT BRODERICK. We want to welcome you and tell you what a wonderful job Delegate Thomson is doing. It is nice to have you with us.

RESOLUTION

DELEGATE ROBERTS. As you know, there are four ministers who are members of this Convention. Last night we had a clandestine clergy caucus meeting without the knowledge of the chair, and we have fashioned a resolution to defend ourselves against the new vocabulary we all had to learn. With the permission of the President, I would like to share it with the Convention if appropriate at this time.

This has been sponsored by myself, by the Reverend Byron Horne, the Reverend Richard L. Huggins, the Reverend William Gray, and "Rabbi" Solomon seconds our efforts.

DELEGATE ROBERTS requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, February 21, 1968.

WHEREAS, The delegates to this Convention for Constitutional revision have exhibited conscientious perusal of the lengthy epistles and other printed materials that have flooded across their desks; and

WHEREAS, The delegates have fashioned and created a feeling of Koinania that has been experienced and shared by all; and

WHEREAS, The delegates have exhibited genuine Kenosis in their toleration of the naughtiness of the barristers and publicans in their glossalia . . . and of the ex-officios in their analysis of exegetical propondurances; and

WHEREAS, The delegates, on occasion, have exhibited evangelistic zeal in their kerygmatic speaking on the floor of this Convention; and

WHEREAS, The delegates have exhibited genuine ecumenism as they have welded themselves together into a community; and

WHEREAS, The delegates have moved beyond the point of existentialism even to a position of transcendentalism in their efforts to provide means for better government for the Commonwealth; and

WHEREAS, The delegates with great insight selected one to serve as "Malech Godol" who has proven to be a prophetic leader maintaining the wisdom of Solomon and the patience of Job . . .; and

WHEREAS, The delegates have come to an eschatological moment and are about to present an instrument to the people—apocolyptic in its scope; therefore be it

RESOLVED, That the clergy of this Convention, in the apostolic tradition of Holy Church, do hereby commend and praise this Convention for Constitutional revision.

DELEGATE SOLOMON. Mr. President.

PRESIDENT BRODERICK. Yes, "Rabbi" Solomon.

DELEGATE SOLOMON. Truthfully, I was the one who was referred to as the "Maleeh Godol." In Hebrew that means "the great King," but I do think that the spirit shown by these good Reverend gentlemen and the very fact of their variety points up something to us, and I would like to speak on that for a moment if the Convention would like to hear something. It will be good.

Truthfully, from the variety of opinions we have received from the nonclergy, we can only say we have in evidence a variety of religions as indicated by the body here, and this only goes up to point that by reason of these different faiths and conflicting faiths we all should come to the conclusion that there is not only one way, but that there are many ways that can attain our idealism and our belief in the fatherhood of God and brotherhood of man. A friend of mine, who has long since passed, truthfully envied me, and I found that I had something appropriate. I did not write it. Do I believe in God? Is that the price of a nice hat? Has he commanded that His name be written everywhere the same? Have all who lived in every place identified his hidden face? Who knows, but he may like as well, my story is the one you tell, and so long as that story is epitomized in the brotherhood and the spirit of the recent paper delivered by our good clergy friends, I think that the land is fine and the spirit of the Convention is good. The sun is high and I have done this sober, believe it or not.

PATRICIA KLINE WELCOMED

PRESIDENT BRODERICK. I just want to say that we now have back with us the daughter of Delegate Kline, Miss Patricia Kline. Would you stand up so this body can give you a warm cordial welcome.

SHETTIG AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Shettig.

DELEGATE SHETTIG. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SHETTIG offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 16), page 11; line 7, by removing the semicolon after "Court" and inserting a period

Amend Sec. 1 (Sec. 16), page 11, lines 7 to 9, by striking out "two non-judge members of the" in line 7 and all of lines 8 and 9

Amend Sec. 1 (Sec. 16), page 12, line 6, by removing the period after "duties" and inserting: but in no event shall any justice or judge be suspended or removed from office or otherwise, for or by reason of any decision rendered by him.

Amend Sec. 1 (Sec. 16), page 12, lines 7 to 19, by striking out all of said lines and inserting: (c) The board shall keep itself as fully informed as may be of fact and circumstances relating to justices or judges, by such methods of procedure as prescribed by the Supreme Court for receiving complaints, investigations, hearings, attendance or testimony for the production of documents, in so far as the same may bear upon grounds for suspension, removal, discipline or compulsory retirement.

Amend Sec. 1 (Sec. 16), page 13, lines 11 and 12, by striking out all of said lines

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shettig in connection with his amendment.

DELEGATE SHETTIG. Mr. President, I would like to interrogate Delegate Curran and Delegate Barry because we had a discussion and I want to make sure that the discussion is on the record. I think possibly part of this amendment is already covered by the committee proposal.

PRESIDENT BRODERICK. You may proceed. Delegate Barry is ready.

DELEGATE SHETTIG. Mr. President, I call attention to page 13 of the committee proposal, line 11, where you say the Supreme Court shall prescribe rules for procedure under this section. Does that apply to the procedure before the review board itself?

DELEGATE BARRY. Yes, that was the intent. I think if you have any objection to not including this procedure, that answers that objection.

DELEGATE SHETTIG. If that is the definite understanding, so I can know, I can withdraw the last part of the proposed amendment. That was the only concern I had there, that the Supreme Court would establish the rules and the procedure under which the complaints would be filed, accepted and investigated.

DELEGATE BARRY. That is our intent, to provide a procedure under this section whereby the board would receive definite rules of procedure from the Supreme Court as to how to proceed with its hearings and other acts.

DELEGATE SHETTIG. And that also applies to the acceptance of the complaints, whether they are formal or informal types of complaints?

DELEGATE BARRY. We specifically provide that they shall receive complaints informal or formal in another portion. Here is our theory on that, we likened it to a grievance committee of the bar association. There should be no formal way that a person has to make a complaint against a judge. If he wants to make a telephone call about a judge, if he wants to file a written complaint, he should not be required to do it in any format or any formal manner, the same as a complaint can be lodged against a lawyer. We felt there should be no specific procedure set up, but it should be free and flexible. The going through the complaints and sifting them out and holding hearings is where we first apply stringent rules and protection for the judiciary there.

DELEGATE SHETTIG. Mr. President, in view of the answer by Delegate Barry, I am willing to withdraw that last part of this amendment and consider only the first two sections of the amendment. The last part would be, "Amend Sec. 1 (Sec. 16), page 12, lines 7 to 19, by striking out all of said lines and inserting . . ." I would request that they be stricken from the proposed amendment and only the other sections be considered at this time.

If I may, I would like to direct myself for a few seconds to both of the first two sections of this proposed amendment.

The first part of the amendment deletes from the review board the lawyers and non-lawyer members and leaves instead a board composed entirely of judges. Now the purpose for this is two-fold:

One, It adopts the theory used by the New York Judiciary Review Board;

Two, and I think most importantly, it eliminates the criticisms raised and pointed at the Review Board in the State of California. They have discovered that in the Judicial Review Board in California the lawyer members have used that as a means of advertising their wares in Martindale-Hubbell, and this has led to criticism. They also discovered that the non-lawyer members were seeking the lawyer members as their own personal lawyers. So you have a little clique working there together. I believe all of the attorneys in this room would rather, if they were on the bench, be reviewed by a board of judges. This is the purpose of that first one.

The second part of the amendment, which reads, "in no event shall any justice or judge be suspended or removed from office or otherwise, for or by reason of any decision of any decision rendered by him," is designed to take care of the situation where a judge may be in the position of sentencing individuals on a Monday afternoon, sentencing one person for two to six months and the very next one from two to six years and the facts may look similar. This is the whole purpose and reason for a judge using his own judgment. If he will be subjected daily for every decision he makes to be brought before a review board, this will enter into every decision and will affect, ultimately, his decisions.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. May I question Delegate Shettig, please?

PRESIDENT BRODERICK. He will stand for interrogation, I am sure.

MOTION TO DIVIDE

DELEGATE GOLDMAN. Delegate Shettig, would you agree to separate these two proposed amendments? I understand you have taken out the last two.

DELEGATE SHETTIG. The last one.

DELEGATE GOLDMAN. The reason I suggest that, I see much merit in your first portion to leaving the review panel to only judges and leaving non-judges and lawyers off this panel. I think that has a great deal of merit.

I am somewhat concerned about the last section, because I can see a very distinct possibility where a judge has undergone a mental or physical disability and it may well prove itself in some of his decisions.

Therefore, I would like to know whether or not you would agree to have these two separated so we might vote on them separately? Is that permissible?

DELEGATE SHETTIG. I have no objection if that is permissible, Mr. President, and I so move.

PRESIDENT BRODERICK. Let me say that under our rules, unless we have an objection from the body, it is permissible. If we hear no objection, then it could be separated.

The decision will be up to the proposer of the amendment, Delegate Shettig.

DELEGATE SHETTIG. I said I had no objection, if it was permissible and if there are no objections from the floor.

PRESIDENT BRODERICK. Let us determine where we will separate this amendment into two amendments, in effect.

DELEGATE GOLDMAN. It would be my suggestion, subject to Delegate Shettig's approval, that we take the first amendment to be the first four lines of the proposed amendment and the second amendment to be the next five lines.

PRESIDENT BRODERICK. In other words, you want lines 1 to 4 to be the first amendment.

DELEGATE GOLDMAN. First, we would vote on that. That would be in line with taking the non-judges off this panel.

PRESIDENT BRODERICK. Then the portion beginning "Amend Section 1 (Sec. 16), page 12," from there on to the end would be the second portion, is that right?

DELEGATE GOLDMAN. That would be continued for the next five lines, which would include "but in no event shall any justice or judge," etc.

PRESIDENT BRODERICK. Why are you dividing this into three parts, then?

DELEGATE GOLDMAN. I am not. That is the second.

DELEGATE SHETTIG. That is perfectly all right with me, dividing it into just those two parts. The bottom section beginning with "Amend Section 1 (Sec. 16)," I stated before that I was willing to omit from this. This was after I questioned Delegate Barry. That is already covered.

Mr. President, let me start from the top and work down. If we take the first two paragraphs, which begin with "Amend Section 1 (Section 16), page 11, line 7," and follow that down to where we have "lines 8 and 9," that would be No. 1.

PRESIDENT BRODERICK. We are with you. Thank you.

DELEGATE SHETTIG. Then you start with "Amend Section 1 (Section 16), page 12," and follow down to the last three words "rendered by him," which are underscored, that would be No. 2.

PRESIDENT BRODERICK. What about the rest?

DELEGATE SHETTIG. The last part I have removed from the amendment as a result of the answers which I received from Delegate Barry.

PRESIDENT BRODERICK. It has been moved. We vote twice.

The first part is as you have designated; the second part is as you designated; the third part, in effect, will be withdrawn.

DELEGATE SHETTIG. That is correct.

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate More.

DELEGATE MORE. Mr. President, depending on your point of view, the last two days, to some, have been dark

days with respect to the provisions on selection. If this is the case, I ask you to take heart, because I believe that the committee has come up with an excellent section on removal, suspension and discipline.

While a great deal of emphasis has been placed on the selection of judges and the manner of selection, I believe that the area of removal, suspension and discipline is equally as important, if not more so. This has been the greatest void in our judicial system. For the first time we are offered an effective method of removing, suspending and disciplining judges who were lazy, who neglected their duty, who are incompetent, who are disabled—both mentally and physically—who have attempted to—well, I should not say "attempted," but who have, in many cases, been hesitant about deciding causes and thereby hindering litigants. For the first time we have an opportunity to effectively cope with this problem.

A great deal of thought went into this particular section. It is based a great deal on the California system, which has been extremely successful and which is presently being practiced by a great many states, and a great many other states are anticipating putting this system into effect.

The present proposal provides for a judicial inquiry and review board made up of five judges, two lawyers and two non-lawyer members. We believe that every segment of society should be represented on this board. Though the judges should be the majority in a board like this, they certainly should have the benefit of the advice of both men in the legal profession and laymen. I say that if we adopt this amendment and compose the board of five judges, we are emasculating this particular section and I think we are doing great harm to the entire area of removal, suspension and discipline.

Delegate Shettig brought up the question of New York. Under the New York system there is no permanent committee such as we would have in this division here. Under the New York system, which is composed of a panel of five judges, it is an ad hoc committee. Since 1948, which was the date of its creation, that ad hoc committee has been convened only three times. You can see what can possibly happen when you have a committee which is made up entirely of judges. It is extremely important that both lawyers and laymen have a distinct say in the operation of this committee. I cannot express how strongly the entire committee felt about this particular area.

Let me say this, of all the proposals that were submitted by the sub-committee, this particular proposal was the only one that came out of the sub-committee that was adopted by the entire committee without a single word changed.

I implore you—and this is the first time I have spoken on the floor of this Convention—to defeat this amendment and to leave the entire section intact.

PRESIDENT BRODERICK. The Chair recognizes Delegate Buck.

DELEGATE BUCK. I wish to speak in support of the committee's proposal. Next to merit selection, upon which this assembly has already spoken, I do not think there is anything that would do more to improve the administration of justice than the adoption of the provision of the Judiciary Committee in regard to removal, suspension, discipline and the compulsory requirement of judges. I certainly urge this assembly to support the committee proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. I speak on behalf of the committee briefly, Mr. President. The co-chairman did not give any explanation of this new section to the Pennsylvania Constitution, but I think, in looking at it, it is a new and novel thing in which for the first time there is some system of disciplining judges who up to this time, as our co-chairman has said, are heads of groups in Pennsylvania. We feel that if there is anything wrong with our judicial system, this is a long step forward to remedying what ailments there are in it.

As far as the specific proposal is concerned, the amendment that there be only judges on this board, we feel that this would be a mistake. It was discussed at some length in our sub-committee and before the standing committee. We feel that if a man should be tried by his peers, a judge should be tried ultimately by judges. But the public, besides the judges, has an interest in this board and should be represented; the legal profession has an interest; laymen have an interest.

We have no way of saying whether or not the New York board should have met more often than it did, but if there are laymen on the board and if there are lawyers on the board, there will not be the same imputation of misconduct as if it is composed entirely of judges.

We feel, as a matter of fact, that this board will not meet too often because the Supreme Court is going to call an erring judge in and say, here, we made an investigation, we feel you should do this or that. You should get out of this incompatible activity, you should do this, you should do that, you should resign. We feel that the hearings that will be held by this board will be few in number, but, if you have a board composed entirely of judges, you are going to have, perhaps, some difficulty because of the fact that only judges are represented and the people will ask what you are doing.

We feel that the public interest is best served by having laymen on it and by having lawyers on it, but still having a majority of the board composed of judges, so that ultimately the erring and the unerring will be tried by their peers.

This was very carefully thought out in the final conclusion of the sub-committee and the standing committee.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, it is difficult for me to understand the change that this amendment represents. Nothing of this sort was considered in the committee. I can only assume that this change is proposed now in view of the change that was made in the idea of selecting judges. You will remember the screening committee, if I might call it that, was to be composed of lawyers and laymen with the majority laymen. That has all been knocked down in the day of great struggle in this assembly so that now we have gone back to the traditional method where selecting judges by any selective process must be exercised only by the political authorities. We are back to the status quo.

Assuming we are back to the status quo, we will add to it the fact that we have the amendment allowing a

vote, of the operation of the sitting judge rule, to lock the people selected in their offices as judges. The hope is that we can keep them in there for their lifetimes.

Mr. President, when it comes to any dispassionate inquiries as to whether they meet up with the standards the public wants in their judges, all of the laymen are to be taken out. It is about time we began to consider the posture in which this Convention is putting itself in the eyes of the public. I believe this amendment should be defeated.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, I think that there is some little misunderstanding with respect to this particular amendment and, perhaps, that is our responsibility for not explaining in more detail the exact composition and procedure which will be required under our new judicial inquiry and review board.

For the sake of meeting the Shettig amendment head on, may I just explain to you briefly, because I do not want to overtalk this particular issue.

In our particular judicial inquiry and review board which is composed of nine members, five of which are judges, that particular board is only constituted for the purpose of receiving, investigating complaints, taking testimony and making a recommendation to a higher body.

We feel in that regard we have given sufficient protection to judges, if judges disagree with this concept. By that I mean, in the first instance, the judicial inquiry and review board, which is composed of nine members, has the controlling number of five members being judges, but they actually take no specific action on any complaint.

The judiciary inquiry and review board makes recommendations to the Supreme Court where there are seven judges, and these are the people who actually make the final decision regarding suspension, removal or discipline, so that in that regard, if there are any judges or anyone who fears that judges will be crucified, we only say to them that we feel they are well protected, and rightly they should be. But please understand that this amendment may well be confused in that for the purpose of advocating this amendment we are saying that we want five judges because they are going to make a decision. That is not true. This board is only going to make a recommendation and in that regard we thought it salutary if there were lawyers and lay people on that board, not only to understand judges but, perhaps, to understand the complaintants.

We ask you as the committee to defeat this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I believe that the Judiciary Committee has explained this fully and I hope to the satisfaction of the proponent of the amendment. I move the question.

DIVISION ONE

PRESIDENT BRODERICK. We open the voting machine and we are going to vote on the first division first.

Is there any question that we are going to vote on this in two parts, and the first part we are going to vote on consists of the first four lines, down to line 4 where it says, "members of the in line 7 and all of lines 8 and 9." We will unlock the voting machine. The question is, will the Convention agree to the amendment being offered by Delegate Shettig in connection with the first four lines on your printed sheet.

On the question recurring,

Will the Convention agree to the first part of the amendment to the Shettig amendment?

The roll was recorded as follows:

YEAS—15

Cosetti	Goldman	Murray	Shively
Cunningham	Gouger	Prendergast	Shoemaker
Dumbauld	Kauffman	Sharp	Woodside
Gerber	Leinbach	Shettig	

NAYS—114

Aberman	Dailey	Laputka	Reynolds
Amsterdam	Desmond	Leach	Richter
Aurentz	Devlin	Leonard	Roberts
Bagenstose	Erwin	Levin	Sahli
Baldrige	Fagan	Manderino	Scales
Baldwin	Fawcett	Mangery	Scarlett
Banes	Feather	Markley	Scott
Barron	Filson	Mattioni	Scranton
Barry	Fohl	McGeary	Sebastian
Benedict	Forster	McGlynn	Shapiro
Benfield	Gehrlein	Meyer	Solomon
Bloom	Goldstein	Michael	Sprogell
Braham	Griffith	Michener	Stout
Brennan	Hannum	Miller, D.	Strickler
Broderick	Harding	Moorhead	Stroup
Brown	Hatter	More	Swope
Buck	Henderson	Morton	Tate
Bunting	Heyburn	Nelson	Thomson
Burkholder	Himes	O'Donnell	Thornburgh
Cain	Hocker	Orban	Tomascik
Camardella	Hook	Otto	Tully
Caputo	Hostetler	Pasquerilla	Waldron
Casey	Huggins	Pelletier	Welsh
Clark	Irvis	Popil	Westerberg
Clinger	Jirolanio	Pott	Whittum
Corey	Keller, J.	Rappaport	Wilcox
Cortese	Keller, M.	Rea	Wilmarth
Croop	Kelly	Redick	Woodring
Curran	Krill		

NOT VOTING—34

Allison	Fineman	Lane	Powell
Baldus	Fleming	Lee, K.	Quiles
Bashoff	Fortney	Lee, L.	Rovner
Butera	Gabreski	Miller, R.	Ruth
Caron	Gray	Musselman	Shrager
Conley	Horne	Orbin	Silverman
Donaldson	Johnson	Pechan	Van Sant
Donolow	King	Percey	Warman
Fay	Kline		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

DIVISION TWO

PRESIDENT BRODERICK. I will recognize Delegate Shettig for discussion of part 2.

DELEGATE SHETTIG. Mr. President, I had discussed briefly part 2. It has been called to my attention by one of the delegates that one of the words that should be in that sentence was left out when it was transcribed.

This amendment has been changed, and I think the word that was left out on the second line after the word "otherwise" should be the word "disciplined." So it should read, "But in no event shall any justice or judge be suspended or removed from office or otherwise disciplined, for or by reason of any decision rendered by him."

PRESIDENT BRODERICK. I think we can all make that correction in connection now with the typographical error at this time.

Is there any delegate that has any question of where the word "disciplined" goes?

DELEGATE CURRAN. Perhaps a brief statement will make this whole amendment very simple. This amendment relates to a section regarding the standards for which judges would be subject to review.

We had said to Delegate Shettig that we in no event intended any judge to be subject to review for the import or content of a particular decision that he has made. We feel there are already sufficient remedies in our procedure for reviewing decisions. I think the misunderstanding comes from two phrases in our particular standards which relate to conduct which prejudices the proper administration of justice or brings a judicial office into disrepute. If, perhaps, we have not made this clear and there is some misunderstanding that a judge could be reviewed for the contents of a decision, then we would have no objection to this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. I think Delegate Curran just answered my question, that the committee would have no objection to this language being inserted.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. I was not on that sub-committee, but as one of the members of the Judiciary Committee I certainly object to inserting this language. Anybody ought to know that this is the law. A child graduating from high school could tell us, I believe, that we should not put this in a Constitution. The judge is not to be penalized because he makes a decision someone does not like. I think we would be somewhat in the nature of a laughingstock to put this in the Constitution. I am sorry to speak so plainly, but that is what I think.

On the question recurring,

Will the Convention agree to the second part to the amendment offered by Delegate Shettig?

The roll was recorded as follows:

YEAS—16

Baldus	Gerber	Michael	Shettig
Broderick	Gouger	Murray	Shoemaker
Cosetti	Kauffman	Shapiro	Shrager
Dumbauld	Keller, J.	Sharp	Woodside

NAYS—112

Aberman	Desmond	Laputka	Reynolds
Amsterdam	Devlin	Leach	Richter
Aurentz	Erwin	Leinbach	Roberts
Baldrige	Fagan	Leonard	Sahli
Baldwin	Fawcett	Levin	Scales
Banes	Feather	Manderino	Scarlett
Barron	Filson	Mangery	Scott
Barry	Fohl	Markley	Scranton
Benedict	Forster	Mattioni	Sebastian
Benfield	Gabreski	McGeary	Shively
Bloom	Gehrlein	McGlynn	Solomon
Braham	Goldman	Meyer	Sprogell
Brennan	Goldstein	Michener	Stout
Brown	Griffith	Miller, D.	Strickler
Buck	Hannum	Moorhead	Stroup
Bunting	Harding	More	Swope
Burkholder	Hatter	Morton	Tate
Cain	Henderson	Nelson	Thomson
Camardella	Heyburn	O'Donnell	Thornburgh
Caputo	Himes	Orban	Tomascik
Casey	Hocker	Otto	Tully
Clark	Hook	Pelletier	Waldron
Clinger	Hostetler	Popil	Welsh
Corey	Huggins	Pott	Westerberg
Cortese	Irvis	Prendergast	Whittum
Croop	Jirolanio	Rappaport	Wilcox
Curran	Kelly	Rea	Wilmarth
Dailey	Krill	Redick	Woodring

NOT VOTING—35

Allison	Fay	Kline	Percey
Bagenstose	Fineman	Lane	Powell
Bashoff	Fleming	Lee, K.	Quiles
Butera	Fortney	Lee, L.	Rovner
Caron	Gray	Miller, R.	Ruth
Conley	Horne	Musselman	Silverman
Cunningham	Johnson	Orbin	Van Sant
Donaldson	Keller, M.	Pasquerilla	Warman
Donolow	King	Pechan	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHAPIRO AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 16), page 11, lines 28 and 29, by striking out "subsection (c)" and inserting: subsections (c) or (d)

Amend Sec. 1 (Sec. 16), page 11, line 29, by striking out "or judge" and inserting: , judge or justice of the peace

Amend Sec. 1 (Sec. 16), page 12, line 4, by striking out "or judge" and inserting: , judge or justice of the peace

Amend Sec. 1 (Sec. 16), page 12, line 8, by striking out "or judges" and inserting: , judges or justices of the peace

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I hope someone on the committee will correct me if I am wrong in my statements that I am about to make with respect to what went on in the Judiciary Committee with respect to this article.

The present provisions submitted by the committee with respect to removal, suspension, discipline and retirement of justices of the peace simply reads and I am reading from page 13, sub-section (d), "Procedures for the removal, suspension, discipline, and compulsory retirement of justices of the peace shall be as prescribed by general rules of the Supreme Court." I stress the word "procedures."

The section which precedes the sub-Section (c), which starts on page 11, deals with the suspension, removal and discipline of justices and judges.

At one point in the discussion of this article before the Judicial Committee the question was raised and the state-

ment was made that it was intended that the judicial inquiry board be empowered to deal with misconduct in office of justices of the peace, as well as other justices and judges. At some point or other someone made the statement that the word "justices," as it was then ruled, and it was some weeks back, was intended to include justices of the peace.

I have examined the two sub-sections as they came out of the committee in the present Proposal No. 7. It is my humble opinion when we say "Procedures for the removal, suspension and discipline and compulsory retirement of justices of the peace," does not cover the matter entirely and there are several places in sub-Section (b), if we mean to include justices of the peace and put them under the jurisdiction of the judicial inquiry and review board, we must say justices of the peace, as well as justices and judges.

The sole intent of this amendment is to make sure the judicial inquiry board has the power to suspend, remove or discipline a justice of the peace. I do not think that saying at the end of the section in a separate sub-section that the procedures for doing so shall be as prescribed by the general rules of the Supreme Court is sufficient, unless we have previously given to the judicial inquiry board the power to do that, that is to suspend, remove or discipline those officers.

Accordingly, I have inserted in lines 28 and 29 on page 11, I have changed the language in sub-Section (b) to sub-Section (b) or (c), the (c) referring to justices of the peace.

I have inserted the words justices of the peace in line 29 and I bring them specifically under the jurisdiction of this board.

I have inserted the words "justices of the peace" in the place which says that any justice or judge may be retired for disability seriously interfering with the performance of his duties, so it now includes justices of the peace.

In line 8 on page 12, "The board shall keep itself as fully informed as may be of facts and circumstances relating to justices or judges," I want to insert "justices of the peace" there.

There are several other places where reference is made to justices or judges, and I have not inserted justices of the peace because they clearly are procedural and sub-Section (c) takes care of that.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, the appellation which includes justices of the peace is correct because in sub-Paragraph (d) on page 13 there is a provision that, "procedures for the removal, suspension, discipline and compulsory retirement of justices of the peace shall be as prescribed by general rules of the Supreme Court." The Supreme Court, if it chooses, makes the justices of the peace subject to this judicial inquiry and review board. I would rather think they would not, because we have at present about 4,000 justices of the peace in Pennsylvania and under the new Constitution we will have about 1,000. It seems like this would be an awful number to be subject to special appointees, being nine in number, have formal hearings, have to report to the Supreme Court, and then having the Supreme Court review the whole thing and come down with a decision about these 4,000 men. It was not our intent to make them subject to this rather elaborate machinery unless the Supreme Court so wanted it.

We have about 300-some judges in Pennsylvania, seven justices and seven judges of the Superior Court. We feel that this is what we intended to do to cover the major judiciary, not the minor judiciary, but the procedure and mechanics are here for the Supreme Court to implement that at a later time.

We are very much against making it mandatory in the Constitution.

DELEGATE SHAPIRO. May I examine the chairman of the sub-Committee?

PRESIDENT BRODERICK. Certainly. Delegate Barry will stand for interrogation.

DELEGATE SHAPIRO. Does the phrase, "any justice or judge may be suspended, removed from office or otherwise disciplined for violation of Section 15 of this article, misconduct in office, neglect of duty, failure to perform his duties or other conduct which prejudices the proper administration of justice," does that provide for any procedure?

DELEGATE BARRY. Not precisely. I will refer you to sub-Paragraph (e), "Any justice, judge or justice of the peace who shall be convicted of misbehavior in office by a court of competent jurisdiction, who shall be disbarred as a member of the bar of the Supreme Court, or who shall be removed from the Supreme Court, shall automatically forfeit his judicial office and thereafter be ineligible for judicial office."

That provides a specific provision about justices of the peace, and specifically in Section 15, as Delegate Curran pointed out, and we have pointed out in sub-Paragraph (b), "Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court." It is taken care of both in Section 15 and Section 16.

DELEGATE SHAPIRO. I will not belabor the point, but I do not agree with you that it is covered, and I have not by my amendment, subjected justices of the peace to the elaborate procedures set forth in sub-Section (c). I have simply provided they may be removed from office. I have provided the board shall keep itself informed of their activities. I left the rest of it to sub-Section (d) which does provide for procedures. I submit, that the first parts of (c) do not deal with procedures for removal, they merely set the grounds for removal.

DELEGATE BARRY. Just briefly, we feel they should be not part of any of this board's apparatus, their investigating procedures, or anything else. Even the investigation may be more of a burden on this board than any other thing it is required to do. Unless the Supreme Court requires it explicity, we feel it should not be mandated in the Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, may I move the question?

PRESIDENT BRODERICK. You may. Are we ready for the question? Did you want to make any further statement, Delegate Shapiro, or are we all set?

DELEGATE SHAPIRO. I do not want to make any further statements, except that I do not think the committee was listening when I made my point.

I have not required the board to do any of the things

with respect to the justices that they do as judges. I simply put the justices under their jurisdiction.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Shapiro?

The roll was recorded as follows:

YEAS—19

Baldus	Burkholder	McGlynn	Tate
Banes	Clinger	Michael	Thornburgh
Bloom	Cosetti	Michener	Tully
Buck	Feather	Rea	Whittum
Bunting	Hook	Shapiro	

NAYS—110

Aberman	Filson	Leach	Roberts
Aurentz	Fohl	Leinbach	Ruth
Bagenstose	Forster	Leonard	Sahli
Baldrige	Gabreski	Levin	Scales
Baldwin	Gehrlein	Manderino	Scarlett
Barron	Gerber	Mangery	Scott
Barry	Goldman	Markley	Scranton
Benedict	Goldstein	Mattioni	Sebastian
Benfield	Gouger	McGeary	Sharp
Braham	Griffith	Miller, D.	Shively
Brennan	Hannum	Moorhead	Shoemaker
Broderick	Harding	More	Solomon
Brown	Hatter	Morton	Sprogell
Cain	Henderson	Murray	Stout
Camardella	Heyburn	O'Donnell	Strickler
Caputo	Himes	Orban	Stroup
Casey	Hocker	Orbin	Swope
Clark	Hostetler	Otto	Thomson
Corey	Huggins	Pasquerilla	Tomascik
Cortese	Irvis	Pelletier	Van Sant
Croop	Jirolanio	Popil	Waldron
Cunningham	Johnson	Pott	Welsh
Curran	Kauffman	Prendergast	Westerberg
Dailey	Keller, J.	Rappaport	Wilcox
Desmond	Kelly	Redick	Wilmarth
Erwin	King	Reynolds	Woodring
Fagan	Krill	Richter	Woodside
Fawcett	Laputka		

NOT VOTING—34

Allison	Dumbauld	Lane	Percey
Amsterdam	Fay	Lee, K.	Powell
Bashoff	Fineman	Lee, L.	Quiles
Butera	Fleming	Meyer	Rovner
Caron	Fortney	Miller, R.	Shettig
Conley	Gray	Musselman	Shrager
Devlin	Horne	Nelson	Silverman
Donaldson	Keller, M.	Pechan	Warman
Donolow	Kline		

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHAPIRO AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 16), page 13, line 22, by striking out "or judge" and inserting: , judge, or justice of the peace

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. We will hear from Delegate Shapiro in connection with the amendment.

DELEGATE SHAPIRO. Mr. President, I realize that this adds further language, specifically four words to the proposal, but I should like to see justices of the peace under the same sanction with respect to running for public office while they hold the office of justice of the peace as our judges and justices. It seems to me the same considerations apply.

All considerations which compel us, or which persuade us, that judges who sit in judgment with respect to matters of perhaps more consequence, all these things tell us these men should not run for political office, while they remain judges. I think all of those arguments apply in the case of the justices of the peace, even though the matter is of, perhaps, a lesser consequence. They are of equal consequence to the people that come before them.

We will not have justice if we allow justices of the peace to remain in office as justices of the peace and run for other offices.

PRESIDENT BRODERICK. May we hear from the committee in connection with this amendment?

DELEGATE BARRY. There are all kinds of prohibited activities, and we feel this is one that unduly restricts justice of the peace activities. It is not a major judiciary office the same as the court of common pleas judge, and we feel this would be an unwarranted invasion and it is unnecessary.

As Governor Scranton now points out, if the Supreme Court should at any time feel this is necessary, to provide by rule or canon that they not be allowed to secure other public office, this is still within the framework of the flexibility of our provision.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Can Delegate Shapiro answer a question for me?

PRESIDENT BRODERICK. Certainly. Proceed.

DELEGATE RAPPAPORT. Delegate Shapiro, do you include within your definition of justice of the peace all judicial officials sitting in courts not of record, regardless of the particular title they might have?

DELEGATE SHAPIRO. I do not know what else we have, Delegate Rappaport. I think we have only judges, justices and justices of the peace under the judicial proposal that we now have before us.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. This amendment strikes a familiar tone. I think I might point out, when we were considering the amendment to Section 15, I think it was Delegate Baldus that had an amendment similar to this which would have prohibited justices of the peace from holding any other office in political parties, or political organizations, or elected office for profit, something similar to this that we already considered.

PRESIDENT BRODERICK. Are we ready for the question? Would you like to be heard again Delegate Shapiro?

DELEGATE SHAPIRO. No, Mr. President.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Shapiro?

The roll was recorded as follows:

YEAS—28

Baldus	Corey	McGeary	Rea
Bloom	Cosetti	McGlynn	Ruth
Buck	Feather	Michael	Shapiro
Bunting	Gabreski	Michener	Shoemaker
Burkholder	Gehrlein	Murray	Tate
Casey	Hook	Pelletier	Thornburgh
Clinger	Mattioni	Rappaport	Whittum

NAYS—96

Aberman	Fawcett	Krill	Scarlett
Aurentz	Filson	Laputka	Scott
Bagenstose	Fohl	Leach	Scranton
Baldrige	Forster	Leinbach	Sebastian
Baldwin	Gerber	Leonard	Sharp
Barron	Goldman	Manderino	Shively
Barry	Goldstein	Mangery	Shrager
Benedict	Gouger	Markley	Solomon
Benfield	Griffith	Miller, D.	Sprogell
Braham	Hannum	More	Stout
Brennan	Hatter	Morton	Strickler
Broderick	Henderson	O'Donnell	Stroup
Brown	Heyburn	Orban	Swope
Cain	Himes	Orbin	Thomson
Camardella	Hocker	Otto	Tomascik
Caputo	Hostetler	Pasquerilla	Tully
Clark	Huggins	Pott	Van Sant
Cortese	Irvis	Prendergast	Waldron
Croop	Jirolanio	Redick	Welsh
Curran	Johnson	Reynolds	Westerberg
Dailey	Kauffman	Richter	Wilcox
Desmond	Keller, J.	Roberts	Wilmarth
Erwin	Kelly	Sahli	Woodring
Fagan	King	Scales	Woodside

NOT VOTING—39

Allison	Donolow	Kline	Pechan
Amsterdam	Dumbauld	Lane	Percey
Banes	Fay	Lee, K.	Popil
Bashoff	Fineman	Lee, L.	Powell
Butera	Fleming	Levin	Quiles
Caron	Fortney	Meyer	Rovner
Conley	Gray	Miller, R.	Shettig
Cunningham	Harding	Moorhead	Silverman
Devlin	Horne	Musselman	Warman
Donaldson	Keller, M.	Nelson	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Bunting. For what purpose does the gentleman rise?

DELEGATE BUNTING. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BUNTING. Mr. President, I know that a few days ago I asked the status of the register of wills, and Delegate Amsterdam suggested that we could bring it up under the schedule, but I would like this committee to give their reasoning as to why the register of wills was not included as being expressly subjected to the canons of ethics. Would either Delegate Curran or Delegate Barron enlighten me on that point?

PRESIDENT BRODERICK. Delegate Bunting, would you restate your question? Some of the delegates did not hear the question.

DELEGATE BUNTING. I feel as though I have been complimented because they would like to hear my question.

I would like to know the thinking of the committee, the sub-committee, as to the status of the register of wills and why that judicial officer was not made expressly subject to the canons of ethics.

DELEGATE BARRY. There is a lot of judicial officers besides judges, such as the board of viewers, and other bodies, that have a judicial or quasi-judicial function.

The register of wills, of course, has the judicial function in passing on matters coming before the register, but this is not a judicial officer in the sense that a judge is a judicial officer.

This is an intermediate hearing body, even though it has judicial functions. It is passed on in that case to the orphans' court or to the new orphans' court division, and we could not include such officers to have a quasi-judicial function that are really not judges.

DELEGATE BUNTING. Mr. President, the particular cause of my concern is the fact that the register of wills does have original jurisdiction in probate matters to determine whether a will is executed by a person of sound mind, and with that not being subject to undue influence, and then the present rules provide that orphans' court will have appellate jurisdiction as distinguished from original jurisdiction.

Is it the intent somewhere along the line that the orphans' court can acquire that original jurisdiction?

DELEGATE BARRY. The board of viewers, for example, hears cases and as a judicial function until someone takes an appeal from the board of viewers to court. In performing such a judicial function, it is not actually acting like a judge. It was not intended that these intermediate or lower forms of judicial functions, so-called, would be subject to the provisions of this article. It is not a real judicial function.

DELEGATE BUNTING. All right.

But then the Supreme Court can by its own motion, if you will, include the register of wills under the canon of ethics, if it so desires?

DELEGATE BARRY. The Supreme Court is, of course, in charge of the entire judicial system, and I think it could set standards for anything underneath it that it wanted to.

ANNOUNCEMENT BY JUDICIARY COMMITTEE CHAIRMAN

PRESIDENT BRODERICK. The Chair now recognizes the Chairman of the Judiciary Committee, who is going to, as I understand, discuss the schedule.

DELEGATE AMSTERDAM. Mr. President, the schedule to the Judiciary Article, which begins on page 15 of Committee Proposal No. 7, Printer's No. 20, and goes through to page 31 is before us at this time. Since the schedule will naturally have to follow the changes in the article itself, those changes will be made automatically. I would hope that would be done within the course of the next 24 hours, if it is at all possible for the committee to do so. They will be changes that will be automatic as a result of changes that were made in the schedule.

However, there are a number of items, I understand, such as an amendment to the schedule that various delegates have proposed, and I wonder whether we might not at this time take those which have been presented to the Chair so that we can see whether they do affect the items of the schedule which will not be changed, unless they are changed by this assembly.

Mr. President, I suggest at this time that we start the amendments and see whether it is workable. That would save some considerable time at a later date.

PRESIDENT BRODERICK. I just want the delegates to know that I certainly am in wholehearted accord with your suggestion that we try to complete this amending process this evening.

SHOEMAKER AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SHOEMAKER offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 3), page 15, line 29 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 3), page 16, line 3 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 4), page 16, line 6 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 4), page 16, line 9 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 13), page 20, line 25 by striking out "Orphans' " and inserting: Estates

Amend Schedule (Sec. 13), page 21, line 2 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 14), page 21, line 13 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 14), page 21, line 25 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 14), page 23, line 24 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 14), page 24, line 5 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 14), page 24, line 9 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 14), page 24, line 11 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 15), page 27, line 11 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 15), page 27, line 23 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 16), page 28, line 15 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 17), page 28, line 24 by striking out "orphans' " and inserting: estates

Amend Schedule (Sec. 18), page 29, line 3 by striking out "orphans' " and inserting: estates

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, my statement on this is going to be very short.

There is quite a question as to whether or not we have enough basic guts to make a change, but we have made enough changes to the judiciary system and I understand the only reason why the name of the orphans' court was not changed to what it really should be, the Estate Court Division, is that we had some sort of temerity expressed. I say if we are going to call a spade a spade, let us call it the Estate Court Division of the Court of Common Pleas, and that is the effect of this amendment.

I ask for the question.

PRESIDENT BRODERICK. Let us hear from the committee.

DELEGATE AMSTERDAM. Mr. President, I can tell this assembly that the committee did discuss the possibility.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Shoemaker?

The roll was recorded as follows:

YEAS—22

Buck	Laputka	Prendergast	Silverman
Clinger	Manderino	Rea	Tate
Erwin	McGlynn	Ruth	Thornburgh
Hook	Meyer	Shettig	Whittum
Huggins	Michael	Shoemaker	Wilcox
Irvis	Michener		

NAYS—105

Aberman	Desmond	King	Richter
Amsterdam	Devlin	Krill	Sahli
Aurentz	Fagan	Leach	Scales
Bagenstose	Fawcett	Lee, L.	Scarlett
Baldrige	Feather	Leinbach	Scott
Baldwin	Filson	Leonard	Scranton
Barron	Fohl	Levin	Sebastian
Barry	Forster	Mangery	Shapiro
Benedict	Gabreski	Markley	Sharp
Benfield	Gehrlein	Mattioni	Shively
Bloom	Gerber	McGeary	Shrager
Braham	Goldman	Miller, D.	Solomon
Brennan	Goldstein	Moorhead	Sprogell
Broderick	Gouger	More	Stout
Brown	Griffith	Morton	Strickler
Bunting	Hannum	Murray	Swope
Burkholder	Harding	Nelson	Thomson
Cain	Henderson	O'Donnell	Tomascik
Camardella	Heyburn	Orban	Tully
Caputo	Himes	Orbin	Van Sant
Casey	Hostetler	Otto	Waldron
Clark	Jirolanio	Pasquerilla	Welsh
Corey	Johnson	Pelletier	Westerberg
Cortese	Kauffman	Popil	Wilmarth
Croop	Keller, J.	Pott	Woodring
Curran	Kelly	Rappaport	Woodside
Dailey			

NOT VOTING—36

Allison	Donaldson	Hocker	Percey
Baldus	Donolow	Horne	Powell
Banes	Dumbauld	Keller, M.	Quiles
Bashoff	Fay	Kline	Redick
Butera	Fineman	Lane	Reynolds
Caron	Fleming	Lee, K.	Roberts
Conley	Fortney	Miller, R.	Rovner
Cosetti	Gray	Musselman	Stroup
Cunningham	Hatter	Pechan	Warman

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SILVERMAN AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SILVERMAN offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 14), page 21, line 19, by striking out "ten" and inserting: thirty, no more than fifteen of which shall be from the same political party,

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, I do not know whether I am in order at this time, but I would like to see this amendment tabled. I have asked some court personnel for some statistics which they promised to have for me tomorrow, and I think it is necessary to give it to this body before we can make intelligent decision on this very vital issue to Philadelphia. So, if I am in order in asking my own motion that the amendment be tabled, and I now so move.

PRESIDENT BRODERICK. The Chair can only say that you are in order in asking it to be tabled. The Chair is also hoping, and it has been hoping, that we could complete the amending process on the judiciary this evening, so we can have it produced and put on the calendar tomorrow for second consideration, and I will say final second consideration.

I am going to ask the body if they have any objection, then, to putting this on the table?

DELEGATE SCRANTON. May I just make one comment?

PRESIDENT BRODERICK. Yes.

DELEGATE SCRANTON. As of the present moment, we have only three more amendments and the Barron amendment. This would mean that if we continue at this rate, which I have every hope we will, that yours would be the only amendment tomorrow, and it would hold up the whole procedure of the whole Convention one day.

DELEGATE SILVERMAN. Mr. President, in light of what Governor Scranton just said, I think that the body could proceed on this. I would like to make a short opening statement.

PRESIDENT BRODERICK. I will say surely. The Chair appreciates that attitude.

DELEGATE SILVERMAN. I believe this body has heard much about the judicial backlog in Philadelphia. I just want to give you my particular experience as a plaintiff's attorney.

DELEGATE SCRANTON. Mr. President.

PRESIDENT BRODERICK. Yes. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. I just made a misstatement. I apologize to both you and Delegate Silverman. I was just informed by Delegate Barron, that what he calls both sides of the House have asked him to hold his over until tomorrow and, if that is the case, we will have another one, Leon.

PRESIDENT BRODERICK. I can only say that is bad news, indeed. Perhaps, there could be a reconsideration of that decision in connection with the Barron amendment. But, all right, you heard the facts.

DELEGATE SILVERMAN. I have no objection with continuing. I think since it has been started, we might as well go on.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Strickler. I just wanted to pointed out that Delegate Silverman still has the floor.

DELEGATE STRICKLER. I understand that if we act on this there will be none go over to tomorrow?

PRESIDENT BRODERICK. No. I think we have nine more amendments.

DELEGATE SCRANTON. On the judiciary?

PRESIDENT BRODERICK. What we were hoping to do, and what I personally thought we could accomplish today, was to complete the consideration of the amendment and have this on the calendar tomorrow for second consideration. I am personally worried that we are not up to schedule and I want to see us get up to schedule so we can get finished.

DELEGATE STRICKLER. The only reason I talked to the chairman of the ad hoc committee on arrangements, we have to have this thing move along fast, but if we are going to have to continue to vote, from day to day, we cannot do our work.

PRESIDENT BRODERICK. I cannot do anything but agree with you. I just want to point out that Delegate Silverman has the floor.

DELEGATE SCRANTON. I want to hear what Delegate Silverman has to say.

PRESIDENT BRODERICK. Yes. Would you proceed now?

DELEGATE SILVERMAN. Currently, a plaintiff has to wait seven years before his case comes to trial in Philadelphia. I believe that the current Judicial Article attacks this backlog in two ways which are very helpful.

First of all, we provide an increased and better judicial administration so we can take judges and put them where they are needed.

Second of all, I believe we have provided the machinery to remove physically or mentally incapacitated judges, but I feel that we need the third prong and, possibly, this is the most important prong, and that is, we need additional judicial manpower. I believe the 30 judges that I have asked for are really a minimum.

Now, Mr. Spector, who is District Attorney in Philadelphia, has supplied some statistics which I have been handed, and I assume they are correct. They show that jury trials in criminal cases have increased over 300 per cent in the last three years. I believe a lot of delegates had gotten this same letter. They show a civil backlog of untried cases approaching 17,000, and that does not include non-jury cases which are untried, which are in excess, I believe, of 2,300.

Added to this is the fact that recent U. S. Supreme Court decisions have made it more and more timely to try juvenile and other criminal defendants. The Gault decision, which I think we have heard something about, requires that juveniles be given the right to counsel and this, of course, makes the trial of the juvenile much more timely. The Supreme Court decision providing right to counsel in other criminal cases also makes the trial of criminal defendants much more timely, time-consuming.

All of this adds up to an enormous backlog which exists now, and all points of the backlog rally rather than shrink. There is no question that this is probably something that should have been handled by the Legislature. The seven-year backlog did not grow up in the space of five minutes. This has been accumulating for the last five, six and seven years, and the Legislature has not acted.

I think we all know there are reasons why they have not acted. These reasons do not affect this body. We can make the judicial system in Philadelphia an effective functioning order, but we need this additional manpower. I, therefore, respectfully ask for your careful consideration. This number of judges will be put in the schedule and can be changed by the Legislature. It is not something that is fixed for all time.

I have plaintiffs who are suffering and they would be most happy and most grateful, and so would I, if we could add these additional judges.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, I feel that this is one of the crucial issues in this Convention and one upon which the non-legal delegates like myself really need instruction, so I am going to ask a few simple questions in the spirit of the little boy who saw the king walk down the street naked. Everybody knew he was naked, but nobody would admit it until this little kid says, "Look, he has no clothes on."

I start with this:

I believe this Convention ought to consider very seriously the plea made by Delegate Devlin to the effect that Philadelphia needs 30 new judges. The figures have been dropped by some quarters to 24. I will buy 24. But if we need 30 new judges in Philadelphia then we make some silly kind of compromise on 10 judges, just does not make any sense to me.

I am much inspired in my remarks by the interview that Governor Rockefeller gave in New York last Saturday which was reported in the Sunday paper, in which he pointed out that a political impasse in New York lasting over two years to four years, has meant a deficit in the New York courts of, I think, 53 judges, many of them focusing upon the City of New York.

In other words, their problem is the same as our problem. Governor Rockefeller said that the reason he could not appoint these judges was because the two political parties could not get together in a sensible understanding and he was very sharp in his statement. He said this has got to stop, sensible men who are intelligent enough to run great political parties ought to be able to get together and tell me how many judges they need, where they should come from and then let me set in motion the process to provide the 53 judges that are deficit.

I think we face the same thing in Pennsylvania, we need more judges. I understand there are complex political reasons why we cannot get together on this. They are reasons which I do not understand and I do not minimize them. I told you of my participation, in part, in Bucks County in protecting the Democratic Party as firmly as I could. I would certainly expect the leaders of the Democratic Party in this body to protect themselves in this vital situation.

I do not want to see 30 judges fall into the hands of the Republican Party in Philadelphia when, as the last election showed, the citizenry of Philadelphia are slightly preponderant on the Democratic side. I respect the leaders of my party. If they are going to say, we would rather have none than have that, I think it is silly when politics degenerate to that, but I think that sometimes it has to be done.

Now, I would like to interrogate Delegate Silverman for a few moments, if I may, please.

PRESIDENT BRODERICK. I am sure he will stand for interrogation. Proceed with your questions.

DELEGATE MICHENER. Would the gentleman agree as a resident of Philadelphia, with Governor Rockefeller that the time comes when the Gordian knot must be cut in these matters? Is it his belief that between 10 and 30 new judges is vital to the political welfare of Philadelphia?

DELEGATE SILVERMAN. Yes.

DELEGATE MICHENER. Does he think the Democratic and Republican leadership of our State and our city is intelligent enough to get together some way to authorize these judges?

DELEGATE SILVERMAN. I am not sure I understand the thrust of that question. I have a feeling I have been led into a trap here. I am the lawyer, Delegate Michener, remember that.

DELEGATE MICHENER. Delegate Silverman. I am a country boy just like the rest of the delegates here.

DELEGATE SILVERMAN. I am finding that out.

I think I will answer that by saying that this seven-year backlog did not arise overnight. It has been growing and it continues to grow. As of this present time certain factors have prevented the Legislature from solving the problem. I am not enough of an analyst to give you the problems and analyze them in depth. All I know is that the problem exists, and I would like to solve it here. I think we can solve it here.

DELEGATE MICHENER. Do you think we are legally empowered here to do the work of the Legislature?

DELEGATE SILVERMAN. I do not believe we are empowered to do the work of the Legislature, but I think we are mandated to provide Pennsylvania and Philadelphia with a fine, workable judicial system. A person that has to wait seven years to have his case decided certainly does not feel that Pennsylvania has a fine, workable judicial system. I do not want to usurp the power of the Legislature, but if the Legislature has not acted and we are left with a situation where no matter what we do we are still not going to come up with a workable judicial system, then I think we have no choice but that we must act.

DELEGATE MICHENER. In that last statement I agree with you thoroughly, and there was no trap.

Do you think, however, if we mandate the number of required judges, that that will do the job? Will we get the judges?

DELEGATE SILVERMAN. I do not think there is any doubt about it. I believe we will.

DELEGATE MICHENER. Do you think if we do not mandate them that we will then fall in the position that New York is in now?

DELEGATE SILVERMAN. I am afraid of that.

DELEGATE MICHENER. In other words, you doubt that the Legislature will come to a conclusion on this very quickly?

DELEGATE SILVERMAN. I am afraid that there is a substantial chance that they might not resolve this problem.

DELEGATE MICHENER. Mr. President, the final question, I think, cuts to the heart of the thing.

Do you think that your phrase "no more than fifteen of which shall be from the same political party" is enforceable?

DELEGATE SILVERMAN. The purpose of this phrase is to try to get bipartisan support for the 30 new judges. I am interested in having 30 new judges. I would like to take politics out of it as much as I can. I do not believe that anything else will be done. I think 15 of each party will be appointed. I believe that. But this is a safeguard to those who feel that there is a danger that the judges may not be chosen representing each political party and that is why it is there, and for no other reason. I do not think there will be any problem with enforcement. I hope not.

DELEGATE MICHENER. May I then, in conclusion, say that as a citizen who has lived in a variety of states, who has seen this problem firsthand in many parts of this country, I can only say that it is our responsibility to cut this Gordian knot. We are going to fall into the same error that New York is now in. We are going to have delays for extraneous reasons. I think we are intelligent enough to bypass that. I hope that some kind of assurance can be given us in the discussion of this amendment as to whether 30 is the point we are really interested in and whether the second part of this admirable suggestion can be put into effect. Can we safeguard the minority party?

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. I have been here now for about two months and I have a matter of great concern to express to this Convention. Since I have been here, we have created a commonwealth court of seven judges and we have created 66 or 67 public defenders and now we have 30 judges. Do we have enough attorneys to fill all these jobs? There are only 67 in the Convention.

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I shall certainly oppose this with all the power I can and I am going to give you briefly my reasons.

When we came into this Convention, we were aware of the great giant down on the Delaware, the great city that so many people judged as so important to this Commonwealth. We came with a plan for a modern judicial system and we presented that plan. We were met by a monolithic wall this side of Philadelphia. We have tried to reach a point of agreement with the gentlemen in the big cities.

I represent the people who were pushed more than pulled into this matter. I have heard talk about the Bar Association doing all this.

Let me tell you one incident. When I was made Vice President of the Pennsylvania Bar Association, I was assigned to the task of working on Project Constitution, and I began going all around this State. I found the lawyers everywhere against it. I found the judges generally against it. They passed a number of resolutions. All the judges in Philadelphia were against it. My little movement seemed entirely futile. Somehow in the course of the next year the atmosphere changed. I will tell you why it changed.

The press, exercising its immemorial and proper function, undertook to tell the people of this Commonwealth what their judicial system was like, the shape it was in, and they also told the story on the air. That changed the thinking in the most exciting fashion, until we had this Convention.

Oddly enough, in back of this is not lawyers. Lawyers are the slowest people in the world to undertake any change. We learn a little law and a little practice in school and come out and we are dead against anybody that wants to make us learn anything new. The real moving force in this Convention, behind this Convention, is the aggregations of women and public spirited citizens everywhere who have been studying this for years and they are, more than anyone else, the ones responsible for our being here.

One of their cherished purposes is to improve the quality of judges and, particularly, they have been sold on the merit plan for judges. They have been convinced, by their own observation and what they have learned, that the minor judicial system is a burden rather than a benefit in the judicial system. They have a number of others like this.

I want to call your attention to what has happened. We voted for 10 additional judges to go to Philadelphia County. Now, Mr. President, I do not know whether we can sell this in our part of the country. When we tell them it is 30 and, if we were to go home and say to them, oh, we promised them 30, what did you get when you got 10? Very little. We got some valuable things here, but nothing like the improvements. There is no improvement in the selection of judges, the justices of the peace are fastened on the body politic forever, and here we are asked to vote for 30 judges. We cannot sell 10 with all we have.

I was interested in what Delegate Michener had to say. I might say to Delegate Silverman that when he talked about Delegate Michener as a trapper, he has mistaken his man. He is thinking of Robert W. Service. Maybe Delegate Silverman is too young to know about Robert W. Service and Dangerous Dan McGrew. Service was the trapper, not Delegate Michener. However that may be, I think the time has come for us to try to help out our distinguished and capable President in his power to demand unanimous consent and see if we cannot get together here in some kind of agreement.

Goodness knows, I will not be one of the negotiators. I am not a negotiator, I am just a storm trooper, or the equivalent of that, that is usually shot down, too, in the process. But I think there ought to be some conferences here. It is not going to be all on one side, however. I say that these proceedings, these programs that we have fostered so carefully all over the State and brought down here, have not amounted to anything.

Let me call attention to this last debate where we could not have any selection committee, but we could have a committee to examine and remove judges. We had an attempt immediately to take the laymen off that so that the lawyers would be locked in. That is just what they have been saying about them. This is not a law-

yers' meeting. This is not a lawyers' movement. It is a movement of public spirited people.

I, for one, want to speak definitely against this. I will fight with all I have against it because it is not fair. It is an imposition on the people of this Commonwealth for us to go out and tell them that we are to give 30 judges to Philadelphia.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

MOTION TO TABLE

DELEGATE THOMSON. Mr. President, I, with a number of other delegate laymen here who are not attorneys, have sat here and we have heard debates, we have heard discussion, and I want to move this entire subject be laid on the table because it is not a Constitutional matter at all. This is a legislative matter, pure and simple. I do not think it has any place in this Constitutional Convention. I, therefore, move to table it.

PRESIDENT BRODERICK. We have a motion by Delegate Thomson.

DELEGATE O'DONNELL. I will second that.

PRESIDENT BRODERICK. It is seconded by Delegate O'Donnell. The motion is to put the Silverman amendment on the table. I am going to unlock the voting machine because all those voting "yea," will vote in favor of tabling the Silverman amendment. Those voting "nay" will vote to reject the motion.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker. For what purpose does the gentleman rise?

DELEGATE HOCKER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE HOCKER. I have a parliamentary inquiry. If we table this, at a later date will we have a right to offer amendments to this same section?

PRESIDENT BRODERICK. It has to be called off the table.

DELEGATE HOCKER. The section pertaining to the—

PRESIDENT BRODERICK. Yes, I understand. You will have the right to offer other amendments to the same section and, if you want to discuss this amendment, it will have to be recalled.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—110

Aberman	Forster	Manderino	Scales
Amsterdam	Gabreski	Mangery	Scarlett
Aurentz	Gehrlein	Markley	Scott
Bagenstose	Gerber	Mattioni	Scranton
Baldus	Goldman	McGeary	Shapiro
Banes	Gouger	McGlynn	Sharp
Barry	Hannum	Meyer	Shettig
Benfield	Henderson	Michael	Shively
Bloom	Heyburn	Michener	Shoemaker
Braham	Himes	Miller, D.	Shrager
Brennan	Hocker	Moorhead	Silverman
Brown	Hook	Morton	Sprogell
Buck	Hostetler	Murray	Stout
Burkholder	Huggins	Nelson	Strickler
Cain	Irvis	O'Donnell	Stroup
Camardella	Jirolanio	Orban	Swope
Caputo	Johnson	Orbin	Tate
Casey	Kauffman	Otto	Thomson
Clark	Keller, J.	Pasquerilla	Thornburgh
Clinger	Keller, M.	Pelletier	Tomascik
Croop	Kelly	Popit	Tully
Curran	King	Pott	Van Sant
Dailey	Krill	Prendergast	Waldron
Desmond	Laputka	Rappaport	Welsh
Fagan	Leach	Richter	Westerberg
Fawcett	Lee, L.	Ruth	Wilmarth
Feather	Leinbach	Sahli	Woodring
Fohl	Leonard		

NAYS—22

Baldrige	Cortese	Harding	Sebastian
Barron	Devlin	More	Solomon
Benedict	Erwin	Rea	Whittum
Broderick	Filson	Redick	Wilcox
Bunting	Goldstein	Reynolds	Woodside
Corey	Griffith		

NOT VOTING—31

Allison	Donaldson	Hatter	Pechan
Baldwin	Donolow	Horne	Percey
Bashoff	Dumbauld	Kline	Powell
Butera	Fay	Lane	Quiles
Caron	Fineman	Lee, K.	Roberts
Conley	Fleming	Levin	Rovner
Cosetti	Fortney	Miller, R.	Warman
Cunningham	Gray	Musselman	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray. For what purpose does the gentleman rise?

DELEGATE MURRAY I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MURRAY. This morning I presented a proposal. It was ruled by the Chair to be out of order in the Convention. Could I have a reason and what my prerogatives are in this matter?

PRESIDENT BRODERICK. Delegate Murray, you are inquiring about the appeal from the order?

DELEGATE MURRAY. Yes. I did not understand the reasoning. It was against the Constitution, I was told. I would like to know what section.

PRESIDENT BRODERICK. It was the Bill of Rights, but we will have an opinion written and we will have it distributed to you.

DELEGATE MURRAY. I would like to reserve my right of appeal until after I receive a written opinion. Is that all right? Do I have that right?

PRESIDENT BRODERICK. You will have the right to appeal tomorrow, the Chair has ruled, because you are entitled to get a copy of the opinion. You will get a copy of the opinion late tonight.

CAVEAT TO ALL DELEGATES

PRESIDENT BRODERICK. The Chair wishes to recognize Delegate Stroup.

DELEGATE STROUP. Mr. President, a caveat to all of us who are delegates in this Convention. Out of the schoolboy book of verse:

"Time was when time had all the time time ever had. Now time has no time at all and time moves on very much apace."

Thank you, Mr. President.

PRESIDENT BRODERICK. I thank the delegate.

SILVERMAN AMENDMENT No. 2 TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SILVERMAN offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 14), page 22, line 6 by removing the period after "business" and inserting: , and shall be responsible for the orderly administration of all courts within the judicial district, subject only to direction in administrative matters of the Supreme Court of Pennsylvania. The President Judge of the common pleas court may appoint one or more administrative directors to serve at his pleasure for purposes of assisting him in performance of his administrative duties. He shall promulgate administrative regulations as he may deem necessary.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes again Delegate Silverman in connection with this amendment.

DELEGATE SILVERMAN. Mr. President, I apologize for taking the time of the Convention. This is a very simple amendment which writes into the schedule dealing with Philadelphia the office of court administrator, which already exists. I feel that we need this because of the large problems which a large judiciary presents in Philadelphia.

The system which we have now seems to work quite well and I would like to make sure that there is a provision for it so that it can continue to function.

PRESIDENT BRODERICK. Is there any discussion on this amendment? Does the committee have any position on this amendment?

Delegate O'Donnell will now speak on behalf of the committee.

DELEGATE O'DONNELL. Mr. President, this is a matter which was extensively discussed in the Judiciary Committee, originally in sub-Committee E, so-called, on court administration and on court structure, that is, the Woodside-Sprogell Commission, and later the approval of the full Judiciary Committee was derived on this precise point.

The thrust of the Silverman proposal would be largely to destroy the unified system which has been erected throughout the length and breadth of the Commonwealth of Pennsylvania outside Philadelphia. It would do it in this way, the Judiciary Article, in chief, not only requires the Supreme Court to appoint a court administrator, but permits the Supreme Court to appoint such subordinate administrators as the Supreme Court shall decide as the need arises.

Now, that language was put in there and put in there for a very good reason. It was put in there for the reason that we know there are some jurisdictions in the Commonwealth of Pennsylvania which are not handling their business very well and, if you will just bear with me a moment, I will give you some of the statistics which we reviewed.

We noted that Philadelphia is about six years behind in its legal business. We noted that next to Philadelphia is Pittsburgh, which is about four years behind in its legal business. We also noticed something else. We noticed that a county which is adjacent to Philadelphia, with a population that is close to and, at present, projected to be greater than Pittsburgh, to wit, Delaware County, has a zero backlog. In fact, the trial lawyers' complaint from Delaware County—and I am sure Mr. Curran, one of your own delegates, will back me on this—is that they get to court too fast in Delaware County, not too slow. It takes about three months between the time a case is filed and the time a case is tried.

We know it is going to be necessary for the Supreme Court under their administrative setup to make a determination as to what it is that is holding each of these jurisdictions up. Why is it that some handle their business so well and others so poorly? The thrust of this item in the schedule would be to take Philadelphia, in part, out from under the jurisdictional supervision of the Supreme Court.

I urge that you reject this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. I do not think there has been anyone in this Convention more in favor of a unified judicial system than I am. I just cannot see how providing for a court administrator to help Philadelphia run its judicial business in any way defies a unified judicial system. We have a computer which is ordered and which requires handling by skilled personnel. It is due to arrive this year or next. The court administrator has been working for two years so that the entire expedition of judicial business can go forward.

I just want to provide by way of this amendment that it continues, that there will be no hiatus. I am sure in my own mind that the chief justice will make such provision, but in order that the work can go forward in an orderly fashion and that Mr. Blake and the rest of his staff will continue to function once this article goes into effect, I ask that this provision be incorporated in the schedule. If we see that something happens and it does not work, the Legislature can go ahead and remove it. It is not something that may be permanently engrained. The president judge of the common pleas court can make changes in it. The chief justice of the Pennsylvania Supreme Court can make changes. This is not something that is permanent. It is designed as a transient paragraph which will help in the judicial business of Philadelphia go forward smoothly.

I ask your support on this amendment.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Silverman?

The roll was recorded as follows:

YEAS—13

Benedict	Mattioni	Rea	Solomon
Bloom	More	Sebastian	Tomascik
Braham	Murray	Silverman	Whittum
Harding			

NAYS—113

Aberman	Fagan	Krill	Ruth
Amsterdam	Fawcett	Laputka	Sabli
Bagenstose	Feather	Lee, L.	Scales
Baldrige	Filson	Leinbach	Scarlett
Baldus	Fohl	Leonard	Scott
Baldwin	Forster	Levin	Scranton
Banes	Gabreski	Manderino	Shapiro
Barron	Gehrlein	Mangery	Sharp
Barry	Gerber	Markley	Shively
Benfield	Goldman	McGeary	Shoemaker
Brennan	Goldstein	Meyer	Shrager
Broderick	Gouger	Michael	Sprogell
Brown	Griffith	Michener	Stout
Buck	Hannum	Moorhead	Strickler
Bunting	Henderson	Morton	Stroup
Burkholder	Heyburn	Nelson	Swope
Cain	Himes	O'Donnell	Tate
Camardella	Hook	Orban	Thomson
Caputo	Hostetler	Orbin	Thornburgh
Casey	Huggins	Otto	Tully
Clark	Irvis	Pasquerilla	Van Sant
Clinger	Jirolanio	Pelletier	Waldron
Corey	Johnson	Popil	Welsh
Cosetti	Kauffman	Pott	Westerberg
Croop	Keller, J.	Rappaport	Wilcox
Curran	Keller, M.	Redick	Wilmarth
Dalley	Kelly	Richter	Woodring
Desmond	King	Roberts	Woodside
Erwin			

NOT VOTING—37

Allison	Donolow	Horne	Pechan
Aurentz	Dumbauld	Kline	Percey
Bashoff	Fay	Lane	Powell
Butera	Fineman	Leach	Prendergast
Caron	Fleming	Lee, K.	Quiles
Conley	Fortney	McGlynn	Reynolds
Cortese	Gray	Miller, D.	Royner
Cunningham	Hatter	Miller, R.	Shettig
Devlin	Hocker	Musselman	Warman
Donaldson			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

ABERMAN AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE ABERMAN offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 7), page 17, line 7, by removing the period after "hereafter" and inserting: and present justice and judge of the Supreme and Superior Courts may be elected to and complete one more term of office provided that such justice or judge has not attained the age of seventy at the time of such election.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, it is that time of the evening when we once again become solicitous of the general health and well-being of those members of our delegation who have on succeeding evenings reminded us we were rapidly approaching the end of our working day.

Without picking on my good friend, Delegate Bloom, I was moved when I read Section 7 and I heard some of the discussions this afternoon about the question of the mandatory age being the age of 70. It struck me that we are working an injustice on certain members of the appellate courts because of the fact that they did not choose to run under the system that we are now creating. I have no exception to the system we are now creating, I want you to understand that. We have now placed an element of unfairness upon these appellate court judges because of the fact that they may be retired before the age of 70 by virtue of the existing provision and have not been able to accommodate their economic well-being for this transitional period. I think we must take advantage in this limited area of an amendment to the schedule. I think that the experience on the appellate court is valuable and I think we are not attempting to remove that experience. I think that in this limited area we should not work an injustice upon these men and, accordingly, I think that this in this limited area works what I consider to be a fair form of justice and requires them only that they not be 70.

Now, we have talked about the mandatory age. You heard my prior comment this morning.

PRESIDENT BRODERICK. The Chair recognizes Delegate Filson.

DELEGATE FILSON. I would like to ask Delegate Aberman a question.

PRESIDENT BRODERICK. You may proceed.

DELEGATE FILSON. Mr. President, precisely what would this do with the present justices of the Supreme Court and the judges of the Superior Court? Are they not presently on a long-term basis?

DELEGATE ABERMAN. It is my understanding, Mr. President, that the language of the original Printer's No. 20 in Section 13 provided that the terms of the justices and the judges shall hereinafter be 10 years.

What this means in terms of this amendment is that the present justices who had not attained 70 at the time of the potential or possible re-election would be precluded from serving any additional term.

Now that was the purpose for putting in this amendment, to permit these people to have the additional term.

PRESIDENT BRODERICK. The Chair recognizes Delegate Burkholder.

DELEGATE BURKHOLDER. The Committee on Tenure considered this entire question and felt that it would be unfair if judges who were elected, say, at age 63 for the first time would be forced to retire at age 70. So we approved the provisions of Section 7 of the schedule, which provides that any judge who is now serving—whether he is serving a 21 year term as a justice of the Supreme Court or a 10 year term as a judge of the Superior Court, or a local judge—shall have the right, in any event, to finish out his current term.

For example, in Lancaster Judge Brown was elected at age 63, I believe, and he was very much concerned that he would not be able to finish out his term and qualify for the pension to which he would normally be entitled. The purpose of the schedule is to do just that.

I must confess that I do not quite understand what the purpose of the proposed amendment is. Is it to give Supreme Court justices a chance to run for another 21 year

term or is it to give them a chance now to run for an additional 10 year term regardless of their age?

The Committee opposes this amendment.

DELEGATE ABERMAN. Mr. President, if I may respond, I do not think you have dealt with the problem I concerned myself with. Suppose Judge Brown was now 66 and wanted to run again. Suppose he was now up for re-election today and he were to run? You are now saying to him that he must retire at the end of four years.

DELEGATE BURKHOLDER. That is correct, and that is the purpose of the article and the purpose of the article as presented to this Convention by the committee.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Scranton.

DELEGATE SCRANTON. I am sorry, it is late in the day, I am tired and I have a cold, but I seriously do not understand this at all. You do not want to give a member of the Supreme Court—incidentally, every one of them will be over 70 when their 21 years are over?

DELEGATE ABERMAN. That is the information I have, but there are other members of the other courts that may not be.

DELEGATE SCRANTON. Then I would think you want to take the Supreme Court out of here right away. That is No. 1.

No. 2, with regard to the Superior Court, we give them the opportunity of completing their present terms, which are 10 years. They can then run again if they wish to until they are 70 years of age. If they do not want to run again, they may be used, under the retirement plan, in any way that they and the Supreme Court sees fit. I think we are giving them a very fair deal.

DELEGATE ABERMAN. Put it this way, you are not allowing them to remain on the Superior Court under your plan, is that correct?

DELEGATE SCRANTON. No.

DELEGATE ABERMAN. They cannot be appointed to business of the Superior Court.

DELEGATE SCRANTON. They can run for the Superior Court, but your point is well taken in only one instance, that is, where you have a Superior Court judge whose term runs out and he can only run for 10 more years, which is what he can run for now, incidentally, there is no change in it. He might be between 60 and 70 years old.

DELEGATE ABERMAN. That is right.

DELEGATE SCRANTON. Our point is that we take care of them in two ways, one, he could run and retire at 70, and another way, he does not have to run and he could continue to function as a judge under the retirement plan. Is that not correct?

DELEGATE ABERMAN. That is exactly right.

DELEGATE SCRANTON. We think this is just as fair as you can be.

DELEGATE ABERMAN. I am suggesting that simply permitting him to run and complete an additional term would be fair. I never asked a judge to come from the Superior Court to serve in the common pleas court. I do not go into court that often. I am sure the appellate bench would much prefer to serve on the appellate bench.

DELEGATE O'DONNELL. May I interrogate?

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. So that we can have this matter before us four-squared, it seems to me, Governor Scranton is absolutely right. This certainly could have no application whatever to any justice of the Supreme Court, that would seem to be crystal clear. I have here in my hands the Pennsylvania Manual, and I looked down the list of the Superior Court judges to see when their terms expire and I just checked their dates of birth and, unless I am radically mistaken, the only judge who could gain any advantage of this would be Judge Montgomery, which would authorize him to run once more, which would then put him into the area of giving him about a half term if a limit of 75 years of age were placed on it.

I would suggest this, I do not know what the feeling of this body is, but I would wonder if Delegate Aberman would be willing to accept an amendment to exclude the words "justice and" in all reference to the Supreme Court in its entirety and simply add in there, "provided, however, that no judge shall serve after the age of seventy-five." That is the only way I think this could be acceptable at all.

DELEGATE PASQUERILLA. I should like to call Delegate Aberman's attention to the Act which is presently in effect in the Commonwealth of Pennsylvania in the particular area in which this particular amendment is disposed. There would be no reason why this man who might be 68 years of age and who wanted to run again for Superior Court could not do so. If he ran again for Superior Court and was on the bench for two years and was mandatorily retired, the present Act which is in effect in Pennsylvania would permit him to be retired from the Superior Court and draw his full salary for the remainder of his term.

Upon this basis and for this reason alone, if for no other, I would suggest that the amendment be voted down.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. I would like to ask Delegate Aberman a few questions.

PRESIDENT BRODERICK. Yes, indeed. He will stand for interrogation.

DELEGATE PASQUERILLA. Are you saying by your amendment that if a man is 68 years old and he wants to run for another term of 10 years, you want him to finish out his term until he is 78?

DELEGATE ABERMAN. I did not get a chance to accept Delegate O'Donnell's amendment before you started to inquire.

DELEGATE PASQUERILLA. We are not on that now. I do not care whether it is 75 or 78.

DELEGATE ABERMAN. I happen to think it makes a difference in terms of experience.

DELEGATE PASQUERILLA. In other words, you are, in effect, defeating the whole wonderful committee proposal of mandatory retirement at the age of 70, which I think the committee has done an excellent job on.

Therefore, Mr. President, I have to rise in support of the committee proposal. I think this is a very simple question to settle in the minds of the delegates.

DELEGATE ABERMAN. Is this interrogation, sir?

DELEGATE PASQUERILLA. I have completed my interrogation, sir. I am now making a statement.

DELEGATE ABERMAN. I have not responded.

PRESIDENT BRODERICK. I will give you an opportunity to respond.

DELEGATE PASQUERILLA. Therefore, Mr. President, it appears to me that the committee has adequately taken care of this problem, and I move the previous question, and I will now give Delegate Aberman an opportunity to make his closing remarks.

DELEGATE ABERMAN. That is very nice of you. Thank you.

PRESIDENT BRODERICK. We promised Delegate Aberman that opportunity, and we will work it out.

DELEGATE ABERMAN. I should respond now and save my closing. The answer to Delegate Pasquerilla is not that I am attempting to destroy any wonderful plan. You know as well as I do that we have created some wonderful plans around here which I am very much in favor of, and there is not one writ or one motion here that attempts to destroy that mandatory requirement which we had established.

As I now find myself down to naming Justice Montgomery, when, much to my surprise, I thought I was dealing with three or four men, the point I am making is simply this, you are creating a transition. You are creating a situation where judges do not have a chance to readjust.

If we deal only with Justice Montgomery, I will speak about him. He came on the bench, and now you are saying to him that you mandatorily retired. Change your life. I say that is manifestly unfair, and, if I have to deal with one man, I will deal only with one man. You are being unfair to him, and that is my response to you.

I am not attacking your mandatory requirement. I am simply saying, if you are going to legislate in a schedule—and I feel very strongly about this and I have studiously avoided getting up with respect to this entire article before—if you are going to legislate this article, be fair to the one exception that you are going to put out of business.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Strickler. For what purpose does the gentleman rise?

DELEGATE STRICKLER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE STRICKLER. In the proposal now under the amendment, it says that the justice and the judge of the Supreme and Superior court may be elected. Has not this Convention already decided that all those people shall be appointed? Would this not be contrary to that which we have passed?

I am asking a parliamentary question.

DELEGATE ABERMAN. I would note in the scehdule from which this language was drawn that the word "elected" is in the fourth line. I would be happy to amend it to make it consistent. This is retention on a "yes"-"no" ballot.

PRESIDENT BRODERICK. The answer to your question is, I think the delegate is right.

Now, the Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. We have gotten this thing down to where we are not talking about the Supreme Court any more, because that obviously has no pertinence to it. We are talking about one judge on the Superior Court.

We made arrangements for all kinds of judges all over the universe in this arrangement. I have no objection to making an arrangement for one judge on the Superior Court, but this demands that we must take the amendment back and rewrite it so that it says that. If you do not mind, I suggest we table it until it is rewritten.

PRESIDENT BRODERICK. Is that a motion to table it?

DELEGATE ABERMAN. Mr. President, may I suggest, since everyone has a copy and Delegate O'Donnell's amendment is available, that we simply delete the words : "justice in the Supreme Court," and then vote it. I do not want to hold up this Convention.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gouger.

DELEGATE GOUGER. I happen to be one of the pioneers of American industry in the subject of compulsory retirement. I have been given credit in various places in the industrial world in knowing as much about it as anyone and having dealt with the problem as much as, anyone. That is a matter of record. We learned in industry that retirement at 65 makes a great many things of great value to industry. It produces mobility. It provides for the young ones to come on. It provides for fresh ideas. I cannot agree with my good friend, Delegate Aberman. I disagree with him on this violent adjustment. There are many men in the room who retired early and it is not violence. I disagree with our distinguished delegate, Delegate Scranton, to make an exception for one person. This is manifestly unfair to everybody else that you retire at age 70. I think we ought to face it forthrightly. The weight of the evidence is clear and unmistakable, there is no great emotional problem in retiring at 65, and to carry a judge on to 70 or 75 is just, in my judgment, a most ill-advised move.

I think we ought to vote on this now.

PRESIDENT BRODERICK. Does everybody want to vote on it?

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. I merely point out, despite what Delegate Gouger says, Judge Montgomery is in, and, I have just rechecked, he will be the only person that the schedule has not made some provision for.

PRESIDENT BRODERICK. Before we vote, did you want to make a statement, Delegate Aberman?

DELEGATE ABERMAN. I will never disagree with my good friend, Delegate Gouger, on any point.

I would only point out to you that since we have narrowed this down to one person—I was not aware of that when this started—I accept Delegate O'Donnell's amendment of 75. I looked through the schedule and I found out that we may be treating unfairly the eleventh man from Philadelphia who will not become a judge, and the seven magistrates who will not get on the traffic court, and all the other things that are in the schedule.

I find it very difficult to say to Judge Montgomery, your experience has ended at 67, and with that I close.

On the question,

Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—43

Aberman	Forster	McGeary	Shapiro
Baldrige	Gabreski	Murray	Shoemaker
Barron	Gehrlein	O'Donnell	Shrager
Barry	Gerber	Orban	Silverman
Bloom	Goldman	Pelletier	Stroup
Casey	Hook	Popil	Thornburgh
Clinger	Hostetler	Rappaport	Tomascik
Corey	Irvis	Rea	Welsh
Curran	Kauffman	Ruth	Woodring
Dailey	Laputka	Scales	Woodside
Fagan	Mattioni	Scranton	

NAYS—85

Amsterdam	Fawcett	Leinbach	Roberts
Aurentz	Feather	Leonard	Sahli
Bagenstose	Filson	Levin	Scarlett
Baldus	Fohl	Manderino	Scott
Baldwin	Goldstein	Mangery	Sebastian
Benedict	Gouger	Markley	Sharp
Benfield	Griffith	Meyer	Shettig
Braham	Hannum	Michael	Shively
Brennan	Harding	Michener	Sprogell
Broderick	Henderson	Miller, D.	Stout
Brown	Heyburn	Moorhead	Strickler
Bunting	Himes	More	Swope
Burkholder	Hocker	Morton	Tate
Cain	Huggins	Nelson	Thomson
Camardella	Jirolanio	Orbin	Tully
Caputo	Johnson	Otto	Van Sant
Clark	Keller, J.	Pasquerilla	Waldron
Cortese	Kelly	Pott	Westerberg
Croop	King	Redick	Whittum
Desmond	Krill	Reynolds	Wilcox
Devlin	Lee, L.	Richter	Wilmarth
Erwin			

NOT VOTING—35

Allison	Donaldson	Horne	Pechan
Banee	Donolow	Keller, M.	Persey
Bashoff	Dumbauld	Kline	Powell
Buck	Fay	Lane	Prendergast
Butera	Fineman	Leach	Quiles
Caron	Fleming	Lee, K.	Rovner
Conley	Fortney	McGlynn	Solomon
Cosetti	Gray	Miller, R.	Warman
Cunningham	Hatter	Musselman	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

MOTION TO LIMIT DEBATE

DELEGATE THOMSON. Mr. President, we have suffered through these attorneys' free legal advice for the better part of two days, and there seems to be no end to the flow. I, therefore, in an effort to cut it a little make a motion that all debate on all future amendments in this article be limited to five minutes.

DELEGATE RAPPAPORT. I second it.

PRESIDENT BRODERICK. It has been moved by Delegate Thomson, seconded by Delegate Rappaport, that all debate in connection with future amendments on the Judiciary Article be limited.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. Do we not have a rule somewhere in our rules that takes care of this matter, that you are allowed to talk so many minutes? We passed upon it before, and it was reported on by the Rules Committee.

PRESIDENT BRODERICK. Yes. We do have a rule in connection with that. Our rules provide that in connection with the amendments there is no limit on debate, that every member has a right to talk for 10 minutes and cannot talk more than twice.

DELEGATE THOMSON. I move for the suspension of that rule and that my motion should stand.

PRESIDENT BRODERICK. I would just like to make a suggestion from the Chair. We may be getting ourselves into a situation, Delegate Thomson, which we would not like tomorrow or the next day. I want to say that at any time, as you have noticed, we can move to close debate, and I feel that this body would be in a better position if we did move to close debate after we had determined we heard sufficient debate on it. I think it would be more elastic than providing a definite rule. This is up to you.

DELEGATE THOMSON. Mr. President, the elasticity you speak of seems to be carried to an extreme degree. If we really ever do have an emergency in the law of emergency on whether you talk for five or ten minutes, my motion was an over-all time limit on all debate in an effort to stop a laughingstock being made out of this Convention and, in order to try to meet the necessary deadline that is imposed upon us by the Act under which we are organized.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick. For what purpose does the gentleman rise?

DELEGATE REDICK. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE REDICK. Mr. President, I rise for a point of information.

Does that not require a two-thirds vote to amend the rules?

PRESIDENT BRODERICK. We will check it for you. It requires 82 votes to amend the rules.

DELEGATE FOHL. Mr. President, I think you may find it requires 82 votes to amend the rules when it has gone to the Rules Committee, but in order to suspend the rules you need 109 votes.

PRESIDENT BRODERICK. That is right.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—31

Aurentz	Dailey	Hostetler	Shively
Bagenstose	Forster	Huggins	Shoemaker
Benedict	Gehrlein	Kelly	Stroup
Benfield	Gerber	Miller, D.	Swope
Bloom	Gouger	Moorhead	Thomson
Braham	Griffith	Otto	Welsh
Camardella	Harding	Rappaport	Wilmarth
Croop	Heyburn	Roberts	

NAYS—101

Aberman	Fagan	Manderino	Scales
Amsterdam	Feather	Mangery	Scarlett
Baldrige	Filson	Markley	Scott
Baldus	Fohl	Mattioni	Scranton
Baldwin	Gabreski	McGeary	Sebastian

Banes	Goldman	Meyer	Shapiro
Barron	Goldstein	Michael	Sharp
Barry	Hannum	Michener	Shettig
Brennan	Henderson	More	Shrager
Broderick	Himes	Morton	Silverman
Brown	Hocker	Murray	Solomon
Buck	Hook	Nelson	Sprogell
Bunting	Irvis	O'Donnell	Stout
Burkholder	Jirolanio	Orban	Strickler
Cain	Johnson	Orbin	Tate
Caputo	Kauffman	Pasquerilla	Thornburgh
Casey	Keller, J.	Pelletier	Tomascik
Clark	King	Popil	Tully
Clinger	Krill	Pott	Van Sant
Corey	Laputka	Rea	Waldron
Cortese	Leach	Redick	Westerberg
Cosetti	Lee, L.	Reynolds	Whittum
Curran	Leinbach	Richter	Wilcox
Desmond	Leonard	Ruth	Woodring
Devlin	Levin	Sahli	Woodside
Erwin			

NOT VOTING—31

Allison	Dumbauld	Horne	Pechan
Bashoff	Fawcett	Keller, M.	Percey
Butera	Fay	Kline	Powell
Caron	Fineman	Lane	Prendergast
Conley	Fleming	Lee, K.	Rovner
Cunningham	Fortney	McGlynn	Quiles
Donaldson	Gray	Miller, R.	Warman
Donolow	Hatter	Musselman	

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

STATEMENT BY DELEGATE CAMARDELLA

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. The motion that was just defeated, I urge this Convention, and especially the attorneys, they are not in court, they are not getting paid by the hour or the day, let us cut the "malarky" out and get down to business and get this thing over with.

TATE AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE TATE offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 14), page 26, lines 17 and 18, by striking out "and to be elected to and serve for one additional term"

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, this is a small effort for consistency within the Judiciary Article.

I think our general procedure has been to allow all presently sitting judges to complete their terms before they fall under the provisions of this judiciary article.

There is, however, an exception. For the 22 present magistrates who will make up the municipal court of Philadelphia, in accordance with the provisions under subparagraph (u) on page 26, they are provided not only with their present terms, but one additional term. In my opinion, this is unnecessary. I think that it would be consistent with the rest of the article if they were given a simple grandfather clause. I urge this body not to create a new experiment, an experiment for a great-grandfather clause, not just a grandfather clause, which, if adopted, in my opinion, will be an experiment in infamy.

DELEGATE SCRANTON. Mr. President, we have discussed this on the floor many times with regard to earlier considerations in this Convention.

We discussed it in the committee at some length and decided that the fairest thing to do, in our judgment, was to give them the initial term, since it is a shorter term than that of judges. Consequently, we were attempting to do approximately the same for everyone in length of time. It is not identical, but it is an approximation thereof.

That is all I would like to say.

PRESIDENT BRODERICK. Is there anyone else who wants to be heard?

Delegate Tate, do you want to make a closing statement? If not, we are ready to vote.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Tate?

The roll was recorded as follows:

YEAS—37

Amsterdam	Casey	Michener	Solomon
Aurentz	Clinger	Miller, D.	Sprogell
Baldus	Cosetti	Nelson	Stout
Barron	Feather	O'Donnell	Swope
Barry	Gabreski	Pelletier	Tate
Bloom	Gehrlein	Popil	Thornburgh
Braham	Hook	Roberts	Welsh
Bunting	McGeary	Ruth	Whittum
Burkholder	Michael	Shapiro	Wilmarth
Camardella			

NAYS—91

Aberman	Fawcett	Krill	Sahli
Bagenstose	Filson	Laputka	Scales
Baldrige	Fohl	Leach	Scarlett
Baldwin	Forster	Lee, L.	Scott
Banes	Gerber	Leinbach	Scranton
Benedict	Goldman	Leonard	Sebastian
Benfield	Goldstein	Levin	Sharp
Brennan	Gouger	Manderino	Shettig
Broderick	Griffith	Mangery	Shively
Brown	Hannum	Mattioni	Shoemaker
Buck	Harding	Meyer	Shrager
Cain	Henderson	Moorhead	Silverman
Caputo	Heyburn	More	Strickler
Clark	Himes	Morton	Stroup
Corey	Hocker	Orban	Thomson
Cortese	Hostetler	Orbin	Tully
Croop	Irvis	Otto	Van Sant
Curran	Jirolanio	Pasquerilla	Waldron
Dailey	Johnson	Pott	Westerberg
Desmond	Kauffman	Rea	Wilcox
Devlin	Keller, J.	Redick	Woodring
Erwin	Kelly	Reynolds	Woodside
Fagan	King	Richter	

NOT VOTING—35

Allison	Fay	Kline	Percey
Bashoff	Fineman	Lane	Powell
Butera	Fleming	Lee, K.	Prendergast
Caron	Fortney	Markley	Rappaport
Conley	Gray	McGlynn	Quiles
Cunningham	Hatter	Miller, R.	Rovner
Donaldson	Horne	Murray	Tomascik
Donolow	Huggins	Musselman	Warman
Dumbauld	Keller, M.	Pechan	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker. For what purpose does the gentleman rise?

DELEGATE HOCKER. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE HOCKER. Mr. President, I would ask, approximately how many more amendments do we have to decide?

PRESIDENT BRODERICK. The Chair will endeavor to answer that.

DELEGATE HOCKER. You do not have to give me a number. Do you have a pile of them, or do you not?

PRESIDENT BRODERICK. We have approximately 10 amendments that are sitting here.

DELEGATE HOCKER. Then, obviously, we cannot finish tonight.

MOTION TO ADJOURN

DELEGATE HOCKER. I am going to make a motion to adjourn.

DELEGATE SCRANTON. Mr. President, it is perfectly clear that the delegates want to finish this up as rapidly as we can. So do I. So does everyone.

From the last time I made this comment, there have been 14 more amendments coming in. Frankly, I just think this is beyond the pale. They had five days to put them in and suddenly at the last minute they bring them all in here.

Has anyone else got any amendment for the schedule on any other part of the Judiciary Article?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Yesterday, I think, or the day before, there was an amendment with respect to the commonwealth court from which there was inadvertently stricken one sentence which we were then assured would be put into the schedule.

Is it necessary for me to present that amendment, or is it necessary for me to make a special request to have that amendment prepared, or is it being prepared, or is it one of the 14 that Governor Scranton refers to?

PRESIDENT BRODERICK. Apparently, it is not one of the 14, unless you have asked to have it prepared. I think, if it has to be changed, there should be an amendment.

DELEGATE SHAPIRO. I was under the assumption it would be prepared by the staff, since it was inadvertently omitted from an amendment, and we were assured it would be.

DELEGATE SCRANTON. Very well. Is there any other amendment?

DELEGATE BARRY. On the effective date of the commonwealth court, I think it was agreed there would be in the schedule an effective date of January 1, 1970. I am not putting in an amendment on that formally, but is it the understanding that this will be done?

DELEGATE SCRANTON. Right.

Anyone else?

PRESIDENT BRODERICK. The Chair recognizes Delegate Westerberg.

DELEGATE WESTERBERG. I want to inform Governor Scranton that I have an amendment here on which I have 23 signatures. When I get 59 more, I am going to put that in and maybe, if this keeps going on very much longer the way it is going, I may put it in early.

DELEGATE SCRANTON. I know about Delegate Westerberg's.

DELEGATE SHAPIRO. There is also one other amendment I had prepared which I withheld from offering because I was waiting for Delegate Barron to complete action on his revised amendment that is under reconsideration.

DELEGATE SCRANTON. Then we have one more Shapiro amendment coming?

Perhaps another amendment of his is coming, and that is all.

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus.

DELEGATE BALDUS. The delegates of Allegheny County, Governor, have a correctional amendment for the Allegheny County schedule and, also, I have an amendment which has been referred to Delegate O'Donnell for consultation on the language of it relating to the venue of the magisterial courts that I would like to present.

DELEGATE SCRANTON. May I ask a question? How many are left to go over there?

PRESIDENT BRODERICK. We understand we have 10 here.

DELEGATE SCRANTON. And there will be three more, that is 13.

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. Governor Scranton, I may have two more.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gabreski. How many amendments do you have?

COMMITTEE MEETING

DELEGATE GABRESKI. We have no amendments. We just wanted to make an announcement, if we could, of the Rules Committee meeting immediately after the adjournment of this session in Room 401.

As you know, we have some important matters to discuss and to bring back to the floor of this Convention. If we can have a quorum present, we would appreciate it.

PRESIDENT BRODERICK. This is a very happy announcement. I am sure we all heard it.

DELEGATE HOOK. I have one amendment I am working on trying to get drafted. It is one that Delegate Keller and I have been working on all day pertaining to a problem dealing with constables and law enforcement officers.

PRESIDENT BRODERICK. I am advised that if we include yours now we are up to 16.

Could we have 17?

The Chair recognizes Delegate Curran.

DELEGATE CURRAN. On behalf of the magistrates association of Delaware County, we have a request that there be 2,000 more magistrates in Delaware County.

SON OF DELEGATE KELLER WELCOMED

PRESIDENT BRODERICK. I want to tell you that one of our delegates has his son here. Where is John Keller, the son of Delegate Keller? He also has with him a friend, Ken Clark. We want to extend our cordial welcome to John.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I want to move that this Convention do now adjourn until Thursday, February 22, 1968, at 9 a.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Hocker, and seconded by Delegate Banes that this Convention do now adjourn until Thursday, February 22, 1968 at 9 a.m., e.s.t.

The motion was agreed to, and (at 7:00 p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 **Thursday, February 22, 1968** **Number 49**

The Convention was called to order at 9 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND THOMAS MAY, pastor of the State Street Evangelical Church, Harrisburg, Pennsylvania, offered the following prayer:

REVEREND MAY. Let all of us pray now. Eternal God, our loving Heavenly Father, early in this new day we turn to Thee with worship, prayer and praise.

We come into Thy presence, O Lord, to seek Thy blessing and benediction upon this body.

We thank Thee for the great land which by Thy mercy and grace it is our privilege to enjoy. We thank Thee Father for the faith of founding fathers in having trusted in Thee, they never faltered nor failed. We thank Thee Father for our great Commonwealth, for its fertile fields, its deep mines, the diligence and the devotion, the godliness of its peoples over the years whose efforts Our Father Thou hast blessed. We come Our Father praying Thy blessing upon this deliberate body and accept and thank Thee this morning for this Convention, as a new moving of Thy Holy Spirit in the hearts and the minds of the peoples of our Commonwealth.

We pray Our Father that this body shall serve godly purposes and then of every citizen within its bounds calm our hearts right now for the labors of this day.

We pray for Thy peace, the greatest gift Thou canst give us so that our thinking and our efforts today shall come out of hearts and minds that are pure and just; that we shall share trust today in the new way in our deliberations, in our planning.

We pray Our Father unknown to this body for Thy blessing to come its way and we would ask Thee now in these busy heavy days that lie before its close, Thou wilt bless each one; the one presiding and every delegate here, so that that which has been done with such high and literally holy expectation, shall therefore wish a new day, a new life in the Commonwealth and above all, bring honor and glory to Thee. We would pray Thy blessings upon the President of our nation, the Governor of this state, the Lieutenant Governor and those who provide leadership in this body and grant an even title, God, a sense of victory, the satisfaction of a job nobly and well done. We pray in the name and the spirit of our Blessed Lord, Thy Son, Our Saviour, Jesus Christ. Amen.

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance to the Flag was recited by the Convention, led by Delegate Redick.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

DELEGATE MICHENER. Mr. President, I want to submit the following requests for leaves of absence:

The delegate ex officio, DELEGATE DONOLOW, for February 21st and 22nd, because of illness in the family.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. There are no Journals to be approved this morning.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Desmond	Kline	Reynolds
Amsterdam	Devlin	Krill	Roberts
Aurentz	Dumbauld	Laputka	Rovner
Bagenstose	Edwin	Lee, L.	Sahli
Baldrige	Fagan	Leinbach	Scales
Baldus	Fawcett	Leonard	Scarlett
Baldwin	Feather	Levin	Scott
Banes	Filson	Manderino	Sebastian
Barry	Fohl	Mangery	Sharp
Benedict	Fortney	Markley	Shettig
Benfield	Gabreski	Mattioni	Shively
Bloom	Gerber	McGeary	Shrager
Braham	Goldman	Meyer	Silverman
Brennan	Goldstein	Michael	Solomon
Broderick	Gouger	Michener	Sprogell
Buck	Griffith	Miller, D.	Stout
Bunting	Hannum	Miller, R.	Strickler
Burkholder	Harding	Moorhead	Swope
Butera	Hatter	Morton	Tate
Cain	Henderson	Nelson	Thornburgh
Camardella	Himes	Orban	Tomascik
Caputo	Hook	Orbin	Tully
Caron	Horne	Otto	Van Sant
Casey	Hosteller	Pasquerilla	Waldron
Clark	Huggins	Pelletier	Warman
Clinger	Jirolanio	Percey	Welsh
Corey	Johnson	Popil	Westerberg
Cortese	Kauffman	Pott	Whittum
Cosetti	Keller, J.	Prendergast	Wilcox
Croop	Keller, M.	Rappaport	Wilmarth
Cunningham	Kelly	Rea	Woodring
Curran	King	Redick	Woodside
Dailey			

PRESIDENT BRODERICK. The electric roll call tabulator indicates that 129 delegates have recorded their presence.

The Chair also notes the presence of the following delegates:

Barron	Hocker	O'Donnell	Scranton
Brown	Irvis	Powell	Shapiro
Gehrlein	Leach	Quiles	Shoemaker
Gray	More	Richter	Stroup
Heyburn	Murray	Ruth	Thomson

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Gouger. For what purpose does the gentleman rise?

DELEGATE GOUGER. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GOUGER. Mr. President, there are those of us unlearned in law. There are those of us who in the judgment, I suspect, of our young crusaders have reached the age of mental senility. There are those of us who listen with great patience to the clarion voices and watch flaming swords of these young crusaders who have been so helpful to us. I do not know how we could have made it along without their invaluable help and, on behalf of all of us in this category, we want to express our profound appreciation to them. As an expression of our appreciation, may we say to you, you gallant gentlemen, learned, eager, and no doubt possessed with the great zeal of youth to do a great job for this Convention, that we are going to permit you to rest upon your labors, sheath your swords and mute your trumpets, they have been recorded in history by this time, and let those of us who are not so mentally agile do the best we can to stumble on through this thing.

May I suggest just one or two little things that may rest you from your labors. If you have a point of parliamentary procedure, for the love of heaven, go down and ask the Parliamentarian and do not grab the microphone and display your great acumen and your wisdom in posing this question.

If you have a question to the distinguished committee who is presenting this thing, please go down and ask them. You blessed people from Philadelphia and Pittsburgh, my goodness, have not we served you well up to this time? Those of us from the great middle part of this country have listened again with patience and with understanding, but rest on your labors, gentlemen.

I am going to prove that I am an old man. We cannot turn you across our knee and spank you, but there is a little button on this desk that says "nay," and there are a great many of us that have reached the point where in our impatience we may just vote "nay" to try and get it over with. I must warn you in advance, there is a little senile coalition here that is going to call the question pretty rapidly from this point on.

CALENDAR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 7, Printer's No. 1,** entitled:

A proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

PRESIDENT BRODERICK. We will proceed next to the calendar.

We are still on Proposal No. 7, Printer's No. 20, and, as a matter of statistical information for those of you that think we have not been covering any ground, I want you to know that since we have been on the Judiciary Article, you have considered 92 amendments. But the figure that is, I think, more fantastic than all the other figures is, we have had prepared 164 amendments to this judiciary article and 72 of them were withdrawn. With 92 and 72, we have, in effect, been dealing in the last few days with 164 amendments. I hope our record does not go very much higher.

CORTESE AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The first amendment to be considered this morning is an amendment being offered by Delegate Cortese.

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATE CORTESE offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 14), page 21, line 27 by striking out "appointed" and inserting: designated

Amend Schedule (Sec. 14), page 21, line 29 by striking out "appointed" and inserting: designated

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. We recognize Delegate Cortese.

DELEGATE CORTESE. Mr. President, the staff has advised me that the word "appointed" is much more accurate than the word "designated." This is, in a sense, correctional.

PRESIDENT BRODERICK. When you say "the staff," do you mean the committee?

DELEGATE CORTESE. The committee, the legal staff.

PRESIDENT BRODERICK. As soon as you finish your statement, I will ask the committee to make a statement.

DELEGATE SCRANTON. The Committee will make one now. We have no objection to this at all.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gabreski.

DELEGATE GABRESKI. Mr. President, while we are waiting to have the amendment distributed, perhaps Mr. Cortese can tell us what he means by the words "as designated by the Governor," the phrase, "The twenty-two present magistrates, as designated by the Governor," in both lines 27 and 29.

Is he meaning to infer that the provisions as to appointment of judges and justices within the Commonwealth of Pennsylvania will not apply in the City of Philadelphia?

DELEGATE CORTESE. Under the present proposal the 28 magistrates in the City of Philadelphia would constitute both the municipal court and the traffic court.

The Governor would designate from the 28, 22 to constitute the municipal court and six to constitute the traffic court.

DELEGATE GABRESKI. The provisions for appointment that are provided for in the proposal as to justices would not apply in this particular instance?

DELEGATE CORTESE. This only applies to the municipal court and the traffic court.

DELEGATE RAPPAPORT. I would like to ask Delegate Cortese a question, if I may.

PRESIDENT BRODERICK. You may.

DELEGATE RAPPAPORT. Does the change in words from "appoint" to "designate" eliminate the requirement of the two-thirds confirmation by the Pennsylvania State Senate?

DELEGATE CORTESE. This is a transition from the magistrates court to the municipal court and the traffic court. It is a transitional designation.

DELEGATE RAPPAPORT. You have not answered my question, either it eliminates it or it does not?

DELEGATE CORTESE. It would seem to me that the Governor would designate without confirmation.

DELEGATE RAPPAPORT. In other words, this is not just a correctional thing. This is a serious change of substance, is that correct?

DELEGATE CORTESE. It is a change in substance, but it is more accurately expressed to carry out the intent of the proposal, because in the proposal there is express language authorizing the Governor to designate 22 from the 28 magistrates to constitute the municipal court and six to constitute the traffic court. This is to give implementation to that expression. The authority is there. The Governor must under the proposal make his designation from the present incumbent magistrates.

DELEGATE RAPPAPORT. Delegate Cortese, what happens if there is a vacancy between now and then, since we do have a magistrate running for the Legislature who will probably be elected?

DELEGATE CORTESE. If there be a vacancy, that appointment will be filled not under this provision, but under the standard formula of appointments and confirmation.

DELEGATE RAPPAPORT. I see. You feel you want to eliminate the word "appointed" so as to eliminate any question of the State Senate becoming involved.

DELEGATE CORTESE. I think the word "designated" is absolutely necessary so that the Governor may carry out the authority given him in the proposal elsewhere to constitute both courts from the current personnel of the magistrates court.

DELEGATE RAPPAPORT. Without the intervention of the State Senate?

DELEGATE CORTESE. Without it.

PRESIDENT BRODERICK. The Chair will recognize Delegate Shrager.

DELEGATE SHRAGER. Delegate Cortese, is it your purpose not to have any check at all upon the Governor from our Legislature as to this appoinment, so he can choose any of the present magistrates and put in the traffic court?

DELEGATE CORTESE. That is a matter within the discretion of the Governor as to who should go into the municipal court and who should be designated for the traffic court.

DELEGATE SHRAGER. Do you feel it is a good idea not to have a check by the Legislature of these matters?

DELEGATE CORTESE. Mr. President, I have to repeat what I said before; there is specific authority in the Proposal authorizing the Governor to make up the municipal court and the traffic court from the personnel now in the magistrates court. He has the discretion to say by his designation who shall go into the municipal court and who shall be part of the traffic court.

DELEGATE SHRAGER. Is this not just another method of trying to do away with the two-thirds, as you have been trying to do with previous amendments?

DELEGATE CORTESE. Absolutely not. This is in the light of the authority given to the Governor in other parts of the proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. As a non-attorney, I fully understand what we are trying to accomplish here. This is in the schedule, and in the schedule they are providing a transitional period of appointing 22 of the present magistrates by the Governor who shall become judges of the municipal courts. I think that all this is doing is clarifying the intent of the committee. The committee has so stated that they will accept the change. It is very clear.

As I understand it, if there are new appointments, it is taken care of in the regular Judiciary Article. I think it is a very simple matter and, since the committee has said that it is acceptable to them, I would move the previous question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, this is obviously an attempt to substantially change the proposal of the committee. There is no question that there is a vast difference between the words "designate" and "appoint." An appointment carries with it the understanding, as we all have known and thought about it, that the Senate will confirm the appointment. Designation does not carry with it that weight.

I can understand that from the 28, 22 will be something and six others will be something else. But there is also a question of which shall be what or where. I think that is important and I think there ought to be a check on the Governor.

I am disturbed, first of all, with the amendment, which I will vote against, and it is up to you to vote otherwise. I am also disturbed about this, I am tired, too, but I do not think anyone should try to walk in here early some morning after a speech about how we ought to get on with our business and try to slip something through like this which means a great deal to the largest City in this Commonwealth. I do not think we should try it, and I am sure that if we try it again someone will be at the gate to guard against it.

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Cortese?

The roll was recorded as follows:

YEAS—70

Amsterdam	Curran	Laputka	Richter
Bagenstose	Desmond	Lee, L.	Rovner
Baldrige	Devlin	Leinbach	Scott
Baldwin	Erwin	Leonard	Scranton
Barron	Fawcett	Mangery	Sebastian
Benedict	Fohl	Meyer	Shively
Benfield	Fortney	Miller, R.	Shoemaker

Bloom	Goldman	More	Strickler
Braham	Goldstein	Morton	Stroup
Broderick	Griffith	Nelson	Thornburgh
Burkholder	Hannum	Orban	Waldron
Cain	Hatter	Otto	Warman
Caron	Heyburn	Pasquerilla	Westerberg
Clark	Himes	Quiles	Whittum
Clinger	Jirolanio	Rea	Wilcox
Corey	Kauffman	Redick	Wilmarth
Cortese	Keller, M.	Reynolds	Woodside
Croop	Krill		

NAYS—64

Aberman	Filson	Manderino	Scales
Aurentz	Gabreski	Markley	Scarlett
Banes	Gehrlein	Mattioni	Shapiro
Baldus	Gerber	McGeary	Sharp
Barry	Gouger	Michael	Shrager
Brennan	Harding	Michener	Silverman
Brown	Henderson	Miller, D.	Solomon
Buck	Hocker	Moorhead	Sprogell
Bunting	Hook	Murray	Stout
Camardella	Horne	Orbin	Swope
Casey	Hostetler	Pelletier	Tate
Cosetti	Huggins	Percey	Tomascik
Cunningham	Keller, J.	Popil	Tully
Dumbauld	Kelly	Rappaport	Van Sant
Fagan	King	Roberts	Welsh
Feather	Kline	Sahli	Woodring

NOT VOTING—29

Allison	Fay	Lane	Pechan
Bashoff	Fineman	Leach	Pott
Butera	Fleming	Lee, K.	Powell
Caputo	Forster	Levin	Prendergast
Conley	Gray	McGlynn	Ruth
Dalley	Irvis	Musselman	Shettig
Donaldson	Johnson	O'Donnell	Thomson
Donolow			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

CORTESE AMENDMENT No. 2 TO PROPOSAL No. 7

PRESIDENT BRODERICK. Now we are ready for the next amendment, and this is another amendment from Delegate Cortese.

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATE CORTESE offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 14), page 27, line 5 by striking out "by" and inserting: in

Amend Schedule (Sec. 14), page 27, line 5 by striking out "in the manner provided by law." and inserting: by a referendum.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. You may proceed, Delegate Cortese.

DELEGATE CORTESE. Mr. President, in Philadelphia ever since 1873 the office of the prothonotary has been an appointive office. I want to make sure that I am clearly understood in the statement that this does not affect or in any way disturb any prothonotary in any other county in the Commonwealth.

Under the current Judiciary Article in Section 7 there is a provision for the appointment of the prothonotary of Philadelphia by the Board of Judges. The Judiciary Committee has removed from the office of prothonotary the constitutional protection it now has under Article II, Section 7, the reason being that that office should not be provided for in the constitution.

As you know, in Philadelphia we have the Home Rule Charter. The thought was that the office of prothonotary, in the event the electors of Philadelphia so desire, might be integrated into the Home Rule. As the law now stands, and as we have received the law from the Supreme Court, both the office of prothonotary and the office of the register of wills are outside the Home Rule Charter.

The current provision in the schedule suggests that the office of prothonotary might be made part of the Home Rule Charter under the passage of an appropriate law.

Now, here is the gist of my amendment, the basic concept of a home rule charter is to give the people who must live under that charter the right of expression, the right to say whether or not they want a home rule charter, and the electors of Philadelphia so expressed themselves, but these two offices were not included, others are, for instance, the office of the clerk of the Court of Quarter Sessions, and other offices in the city government.

So my amendment merely says that if the office of prothonotary shall become a part of the Home Rule Charter, then the people of Philadelphia by a referendum should say whether or not this office should be part of the Home Rule Charter.

I may suggest that the prothonotary in Philadelphia, as against the practice, and tradition, and custom, and law, of all of the other counties in this Commonwealth, does not do all of the work, does not render all of the service that the prothonotary does in other counties. In Philadelphia, by and large, the office of the prothonotary is one of custodial records, and the work is an intra-office work.

We have, however, in Philadelphia the office of court administrator. Now, the office of court administrator does the work that is done by prothonotaries in other counties. The office of the court administrator now has supervision over the prothonotary's office to the extent that the court through the administrative judge and through the court administrator is streamlining the work and service of the prothonotary and is doing a great deal by way of programming the work, so that today in Philadelphia the office of the prothonotary is welded into the judicial structure through the office of the court administrator.

So we say if we are going to extricate the office of the prothonotary in Philadelphia and inject it into the Home Rule Charter consistent with the basic concept that gave birth to the Home Rule Charter, that should be done only by a full opportunity on the part of the electors to so say, and that is by a referendum.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. May we move the question.

DELEGATE RAPPAPORT. No, sir, we have not heard the facts yet.

DELEGATE SOLOMON. Mercy, Mr. President. Mercy.

PRESIDENT BRODERICK. Any time you want to make a motion to close debate, say so, and see if it has a second, and we will take a vote on it.

DELEGATE RAPPAPORT. I yield to the chairman of the committee.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the committee considered this in some detail on several occassions and we had agreed and it was overlooked by an inadvertence to add the words, "covered in the Home Rule Charter," by a referendum in the manner provided by law.

The words are being added by Delegate Cortese, but he has taken out the words, "in the manner provided by law." I do not know why, because the reason for it was that under the Home Rule Charter in Philadelphia the only way it can be amended is by referendum and it was agreed it would be amended in a normal way by a referendum in accordance with the rules of the Home Rule Charter. Assuming that is exactly what is meant here, this was approved by the committee.

DELEGATE CORTESE. May I say that what Delegate Amsterdam said is absolutely correct and the intent he expressed is the intent I give to the amendment I offer.

DELEGATE O'DONNELL. I wonder if Delegate Cortese would be good enough to accept an amendment to his amendment which would simply leave in the words, "in the manner prescribed by law?"

DELEGATE AMSTERDAM. May I suggest, Mr. President, since Delegate Cortese has indicated that this is his intent, it now becomes purely a matter of style and drafting. If the Style and Drafting Committee feels in order to carry out the intent which is expressed that those words should go in, that would be sufficient, and I suggest we go to a vote on that assumption.

DELEGATE SHAPIRO. I want to ask the delegate whether a referendum is the only manner in which the Home Rule Charter can be changed to include an office not now covered by the Home Rule Charter?

DELEGATE CORTESE. That is correct. In other words, this amendment is in a sense technically correctional.

PRESIDENT BRODERICK. Are we ready for the question?

DELEGATE TATE. I would like to ask the opinion of counsel, because I think Delegate Cortese has just made a misstatement of fact. I think the Home Rule Charter in Philadelphia can be amended other than by a referendum. I would like counsel to rule on that question.

PRESIDENT BRODERICK. I do not know whether counsel can rule on that immediately. I doubt that they can. Are we ready for the question or are we not?

DELEGATE TATE. It is very material to this vote. That fact is very material to this vote, Mr. President, and it has been stated one way by Delegate Cortese, and I think he may be wrong.

DELEGATE CORTESE. Mr. President, may I answer Delegate Tate?

PRESIDENT BRODERICK. Yes.

DELEGATE CORTESE. Mr. President, in order for, let us say by way of example, the office of the clerk of the court of Quarter Sessions to become part of the Home Rule Charter, it is only necessary that an ordinance to that effect be passed. But to bring in an office which is not in the charter at all, as is the case with the office of the prothonotary, a referendum as provided by law is necessary.

PRESIDENT BRODERICK. Are we ready for the question? We will unlock the voting machine and the question is, will the Convention agree to the amendment being offered by Delegate Cortese. All those agreeing to the amendment will vote "yea." Those that wish to reject the amendment will vote "nay."

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Cortese?

The roll was recorded as follows:

YEAS—74

Amsterdam	Desmond	Keller, J.	Pott
Bagenstose	Devlin	Keller, M.	Rea
Baldrige	Erwin	Krill	Reynolds
Baldwin	Fagan	Laputka	Rovner
Barron	Fawcett	Lee, L.	Sahli
Benfield	Fohl	Leinbach	Scott
Bloom	Fortney	Leonard	Scranton
Braham	Goldman	Levin	Sebastian
Broderick	Goldstein	Manderino	Shively
Burkholder	Griffith	Mangery	Shoemaker
Butera	Hannum	Meyer	Strickler
Cain	Hatter	Miller, R.	Thomson
Caron	Heyburn	More	Tomasetik
Clark	Himes	Morton	Warman
Clinger	Hocker	Orban	Westerberg
Corey	Hostetler	Otto	Whittum
Cortese	Jirolanio	Pasquerilla	Wilcox
Croop	Johnson	Pelletier	Woodside
Curran	Kauffman		

NAYS—63

Aberman	Ellson	Miller, D.	Sharp
Aurentz	Gabreski	Moorhead	Shettig
Baldus	Gehrlein	Murray	Shrager
Banes	Gouger	Nelson	Silverman
Barry	Harding	Orbin	Solomon
Brennan	Henderson	Porcey	Sprogell
Brown	Hook	Popil	Stout
Buck	Horne	Prendergast	Stroup
Bunting	Huggins	Rappaport	Swope
Camardella	Irvis	Redick	Tate
Caputo	Kelly	Richter	Tully
Casey	Kline	Roberts	Van Sant
Cosetti	Mattioni	Ruth	Welsh
Cunningham	Markley	Scales	Wilmarth
Dumbauld	Michael	Scarlett	Woodring
Feather	Michener	Shapiro	

NOT VOTING—26

Allison	Fay	Lane	O'Donnell
Bashoff	Fineman	Leach	Pechan
Benedict	Fleming	Lee, K.	Powell
Conley	Forster	McGeary	Thornburgh
Dailey	Gerber	McGlynn	Quiles
Donaldson	Gray	Musselman	Waldron
Donolow	King		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

CORTESE AMENDMENT No. 3 TO PROPOSAL No. 7

PRESIDENT BRODERICK. The next amendment is the third amendment being offered by Delegate Cortese.

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATE CORTESE offered the following amendment which was read by the clerk:

Amend Schedule, (Sec. 18), page 29, line 15, by removing the period after "court" and inserting: except that judges who are now serving in the orphans' court or the family court may not be so assigned without their consent.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Cortese for a statement in connection with his amendment.

DELEGATE CORTESE. Mr. President, I could explain the thrust of this amendment in one sentence. This represents the consensus of the judges of the orphans' court and of the county court, so that when these judges become members of the divisions of the Common Pleas Court they will not be able to be assigned to other services without their consent.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Amsterdam for his statement from the committee.

DELEGATE AMSTERDAM. Mr. President, we believe that this is contrary to the spirit of the unified system which we have proposed and which has been overwhelmingly approved by this body from time to time. Actually, we had a vote earlier on whether the orphans' court should in some way be separated and decided it should not. We have no doubt that the president judge will certainly keep those very qualified to handle certain cases on those cases and we need not assume, it seems to me, that they will act unintelligently or in some way that will be inimical to the best interests of the court. Therefore, we oppose this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, we have covered this subject at least 10 times at this convention, and I hereby move the question at this time.

PRESIDENT BRODERICK. We are ready for the question. We will unlock the voting machine. All those voting "yea" will vote to support the amendment. All those voting "nay" will vote to reject the amendment.

Have all the delegates present voted?

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales. For what purpose does the gentleman rise?

DELEGATE SCALES. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SCALES. My machine is not working and I would like to be recorded as voting "No."

PRESIDENT BRODERICK. Delegate Scales indicates his machine is not working. We will send out one of our electronic engineers, but in the meantime he will be recorded as having voted "No."

On the question recurring,

Will the Convention agree to the amendment offered by Delegate Cortese?

The roll was recorded as follows:

YEAS—29

Bagenstose	Devlin	Krill	Rovner
Baldwin	Erwin	Leonard	Sebastian
Baldrige	Fagan	Meyer	Shoemaker
Broderick	Goldstein	Michael	Swope
Butera	Hatter	More	Warman
Cain	Jirolanto	Quiles	Welsh
Corey	Kauffman	Reynolds	Woodside
Cortese			

NAYS—110

Aberman	Filson	Manderino	Ruth
Amsterdam	Fohl	Mangery	Sahli
Aurentz	Fortney	Markley	Scales
Baldus	Gabreski	Mattioni	Scarlett
Banes	Gehrlein	McGeary	Scott
Barron	Gerber	Michener	Scranton
Barry	Gouger	Miller, D.	Shapiro
Benfield	Griffith	Miller, R.	Sharp
Bloom	Hannum	Moorhead	Shively
Braham	Harding	Morton	Shrager
Brennan	Henderson	Murray	Silverman
Brown	Heyburn	Nelson	Solomon
Buck	Himes	O'Donnell	Sprogell
Bunting	Hocker	Orban	Stout
Burkholder	Hook	Orbin	Strickler
Camardella	Horne	Otto	Stroup
Caputo	Hostetler	Pasquerilla	Tate
Caron	Huggins	Pelletier	Thomson
Casey	Irvis	Percey	Thornburgh
Clark	Johnson	Popil	Tomaselik
Clinger	Keller, J.	Pott	Tully
Cosetti	Keller, M.	Prendergast	Van Sant
Croop	Kelly	Rappaport	Westerberg
Cunningham	Kline	Rea	Whitlum
Desmond	Laputka	Redick	Wilcox
Dumbauld	Lee, L.	Richter	Wilmarth
Fawcett	Leinbach	Roberts	Woodring
Feather	Levin		

NOT VOTING—24

Allison	Donaldson	Goldman	McGlynn
Bashoff	Donolow	Gray	Musselman
Benedict	Fay	King	Peehan
Conley	Fineman	Lane	Powell
Curran	Fleming	Leach	Shettig
Dalley	Forster	Lee, K.	Waldron

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SCHEDULED CORTESE AMENDMENTS TO PROPOSAL No. 7 WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Cortese.

DELEGATE CORTESE. Mr. President, may I suggest that as to the next two amendments which I have that they be not called at this time. In terms of sequence, this is not the time for these amendments, as I see it, to be offered.

PRESIDENT BRODERICK. Delegate Cortese, the only thing I can say is the committee that sets up these amendments is here and I am going to ask Delegate Orban and Delegate Casey if they will please come over, because they number them for me. The Committee does this in the morning, and I want them to determine the order. I will ask Vice President Orban and Vice President Casey if they will please come forward.

Do we have an amendment we can take in the meantime?

Delegate Cortese, the committee has decided these amendments have to be taken up now, unless you want to withdraw the amendments. You may always withdraw your amendments and you can submit them again or you may table them. This is up to the body.

DELEGATE CORTESE. Mr. President, will I have an opportunity to offer them at a later time?

PRESIDENT BRODERICK. This is going to be up to the delegates. We have up until this time, Delegate Cortese, given every delegate an opportunity to withdraw his amendments. We have given him an opportunity to offer them. I do not want to deprive you of the same opportunity, but this convention can vote otherwise.

I have always permitted a delegate to withdraw any time he wanted to withdraw.

DELEGATE CORTESE. Mr. President, do I understand, if I do not offer these amendments now and want to offer them later, I need the consent of the majority of the delegates?

PRESIDENT BRODERICK. No, you do not need the consent of the majority of the delegates, but a majority of the delegates could vote, I think, not to accept amendments at some time or other, but that is a very serious problem that we have not faced as yet. So if the delegate wishes to withdraw the amendment, we have always applauded the withdrawal of amendments.

DELEGATE CORTESE. Rather than receive the applause, I say at this time I shall not offer them and I will offer them later.

PRESIDENT BRODERICK. Delegate Cortese, I just want you to know the position we are in. The Committee gives me these amendments and your amendment is next. You have another amendment. Unless you withdraw that amendment, this is the one that has to be taken up next because that is the decision of the committee composed of Delegate Orban, Delegate Casey and the attorneys for the committee. The decision is yours.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Cortese. For what purpose does the gentleman rise?

DELEGATE CORTESE. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE CORTESE. Mr. President, for my procedural enlightment, will the President please suggest under what parliamentary authority does the Chair make that ruling?

PRESIDENT BRODERICK. The Chair makes that ruling on the basis that the Chair set up a committee, a committee composed of our two vice presidents, the attorney for the Convention and the attorney for the Judiciary Committee, to furnish the Chair amendments in the proper sequence, and this is the manner in which the Chair has been conducting the Convention. I will also say to you, this body and this Chair has never denied any delegate the right to withdraw an amendment and submit it again. But, as I say, the ultimate decision on all of these things is in the hands of the body.

AMENDMENTS WITHDRAWN

DELEGATE CORTESE. I withdraw the amendments.

PRESIDENT BRODERICK. The amendments are withdrawn.

HOCKER-MORTON AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The next matter is an amendment being offered by Delegate Hocker and Delegate Morton.

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATES HOCKER AND MORTON offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 14), page 21, lines 17 to 20, by striking out "The" in line 17 and all of lines 18 to 20

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker or Delegate Morton in connection with this amendment. I see Delegate Morton at his microphone, so you may proceed.

DELEGATE MORTON. Mr. President, I say to all the non-lawyers, welcome aboard on this one, because it is a non-technical one all of us can understand. The sole purpose of it is to amend to eliminate the legislation creating 10 new judgeships for Philadelphia.

I was not elected here as a member of the House of Representatives, I did not run as a member of the House of Representatives, I ran to be a constitutional delegate. I think each and every one of you ran to be a constitutional delegate and not a member of the House of Representatives. It is the House of Representatives which has the duty and the chore to create courts. This is purely a legislative matter, the creation of courts, and I say a constitutional body should not legislate. Yesterday we had the question of 30 additional courts for Philadelphia, and we overwhelmingly tabled it. In my opinion, there is no difference in legislating for one court, 10 courts, 30 courts, 50 courts, or 100 courts, it is simply legislation.

We recognize that there may be problems and there may be ills, and we may criticize the Legislature for their failure to act, but does the mere fact that the Legislature may fail to act, or have a good reason for not acting, empower a constitutional convention, those who are dedicated to writing a constitution, to begin legislation? I think it is easy for us to look and say, let us create judgeships, let us do this and let us do that, because we do not have to provide the funds for doing this.

Do we recognize that the average court costs the Commonwealth of Pennsylvania approximately $55,000 a year and 10 new judgeships would be approximately $550,000, or whether it be 30 judgeships? We do not have to provide that money, do we? Yes, it is easy for us to legislate. Is it easy for us to legislate because of the seven-year backlog over here in Philadelphia and the four-year backlog in Allegheny County? Why do we not legislate for them? Maybe Erie County has a backlog. Let us look at this backlog. We used the judges as the whipping boys for that, but I am one attorney who will say to you, and I have proclaimed that, for too long the attorneys have pointed the fingers at someone else and said, "There is a backlog because we need more judges."

The backlog exists because, for example, in Allegheny County last year out of all the cases called for trial less than 20 per cent of them went to a jury trial. The lawyers settled them on the eve of trial. If they could have settled them then, they could have settled them shortly after they were filed. This is one of the reasons for the backlog. It is not a lack of judges. I think the lay people should recognize this, that the backlog is not only because of the lack of judges.

It was very interesting for me to get a complete record from the board of judges of Philadelphia comparing what they wanted compared to the Pennsylvania Bar, and in that they did not request more judges.

I sympathize with the problem, I appreciate the prob-

lem throughout the State, but I earnestly implore you that you are here to write a Constitution, you are not here to legislate. There is no question in my mind that the creation of one, 10, 30, 50, or 100 judges throughout the State is purely a legislative matter and should be left to the Legislature.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Sprogell.

DELEGATE SPROGELL. I rise to oppose this motion for 10 new judges in Philadelphia. I protest against any new judges in Philadelphia being put in the Constitution. It does not belong here. As Delegate Morton has said, this is a legislative matter, not a constitutional matter.

Philadelphia may need them, indeed, but we have been told in our Judiciary Manual that simply putting new judges in does not take care of the backlog. When 25 per cent of the court was increased, only three per cent of the backlog was eliminated. I think they should put their house in order first and see what a new administrative job does for them. Eliminate the judges that are not doing their jobs. Try and get the lawyers to cooperate and see that the continuances are discontinued.

I feel that this is a legislative matter and I think the Legislature is better equipped to look at this more clearly than we are, and with more time. Time is not of that much essence. If Philadelphia can say that they can great-grandfather clause their magistrates in, what is 12 years? I think we have the time to look at this more carefully if the Legislature does it. I am sorry to say this but I think the Legislature is more aware when its arm is being twisted.

I think this body has lost its vision. I hope it does not lose its senses. I think our Constitution that we have now is distinctly unpalatable in many aspects, and if we put this in, it is going to be unsalable.

DELEGATE CAIN. Mr. President?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Cain.

DELEGATE CAIN. I certainly think the Convention should like to have the benefit of the committee's thinking on this before we jump to conclusions about the constitutionality and the need in Philadelphia.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the committee also had some difficulty in trying to decide whether this was within the proper function of the Constitutional Convention. It decided that it was. We can point to a precedent as early as 1873, being the schedule for the last convention that was held in this State, that Convention also provided for additional courts and additional judges in Philadelphia.

I might say that there was considerable argument as to whether there should be 30, or 26 or some other number. It was decided that there was clear evidence that there was some additional number desirable for Philadelphia and since we were making a change that was going to be helpful to the entire judiciary system of the State, we felt that it was proper to add some additional judges, at least, to the extent that it was clearly proven to be necessary. The number 10 was chosen as the proper number in the light of whatever was given to us in the way of comments and evidence at that time. Therefore, the committee recommends we continue to have, as scheduled, the provision for 10 additional judges in Philadelphia County.

PRESIDENT BRODERICK. The Chair recognizes Delegate Himes.

DELEGATE HIMES. I speak for this amendment and in opposition to the committee report, primarily for one reason that has not been discussed too much on this Convention floor.

I come from an area of our State which for many years sent to our Congress in Washington a very respected and able man by the name of the Honorable Robert F. Rich. He was not only known throughout our State, but throughout all of the nation for his ability and also for one question which he posed many times to his colleagues. That was: "Where are you going to get the money?" Mr. Rich is retired now from active participation in political life, but he is still honored and revered by all who know him.

I would like to use Mr. Rich's statement for our benefit this morning, where in the world do we, as delegates to this Convention, expect to get all of the money that we have already instigated and applied to this new Constitution?

I quickly wrote down some of the things that we have already done. In the last 10 days we have brought in these tax exemptions to include the aged, the needy, the redevelopment areas, and we have given tax easements to both builders and contractors. We have taken funds from our General Assembly, funds which they have collected and distributed them about the State, rather than for us, ourselves, to tax utilities. We have set up a whole new series of commonwealth courts. We have put all JPs on a salary basis—and heaven only knows, when this is over, we may have all the constables under salary, also.

Now we are talking about creating more courts. Yesterday Delegate Pasquerilla asked where we would find all the lawyers to fill these courts. I ask today, in all seriousness, where will we find the money to pay all the lawyers? There may be some within this august body who have unlimited funds, but, again I speak for my area, which is the largest geographical area of senatorial districts in our State, and I know of no one, not one single person, that is not already concerned about the tax burden he is now carrying, and we all know that taxes are certain to increase in the years to come. We pride ourselves here that we are the architects of a new and progressive Constitution. I suggest to you that with that pride also goes some responsibility for us to give our finished document a sound economic basis. Then when we take it back to the people at home, it will be worthy of acceptance.

Therefore, I would like to suggest that at this time, if I am not already too late, that each proposal which comes before our faces in the few remaining days should perhaps be read with some dollar signs in front of our eyes. It may take a little longer to get through it, but it might make a lot more sense.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Thornburgh.

DELEGATE THORNBURGH. Mr. President, I rise in support of the amendment offered by Delegate Morton. As a member of the Judiciary Committee I was troubled during our consideration by the fact that an amendment

had been offered and incorporated into our proposal which provided, first, 30 and then 10 judges for the City of Philadelphia.

The feeling grew within me that this was a gross usurpation of the legislative process, and it would be improper to provide a specified number of judges for a specified Judicial District, particularly, as has been pointed out, when we have framed and adopted a new unified judicial system not only for the State of Pennsylvania, but for the judicial district in which Philadelphia lies. It seems to me, which you are at this time to decide in this body, which does not have to deal as a continuing matter with the correction of judgeships just willy-nilly to create a magic number of judges for Philadelphia.

We have heard the complaints on this floor that the political processes of the Legislature make it difficult to get these judgeships. It is ironic to me that the very persons who raise this complaint are those to have discarded a nonpolitical method of choosing judges in this State.

It seems to me the City of Philadelphia should do as every judicial district in this Commonwealth has to do, come to the Legislature to make its case, then, if it is entitled to the judges, to speak and get them.

I vigorously support Delegate Morton's amendment and would move that any denomination of specified judges for any judicial district not appear in this Constitution or in this schedule.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, if we are not careful, someone is going to come up with a list of what judges we need in other counties in the State. Now, by pure coincidence I happen to have such a list. In my county, Mr. President, we need two judges, provided, of course, that they are of the right political party. Cambria County is apparently expecting a crime wave, because they requested five new judges, and my good friend Matt Gouger, tells me that in Franklin County they need one and three-quarter judges. My good friend, Delegate Jirolanio, would like two new judges, but he does not particularly care what counties those judges go into. A number of delegates have asked me to announce that they would like one judge less in their particular district, and they have asked me to withhold their names and the names of their counties.

Mr. President, the point is that we are here to write a Constitution. I would like to go home and tell the people that we have written a Constitution, and for that reason I support this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I yield to Delegate Devlin.

DELEGATE GERBER. I move the question.

DELEGATE HOOK. I will second the motion.

DELEGATE KAUFFMAN. I was recognized before the question was moved.

PRESIDENT BRODERICK. There is no question but that I recognized Delegate Kauffman before.

The Chair recognizes Delegate Devlin.

DELEGATE DEVLIN. Mr. President, there has been some bitter consternation over whether or not we should put into the Constitution a number dealing with judges, and arguments for both sides can be heard as to whether or not this is a legislative matter or a matter of constitutional nature, and I can agree with both.

I did not, under any circumstances, ask my very close and very dear friend, Delegate Silverman, to try to increase the number in our Proposal No. 7 from 10 to 30, and, indeed, I asked Leon not to do that. I did not think it was the proper way to approach this problem. I am not admonishing him and he knows it, and I will be just as close to him, if not closer to him than before. I said, "Leon, if you think you made a mistake and, if that is the only mistake we have made up here, we are on the side of the angels."

Let me tell you what you have done for me personally, if you want to think that way, but let me tell you what you have done for 2 million people in the City of Philadelphia for which I am so pleased and so proud that I can go home as a party leader and be for something worthwhile. This is what you did.

The Pennsylvania Bar Plan is a good plan, generally speaking, but what it did not do, it did not move immediately into solving the unified judicial system of Pennsylvania. It set up the same work which will be carried out. I came to you as a stranger and I presented a plan, after seeing what was happening up here for a few weeks, which was known as 1204, and the only thing that I did for my court system in Philadelphia was make it unified and put it into operation immediately, and you did that for me.

The Bar plan did not have a unified system as we now have. It had a separate orphans' court, and for reasons we will not go into now, but you know why, we do have that orphans' court in the common pleas court. The municipal court, community court, I do not care what you want to call it, but you gave Philadelphia a community court, if you want to think of it that way now, and it is the only jurisdiction that has one, and I am grateful.

You are allowing us in Philadelphia now to immediately attack the backlog by not having those minor offenses that are now clogging up the common pleas court adjudicated and tried at the municipal court level.

You have allowed us immediately to up-date our minor judiciary and make it a court of record.

You have allowed us to set up an administration of our justice in Philadelphia immediately so we can, if you please, administer the operation of the judicial officers by moving judges from here to there, using all the court rooms.

With regard to the judges let me tell you this, I am not interested in 10 judges. The bar association and all the interested parties such as the Greater Philadelphia Movement, which Delegate Amsterdam is a member of and Governor Scranton, our jurists, our lawyers, they were all interested in trying to do something for Philadelphia while we had the opportunity. I presented the figure they gave me for your due consideration. This figure was whittled down to 10. If I can get one more extra judge for Philadelphia, I would be providing a service, and that is what I am up here for.

If this distinguished body does not want to help Philadelphia immediately in this one area, in this one area alone, I bow to your considered judgment. It will not be the end of all, you have given me everything that I had

ever dreamt of when I came up here. This is really not too important, but if you feel you can add to the success of our judicial system in Philadelphia by allowing our people to get their cases tried immediately, then you shall, perhaps, give us 10 extra judges in this Constitution.

I need not talk on the merits of why 10 are needed, or why we should not have 10. I just want to leave this microphone in the next few seconds and tell you again that I am indeed grateful, extremely happy, and I will never forget what you have done for me and my city, I, a stranger to you, and I would rather not have anybody who is a proponent of the City of Philadelphia seeking ten additional judges speak on that point. I wish you would extend me that courtesy. I know that this fine young man on my right who tries cases in Philadelphia would like to, but I would just like to leave you with the thoughts I gave you.

DELEGATE KAUFFMAN. Mr. President, I would like to take a moment to talk as a lawyer who practices in Philadelphia and try to explain to you—

DELEGATE HOOK. I believe Delegate Kauffman is out of order. When he yields the floor, he yields the floor.

PRESIDENT BRODERICK. I have to agree with Delegate Hook that Delegate Kauffman has not been recognized. You did yield to Delegate Devlin, and I think that in this respect I would have to call on someone else. That does not mean I cannot come back and recognize you, but it is not fair that two delegates line up that way.

MOTION TO CLOSE DEBATE

DELEGATE GERBER. Mr. Chairman, I believe you said that I was not recognized to move the question. I now move the question.

DELEGATE HOOK. I second it.

PRESIDENT BRODERICK. The question has been moved by Delegate Gerber and it has been seconded by Delegate Hook.

This may be a controversial matter on moving the question, and the way we interpret that, you move that we close debate and put the pending question.

On the question,

Will the Convention agree to the motion to close debate?

The roll was recorded as follows:

YEAS—101

Amsterdam	Feather	Manderino	Ruth
Aurentz	Filson	Mangery	Sahli
Bagenstose	Fortney	Markley	Scales
Baldrige	Gerber	Mattioni	Scarlett
Barry	Goldman	McGeary	Scott
Benedict	Goldstein	Meyer	Sebastian
Benfield	Gouger	Michener	Shapiro
Bloom	Harding	Miller, D.	Sharp
Brennan	Henderson	Miller, R.	Shoemaker
Brown	Heyburn	Moorhead	Shrager
Camardella	Himes	More	Sprogell
Caputo	Hocker	Murray	Stout
Caron	Hook	O'Donnell	Stroup
Casey	Horne	Otto	Swope
Clark	Hostetler	Pasquerilla	Tate
Clinger	Huggins	Pelletier	Thomson
Corey	Irvis	Percey	Thornburgh
Cortese	Johnson	Popil	Tomascik
Cosetti	Keller, M.	Pott	Tully
Cunningham	Kelly	Prendergast	Van Sant
Dailey	King	Quiles	Waldron
Desmond	Kline	Rea	Warman
Devlin	Lee, L.	Redick	Welsh
Dumbauld	Leonard	Reynolds	Westerberg
Erwin	Levin	Rovner	Woodring
Fawcett			

NAYS—39

Aberman	Butera	Kauffman	Roberts
Baldus	Cain	Keller, J.	Scranton
Baldwin	Croop	Krill	Shettig
Banes	Curran	Laputka	Shively
Barron	Fagan	Leinbach	Silverman
Braham	Fohl	Michael	Strickler
Broderick	Griffith	Morton	Whittum
Buck	Hannum	Nelson	Wilcox
Bunting	Hatter	Orbin	Woodside
Burkholder	Jirolanio	Rappaport	

NOT VOTING—23

Allison	Fineman	Lane	Pechan
Bashoff	Fleming	Leach	Powell
Conley	Forster	Lee, K.	Richter
Donaldson	Gabreski	McGlynn	Solomon
Donolow	Gehrlein	Musselman	Wilmarth
Fay	Gray	Orban	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion to close debate was agreed to.

On the question,

Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—87

Aberman	Erwin	Leinbach	Scarlett
Aurentz	Feather	Manderino	Shapiro
Bagenstose	Filson	Markley	Sharp
Banes	Fortney	Mattioni	Shively
Barry	Gehrlein	McGeary	Shrager
Benfield	Gerber	Michael	Sprogell
Bloom	Goldman	Miller, D.	Stout
Braham	Gouger	Miller, R.	Stroup
Brennan	Harding	Moorhead	Swope
Brown	Henderson	Morton	Tate
Buck	Himes	Murray	Thomson
Bunting	Hocker	O'Donnell	Thornburgh
Burkholder	Hook	Otto	Tomascik
Camardella	Horne	Pelletier	Tully
Caputo	Hostetler	Percey	Van Sant
Caron	Huggins	Popil	Waldron
Casey	Irvis	Pott	Welsh
Clinger	Johnson	Prendergast	Westerberg
Cosetti	Keller, M.	Rappaport	Whittum
Cunningham	Kelly	Ruth	Wilmarth
Dailey	King	Sahli	Woodring
Dumbauld	Kline	Scales	

NAYS—57

Amsterdam	Devlin	Lee, L.	Reynolds
Baldrige	Fagan	Leonard	Richter
Baldus	Fawcett	Levin	Roberts
Baldwin	Fohl	Mangery	Rovner
Barron	Goldstein	Meyer	Scott
Benedict	Griffith	Michener	Scranton
Broderick	Hannum	More	Sebastian
Butera	Hatter	Nelson	Shettig
Cain	Heyburn	Orban	Shoemaker
Clark	Jirolanio	Orbin	Silverman
Corey	Kauffman	Pasquerilla	Strickler
Cortese	Keller, J.	Quiles	Warman
Croop	Krill	Rea	Wilcox
Curran	Laputka	Redick	Woodside
Desmond			

NOT VOTING—19

Allison	Fay	Gray	Musselman
Bashoff	Fineman	Lane	Pechan
Conley	Fleming	Leach	Powell
Donaldson	Forster	Lee, K.	Solomon
Donolow	Gabreski	McGlynn	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

O'DONNELL AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I offer an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE O'DONNELL offered the following amendment which was read by the clerk:

Amend Schedule, Section 12, page 20, by inserting between lines 14 and 15: Effective immediately upon establishment of magisterial districts and until otherwise prescribed the civil and criminal procedural rules relating to venue shall apply to magisterial districts; all proceedings before aldermen, magistrates and justices of the peace shall be brought in and only in a magisterial district in which occurs an event which would give rise to venue in a court of record; the court of common pleas upon its own motion or on application at any stage of proceedings shall transfer any proceeding in any magisterial district to the justice of the peace for the magisterial district in which proper venue lies.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell in connection with this amendment.

DELEGATE O'DONNELL. This amendment does not in any way contravene Proposal No. 7. In fact, it supplements it in the one or two areas which were overlooked, as it came out of the Committee proposal very similar to the situation of constables. This merely says and carries out the fundamental philosophy of Proposal No. 7 that there will be no more playing games between one magistrate and another in which you cannot, in effect, check your own magistrate nor permit the magistrate to move his or her house trailer around, and what have you.

This says that in order for a case to be brought before a magistrate that case must arise in the magisterial district. I do not believe there is any opposition to this proposal whatever, to the best of my knowledge.

PRESIDENT BRODERICK. The Chair would like to hear from the committee chairman in connection with this proposal.

DELEGATE SCRANTON. I do not know whether there is any opposition, or not, but the committee did not go into a discussion on this and does not consider it inconsistent with the committee's proposal.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I would like to interrogate Delegate O'Donnell, please.

PRESIDENT BRODERICK. I am sure he will stand for interrogation. Proceed with your questions.

DELEGATE SHOEMAKER. Mr. President, would the delegate kindly state to me what would happen if I were involved in some, let us say, intersection collision in a magisterial district, which under this total proposal, I understand, could be rather large. For instance, it might cover the whole City of York, my county, which would be about 60,000 people in quite a few hundred square miles. If I were involved in some sort of scrape and I wanted to bring an action, and if the magistrate in that district decided he either was sick, or was on vacation, or if he maybe had died and had not been replaced, would this not prohibit me from bringing my action and keep me out of court?

DELEGATE O'DONNELL. Indeed, it would not, Mr. President.

First of all, I would like to point out to the delegate that he would have under the rules of civil procedure essentially two choices in a vehicle collision. He may sue the defendant either in the magisterial district in which he lives or can be served, or he may sue in the area in which the accident occurred. That gives him two choices.

Secondly, under the general administrative rules of the judiciary article, an unfilled magisterial district, whether through lack of qualification, or sickness, or illness, or what have you, will be covered by assignment of the local court. It will simply assign a magistrate in there to fill that spot.

DELEGATE SHOEMAKER. What would happen if I had a bill to collect for an out-of-state company, let us say, and the defendant was passing through or lived in the City of York, and the magistrate there was personally involved and did not want to handle it? What would I do then?

DELEGATE O'DONNELL. He would disqualify himself and the court would assign a magistrate to hear it.

DELEGATE SHOEMAKER. In other words, I would have to apply to the court of common pleas to get somebody assigned to handle that particular case?

DELEGATE O'DONNELL. The delegate would have to do exactly the same thing which he now has to do if the claim was larger. I understand that he is talking about an assumpsit claim under $300 or a motor vehicle claim under $500.

DELEGATE SHOEMAKER. I am referring to an assumpsit claim under $500. I think you have the figures reversed.

DELEGATE O'DONNELL. Yes, that is right.

If the case were larger and it was in a one-judge county, we would have an identical situation. The judge would have to disqualify himself and another judge would come in and sit. In like manner if the magistrate felt for any reason that he was disqualified, then another magistrate would be assigned and come in and sit, that is all. It is as simple as that.

In other words, the clear scope, unless you are attacking the entire theory of committee proposal No. 7 regarding magistrates, unless you are attacking the entire reform program, this follows as of course that people should not be permitted to shop around for the magistrate of their choice, which is one of the greatest evils presently in the system.

DELEGATE SHOEMAKER. Mr. President, if I understand the committee proposal correctly, and I am talking about the county I know something about, instead of having about 113 magistrates in York County, it would be anticipated that would be cut down to maybe 10, or 15 or 20, districts in the county?

DELEGATE O'DONNELL. This county, I believe, is York County, is it not?

DELEGATE SHOEMAKER. That is correct.

DELEGATE O'DONNELL. Our computation was 29, just for sake of interest.

DELEGATE SHOEMAKER. And previously, as the law now exists, there have been maybe two justices of the peace in the townships and in the City of York we have 15. That would be cut back substantially, correct?

DELEGATE O'DONNELL. That may be correct. In fact, it is correct.

What these comments are doing is attacking the entire theory of Committee Proposal No. 7 for remedying the abuses of the magisterial system. They are not germane to this particular proposal.

DELEGATE SHOEMAKER. Mr. President, it may be that I am not particularly happy with the compromise that came out of the committee on the magisterial districts, because it does not establish a community court and it does upset what has been traditional, but I believe you have here a piece of legislation, or more properly, under the judicial system, the unified system, something which the courts would be empowered to write the rules for.

DELEGATE O'DONNELL. The delegate is absolutely correct. All this does is take care of that interim period before the rules are written.

DELEGATE SHOEMAKER. Mr. President, I would speak to the amendment.

PRESIDENT BRODERICK. Proceed Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I frankly am not sure I completely understand this hastily placed forward amendment, but it is quite clear to me that this is an O'Donnell amendment and the committee did not study it.

The committee did not figure the ramifications of this, and I would hardly besiege every lawyer in this room to look carefully at what is before you in this amendment. If you know anything about the procedure in the minor judiciary, even as it exists today or as we hope it to be, and look at the effect of this on the present system, I suggest that you are going to find a dozen different holes in it.

I do not believe this Convention is here to legislate—and this has been repeated over and over again—we have just torn 10 judges away from Philadelphia, primarily because it was not our function. Now, apparently because no one else seems to oppose this situation, we are about to legislate something for which we have clearly said the Supreme Court and the unified system is going have the responsibility.

I suggest that this amendment is ill-conceived and ill-designed, that this is legislation and should not be hastily passed. I am opposed to it very strongly. I am quite sure that the courts can cover this situation under the unified system without the necessity of this amendment. I am opposed to it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka.

DELEGATE LAPUTKA. Mr. Chairman, may I interrogate Delegate O'Donnell?

PRESIDENT BRODERICK. Proceed.

DELEGATE LAPUTKA. Mr. President, in line 2 are inserted the words "until otherwise prescribed." Will he explain to the delegation how it would otherwise be prescribed?

DELEGATE O'DONNELL. Throughout the entire judiciary article and, as a matter of fact, under Style and Drafting, throughout all of the articles everywhere the word "prescribed" appears in the Constitution which we are now writing it refers to rules. Everywhere where the words "provided by law" appear, they concern legislation.

Consequently, this would be prescribed by rule of the Supreme Court. If you turn back to Committee Proposal No. 7, in its administrative proceedings you will observe that the Supreme Court, and the Supreme Court alone, has the power to prescribe by general rule for practice, procedure and conduct of justices of the peace, as well as the Court. This is all it would do and this merely prescribes what happens while the Supreme Court is preparing their rules.

DELEGATE LAPUTKA. In effect, we have a transitional type amendment here until such time they are prescribed?

DELEGATE O'DONNELL. Purely transitional. I might remind delegates, that there is no legislation in here whatever for this reason. Under the present Constitution, in one of the articles which we are not permitted to disturb, venue is taken out of the hands of the Legislature and put into the hands of the courts.

DELEGATE LAPUTKA. I, therefore, Mr. President, rise in favor of this amendment and would move its adoption. Therefore, I move the question.

PRESIDENT BRODERICK. Delegate Laputka has just moved the question.

DELEGATE SHAPIRO. I ask for the floor. I would like to interrogate Delegate O'Donnell.

DELEGATE GERBER. I would also like to interrogate Delegate O'Donnell.

PRESIDENT BRODERICK. Let us proceed with the interrogation quickly.

The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Delegate O'Donnell, I direct your attention to Section 11 (a) on page 18 of the schedule. Is not this amendment inconsistent with 11 (a)? I realize you have used the word "venue," but it seems to me we discussed at some length the question of whether we were going to allow the justices of the peace to continue to serve out their existing terms and to continue to earn whatever they could earn by exercising whatever jurisdiction they are entitled to exercise at the present time.

Would this amendment not interfere with the exercise of their jurisdiction and their continuation in office for the balance of their terms?

DELEGATE O'DONNELL. I do not think they will. I think the delegate is confusing "jurisdiction" with "venue."

DELEGATE SHAPIRO. I am not confusing them. Which would prevail, Mr. President? If this amendment were to read that it would take effect when each justice of the peace now in office has served out his term, I would understand it, but, as I see it now, he is interfering with their exercise of the prerogative of their office.

DELEGATE O'DONNELL. Mr. President, I believe the question confuses the notion of "jurisdiction" with the notion of "venue." If I may give you a parallel, a court of common pleas under the new judiciary article will have unlimited jurisdiction, for example, in all criminal cases,

but that does not suggest that a criminal case which arises in Pittsburgh can be tried in Philadelphia, except upon assignment in a unique situation where there is a change of venue. Consequently, the fact that the case can be tried in common pleas is a jurisdictional matter; the fact that it ought to be tried in Pittsburgh is a venue matter.

Under the present selection governing jurisdiction before a justice of the peace, he has a certain fixed jurisdictional amount, shall we say, in an assumpsit case. He will continue to have that same jurisdiction. There is nothing in any piece of legislation existing today which permits a justice of the peace to hear cases outside of his own bailiwick. The only reason he does hear cases outside of his own bailiwick is that his bailiwick has never heretofore had boundaries. We are merely adopting venue rules to supplement the jurisdictional requirements that are presently in the law.

DELEGATE SHAPIRO. If the court does fix boundaries to a justice of the peace district, or a bailiwick, as the delegate states, would that not limit the number of cases that he can receive during the balance of his term?

DELEGATE O'DONNELL. It would have that effect.

DELEGATE SHAPIRO. Are we not, in effect, negating or conflicting with the decision of the committee which was to permit the justices of the peace now in office to serve out the balance of their term and to continue to do whatever it is they presently do?

DELEGATE O'DONNELL. That may be his opinion. I think this is in accordance with the committee's proposal to limit the jurisdiction of magistrates to the area in which the problem arises.

DELEGATE SHAPIRO. If I may, sir, I do not think I have been the champion of the justices of the peace in this Convention, but on this matter I think the committee did speak and I think he is in conflict with what the committee had decided.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, is this proposal of his an attempt to cure one of the problems that presently exists in the justice of the peace system where there is what is known as "squire shopping?"

DELEGATE O'DONNELL. It is. And I might say, to the delegate, that this proposal did not arise with me, personally. I was simply given the chore of drafting the language which would incorporate a number of suggestions that were made to the Judiciary Committee. I have no pride of authorship in this at all.

DELEGATE GERBER. Mr. President, would the delegate please tell me and my fellow delegates what some of the problems have been up to date in what we country lawyers know as "justice of the peace" or "squire shopping?"

DELEGATE O'DONNELL. Yes, very easily, Mr. President, and I thank the delegate for asking the question.

It is very simple, indeed, for one neighbor in a neighborhood dispute to harrass another neighbor unmercifully. You take a situation that might arise, shall we say, in Red Hill in Montgomery County. Two neighbors are annoyed with one another, one charges the other with disorderly conduct. Under these rules, that case will have to be heard in Red Hill where they and their witnesses and everyone else are available. Under the present situation the neighbor willing to annoy and harrass his friend—or former friend—could take the case all the way down to Abington, as long as it was still in Montgomery County. He could take it to the extreme limit of the county and make him, and all the witnesses, and everybody else, thus pile up constable costs, and the whole works, in taking it all the way to the extreme limit of the county. This corrects that problem.

DELEGATE GERBER. Does it also reach the problem of claims where certain creditors have their own private justices of the peace or squires with whom they do business regularly?

DELEGATE O'DONNELL. Of course, it does, and that is one of the most important criticisms of the present magisterial and justice of the peace system, that there were certain major creditors who threw all of their cases into the hands of one justice of the peace or into the hands of one magistrate, who became, in effect, a collection agency. This will stop that procedure for all time.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hannum.

DELEGATE HANNUM. Mr. President, would Delegate O'Donnell stand for interrogation?

PRESIDENT BRODERICK. Yes. Proceed with your question.

DELEGATE HANNUM. Mr. President, conceding, as I do, that his proposal is salutary, what is his definition of "constitutional" vis-a-vis "legislative?"

DELEGATE O'DONNELL. Mr. President, that is a rather difficult question, but let me say this to you, "Venue" now under the Pennsylvania Constitution is not a legislative matter. This proposal deals exclusively with venue and, therefore, I must respectfully suggest that it is not legislative on that ground alone.

But on a broader basis than that, I think that, of necessity—and particularly in the Judiciary Article—there are transitional things that must take effect immediately for the system to work. This merely contemplates, you understand, that if the Supreme Court of Pennsylvania wishes to adopt a rule differing from this, they can do it on the day after the magisterial districts go into effect. We merely had in mind that it took the procedural rules committee of the Supreme Court of Pennsylvania almost 20 years to get around to adopting uniform rules of civil procedure for the Commonwealth. We have merely suggested the kind and character of uniform rule which would go into effect.

DELEGATE HANNUM. Mr. President, possibly the delegate attempted to, but you have not given me, as I understand his comments, any definition of "constitutional". Believing, as I do, that this is clearly a legislative matter, I propose to vote against your proposal.

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, I would like just a few words of interrogation of Delegate O'Donnell.

It is true, is it not, that this is not a relatively new concept with the Judiciary Committee. This is not an idea that he has discovered since the Judiciary Committee has adjourned.

DELEGATE O'DONNELL. No, Mr. President. As I pointed out before, this idea does not originate with me. It is not a last minute proposition. It is a matter which

had been discussed time and time and time again in the Judiciary Committee, but we never came up with a specific solution. This is the specific solution.

DELEGATE CURRAN. As a matter of fact, I recommended this particular idea to the sub-committee when you had your first open meeting for the Judiciary Committee.

DELEGATE O'DONNELL. That is correct, and our subcommittee adopted his recommendation, and thought it was splendid, but just did not write the implementing material in the schedule.

DELEGATE CURRAN. There is one particular problem I have, and that is, how would this particular requirement relate to what we know as the committing magistrates in, for instance, the third class cities?

DELEGATE O'DONNELL. In a third class city, Mr. President, if my recollection is correct, I believe they have the alderman situation who acts as a committing magistrate and, in effect, is the justice of the peace for a third class city in a certain area.

What this means is that when a magisterial district boundary is drawn by the Supreme Court, unquestionably, perhaps five or six of these aldermen would be included within the one magisterial district. With this Proposal, you can go to any one of those five or six, so long as they continue in office and they are "grandfather" to the end of their terms. But one cannot go and shop around and take it out of the city, or into the next township, or wherever.

DELEGATE CURRAN. The requirement is in the schedule. There is no question that any defect that may arise in this particular language can be cured by the Legislature or by the Supreme Court in their rules.

DELEGATE O'DONNELL. By the Supreme Court instantly, no problem.

MOTION

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, it has been amply shown that this is a transitional provision. I move that the debate be closed and we move the question.

On the question,

Will the Convention agree to the motion?

It was agreed to.

The question recurs,

Will the Convention agree to the amendment offered by Delegate O'Donnell?

The roll was recorded as follows:

YEAS—76

Aberman	Butera	Harding	Orbin
Amsterdam	Cain	Hook	O'Donnell
Aurentz	Camardella	Irvis	Otto
Bagenstose	Caputo	Jirolanio	Pelletier
Baldrige	Caron	King	Percey
Baldus	Casey	Laputka	Popil
Baldwin	Corey	Lee, L.	Pott
Banes	Cortese	Leinbach	Rappaport
Barron	Cosetti	Markley	Rea
Barry	Curran	Mattioni	Redick
Benedict	Dailey	McGeary	Ruth
Benfield	Desmond	Meyer	Scranton
Bloom	Erwin	Michael	Sprogell
Braham	Fawcett	Michener	Stout
Brennan	Fortney	Miller, D.	Strickler
Brown	Gabreski	More	Stroup
Buck	Gerber	Murray	Swope
Bunting	Gray	Nelson	Thornburgh
Burkholder	Griffith	Orban	Woodside

NAYS—56

Broderick	Hocker	Prendergast	Solomon
Clark	Hostetler	Reynolds	Tate
Cunningham	Huggins	Richter	Thomson
Dumbauld	Johnson	Rovner	Tomascik
Feather	Kauffman	Sahli	Tully
Filson	Keller, J.	Scales	Van Sant
Fohl	Kelly	Scarlett	Waldron
Goldman	Kline	Scott	Warman
Goldstein	Krill	Sebastian	Welsh
Gouger	Levin	Shapiro	Westerberg
Hannum	Mangery	Sharp	Whittum
Hatter	Miller, R.	Shettig	Wilcox
Henderson	Moorhead	Shively	Wilmarth
Heyburn	Pasquerilla	Shoemaker	Woodring

NOT VOTING—31

Allison	Fagan	Keller, M.	Musselman
Bashoff	Fay	Lane	Pechan
Clinger	Fineman	Leach	Powell
Conley	Fleming	Lee, K.	Quiles
Croop	Forster	Leonard	Roberts
Devlin	Gehrlein	Manderino	Shrager
Donaldson	Himes	McGlynn	Silverman
Donolow	Horne	Morton	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

SCHEDULE OF REMAINING AMENDMENTS

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, if it is your desire to finish, as it is everyone's, I would like to report to you that, through the offices of Delegate Amsterdam and myself we have been able to persuade—that is what we have been running around here about—a great many delegates to withdraw amendments.

We are now in the following position:

We have four amendments left. We have one by Delegate Baldus, which has just been given out to you—which, incidentally, the committee has no objection to, whatsoever. It rearranges slightly the situation in Allegheny County, and it is my understanding, although I was not at the meeting, that the Allegheny County people are in agreement on this.

Secondly, there is the amendment put in by Delegate Barron.

There may be an amendment by Delegate Shapiro.

There will be an amendment by Delegate Sprogell.

Under those circumstances, I ask all of you to please not put in any more amendments. I say to you, openly, that if there are any more—if we start to get any more—I am going to offer a motion to have no more amendments. Is that clear?

DELEGATE BANES. I have an amendment to the Barron amendment pending since yesterday. I want to correct Delegate Scranton in that respect.

PRESIDENT BRODERICK. Do I understand Delegate Banes to say he has an amendment?

DELEGATE BANES. Yes, I do, Mr. President. That was placed with the drafting bureau and certainly should be on their list.

PRESIDENT BRODERICK. I will ask Delegate Banes to come forward. We will check that. It may be in process some place.

BALDUS AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldus.

DELEGATE BALDUS. Mr. President, I rise to offer an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the amendment on second consideration?

DELEGATE BALDUS offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 15), page 27, lines 9 to 30 and page 28, lines 1 to 8 by striking out all of said lines and inserting: Section 15. Court.—Until otherwise provided by law, the court of common pleas of Allegheny County shall consist of a trial division, an orphans' court division and a family division. The courts of oyer and terminer and general jail delivery and quarter sessions of the peace, the county court, the orphans' court, and the juvenile court are abolished and their present jurisdiction and powers shall be exercised by the court of common pleas of Allegheny County. Until otherwise provided by rule of the court of common pleas and, except as otherwise provided in this schedule, the court of common pleas shall exercise the jurisdiction and powers of the present court of common pleas and the present county court through the trial division. Until otherwise provided by rule of the court of common pleas, the jurisdiction and powers of the present orphans' court of Allegheny County, except as otherwise provided in this schedule, shall be exercised by the court of comomon pleas through the orphans' court division. Until otherwise provided by rule of the court of common pleas, the court of common pleas shall exercise jurisdiction in the following matters through the family court division:

(a) Domestic Relations: Desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings, including habeas corpus, for custody of children; divorce and annulment and property matters relating thereto.

(b) Juvenile Matters: All matters now within the jurisdiction of the juvenile court of Allegheny County.

(c) Adoptions and Delayed Birth Certificates.

Amend Schedule (Sec. 17), page 28, lines 19 to 30 and page 29, line 1 by striking out all of said lines and inserting: Section 17. President Judges, Allegheny County.—In Allegheny County, the present president judge of the court of common pleas shall be president judge of the court of common pleas for the remainder of his term as president judge; the present president judge of the orphans' court shall be the president judge of the orphans' court division of the court of common pleas for the remainder of his term as president judge, and the present president judge of the county court shall be president judge of the family division of the court of common pleas for the remainder of his term as president judge. The present president judge of the juvenile court of Allegheny County and each of the foregoing president judges now serving shall be entitled to a salary no less than the salary he presently receives as president judge until the end of his present term as president judge. The president judge of the trial division shall be selected pursuant to section 18 of this schedule.

Amend Schedule (Sec. 18), page 29, line 15 by inserting after "court.": The exercise of the supervisory and administrative powers, however, shall be subject to the supervisory and administrative powers of the Supreme Court.

Amend Schedule (Sec. 19), page 29, lines 17 to 24 by striking out all of said lines and inserting: Section 19. Inferior Court in Pittsburgh.—Upon the establishment of magisterial districts pursuant to this article and schedule, and unless otherwise provided by law, the traffic court and the housing court, the city court and the police magistrates in the City of Pittsburgh shall continue as at present. Such magistrates and courts shall be part of the unified judicial system of the Commonwealth and shall be subject to the general supervisory and administrative authority of the Supreme Court. Such magistrates shall be subject to the provisions of this article and schedule regarding educational requirements and prohibited activities of justices of the peace.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, the Allegheny County delegation has gotten together to resolve its own housekeeping problem. Twenty of the 21 delegates here present have signed the amendment. The other delegate has agreed to it. It was not possible to secure his signature before it was printed. Three delegates are missing but I think I can speak for Senator Fleming, that he, or a member of the Judiciary Committee has agreed to these amendments.

They, in effect, change the schedule in some respects by agreement of the entire delegation to provide for the "grandfathering" of our president judges, to designate the judges of which courts shall be the judges of the new trial divisions, the jurisdiction of the family court division is set forth in full, and, as per agreement with the entire delegation, the inferior courts in Pittsburgh are preserved until such time as the Legislature changes their present structure. The traffic court, the housing court, the city court and police magistrates in the city shall continue as at present.

We wish to call Style and Drafting's attention to the fact that because of the last amendment the venue requirements in the City of Pittsburgh should remain as at present, rather than as per the amendment, until such time as the Legislature changes the system. We do provide specifically, however, that the magistrate shall be subject to the educational requirements and to the prohibited activities of the justice of the peace, and the other portions of the Judiciary Article, and we provide very specifically that they shall be part of the unified judicial system.

This has, as I say, the agreement of the entire delegation from Allegheny County. Unless there are questions, which I will be glad to answer, I would hope that someone would move the question.

MOTION

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, although it is obvious that no judicial coal shall be carried to Newcastle, I still move the question.

PRESIDENT BRODERICK. It has been moved by Delegate Solomon and seconded by Delegate Roberts that debate on this question be closed and that we now vote on the pending question.

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

The question recurs,
PRESIDENT BRODERICK. The question before the Convention is: Will the Convention agree to the amendment offered by Delegate Barry and by Delegate Baldus?

The roll was recorded as follows:

YEAS—128

Aberman	Curran	Kelly	Redick
Amsterdam	Dailey	King	Roberts
Aurentz	Desmond	Kline	Rovner
Bagenstose	Devlin	Krill	Ruth
Baldus	Dumbauld	Lee, L.	Sahli
Baldrige	Erwin	Leinbach	Scales
Baldwin	Fagan	Leonard	Scarlett
Banes	Fawcett	Mangery	Scott
Barron	Feather	Markley	Scranton
Barry	Filson	Mattioni	Sebastian
Benedict	Fohl	McGeary	Shapiro
Benfield	Fortney	Meyer	Sharp
Bloom	Gerber	Michael	Shettig
Braham	Goldman	Michener	Shively
Brennan	Goldstein	Miller, D.	Solomon
Broderick	Gouger	Moorhead	Sprogell
Brown	Gray	More	Stout
Buck	Griffith	Murray	Strickler
Bunting	Hannum	Nelson	Stroup
Burkholder	Harding	O'Donnell	Swope
Butera	Hatter	Orban	Tate
Cain	Henderson	Orbin	Thornburgh
Camardella	Heyburn	Otto	Tomascik
Caputo	Himes	Pasquerilla	Tully
Caron	Hook	Pelletier	Van Sant
Casey	Hostetler	Percey	Waldron
Clark	Huggins	Popil	Warman
Corey	Irvis	Pott	Welsh
Cortese	Jirolanio	Prendergast	Westerberg
Cosetti	Johnson	Quiles	Whittum
Croop	Kauffman	Rappaport	Wilcox
Cunningham	Keller, J.	Rea	Woodside

NAYS—5

Hocker	Thomson	Wilmarth	Woodring
Shoemaker			

NOT VOTING—30

Allison	Fleming	Leach	Musselman
Bashoff	Forster	Lee, K.	Pechan
Clinger	Gabreski	Levin	Powell
Conley	Gehrlein	Manderino	Reynolds
Donaldson	Horne	McGlynn	Richter
Donatow	Keller, M.	Miller, R.	Shrager
Fay	Lane	Morton	Silverman
Fineman	Laputka		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

WOODSIDE-BARRY AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. I offer an amendment on behalf of Delegate Barry and myself to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATES WOODSIDE AND BARRY offered the following amendment which was read by the clerk:

Amend Schedule, page 15, line 10, by removing the period after "1969" and inserting: except that the Commonwealth Court shall come into existence January 1, 1970.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes the chairman of the committee.

DELEGATE SCRANTON. This was an amendment which I did not name a few moments ago and Judge Woodside brought to my attention that this has been in the works for a long time, because the Committee agreed on this a long time ago and we just neglected to put it in the proposal.

Obviously, it will take some time to get the commonwealth court established because, as you know, we left it up to the Legislature to determine a good deal about it and we want them to have the time to do that. Yet, at the same time, we want it done. That is why this date of January 1, 1970, is placed here.

MOTION

DELEGATE SCRANTON. I would like to move the question, sir.

PRESIDENT BRODERICK. Let us vote on moving the question and before we vote, we will have it distributed.

The motion has been made by Chairman Scranton that debate on this question be closed and that we vote on the pending question.

DELEGATE AMSTERDAM. I second that.

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

The question recurs,
Will the Convention agree to the amendment offered by Delegates Woodside and Barry?

QUESTION OF PERSONAL PRIVILEGE

DELEGATE McGEARY. My machine would not work. I voted "aye."

PRESIDENT BRODERICK. The gentleman will be so recorded.

The roll call was recorded as follows:

YEAS—132

Aberman	Dailey	Krill	Rovner
Amsterdam	Devlin	Lee, L.	Ruth
Aurentz	Dumbauld	Leinbach	Sahli
Bagenstose	Erwin	Leonard	Scales
Baldrige	Fagan	Mangery	Scarlett
Baldwin	Fawcett	Markley	Scott
Banes	Feather	Mattioni	Scranton
Barron	Filson	McGeary	Sebastian
Barry	Fohl	Meyer	Shapiro
Benedict	Fortney	Michael	Sharp
Benfield	Gabreski	Michener	Shettig
Bloom	Gerber	Miller, D.	Shively
Braham	Goldman	Miller, R.	Shoemaker
Brennan	Goldstein	Moorhead	Shrager
Broderick	Gray	More	Sprogell
Brown	Griffith	Murray	Stout
Buck	Hannum	Nelson	Strickler
Bunting	Harding	O'Donnell	Stroup
Burkholder	Hatter	Orban	Swope
Butera	Henderson	Orbin	Tate

Cain	Heyburn	Otto	Thomson
Camardella	Himes	Pasquerilla	Thornburgh
Caputo	Hocker	Pelletier	Tomascik
Caron	Hook	Percey	Tully
Casey	Hostetler	Popil	Van Sant
Clark	Huggins	Pott	Warman
Corey	Irvis	Prendergast	Welsh
Cortese	Johnson	Quiles	Westerberg
Cosetti	Kauffman	Rappaport	Whittum
Croop	Keller, J.	Rea	Wilcox
Cunningham	Kelly	Redick	Wilmarth
Curran	King	Reynolds	Woodring
Desmond	Kline	Roberts	Woodside

NAYS—0

NOT VOTING—31

Allison	Fineman	Lane	Musselman
Baldus	Fleming	Laputka	Pechan
Bashoff	Forster	Leach	Powell
Clinger	Gehrlein	Lee, K.	Richter
Conley	Gouger	Levin	Silverman
Donaldson	Horne	Manderino	Solomon
Donolow	Jirolanio	McGlynn	Waldron
Fay	Keller, M.	Morton	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

BARRON AMENDMENT TAKEN FROM TABLE

PRESIDENT BRODERICK. The next amendment is one offered by Delegate Barron. I understand this amendment was placed on the table and Delegate Barron wishes to withdraw it and substitute another amendment, is that correct?

DELEGATE BARRON. That is correct.

PRESIDENT BRODERICK. You are recognized for that purpose.

BARRON AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. I want you to withdraw your amendment and just state you are offering a new one and we will have the Clerk read that.

DELEGATE BARRON. I withdraw the amendment, based on the advice of counsel as stated in writing, and submit the present amendment, Mr. President.

SUBSTITUTED BARRON AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I am now offering my substituted amendment to Proposal No. 7.

On the question,

Will the Convention agree to the proposal on second consideration?

DELEGATE BARRON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 5, lines 28 to 30; page 6, line 1, by striking out "Whenever a vacancy occurs for any other reason in the" in line 28, page 5, all of lines 29 and 30, page 5, and all of line 1, page 6, by striking out all of said lines and inserting: Whenever a vacancy occurs for any other reason in the office of judge in a court other than a Statewide court, the Governor shall fill the vacancy by appointment in accordance with the provisions of Article IV, section 8 of this Constitution.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Just a moment of brief introduction and some advocacy on this point. Counsel has very kindly, in the last paragraph of his opinion, advised as follows:

"In order to eliminate any problem of interpretation, it is suggested that the language of Proposal No. 7 be self-sufficient. Accordingly, the amendment should be rewritten to recite independently what is the intention of this Convention without reference to any other article of the present Constitution."

In presenting this amendment to you, I have endeavored to comply with this statement of counsel and I have endeavored, by reason of the language employed in this particular amendment, to provide in our present proposal precisely the state and existence of the law as done heretofore by reason of the Constitution of 1874.

Lest there be any confusion, the basic proposition is this, when a vacancy arises for other reasons than those specified by the expiration of term, the appointment may be filled by the Governor. If the vacancy occurs during the session of the Senate, the appointment shall be by the advice and consent of two-thirds of the Senate. This language is now in the proposal.

The real nub of my suggestion and amendment is that if the vacancy occurs during sine die adjournment of the Senate, such appointment shall not require the advice and consent of the Senate. I again emphasize that this applies at present only to the common pleas, those local county courts. This does not—nor do I, nor have I ever intended that it—have any relation to appellate courts. It is the status quo now as relates in Philadelphia County, Allegheny County, Potter County, Mifflin County, and the other 63 counties of the State.

May I suggest to you just this, in the short period of time we have had to operate, I found that in 1964 the General Assembly rose sine die on June 16th of 1964, and for a period of six and a half months, while it was in sine die adjournment, there could have been no vacancies in office of county court judges filled during that interim period. It has been suggested to me by a number of sources that this is a vital political issue in various areas. If this is so, so let it be.

I point out to you on a philosophical note that nature abhors a vacuum. On a practical point, I say that if the office is there, it needs filling. If it has been determined, as this present assembly has determined, that there shall be no more judges in Philadelphia, it is plain to me that replacements in vacancies must be seated promptly, and I urge to you as strongly as I know how that the time for the creation of the appointment will be determined by when the vacancy happens and not by when the appointment is made.

Hence, there is no room for hanky-panky or juggling around. The facts of the creation and existence of the vacancy will clearly set in the future how the appointment shall be made.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gabreski.

DELEGATE GABRESKI. I rise in opposition to this

amendment. We had this situation in Venango County, where we did not have a judge for six months. Our people did not suffer as a result of the failure of the Governor to make an appointment. We had the adjoining judge from the county nearest to us sit on our bench and dispose of all judicial matters.

This is more substantive today when we have the unified judicial system in effect under our proposal, and I cannot foresee any substantial problems in having the Supreme Court assign justices to that particular vacancy in a small county to make sure that their particular problems are resolved immediately.

I think that the appointment of a judge is such an important matter that it requires the consent of two-thirds of the Senate and, if they are in adjournment for six months, I think that county can wait for six months to have a permanent judge appointed. May I also point out that the longest period of time under the proposal to the Constitution would be that a vacancy would exist for a period of 22 months.

Of course, even at the longest period of time with the six-month adjournment of the Senate, there would be a 16-month period of time that a candidate or a person who is appointed by the Governor with the consent of the Senate could sit as the sitting judge on that particular bench.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. I do not know where Delegate Barron received his information that no judge could be appointed during the interim period after the Senate and the House had adjourned sine die. I question that. But that is really not an issue here.

I simply want to completely understand him before I make up my mind. At the present time if a vacancy occurs, or in the past if a vacancy has occurred, the Governor could wait until the Senate adjourned before he made an interim appointment.

As I understand this language, it clearly says that if the vacancy occurs while the Senate is in session, then the Governor cannot make an appointment without two-thirds of the Senate agreeing. Do I understand that correctly?

DELEGATE BARRON. Yes, that is its intent, and I believe the language so states it.

DELEGATE KLINE. The language also clearly states that if the vacancy occurs during a period after sine die adjournment and the resumption of the next session, the Governor can make the appointment without the advice and consent of the Senate.

DELEGATE BARRON. Yes, the happening of the vacancy will apply the test by which mode the appointment shall be made.

DELEGATE KLINE. So actually, if someone were to die a day before the next session began, even though the Senate may technically be in session, the Governor would not have to get the two-thirds of the Senate. It depends on the time of the vacancy.

DELEGATE BARRON. Yes, that is my intent and I believe it is clearly expressed.

DELEGATE KLINE. After the appointment is made, what forces move into play to bring about the election of a judge?

DELEGATE BARRON. If I may check the clean copy that appeared on the desk today, I will cite the page.

It is in Section 11 (b) and it now appears in the clean copy. This provides as follows:

"Whenever in any judicial district a vacancy occurs in the office of judge by reason of the expiration of the term of office of an appointed judge or the failure of an elected judge to file a declaration of candidacy specified," and so forth.

It is in the alternative and this judge certainly will be an appointed judge. The clear reference is in any judicial district which is precisely the situation we are addressing ourselves to.

DELEGATE KLINE. If I understand this correctly, if new judgeships are created, the vacancy will have to have occurred while the House and Senate are in session and, consequently, the Governor would need two-thirds for newly created judgeships by the General Assembly.

DELEGATE BARRON. As I am sure the gentleman well knows, this will depend on the effective date of the act, if my understanding is correct. If it is made effective immediately and they pass it in session, yes. If it is made effective on some other date and they are in adjournment sine die, I say no.

DELEGATE KLINE. He would not want to make a wager on when I would make it effective, would he?

DELEGATE BARRON. No, I would not.

DELEGATE KLINE. Thank you. I only wanted to find out what the amendment provided for. I am now satisfied personally—and I am close to this because the problem is mine—that this is a good amendment. It does make sense and I intend to support it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I see that the delegate and Dean of Duquesne Law School is standing. I move the question, but rather expect that he will be heard.

PRESIDENT BRODERICK. We also have the chairman of the committee standing, so if you will just amend your motion to include that we hear from both of them, you may move the question.

DELEGATE SOLOMON. With your permission, I recognize both of these distinguished gentlemen.

PRESIDENT BRODERICK. Thank you. We will first recognize Delegate Manderino.

DELEGATE MANDERINO. Mr. President, a question, first, to the proposer of the amendment:

Mr. President, again I should like to state, as I stated yesterday, that I have absolutely no objection to the intent contained herein and the objective to be achieved. I still have some concern about whether or not in the future interpretation can be given which will allow something other than what was intended.

The term is used in here "if a vacancy occurs during sine die." It appears to me that that term constitutionally has no meaning and with the new constitutional amendments that the General Assembly is a continuing body, there can be a dozen sine die adjournments during one year. What would prevent that? Let me give you this example, because I am asking for information and perhaps I am wrong on this, what would prevent the Senate from adjourning sine die on March 1st of a given year and then be called back into session two weeks later?

DELEGATE BARRON. There is a most distinguished majority leader of the Senate right behind the gentleman, and I would defer to his practical experience, knowledge and skill as a fine lawyer from Bedford County.

PRESIDENT BRODERICK. I am sure Delegate Solomon's motion would also include the distinguished Delegate Stroup.

DELEGATE STROUP. Mr. President, there seems to be some confusion between the term "session" and "continuing body."

By joint rules of the General Assembly adopted pursuant to the Constitution in relation to this subject, the General Assembly remains a continuing body, but when it adjourns sine die that session is over and it cannot come back into session during that period after the sine die until or unless the Governor should call them into special session.

I believe that answers the delegate's question. If not, I shall be happy to respond to further ones.

DELEGATE MANDERINO. It answer the question.

PRESIDENT BRODERICK. The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. I just want to make a one-sentence statement.

I think this is an extremely important amendment and is absolutely necessary for the carrying on of the powers of the Governor vis-a-vis the powers of the Legislature.

PRESIDENT BRODERICK. We are, therefore, ready for the question.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Barron?

The roll was recorded as follows:

YEAS—132

Allison	Desmond	Lee, L.	Richter
Amsterdam	Devlin	Leinbach	Roberts
Aurentz	Erwin	Leonard	Rovner
Baldrige	Fagan	Levin	Ruth
Baldus	Fawcett	Manderino	Sahli
Baldwin	Feather	Mangery	Scales
Banes	Filson	Markley	Scarlett
Barron	Fohl	Mattioni	Scott
Barry	Fortney	McGeary	Scranton
Benedict	Gehrlein	Meyer	Sebastian
Benfield	Goldman	Michener	Sharp
Bloom	Goldstein	Miller, D.	Shively
Braham	Gray	Miller, R.	Shoemaker
Brennan	Griffith	Moorhead	Shrager
Broderick	Hannum	More	Sprogell
Brown	Hatter	Morton	Stout
Buck	Harding	Murray	Strickler
Bunting	Henderson	Nelson	Stroup
Burkholder	Himes	O'Donnell	Swope
Butera	Hocker	Orban	Tate
Cain	Hook	Orbin	Thomson
Camardella	Hostetler	Otto	Thornburgh
Caputo	Huggins	Pasquerilla	Tomascik
Caron	Irvis	Pelletier	Tully
Casey	Jirolanio	Percey	Van Sant
Clark	Johnson	Popil	Waldron
Clinger	Kauffman	Pott	Warman
Corey	Keller, J.	Prendergast	Westerberg
Cortese	Kelly	Quiles	Whittum
Croop	King	Rappaport	Wilcox
Cunningham	Kline	Rea	Wilmarth
Curran	Krill	Redick	Woodring
Dalley	Laputka	Reynolds	Woodside

NAYS—8

Aberman	Dumbauld	Gerber	Shapiro
Cosetti	Gabreski	Heyburn	Shettig

NOT VOTING—23

Bagenstose	Fineman	Lane	Pechan
Bashoff	Fleming	Leach	Powell
Conley	Forster	Lee, K.	Silverman
Donaldson	Gouger	McGlynn	Solomon
Donolow	Horne	Michael	Welsh
Fay	Keller, M.	Musselman	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

SHAPIRO AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I rise to offer an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 6, line 29, by inserting after "of": two-thirds of

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. The effect of this amendment would be to require the approval of two-thirds of the Senate to the appointment of a justice of the peace to fill a vacancy.

I present it solely because we have amended practically everything now with the sole exception of interim appointments as provided by Delegate Barron's amendment. All other appointments of a judicial nature under Proposal No. 7 now require a two-thirds majority. I understand this is also in conformity with existing law. Justices of the peace presently require approval of two-thirds of the Senate and this will make our provision with respect to filling such vacancies consistent with what we have elsewhere in this proposal.

PRESIDENT BRODERICK. May the Chair now ask the committee if they have a position in connection with this Shapiro amendment?

DELEGATE SCRANTON. Mr. President, in all honesty, I must say we did not give this a great deal of discussion, but it was brought up twice. On both occasions the committee did not take a vote, but the overwhelming feeling was that they should not come under the two-thirds consent. The main thesis for this is that there will still be, even if this proposal goes through, that is the committee's new Article 5, a very large number of justices of the peace and justices, presently the instant, we thought the clearance of their appointment ought to be more rapid, as it is presently.

PRESIDENT BRODERICK. Does anybody wish to be heard on this?

MOTION

PRESIDENT BRODERICK. The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. I move the question.

PRESIDENT BRODERICK. Delegate Solomon moves we close debate and that has been seconded by Delegate Percey.

On the question,
Will the Convention agree to the motion?
The motion is agreed to.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Shapiro?
The roll was recorded as follows:

YEAS—28

Aberman	Hook	Murray	Shapiro
Aurentz	Kelly	Orbin	Solomon
Banes	Kline	Popil	Stout
Camardella	Markley	Rappaport	Swope
Caputo	Mattioni	Rea	Tate
Cosetti	Michener	Ruth	Tully
Dumbauld	Miller, D.	Sharp	Van Sant

NAYS—106

Allison	Desmond	King	Reynolds
Amsterdam	Devlin	Krill	Richter
Baldrige	Erwin	Lee, L.	Roberts
Baldwin	Fagan	Leinbach	Rovner
Barron	Fawcett	Leonard	Sahli
Barry	Feather	Levin	Scales
Benedict	Filson	Manderino	Scarlett
Benfield	Fohl	Mangery	Scott
Bloom	Fortney	McGeary	Scranton
Braham	Gabreski	Meyer	Sebastian
Brennan	Gehrlein	Michael	Shettig
Broderick	Gerber	Miller, R.	Shively
Brown	Goldman	Moorhead	Shoemaker
Bunting	Goldstein	More	Shrager
Burkholder	Griffith	Morton	Sprogell
Butera	Hannum	Nelson	Strickler
Cain	Harding	O'Donnell	Stroup
Caron	Hatter	Orban	Thomson
Casey	Henderson	Otto	Thornburgh
Clark	Heyburn	Pasquerilla	Warman
Clinger	Hines	Pelletier	Westerberg
Corey	Hocker	Percey	Whittum
Cortese	Huggins	Pott	Wilcox
Croop	Irvis	Prendergast	Wilmarth
Cunningham	Johnson	Quiles	Woodring
Curran	Kauffman	Redick	Woodside
Dailey	Keller, J.		

NOT VOTING—29

Bagenstose	Fineman	Jirolanio	Musselman
Baldus	Fleming	Keller, M.	Pechan
Bashoff	Forster	Lane	Powell
Buck	Gouger	Laputka	Silverman
Conley	Gray	Leach	Tomascik
Donaldson	Horne	Lee, K.	Waldron
Donolow	Hostetler	McGlynn	Welsh
Fay			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BRAHAM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I offer an amendment to Committee Proposal No. 7.

DELEGATE SCRANTON. Mr. President, may I just make it clear to the Convention about this. Judge Braham came to me after I made my previous announcement and pointed out that a long time ago he asked both Delegate Amsterdam and me if he could introduce amendments on the two subjects, this one and the one following, and I was reminded that he was quite proper in this request. So this is in accordance with a long-term agreement.

I do not mean that I want to comment on the Committee's likes or dislikes about it, but simply that he had the right to make the amendment.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BRAHAM offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 14), page 24, lines 11 to 13, by striking out "except that the orphans' court division" in line 11, all of lines 12 and 13, and inserting a period

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham for a statement in connection with his amendment.

DELEGATE BRAHAM. Mr. President, this is another amendment which seems necessary to clear the jurisdiction of the common pleas court as a general trial court of each county. It is in aid of the effort to clean away all of these artificial distinctions which might lead to appeals and quorums about jurisdiction.

In our contemplation, the common pleas court should have jurisdiction to decide how to handle the business within its borders. One of the thorny problems has been, what about the orphans' court? In this draft there is ample provision for taking care of orphans' court work in the orphans' court division. However, in Paragraph O on page 24 there is this language "The Court of Common Pleas through the Orphans' Court division shall exercise its jurisdiction heretofore exercised, etc."

You have in equity cases a question whether you are in common pleas or in the quarter sessions, and that is wrong. It is sufficient if they are all handled within the common pleas court and we want the court to be uniform, so, therefore, I think this should be taken out.

PRESIDENT BRODERICK. Does anyone wish to be heard? I now recognize Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, this was acted upon by the Judiciary Committee and, although we cannot find the record, we believe that by a relatively narrow vote it was approved. It was one of the elements in 1204. I would say that Delegate Braham's amendment does not do violence in any degree to the unified judicial system concept which has been the basis for the entire work of the Judiciary Committee.

In view of the fact that the Supreme Court can move cases around in any way that is desirable, this would certainly not be in opposition in any regard to the main context of the article.

MOTION

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, before making the center field motion, I would ask that the Convention adopt the recommendation of Judge Braham. It makes sense. I now move the question.

PRESIDENT BRODERICK. The motion has been made by Delegate Solomon. He moves that debate on this question be closed and we vote on the present question.

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Braham?

The roll was recorded as follows:

YEAS—128

Aberman	Devlin	Lee, L.	Richter
Allison	Dumbauld	Leinbach	Roberts
Amsterdam	Erwin	Leonard	Rovner
Auresz	Fagan	Levin	Ruth
Baldrige	Fawcett	Manderino	Sahli
Baldus	Feather	Mangery	Scales
Baldwin	Filson	Markley	Scarlett
Banes	Fohl	Mattioni	Scott
Barron	Fortney	McGeary	Scranton
Barry	Gabreski	Meyer	Sebastian
Benedict	Gehrlein	Michael	Shapiro
Benfield	Gerber	Miller, D.	Sharp
Bloom	Goldman	Miller, R.	Shettig
Braham	Goldstein	Moorhead	Shively
Brennan	Griffith	More	Shrager
Broderick	Hannum	Morton	Silverman
Bunting	Harding	Murray	Solomon
Burkholder	Hatter	Nelson	Strickler
Butera	Henderson	O'Donnell	Stroup
Cain	Heyburn	Orban	Swope
Camardella	Himes	Orbin	Tate
Caputo	Hook	Otto	Thomson
Caron	Hocker	Pasquerilla	Thornburgh
Casey	Hostetler	Pelletier	Tomasetik
Clark	Huggins	Percey	Tully
Cortese	Irvis	Popil	Waldron
Cosetti	Jirolanio	Pott	Warman
Croop	Johnson	Prendergast	Westerberg
Cunningham	Kauffman	Quiles	Whittum
Curran	Keller, J.	Rea	Wilcox
Dailey	Kelly	Redick	Wilmarth
Desmond	Krill	Reynolds	Woodring

NAYS—4

Shoemaker	Sprogell	Stout	Woodside

NOT VOTING—31

Bagenstose	Donolow	Keller, M.	Michener
Bashoff	Fay	King	Musselman
Brown	Fineman	Kline	Peehan
Buck	Fleming	Lane	Powell
Clinger	Forster	Laputka	Rappaport
Conley	Gouger	Leach	Van Sant
Corey	Gray	Lee, K.	Welsh
Donaldson	Horne	McGlynn	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

INTERROGATION REGARDING BRAHAM AMENDMENTS

PRESIDENT BRODERICK. While we are preparing the next Braham amendment, I am not sure that it is ready for distribution yet, the Chair recognizes Delegate Tate who wishes to interrogate the Chairman of the Committee.

DELEGATE TATE. Mr. President, I became concerned yesterday quite coincidently with the same problem in different areas than Delegate Braham has just raised by the amendment which was just passed, that is, the detailed jurisdictional provisions in the schedule for Philadelphia. I discussed this with the counsel for the Judiciary Committee and counsel for the Convention, and I think it is proper at this point to place upon the record some questions and answers which I would like to do by way of interrogation of Delegate Amsterdam.

Delegate Amsterdam, am I correct that the schedule set forth detailed jurisdiction for various divisions of the common pleas court, or municipal court, or the traffic court of Philadelphia?

DELEGATE AMSTERDAM. Yes, sir, that is correct.

DELEGATE TATE. Am I further correct that this is because these are new divisions and new courts, and it is necessary to give some directions as to how jurisdiction of the old courts to be abolished are to be divided among the new division of courts?

DELEGATE AMSTERDAM. Yes, this is a timing problem and was included in the schedule for that reason.

DELEGATE TATE. Am I further correct, while in most instances there are no substantial changes in the allocation of jurisdiction in Philadelphia, there are some changes which may be of importance. For instance, the divorce jurisdiction, including the right to appoint masters, is transferred from the trial division, formerly common pleas, to the family division, formerly county court, and municipal court will have similar jurisdiction up to $500 instead of $100?

DELEGATE AMSTERDAM. Those are the two major changes that remain since the equity jurisdiction, specially set apart, was taken out of the orphans' court division. That is correct.

DELEGATE TATE. Am I also correct that in all of these matters the committee proposal permits the General Assembly to change the allocation of such jurisdiction?

DELEGATE AMSTERDAM. Unquestionably.

DELEGATE TATE. Can the General Assembly do so between April 23, 1968, assuming the people approve the proposed judiciary article, and January 1, 1969, the effective date of the proposed judiciary article, if such legislation is to be made effective on or after January 1, 1969?

DELEGATE AMSTERDAM. This was the intention and we certainly anticipate that the law is as you have indicated. In fact, we talked to general counsel and we have had that confirmed.

BRAHAM AMENDMENT No. 2 TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I offer an amendment to Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE BRAHAM offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 7), page 3, line 19, by inserting after "district": initially before the expiration of five years following the adoption of this article and thereafter shall not be placed upon the ballot

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, this is the only amendment of any substance I have presented during our sessions and, frankly, it may involve matters which seem to have been decided in one form or another. Let me be candid with you, I have been greatly disturbed by the manner in which we have left the situation with respect to the community courts and the justices of the peace.

I am greatly concerned about the large structure of judicial substance that we are building up about the justice of the peace courts granting them tenure, granting them salaries, making them subject to review by the Supreme Court, and in many respects treating them like full scale judges in a full scale court.

I was quite impressed by the remarks of the young lady delegate this morning about the cost of the proceedings. People have assumed that the establishment of a community court meant large public outlay.

One of the mistakes—I will not say it was a mistake, one of the unfortunate circumstances in this Convention's deliberations is that the whole body of delegates was not able to hear the testimony given by the gentlemen from the states where the new type of judicial system has been adopted.

We had a judge from Missouri, we had the young brilliant administrator from Chicago, we had a judge from Denver, Colorado, and they gave us first-hand information as to how these courts have worked.

Now, on the subject of expansion, here is what the young administrator of the courts of Illinois said.

He said that after they did away with the justices of the peace and established the community courts, far from losing money, he said they took in by the operation of the community courts enough in the way of fines and costs to run the entire judicial system of Illinois. He said as the law was set up, it did not all go to the state headquarters, but the amount of money going to the local municipality and going to the state was enough to carry the cost of the entire judicial system of Illinois.

Previously I heard this two years ago, the then head of the Illinois judicial system, the administrator, I heard him speak on the same point, and this gentleman was the retired general counsel of the Illinois Central Railway Company. He gave the figures about how in a certain year under the justices of the peace the justices of the peace had collected, perhaps, in fines and costs $250,000 to $500,000. After they got the community courts, a much smaller number, just a fraction of the number of judges collected $2,500,000 in fines and an extra million dollars in costs. So this is not the great problem that you think it is.

However, a great deal of the sentiment that was behind the calling of this Convention related to this subject. I hate to go back home and tell the people we did not do anything to rectify the system with respect to the justices of the peace beyond educating some justices of the peace, cutting down the number and then freezing them forever.

Accordingly, I am taking the liberty of asking you to consider an amendment to Section 7, that is on page 3 of our last copy, which begins in this fashion; it is Section (b):

"The question of whether or not a community court shall be established in any judicial district shall be placed on the ballot in the primary election by petition," and so forth, and you will remember that the matter of how the question was put on the ballot was to be handled by the appropriate officials.

The difference in my proposal is that this question cannot be placed on any ballot before five years after the adoption of this Constitution. After the adoption of this Constitution, and some of the community courts have been in operation, then people will have a better opportunity to judge it, and we are allowing any court in the Commonwealth, except Philadelphia, to place this question on the ballot and vote on it at any time after the period of five years.

DELEGATE SCRANTON. Mr. President, may I interrogate the sponsor?

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton for the purpose of interrogating Delegate Braham.

DELEGATE SCRANTON. I just want to make sure I understand this.

What you are asking us to do by approving this amendment, as I read it, is to put off any election, or to exercise the option to have an election on the community court, as compared to the justices of the peace system, until five years have passed to see whether this system is working well, or not?

DELEGATE BRAHAM. Yes, Mr. President.

DELEGATE SCRANTON. Is that what he is asking?

DELEGATE BRAHAM. That is it, yes.

DELEGATE SCRANTON. Is that correct?

DELEGATE BRAHAM. That is true.

DELEGATE SCRANTON. The delegate would not have any community court at all for at least five years, is that correct?

DELEGATE BRAHAM. Except the one in Philadelphia.

DELEGATE SCRANTON. Yes.

DELEGATE HOOK. Also, does this not say once it is put on the ballot it can never be put on again?

DELEGATE BRAHAM. No, the question shall not be placed upon the ballot in any judicial district at more than one election during a five-year period.

DELEGATE SCRANTON. Once again let me inquire, I think it will clear up this in everybody's mind, what he is trying to do by this amendment is to keep any election from taking place on the local community court, other than the arrangement for Philadelphia, anywhere else in the State—

DELEGATE BRAHAM. Yes.

DELEGATE SCRANTON. Until five years have passed after the people have approved of this Constitution, if they do?

DELEGATE BRAHAM. Yes.

DELEGATE SCRANTON. So that there would be no community court anywhere for five years, and thereafter they could have an election once every five years, is that correct?

DELEGATE BRAHAM. Yes. It seems to me we have made such explicit provisions about community courts and about justices of the peace that it would be rather incongruous for us to start right in working it all over again. I think that a period of five years might be a decent interval during which we would see how the new justice of the peace arrangement operates.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Casey.

DELEGATE SOLOMON. May I inquire of either of the co-chairmen of the Judiciary Committee with regard to the position of the committee on this amendment?

DELEGATE SCRANTON. Bluntly, this never came up, as far as I can remember, in any of the meetings of the committee at all. I think it is fair to say that the committee as a whole is generally eager to have the people have an option to decide on this probably sooner than five years, but there was never any vote taken. I think you just have to guess, really.

DELEGATE SOLOMON. Mr. President, I am not being presumptious, but I think I can help the judge out.

DELEGATE BRAHAM. You have before, Delegate Solomon.

DELEGATE SOLOMON. What the judge intends is not to delete any of the present language in 19 and 20.

DELEGATE BRAHAM. That is correct.

DELEGATE SOLOMON. And he adds this other language, so I will say this to my good friend and neighbor, there is little or no danger in this.

DELEGATE BRAHAM. There is not as much danger in me as you might think sometimes, either.

DELEGATE SOLOMON. Mr. President, I repeat, if you will look at page 3, Judge Braham's amendment does no violence to lines 19 and 20. Is that correct, Judge?

DELEGATE BRAHAM. I do not have it now.

DELEGATE SOLOMON. It is a little before—

PRESIDENT BRODERICK. Would you yield a second to Delegate Casey?

DELEGATE SOLOMON. Yes.

DELEGATE SCRANTON. Mr. President, I think it is fair to say, however, that the great majority of the committee intended that there should be an election if the petition was available and enough people signed it before five years. I think that is clear from the language in the proposal, and it does change it to that degree, quite obviously.

PRESIDENT BRODERICK. Now, the Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I would submit with all deference to Judge Braham that his amendment works a material change in what the committee proposed regarding this matter and, in response to Delegate Solomon, it is a dangerous amendment, depending upon your point of view.

If you feel that the people should have an immediate right to decide this question for themselves at the local level, then this amendment is extremely dangerous because it takes away from the people for a period of five years, as I read it, the right to do this.

If, on the other hand, you feel that this decision should be deferred for five years, the amendment is not a dangerous one from your standpoint.

I regard this amendment as a step backward and I intend to vote against it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Judge Braham, will you please read the section as you want it to be stated? I have an inconsistency in the way this is going to read, the whole sentence, "The question shall not be placed upon the ballot in a judicial district."

I want you to read that because, starting with line 18, I think you have an inconsistency there in your proposal.

DELEGATE BRAHAM. Understand me, please.

I would have been glad to have the question placed upon the ballot immediately. My view was not in accord with the view of the majority about the justices of the peace, but I thought we have in this Convention established these provisions, and therefore, I thought it was only sensible to let them work on it a while. That is all there is to this. If they want to have the election any time, I will be glad to let it go at that.

DELEGATE HOOK. Judge, I would like you to read how this is going to be stated if this amendment is adopted. I believe you have an inconsistency here, and I want to point it out.

DELEGATE BRAHAM. I would state this, I have not been drawing amendments. This is the only amendment, and I thought they should restate the whole paragraph, but they thought not. Maybe there is something that has not been caught here. Please state it.

DELEGATE HOOK. Judge, I want you to read your language. Take line 18. I think you have a mistake here, and I think you ought to correct it before you present it to this body.

DELEGATE BRAHAM. At more than one election, during the five-year period—

DELEGATE HOOK. The way you have this stated, "The question shall not be placed upon the ballot in a judicial district initially before the expiration of five years following the adoption of this article, and thereafter shall not be placed upon the ballot at more than one election or in any five-year period."

I say that this is inconsistent with what you want to do, Judge.

DELEGATE BRAHAM. I would—

DELEGATE HOOK. Not before 1974. This is what you are doing if this Constitution is adopted.

DELEGATE BRAHAM. If you are satisfied that it is the will of the Convention—I mean, to have the right to have this appealed, this referendum, at any time—that satisfies me. You can vote down the amendment. I thought I was proposing something that would reconcile, perhaps.

DELEGATE HOOK. I am trying to help you, Judge, because I do not think you have it the way you want it to be stated. I want you to understand that.

DELEGATE BRAHAM. Will you state it the way you think it ought to be?

DELEGATE HOOK. Judge, I disagree with you. I am against your amendment, because I agree with Senator Casey that the people in this delegation have already gone on record to show that they want the people at home to vote on this and have it on the ballot as soon as possible and not put that five-year restriction in there.

DELEGATE BRAHAM. If that is the view of the Convention, that we have the right to vote on this question, and at any time, and that is what you want, I can withdraw this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. In view of the fact that the Judiciary Committee has voted on this pretty carefully and Judge Braham is not pushing on this, and those who have spoken are against it, I suggest we come to a vote promptly.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. I think the wisdom of Judge Braham's amendment is quite obvious and apparent on its face, and I find a lot of justification for it.

PRESIDENT BRODERICK. Very well.

DELEGATE STROUP. When our Judiciary Committee and their advisors went to all the stress and efforts to bring forth the qualifications of justices of the peace and set up the system under which it could be improved by learning the law, at least to qualify, that should be given an opportunity to function. It is not denying anything to the people of the Commonwealth to immediately try to put the Commonwealth's thoughts in, but I believe once you have tried to improve the justice of the peace system, this amendment is valid because you should have an opportunity to work. I support the amendment, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I believe somebody, either one of the chairmen of the committee or Judge Braham, indicated that Philadelphia would not be affected by this amendment. I submit, Mr. President, this is not so.

Philadelphia now has the same opportunity to vote the community courts into effect under Section 7 (b), and Judge Braham's amendment would postpone that opportunity for at least five years.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Clinger.

DELEGATE CLINGER. Mr. President, I would just like to point out to the Convention that those who favor community courts, I think, should support this amendment, because if the referendum is put to the people within a year after the adoption of this Constitution, I submit to you that a very strong and persuasive argument could be made against the adoption of a community court on the basis that the reform justice of the peace system had not been given an opportunity to work properly. I suggest to those who favor the community courts, if they truly believe the justice of the peace system cannot be reformed, that they should support this amendment, because, otherwise, I think they would find that the community court referendum would be defeated on the basis that the reform system cannot be permitted to work.

REQUEST TO WITHDRAW AMENDMENT

DELEGATE BRAHAM. Might I withdraw this amendment, or lay it on the table, until we can go over the drafting part of it?

PRESIDENT BRODERICK. Apparently there is some objection, but we will see.

DELEGATE BRAHAM. Very well.

PRESIDENT BRODERICK. Did you want to withdraw your amendment now?

DELEGATE BRAHAM. I am willing to follow the will of the Convention.

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, I believe it has been amply shown that this would defer any local referendum for a five-year period. I think the question is clear. I think that there is enough discussion.

MOTION

DELEGATE BANES. I move the debate be closed and call for the question, Mr. President.

DELEGATE CURRAN. I second the motion.

PRESIDENT BRODERICK. It has been moved and seconded by Delegate Curran that the debate on this question be closed and that the vote on the pending question be taken.

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Braham?

The roll was recorded as follows:

YEAS—69

Aberman	Croop	Jirolanio	Sabli
Allison	Curran	Johnson	Scales
Aurentz	Desmond	Kauffman	Scarlett
Baldrige	Devlin	Krill	Sebastian
Baldwin	Erwin	Leinbach	Shettig
Barry	Fohl	Mangery	Solomon
Benedict	Gehrlein	Markley	Strickler
Benfield	Gerber	Mattioni	Stroup
Bloom	Goldman	Meyer	Thomson
Braham	Goldstein	Miller, D.	Tully
Buck	Griffith	Orban	Van Sant
Burkholder	Harding	Pott	Waldron
Butera	Hatter	Prendergast	Warman
Cain	Heyburn	Quiles	Westerberg
Clark	Hostetler	Redick	Wilmarth
Clinger	Huggins	Rovner	Woodring
Corey	Irvis	Ruth	Woodside
Cortese			

NAYS—67

Amsterdam	Fortney	Miller, R.	Scott
Bagenstose	Gabreski	Moorhead	Scranton
Baldus	Hannum	More	Shapiro
Banes	Henderson	Morton	Sharp
Barron	Himes	Murray	Shively
Brennan	Hocker	Nelson	Shoemaker
Broderick	Hook	O'Donnell	Shrager
Brown	Keller, J.	Orbin	Sprogell
Bunting	Kelly	Otto	Stout
Camardella	King	Pasquerilla	Swope
Caputo	Kline	Pelletier	Tate
Caron	Laputka	Percey	Thornburgh
Casey	Lee, L.	Popli	Tomascik
Cunningham	Leonard	Rappaport	Welsh
Dumbauld	McGeary	Rea	Whittum
Fawcett	Michael	Richter	Wilcox
Feather	Michener	Roberts	

NOT VOTING—27

Bashoff	Fay	Horne	McGlynn
Conley	Filson	Keller, M.	Musselman
Cosetti	Fineman	Lane	Pechan
Dailey	Fleming	Leach	Powell
Donaldson	Forster	Lee, K.	Reynolds
Donolow	Gouger	Levin	Silverman
Fagan	Gray	Manderino	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

STUDENTS FROM DERRY TOWNSHIP SCHOOL WELCOMED

PRESIDENT BRODERICK. Now, the Chair would like

at this moment to recognize that we have a group of 60 students from the Derry Township School in Hershey.

They are the guests of Delegates Swope, Hocker and Woodside. If you are still there, would you just stand up so we can give you a cordial warm greeting.

STUDENTS FROM WAYNESBORO WEST JUNIOR HIGH SCHOOL WELCOMED

PRESIDENT BRODERICK. I also understand that we have 150 students of the ninth grade from Waynesboro West Junior High School, and their teachers Mrs. Broyles and Mr. Conover. They are the guests of Delegates Keller, Barron and Gouger. Let us give them a warm welcome.

DELEGATE SCRANTON. Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. This is a very happy moment for 163 delegates. We have no more amendments.

MEETING OF COMMITTEE ON STYLE AND DRAFTING

DELEGATE PELLETIER. May I make an announcement, Mr. President?

The Committee on Style and Drafting will be meeting during luncheon, and may I request permission to meet this afternoon during the session of the Convention?

ANNOUNCEMENT BY PRESIDENT

PRESIDENT BRODERICK. Now, we are going to take up this afternoon Proposal No. 4, Printer's No. 17, and Proposal No. 5, Printer's No. 18, and I want to announce right now that these are on second consideration. If anybody has an amendment, they should get it in right here and now so that we can be ready to dispose of those quickly this afternoon.

MOTHER OF DELEGATE RUTH WELCOMED

PRESIDENT BRODERICK. Now, the Chair will recognize Delegate Ruth.

DELEGATE RUTH. During the course of the introductions I would like to announce the fact that I have the privilege of having my mother here.

PRESIDENT BRODERICK. If she would rise, we would be very happy to welcome her.

WIFE AND FRIENDS OF DELEGATE BALDRIGE WELCOMED

PRESIDENT BRODERICK. While we are at it, may the Chair please state that I understand that we have the wife of Delegate Baldrige and her companions Mrs. Ward and Mrs. Rudick. They are the guests of Delegates Filson and Leach as well as Delegate Baldrige. Would they please stand so we can give them our warm, cordial greeting.

STUDENTS FROM THE SEVENTH GRADE OF THE MATERNITY OF THE BLESSED VIRGIN MARY OF PHILADELPHIA WELCOMED ALONG WITH WIFE AND SON OF DELEGATE DEVLIN

PRESIDENT BRODERICK. The Chair is advised that we have with us a group of students from the seventh grade of the Maternity of the Blessed Virgin Mary School in Philadelphia.

They, I understand, very willingly gave up their seats so that the other group we just introduced in the balcony could sit. Among them—I hope she is still here—was the very lovely wife of Delegate Devlin. Is she back there? I understand that Delegate Devlin's son was also in the group; so in that connection we will give them a warm welcome and hope they come back.

SISTERS AND FRIEND OF DELEGATE TOMASCIK WELCOMED

PRESIDENT BRODERICK. Now, we recognize Delegate Tomascik.

DELEGATE TOMASCIK. Mr. President, I should like to introduce some people from Wilkes-Barre who are visiting the Convention, among whom are my three sisters, and a young college student, Elliott Catuna.

PRESIDENT BRODERICK. I think if they will stand up we will give them our cordial greetings and tell them how happy we are to have them here.

WIFE AND SON OF DELEGATE ROY MILLER WELCOMED

PRESIDENT BRODERICK. Now, the Chair recognizes Delegate Miller.

DELEGATE R. W. MILLER. Mr. President, so we do not slight anyone, I would like to ask my wife and son David, who are with us today to stand up.

PRESIDENT BRODERICK. Yes, indeed.

We would be glad to recognize Mrs. Miller and her son David.

HUSBAND OF DELEGATE FAWCETT WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Fawcett.

DELEGATE FAWCETT. Mr. President, I would like to introduce my husband who is here today checking on me, I think.

PRESIDENT BRODERICK. We will tell him you are doing a wonderful job, and where is he? Please stand up and we will give him a cordial welcome.

GUEST OF DELEGATE MANDERINO WELCOMED

PRESIDENT BRODERICK. Now, we recognize Delegate Manderino.

DELEGATE MANDERINO. Mr. President, may I introduce a guest of a former Pennsylvanian now the State Director of Planning for the Department of Mental Health in the State of Delaware, Mr. Nicholas Fisfis.

PRESIDENT BRODERICK. If he will stand we will be happy to give him a round of applause.

WIFE AND FAMILY OF DELEGATE ROVNER WELCOMED

PRESIDENT BRODERICK. Now, the Chair recognizes Delegate Rovner.

DELEGATE ROVNER. Mr. President, I'd like to introduce my wife and my thirteen year old son, Howard, and also along with them is another relative, Mr. Leonard Rovner, who I believe is the youngest principal in a school in the City of Philadelphia.

PRESIDENT BRODERICK. I would like very much if they would stand and we will give them a round of applause.

JUDGE DIXON R HERMAN WELCOMED

DELEGATE SWOPE. It is my privilege, Mr. President, to introduce my good friend, a judge in the local Common Pleas Court, whom Judge Woodside tried to introduce but wasn't successful because of the commotion, Judge Dixon R. Herman, who is a Democrat but who I was glad to vote for under the Republican and Democratic ticket.

PRESIDENT BRODERICK. If Judge Herman would please rise, we will give him our cordial welcome.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell. For what purpose does the gentleman rise?

DELEGATE POWELL. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE POWELL. I would like to introduce myself and request that I be marked present.

PRESIDENT BRODERICK. We are glad to have you with us, Delegate Powell.

RECESS

PRESIDENT BRODERICK. In view of the meetings scheduled, we will recess now until 2 p.m. The Chair is willing to hear objections to that if there are any.

The Chair hears none, and the Convention is now in recess until 2 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

MR. AND MRS. JOHN CUMMINGS WELCOMED

PRESIDENT BRODERICK. Before we get into the business of the session this afternoon, I want to introduce several distinguished guests. We are very fortunate, Fellow Delegates, to have with us today the oldest member of the Pennsylvania Correspondents Association, a veteran member of the press, a man whom I think knows the political situation on both sides, up and down, in and out, throughout the State of Pennsylvania. I am very happy to present to you John Cummings, who is sitting up here in the press section where he always deserves to be.

I might add, with John is his ever-loving spouse who accompanies him every place, Mrs. Cummings. Would you please stand?

MRS. HETRICK WELCOMED

PRESIDENT BRODERICK. Along with Mr. and Mrs. John Cummings is another guest Mrs. Hetrick, who is a member of the Pennsylvania Historical Commission and I am happy to present her and welcome her at this Convention.

STUDENTS OF SEVENTH AND EIGHTH GRADES FROM MATERNITY BLESSED VIRGIN MARY SCHOOL IN PHILADELPHIA AND MRS. DEVLIN AND SON BILL WELCOMED

PRESIDENT BRODERICK. I want to say we are happy to have back with us again, the 47 students of the seventh and eighth grade from Maternity Blessed Virgin Mary School in Philadelphia and among them is Mrs. Devlin, the wife of Delegate Devlin and their son Bill.

I am going to ask them to stand up. First, I want Mrs. Devlin to stand so we can give her our cordial greeting and welcome.

I am going to ask young Bill to stand up. Give him a hand.

I would like to introduce Sister Mary Cletus and Sister Mary Teresina of the Sisters of Mercy. Let us all stand and give them a big hand.

WIFE AND MOTHER OF DELEGATE SCALES WELCOMED

A DELEGATE. Mr. President, I think it should be called to the attention of the Chair, we have a country mother and a country wife with us. The mother of John Scales and his wife Joan.

PRESIDENT BRODERICK. I think we should give them a big hand.

DELEGATE SCALES. Mr. President, I would like to announce that one of those two lovely ladies is a Democrat and one is a Republican, but by the way in which they vote, I cannot tell which one.

GRIFFITH FAMILY WELCOMED

PRESIDENT BRODERICK. I think we have Delegate Griffith's husband and children here today. Let us give them a big hand. Where is the Griffith family? I want you to know that Delegate Griffith is doing a wonderful job and we are very happy to have you with us.

PRESIDENT BRODERICK. The Chair recognizes Delegate Richter.

DELEGATE RICHTER. Mr. President, it is most fitting and proper on this holiday honoring George Washington, a cherry tree, and truth, that this resolution I am about to offer be given your deep consideration and above all your approval.

I wish to call your attention to the fact that the resolution contains 89 signatures, 88 signatures of non-lawyers to this Convention, the only four non-lawyers missing are those of absent members. There is one thing I also must point out on this signature enumeration, there is one attorney wishing to tip the scales of justice and surreptitiously slipped in his signature.

Now, for the resolution:

RESOLUTION

DELEGATE RICHTER requested and obtained unanimous consent to offer the following resolution for im-

mediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 22, 1968.

WHEREAS, Exposure to the debates over the many fine legal and constitutional issues raised during the hearings and meetings of this Pennsylvania Constitutional Convention of 1967-1968, especially during the many long and erudite debates concerning the proposed Judiciary Article to the Constitution, constitutes as adequate preparation for the practice of law in the Commonwealth of Pennsylvania as three or even four years in law school.

WHEREAS, The non-lawyer delegates to this convention are to be congratulated for their perseverance in attending these hearings and meetings and their intelligent grasp of the many different points of view espoused by their lawyer colleagues. Simple congratulations, however, for such diligent service are not sufficient reward for their exemplary service; therefore be it

RESOLVED, That all non-lawyer delegates to this Pennsylvania Constitutional Convention of 1967-1968 are hereby granted the title "attorney-at-law," and are hereby authorized to practice law before all courts of this Commonwealth.

WIFE AND FAMILY OF DELEGATE RICHTER WELCOMED

DELEGATE RICHTER. Mr. President, while I am still warm and in microphonic mood, I would like to have the pleasure of introducing to the folks here my wife, Betty, my daughter, Penny, my son, Gary, and I am sorry to regret that our daughter, Patty, cannot attend.

PRESIDENT BRODERICK. If they will please stand we would like to give them a warm cordial greeting.

RESOLUTION

PRESIDENT BRODERICK. The Chair recognizes Delegate Tomascik.

DELEGATE TOMASCIK. Mr. President, for a period of almost three months this historic conclave has been visited by many knowledgeable and discerning persons from all sections of this great Commonwealth. Their favorable impression of this Convention specifically, and the workings of democracy generically, have been influenced in no small measure by the tactful assistance and courteous treatment accorded them by the official Convention Hostess in the Gallery, Mrs. Ruth Worley.

Mrs. Worley's natural graciousness has enabled her to serve admirably in the capacity of Convention Hostess and has abundantly earned for her the commendation of not only the Delegates, but the citizenry at large.

Therefore, Mr. President, in behalf of Delegate Michener and for myself, I read in place and present to the Chair the following resolution for which I respectfully ask unanimous consent of the delegates for its immediate consideration and adoption.

DELEGATE TOMASCIK requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 22, 1968.

Mrs. Ruth Tudor Worley has performed an excellent job as hostess for the Constitutional Convention. Her gracious handling of the visitors viewing the convention from the gallery has distinguished her as a woman of finesse and ability.

Mrs. Worley is a graduate of Shippensburg State College, and later attended the University of Virginia. She taught in the schools of Pennsylvania for eight years.

Mrs. Worley is married to the Honorable Francis Worley, a member of the Pennsylvania House of Representatives, and is the mother of two sons, who are pre-medical students; therefore be it

RESOLVED, That the Constitutional Convention of Pennsylvania expresses its gratitude to Mrs. Ruth Tudor Worley for her excellent public service to this Convention and to the people of this Commonwealth; and be it further

RESOLVED, That a copy of this resolution be transmitted to Mrs. Ruth Tudor Worley, R. D. 1, York Springs, Pennsylvania 17372.

MOTION TO RECONSIDER

DELEGATE BURKHOLDER. Mr. President, I have made many mistakes in my life, both within and without this Convention, and I made one this morning when I voted for the Braham amendment, Amendment No. 11. Accordingly, I move that we reconsider that Amendment.

PRESIDENT BRODERICK. How did the gentleman vote?

DELEGATE BURKHOLDER. I voted with the majority.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Clinger.

DELEGATE CLINGER. Also, Mr. President, I voted in favor of the Braham amendment. I had spoken in favor of it. I now reconsider and feel that I was wrong in both speaking for it and voting for it. While I still feel it is a matter of strategy, it may be wise for proponents of community courts to defer pushing for a referendum for a year or two. I do not feel that it should be the job of this Convention to forestall any area from moving to have a referendum to decide the matter of the community court for themselves.

I would second the motion to reconsider the Braham amendment.

PRESIDENT BRODERICK. It has been moved by Delegate Burkholder, seconded by Delegate Clinger, that we reconsider the vote by which the Braham amendment was adopted.

On the motion the Chair now recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. Chairman, before I proceed to the melancholy task before me, I would like to make a comment or two on this matter of the lawyers. I think that the license given ought to be a license to practice law before any constitutional convention.

I want to call your attention to the one fact that just came to me as I sat here, the performance of lawyers in the original Constitutional Convention was not as brilliant

as you might think. Probably the two most distinguished lawyers who were delegates to the great Constitutional Convention in 1787 were Luther Martin, one of the greatest of the advocates who jousted with Daniel Webster and all those great men, and the other was Jared Ingersol from Philadelphia—I think it was Jared Ingersol. Luther Martin was distinguished by reason of making the longest speeches of anybody and drinking more brandy, and he came to an inglorious end thereby.

Jared Ingersol was notable in that he never spoke once during the Convention on any matter of business before the Convention.

Now before I proceed to what I term my melancholy task, I am going to quote a little saying of the great editor of the Saturday Evening Post of years gone by, George Horace Lorimer, in a little book we read when I was a boy, called "The Letter of a Self-Made Merchant to His Son."

In it he said, "If you find a bad egg, the time to remove it from circulation is when you find it. The longer you leave it in circulation, the worse impression it makes when it comes out on the breakfast table."

I have made an egregious error, my friends, and I am sorry. When I presented my amendment this morning, in the haste of closing everything, I was under the impression that we had by vote of this body removed the right to have a referendum on whether the community courts would be established. In that opinion I was in error, because it was the right to remove it that was established by our vote.

Accordingly—now this shows what a guileful character I am—when I undertook to establish this right to have a community court on the ruins of the justice of the peace courts, I thought I would sweeten it up a little bit. I did sweeten it up, and I said what was true, that it would be from that point of view an advantageous thing to have it wait five years till we knew how the thing had settled.

However, immediately after the session I was told that there were many people who felt so strongly about this matter of the justices of the peace and the community courts that they had plans already laid, and that I was wrong. I must tell you, when I seemed confused this morning, I was confused, only I did not know how badly confused I was.

Some of the many brilliant young men I have heard speak in this Convention—one may have been Delegate Hook—called my attention to it, and I was convinced and said I would withdraw it. Then some other well-meaning friend said, "No, it will not matter. Let it go." I thought, well, maybe whatever is wrong is a slight thing that can be corrected.

PRESIDENT BRODERICK. We have before the Convention a motion to reconsider the vote by which the Braham amendment was adopted. The Chair recognizes Delegate Gray.

AMENDMENT TO MOTION TO RECONSIDER

DELEGATE GRAY. Mr. President, I would like to ask the maker of the motion if he would permit me to add an appendix or amendment to it to suggest that in making this motion we also express our appreciation to our honored delegate. I move the question.

On the question,

Will the Convention agree to the amendment to the motion to reconsider?

It was agreed to.

MOTION TO CLOSE DEBATE AND VOTE ON QUESTION

On the question,

Will the Convention agree to the motion?

It was agreed to.

The question recurs,

Will the Convention agree to the motion to reconsider?

The roll was recorded as follows:

YEAS—134

Allison	Dumbauld	Leach	Rovner
Amsterdam	Erwin	Lee, L.	Ruth
Aurentz	Fagan	Leonard	Sahli
Bagenstose	Fawcett	Manderino	Scales
Baldrige	Feather	Mangery	Scott
Baldus	Filson	Mattioni	Scranton
Baldwin	Fohl	McGeary	Sebastian
Banes	Gabreski	McGlynn	Shapiro
Barron	Gerber	Meyer	Sharp
Barry	Goldman	Michael	Shettig
Benedict	Goldstein	Michener	Shively
Benfield	Gouger	Miller, D.	Shoemaker
Bloom	Gray	Miller, R.	Shrager
Brennan	Griffith	Moorhead	Silverman
Broderick	Hannum	Morton	Sprogell
Brown	Harding	Murray	Stout
Buck	Hatter	Nelson	Strickler
Bunting	Henderson	O'Donnell	Swope
Burkholder	Heyburn	Orban	Tate
Butera	Himes	Orbin	Thomson
Cain	Hocker	Otto	Thornburgh
Camardella	Hook	Pasquerilla	Tomascik
Caputo	Hostetler	Pelletier	Tully
Caron	Huggins	Persey	Van Sant
Casey	Irvis	Popil	Waldron
Clark	Jirolanio	Pott	Warman
Clinger	Johnson	Powell	Welsh
Corey	Kauffman	Prendergast	Westerberg
Cortese	Keller, J.	Rappaport	Whittum
Cosetti	Keller, M.	Rea	Wilcox
Croop	Kelly	Reynolds	Wilmarth
Cunningham	Kline	Richter	Woodring
Curran	Krill	Roberts	Woodside
Desmond	Laputka		

NAYS—3

Leinbach	Redick	Scarlett

NOT VOTING—26

Aberman	Donolow	Horne	More
Bashoff	Fay	King	Musselman
Braham	Fineman	Lane	Pechan
Conley	Fleming	Lee, K.	Quiles
Dailey	Forster	Levin	Solomon
Devlin	Fortney	Markley	Stroup
Donaldson	Gehrlein		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Does the sponsor of that amendment wish to withdraw the amendment instead of having to vote on it?

PRESIDENT BRODERICK. The Chair now calls on Delegate Braham and the question is, do you wish to withdraw your amendment?

DELEGATE BRAHAM. Mr. President, I would appreciate the privilege of withdrawing the amendment.

PRESIDENT BRODERICK. Is there any objection?

The Chair hears no objection.

FAMILY OF DELEGATE DESMOND WELCOMED

PRESIDENT BRODERICK. Now, I, at this time, want to take one second out of the busy business and state that we have with us the daughter of Delegate Desmond, Mrs. Judy Carey, and with her is Agnes Jean Donato, who, I understand, will soon be a daughter-in-law of Delegate Desmond. Would they stand so we can give them our warm cordial greeting?

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of Committee Proposal No. 5, Printer's No. 18, entitled:

A Proposal amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

On the question,

Will the Convention agree to the proposal on second consideration?

PRESIDENT BRODERICK. Now, we are going to move on from Proposal No. 7, Printer's No. 20, to Proposal No. 5, Printer's No. 18, and the question is, will the Convention agree to advance Proposal No. 5, Printer's No. 18, to third consideration?

DELEGATE BANES. I second the motion to advance that.

And said proposal having been read a second time, considered and agreed to,

On the question,

Will the Convention agree to the proposal on second consideration?

The roll was recorded as follows:

YEAS—133

Allison	Desmond	Krill	Roberts
Amsterdam	Devlin	Leach	Rovner
Aurentz	Dunbauld	Lee, L.	Ruth
Bagenstose	Erwin	Leinbach	Sahli
Baldrige	Fagan	Leonard	Scales
Baldus	Fawcett	Manderino	Scarlett
Baldwin	Feather	Mangery	Scott
Banes	Filson	McGeary	Scranton
Barron	Fohl	McGlynn	Sebastian
Barry	Gerber	Meyer	Shapiro
Benedict	Goldman	Michael	Sharp
Benfield	Goldstein	Michener	Shettig
Bloom	Gouger	Miller, D.	Shively
Braham	Gray	Miller, R.	Shoemaker
Brennan	Griffith	Moorhead	Shrager
Broderick	Hannum	Morton	Silverman
Brown	Harding	Murray	Sprogell
Buck	Hatter	Nelson	Stout
Bunting	Henderson	Orban	Strickler
Burkholder	Heyburn	Orbin	Swope
Butera	Himes	Otto	Tate
Cain	Hocker	Pasquerilla	Thornburgh
Camardella	Hook	Pelletier	Tomascik
Caputo	Hostetler	Percey	Tully
Caron	Huggins	Popil	Van Sant
Casey	Irvis	Pott	Waldron
Clark	Jirolanio	Powell	Warman
Clinger	Johnson	Prendergast	Welsh
Corey	Kauffman	Rappaport	Whittum
Cortese	Keller, J.	Rea	Wilcox
Cosetti	Keller, M.	Redick	Wilmarth
Croop	Kelly	Reynolds	Woodring
Cunningham	Kline	Richter	Woodside
Curran			

NAYS—2

Mattioni	Thomson

NOT VOTING—23

Aberman	Fineman	King	Musselman
Bashoff	Fleming	Lane	O'Donnell
Conley	Forster	Laputka	Pechan
Dailey	Fortney	Lee, K.	Quiles
Donaldson	Gabreski	Levin	Solomon
Donolow	Gehrlein	Markley	Stroup
Fay	Horne	More	Westerberg

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of Committee Proposal No. 4, Printer's No. 17, entitled:

A Proposal amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

On the question,

Will the Convention agree to the proposal on second consideration?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shettig.

DELEGATE SHETTIG. I have a motion to reconsider one of the amendments to Proposal No. 4, Printer's No. 12.

PRESIDENT BRODERICK. Before you proceed with your motion, would you please identify the amendment and give us an opportunity to get it out.

We will also have to get the voting record out.

MOTION TO RECONSIDER

PRESIDENT BRODERICK. Please tell the Convention which amendment you refer to.

DELEGATE SHETTIG. It is the amendment known as the Fohl Amendment amending Section 1, page 2, by inserting between lines 1 and 2 "the same Commonwealth officer or department shall not have responsibility for both the pre-audit and post audit function."

I believe it was amendment No. 4 on the voting, Mr. President.

PRESIDENT BRODERICK. Yes. What day was that?

DELEGATE SHETTIG. It was the 13th, Mr. President.

PRESIDENT BRODERICK. Will you just give us a few moments to retrieve the amendment and get the voting record?

I might ask that the Chairmen of the Committee on Taxation—and, if they wish, their co-chairmen—please come forward for discussion in this connection.

Now the Chair again recognizes Delegate Shettig.

We now have before us the amendment and I ask you how you voted on that amendment?

DELEGATE SHETTIG. I voted with the majority, Mr. President.

PRESIDENT BRODERICK. You voted with the prevailing side?

DELEGATE SHETTIG. The prevailing side.

PRESIDENT BRODERICK. I want to call the attention of the delegates to the fact that this amendment appears on page 2, lines 1 and 3, in Printer's No. 17 of this proposal.

DELEGATE MILLER. Mr. President, I second the motion. I voted with the majority.

PRESIDENT BRODERICK. Delegate Miller seconds the motion to reconsider.

He states he voted with the prevailing side. The record shows that he did.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl. For what purpose does the gentleman rise?

DELEGATE FOHL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. Let me state the motion first and then I will take your point of inquiry.

The motion is that we reconsider the vote by which the Fohl amendment was adopted.

Now, I will recognize Delegate Fohl.

DELEGATE FOHL. Mr. President, I would refer the President and the Parliamentarian to Rule 21, which appears on page 22, regarding reconsideration, wherein it reads: "No motion for the reconsideration of any vote shall be in order unless made on the same day as the vote was taken or within the next five days of actual session of the Convention."

PRESIDENT BRODERICK. The Chair is looking at that rule and I might add we looked at it a few moments before you called it to the attention of the Chair. The Chair feels that that rule should not be applied in this situation, because we have never called up for consideration the Proposal No. 4, Printer's No. 17, and I do think that as far the Chair is concerned the motion is timely and does not violate that rule.

APPEAL

DELEGATE FOHL. Mr. Chairman, I would appeal to your ruling.

DELEGATE MURRAY. Point of parliamentary procedure.

Mr. President, if I recall correctly, I believe the journal will show Delegate Popil was guaranteed by the Chair on this day that this item would be held open for reconsideration.

PRESIDENT BRODERICK. I believe you are correct, Delegate Murray, but you have a right to appeal the Chair's ruling. I just say that is another added reason why the Chair at this time rules that this rule should not apply, because I think I now recall—and the Parliamentarian reminds me—is that correct, Delegate Popil?

DELEGATE POPIL. Yes.

DELEGATE FOHL. I would remind the Chair that Delegate Popil did not vote with the prevailing side.

PRESIDENT BRODERICK. I do not think it is a question of how he voted. We have the motion here before us.

I can say this, naturally, you have the right to take your appeal. The Chair, in connection with your appeal, Delegate Fohl, has stated his reasons. Frankly, to reiterate them, this is the first time we have taken up under consideration Proposal No. 4, Printer's No. 17, and the additional reason was the assurance given to one of the delegates that this would be done, so I now say if you wish your appeal, the question is, shall the decision of this Chair stand as the judgment of the Convention?

Under the rules, it will require, as it says in case of an appeal, a majority of 82 of the delegates to be necessary to override a decision of the Chair.

APPEAL WITHDRAWN

DELEGATE FOHL. Mr. Chairman, I withdraw the appeal at this time.

PRESIDENT BRODERICK. Thank you.

The appeal stands withdrawn.

The question, then, is on the motion to reconsider the vote by which the Fohl amendment was adopted. Does anyone wish to be heard either pro or con?

Then we are ready for the question? Did you wish to be heard or are we ready for the question?

DELEGATE SHETTIG. Ready for the question.

PRESIDENT BRODERICK. We are ready for the question.

Yes, the Chair now recognizes Delegate Wilcox.

DELEGATE WILCOX. Mr. President, just briefly on the question of reconsideration. I speak on behalf of myself and a considerable number of the Taxation and Finance Committtee. This, we think, is a valid principle which was established by this Convention. The principle was debated at great length in the sub-committee and adopted in substance. It was debated at great length in committee and adopted in substance. It was debated at great length in the Convention and by a vote of 88 to 47 was adopted by this Convention.

We think it is a very valuable principle. We think the decision that this Convention has made should be allowed to stand and we ask that you vote "no" on the reconsideration.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, I would like to speak on behalf of reconsideration. There were a lot of things that were not clear to a lot of delegates, for instance, the partial destruction of the fiscal code.

We set a precedent where we decided by a large vote in this Convention that the State Treasurer should not be a fiscal officer of the State who should sign a warrant to issue the check himself, we then turned around and nullified the fact of the two fiscal officers, the one fiscal officer remaining could not do both functions thereby either creating a third agency of government, creating outside auditing, which deals with outside auditing contracts, or giving the Legislature or the Governor the right to create a new agency of government to check themselves.

Now, I do not think the delegates realized the depth of this item. I think an awful lot of delegates, when it was discussed—after this quick vote—found there was a lot behind it that did not appear on the surface.

I ask you to vote for reconsideration so we can go into this a little deeper and explain all the facts.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Swope.

DELEGATE SWOPE. I would like to echo the words of Delegate Murray.

This amendment, if permitted to remain in the proposal and become part of the Constitution, will do a number of things. First, it may be that the legislature will completely ignore it. I would like to speak upon the question after we have voted to reconsider, which I truly hope we will. I have tried to bring out before that the treasurer does make a pre-audit. I think this has not sunk into the minds of my fellow delegates officially.

The Treasurer of Pennsylvania does make a pre-audit before he writes a check, and the Auditor General also associates himself with the Treasurer in making a pre-audit in order to sign a warrant for the Treasurer to sign the check.

We have heard a great deal here, one of our lady delegates, Miss Himes, talked about economy in government. If the Legislature takes the bit in its teeth and decides that under the provisions of this amendment, if it remains in the proposal, it will be necessary to create a new office that will get a whole new bureaucracy started here in Pennsylvania when we do not need it and there has been no crying need for it. Nobody has said that anything wrong has been done throughout two generations, and I do hope that my fellow delegates will permit us to discuss this at greater length than it was discussed before.

I hope you will vote for reconsideration, or, rather, I hope you will vote to sustain the ruling of the Chair.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl.

DELEGATE FOHL. Delegate Murray in his brief comments referred to the possibility of contracting for outside auditing help with regard to this provision. The section specifically reads, "The same Commonwealth officer or department."

I do not know how in any way that could be construed to mean that we would be contracting with outside auditors. It does not say the treasurer may not continue to do the pre-audit. It just says to the legislature there shall be a post audit and a pre-audit, and by implication it says as the Legislature shall determine.

This is a sound fiscal management proposal, as is the rest of Committee Proposal No. 4, and I urge rejection of this reconsideration motion.

PRESIDENT BRODERICK. The Chair recognizes Delegate Clark.

DELEGATE CLARK. Mr. President, I am delighted that the haze has lifted and the smoke has cleared away, so an ordinary businessman can again stand here with some confidence.

I wish to speak against reconsideration of this proposition. This is a matter of great concern, I think, to anyone who is concerned with the business approach to the management of our State affairs.

This is a business of $2 billion and, in my opinion, that amount of money requires the greatest care that we are able to give to it in auditing, either pre-auditing or post auditing.

This amendment, or this part of the proposal, does not make any officer. It simply says it makes a point that we in business accept, and have accepted, for years, that one individual does not audit his own accounts.

We provide for honesty in our operations and, in my opinion and in my philosophy, buisness and the State are equally responsible for setting up standards that will make it impossible or impractical for people to be dishonest and, if the business or if the State does not set up that kind of safeguard, they are equally responsible with the dishonest person.

Mr. President, I urge you not to reconsider this matter.

PRESIDENT BRODERICK. The Chair again recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, in reply to Delegate Fohl's remarks, I would like to know, since he came back at me with this "the same Commonwealth officer." Since there are only two fiscal officers in the Commonwealth, the Auditor General and the State Treasurer, and correct me if I am wrong, there has been a vote by this entire Convention which rejected the principle of the State Treasurer doing the pre-audit.

If that is the consensus of this Convention that the state treasurer should not do the pre-audit, which is the permission for herself or himself to issue the check, and this function has to be done by two other fiscal officers or two other fiscal departments, and we only have one other fiscal department, who in God's name is going to do the other function, the Secretary of Agriculture?

DELEGATE FOHL. I would reply to Delegate Murray, this is not a Legislative body, that decision will be made by a Legislative body in the future.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I, too, have an understanding of the audit function in a business institution, but let me remind my friends that a business institution and its accounting are very, very different from the accounting of a governmental body.

In this State the Treasurer of Pennsylvania has no relationship to the State government, to the administrative side of the government. He is under no orders to the administrative side of the government, he cannot be told to do one thing or another by the administrative side of the government, and he has the same responsibility to the people of Pennsylvania as an independently elected officer. When he signs a check, he does not have anything from the administrative side of the government where the obligations are made.

Do not forget these are not the obligations of the auditor general, they are not the obligations of the state treasurer. They are the obligations of the State government which come through that route for final payment, auditing, and so forth.

The Treasurer is responsible to the people directly, and he cannot discharge that responsibility unless he has the power to make the pre-audit, which he does, too.

The Auditor General again is responsible directly to the people and not to the State administration. Therefore, the Auditor General makes the post audit, and I maintain that we have here a pre-audit by the Treasurer, and a post audit by the Auditor General, and, therefore, the requirements of regular accounting procedures in a private institution are already carried out in the State Government.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, I speak in favor

of the Convention turning down this request for reconsideration.

It seems strange to me that Delegate Swope would say on one hand that for 200 years this State has had the procedure of post and pre-audit, that for 200 years this State has had no loss of moneys or misdirection of funds, and then at the same time argues that we should not have a safeguard for this. These two arguments are just in conflict.

I think it is perfectly legitimate to expect the moneys of the State, the moneys that the State is collecting from its citizens, to be audited before they are spent, and then again to be audited after they are spent to be certain that they are being spent in the proper manner, in the manner in which the Legislature has decided they should be spent, and in the manner which is consistent with the best interests of the people of the State who have provided those funds. I see nothing wrong with it. We debated it very fully at the time we originally adopted this amendment. Contrary to what Delegate Murray says, that it was a quick vote, it was not a quick vote. We had a great deal of discussion about it. I do not understand what they are trying to hide by preventing this type of post and pre-audit.

PRESIDENT BRODERICK. The Chair recognizes Chairman Leonard.

DELEGATE LEONARD. Mr. President, yesterday morning I sat here and listened to Secretary Michener give us an excellent lecture on the integrity of this Convention. I agreed with him wholeheartedly yesterday on that. He was discussing the integrity of the Convention when it dealt with a reconsideration which was on a vote with even a smaller margin than what we have.

This came out of our committee with better than a 22 to 2 vote, with a better than 20 vote, which means we had our majority. It passed this body by an 88 to 47 vote. How we can stand here today and think that we have integrity when we try to bring up and reconsider something that was so thoroughly considered and so thoroughly won as that amendment in this Convention?

MOTION

DELEGATE LEONARD. I move the question, Mr. President.

PRESIDENT BRODERICK. It has been moved by Chairman Leonard, seconded by Delegate Keller, that we close the debate and vote on the pending question.

All those in favor of that please say aye. Anybody opposed say no.

On the question,
Will the Convention agree to the motion?
The motion was agreed to.

On the question,
Will the Convention agree to the motion to reconsider?

The roll was recorded as follows:

YEAS—53

Aberman	Gerber	Mangery	Shapiro
Allison	Gouger	Mattioni	Shettig
Amsterdam	Harding	McGlynn	Shoemaker
Baldus	Henderson	Michael	Shrager
Banes	Hocker	Miller, R.	Silverman
Barron	Hook	Murray	Solomon
Camardella	Hostetler	O'Donnell	Swope
Caputo	Huggins	Popil	Tate
Cosetti	Irvis	Prendergast	Thomson
Dumbauld	Kelly	Rappaport	Tomascik
Feather	King	Redick	Warman
Filson	Kline	Ruth	Welsh
Gabreski	Manderino	Scales	Woodside
Gehrlein			

NAYS—86

Aurentz	Cunningham	Leach	Richter
Baldrige	Curran	Lee, L.	Roberts
Baldwin	Desmond	Leinbach	Rovner
Barry	Devlin	Leonard	Sahli
Benedict	Erwin	McGeary	Scarlett
Benfield	Fagan	Meyer	Scott
Bloom	Fawcett	Michener	Scranton
Braham	Fohl	Miller, D.	Sebastian
Brennan	Goldman	Moorhead	Shively
Broderick	Goldstein	More	Sprogell
Brown	Griffith	Morton	Stout
Buck	Hannum	Nelson	Strickler
Bunting	Hatter	Orban	Thornburgh
Burkholder	Heyburn	Orbin	Tully
Butera	Himes	Otto	Van Sant
Cain	Jirolanio	Pelletier	Waldron
Caron	Johnson	Percey	Westerberg
Clark	Kauffman	Pott	Whitmm
Clinger	Keller, J.	Powell	Wilcox
Corey	Keller, M.	Rea	Wilmarth
Cortese	Krill	Reynolds	Woodring
Croop	Laputka		

NOT VOTING—24

Bagenstose	Donolow	Gray	Musselman
Bashoff	Fay	Horne	Pasquerilla
Casey	Fineman	Lane	Pechan
Conley	Fleming	Lee, K.	Quiles
Dailey	Forster	Levin	Sharp
Donaldson	Fortney	Markley	Stroup

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question,
Will the Convention agree to the proposal on second consideration?

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. I move that Proposal No. 4, Printer's No. 17, be moved over to third consideration.

On the question,
Will the Convention agree to move Proposal No. 4 over to third consideration?

The roll was recorded as follows:

YEAS—122

Aberman	Desmond	Laputka	Sahli
Amsterdam	Devlin	Leach	Scales
Aurentz	Dumbauld	Lee, L.	Scarlett
Bagenstose	Erwin	Leinbach	Scott
Baldrige	Fagan	Leonard	Scranton
Baldus	Fawcett	Mangery	Sebastian
Baldwin	Feather	McGeary	Shapiro
Barron	Filson	Meyer	Shettig
Barry	Fohl	Michael	Shively
Benedict	Gehrlein	Michener	Shrager
Benfield	Gerber	Miller, D.	Solomon
Bloom	Goldman	Miller, R.	Sprogell
Braham	Goldstein	Moorhead	Stout
Brennan	Gouger	More	Strickler
Broderick	Griffith	Morton	Swope
Brown	Hannum	Nelson	Tate
Buck	Harding	Orban	Thomson
Bunting	Hatter	Orbin	Thornburgh
Burkholder	Henderson	Otto	Tomascik
Butera	Heyburn	Pelletier	Tully
Cain	Himes	Percey	Van Sant
Caputo	Hook	Popil	Waldron
Caron	Hostetler	Pott	Warman
Clark	Jirolanio	Powell	Welsh
Clinger	Johnson	Prendergast	Westerberg

Corey	Kauffman	Rea	Whittum
Cortese	Keller, J.	Reynolds	Wilcox
Cosetti	Keller, M.	Richter	Wilmarth
Croop	Kelly	Roberts	Woodring
Cunningham	King	Rovner	Woodside
Curran	Krill		

NAYS—15

Allison	Huggins	McGlynn	Ruth
Banes	Irvis	Murray	Shoemaker
Camardella	Kline	Rappaport	Silverman
Hocker	Mattioni	Redick	

NOT VOTING—26

Bashoff	Fineman	Lane	O'Donnell
Casey	Fleming	Lee, K.	Pasquerilla
Conley	Forster	Levin	Pechan
Dailey	Fortney	Manderino	Quiles
Donaldson	Gabreski	Markley	Sharp
Donolow	Gray	Musselman	Stroup
Fay	Horne		

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

MISSING RECORD

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, the Clerk of the Convention brought a distressing fact to my attention. The stenographic record for February 16th, which was last Friday and which was on my desk because I corrected a word in it, has disappeared from the Convention. We suppose it was taken out of my office by someone who wanted to edit in more detail. At any rate, we do not have it and that puts us at a grave disadvantage. If anybody has the stenographic record of February 16th, we would like to have it back. I hope you will not take other records from the office, because they are awfully hard to replace.

WIFE AND FAMILY OF DELEGATE ORBAN WELCOMED

DELEGATE ORBAN. I would like to make an introduction, but, before doing so, I would like to preface it with the remark that one of the parties is not here present, and that is my son Frank III. He is a senior at the University of Pennsylvania Law School and is engaged in a project in which he is getting firsthand information on the magisterial system in Philadelphia.

I would like to present to the Delegates, Mr. President, my good wife, my daughter Mary Michel who is visiting from Wellesley, Massachusetts where she is attending the Dana Hall School, and my daughter Susan Ann who is playing hookey from school.

PRESIDENT BRODERICK. If Mrs. Orban and the two girls would please stand, the Convention would be very happy to give you a most cordial greeting and tell you how happy we are you are with us.

I want you to know, you can be very proud of the good work being done by Delegate Orban and we are very happy to have you with us.

GUESTS OF DELEGATE PASQUERILLA WELCOMED

PRESIDENT BRODERICK. The Chair is happy to recognize Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, would the Chair recognize the very distinguished visitors with us today, the President of the Board of Trustees of the University of Pittsburgh and his lovely wife, Mr. and Mrs. Rea.

PRESIDENT BRODERICK. If Mr. and Mrs. Rea will please stand, we want you to know we are very happy to have you with us.

REPORT OF COMMITTEE ON STYLE AND DRAFTING

REPORT ON COMMITTEE PROPOSALS ONE AND TWO

PRESIDENT BRODERICK. We are happy to recognize the Co-Chairman of the Committee on Style and Drafting, Chairman Johnson.

I ask, is the report ready?

DELEGATE JOHNSON. Yes, Mr. President. May I respectfully request, Mr. President, that the delegation withhold their applause until I have completed my very brief remark?

COMMITTEE ON STYLE AND DRAFTING

519 North Office Building

February 22, 1968

To the Honorable,
The Delegates Assembled,
1967-68 Pennsylvania Constitutional Convention

Mesdames and Sirs:

On behalf of the Committee we are pleased to submit our Report on Committee Proposals One and Two relating to legislative reapportionment.

I. GENERAL

Inasmuch as this is the first formal report of the Committee's deliberations pursuant to Rule 22, it is appropriate that we review the function of the Committee. The Convention has instructed the Committee to do four things:

First. To examine and edit proposals to avoid inaccuracy, repetition, inconsistency or poor drafting, and to consider and make recommendations on any differences, conflicts or unresolved matters of substance.

Second. To rephrase or regroup language or sections of the proposals so long as, and this was the polester governing the Committtee's function, "the sense or purpose of any proposal referred" was not changed.

Third. To recommend referral of proposal to the originating, substantive committee.

Fourth. To resolve any inconsistency or conflict in conference with the originating substantive committee, and, failing so to do, to notify the Convention and await its instructions.

The Committee adopted further procedures preliminary to reporting to the Convention proposals on third consideration. For example, proposals referred to this Committee were distributed for preliminary analysis and comment to the Co-Directors of the Convention's Research Staff, the Director of the Convention Drafting Bureau, this

Committee's counsel, and an eminent outside consultant, Frank P. Grad, Director of State Constitutional Drafting Studies at Columbia University. The Committee's counsel then prepared revisions of the proposals referred to the Committee from the floor after second consideration as necessary to accomplish the function of the Committee. The end goal has always been the same: to critically consider each proposal referred to the Committee to insure that the report finally submitted by it to this Convention was clear, concise, unambiguous, and harmonious in style and manner of expression within the substantive committee's proposal as amended on second consideration, with other pending substantive proposals, and with the remainder of the Constitution of 1874.

Preliminary to discussing with you the Committee's report, we wish further to note that this Committee, at the specific request of the President of the Convention, delayed rendering reports of Style and Drafting to permit the Convention to complete second consideration of the various proposals then before it. We also wish to acknowledge the efforts of counsel to the substantive Committee on Legislative Apportionment who worked diligently with this Committee's counsel on multiple revisions and drafts in an effort to present a polished and articulate proposal on legislative reapportionment. Of necessity, the arbiter in making a final judgment with respect to the Committee's report and recommendations was the Committee.

The Report of the Committee on Style and Drafting consists of four parts: (a) the complete, edited text of the substantive Committee's Proposal in "clean" copy; (b) a new print of the substantive Committee's Proposal, as approved by the Convention on second consideration, with the drafting changes effected by this Committee shown in the usual legislative form; (c) a resume of this Committee's recommendations for Convention action on significant unresolved matters of substance; and (d) the full text of the Committee's narrative in explanation of its action. We understand that you will receive on the next Convention day the new print of Committee Proposals Nos. 1 and 2 and, at the same time, a zerox copy of the Committee's narrative and the full text of the sections on legislative reapportionment in "clean" copy.

For your convenience, the Committee on Style and Drafting has arranged this narrative in two sections. The first reports on the Committee's concern with respect to, and recommendations on, unresolved matters of substance pursuant to Rule 22; the second comments upon the significant changes in drafting effected by the Committee.

II. SUBSTANTIVE RECOMMENDATIONS

A. Numbering districts. The Committee on Legislative Apportionment considered and rejected the issue of numbering senatorial and representative districts. We call the Convention's attention to the fact that all legislative districts were once numbered in a normal and logical pattern. At present, as a map of senatorial districts will disclose, this mathematical and geographic pattern is not followed. The arbitrary numbering of legislative districts may permit a sophisticated type of gerrymandering.

The Committee believes this omission is a substantive matter of significance which should be resolved and respectfully suggests the following language for the Convention's consideration:

> SENATORIAL DISTRICTS SHALL BE NUMBERED IN SEQUENCE COMMENCING AT ONE GEOGRAPHICAL POINT IN THE COMMONWEALTH. REPRESENTATIVE DISTRICTS SHALL BE NUMBERED IN SEQUENCE COMMENCING AT ONE GEOGRAPHICAL POINT IN THE COMMONWEALTH.

B. Continuation of incumbents. The Committee has been advised by representatives of the substantive Committee on Legislative Apportionment that it intended, upon reapportionment pursuant to action by the Legislative Reapportionment Commission, all Senators to stand for reelection. The Committee notes that this creates the possibility that some Senators would be faced with the prospect of standing for election three times within a six year period. The Committee appreciates that changes in the terms of Senators are outside the call of the Convention. See Act No. 2 of 1967, Section 7, and Counsel Opinions 22 and 23.

The Committee observes, however, that the failure of the substantive committee to consider alternative procedures causes, by omission, the same result, i.e. the terms of half of the Senators are effectively reduced to two years in violation of the present Constitution, Article II, Section 3. The Committee regards this as an unresolved matter of substance and respectfully suggests the following language for the Convention's consideration:

> TO THE EXTENT POSSIBLE, ANY REAPPORTIONMENT PLAN SHALL PROVIDE FOR THE CONTINUATION IN OFFICE OF ANY SENATOR WHOSE TERM WOULD NOT OTHERWISE EXPIRE IN THE YEAR OF THE GENERAL ELECTION NEXT FOLLOWING THE REAPPORTIONMENT TO REPRESENT A SENATORIAL DISTRICT SUBSTANTIALLY THE SAME AS THAT FROM WHICH HE WAS ELECTED.

C. Effective date. Section 17 provides that a reapportionment plan becomes final in one of three ways. As the substantive committee rightly notes, the time schedule set forth in Section 17 is designed to accomplish the reapportionment, including all judicial proceedings as necessary prior to the primary elections in the first even numbered year after the Federal decennial census has been officially reported.

The Committee believes that one further contingency ought to be considered. A possibility, however, remote, exists that the final reapportion-

ment plan would not be available—whether a result of delays in the reporting of the census or, more likely, because all remedies available to aggrieved persons under Section 17 have not been exhausted—until after the primary election but prior to the general election. The significant problem would then be: Is a special primary election held in the new districts? Or does the nominee from an old district run in the new district? The Committee, therefore, respectfully suggests the following language for the Convention's consideration:

(e) WHEN THE SUPREME COURT HAS FINALLY DECIDED AN APPEAL OR WHEN THE LAST DAY FOR TAKING AN APPEAL HAS PASSED WITH NO APPEAL TAKEN, THE REAPPORTIONMENT PLAN SHALL HAVE THE FORCE OF LAW AND THE DISTRICTS THEREIN PROVIDED SHALL BE USED IN THE NEXT PRIMARY ELECTION IN AN EVEN-NUMBERED YEAR OCCURRING SIXTY (60) DAYS OR MORE AFTER SUCH EFFECTIVE DATE, AND IN THE ELECTIONS TO THE GENERAL ASSEMBLY THEREAFTER UNTIL THE NEXT REAPPORTIONMENT AS REQUIRED UNDER THIS SECTION 17.

III. SIGNIFICANT CHANGES IN STYLE

A. Committee Proposal No. 1, Printer's No. 1.

1. Sections 16 and 17 were combined into a new Section 16 to avoid unnecessary repetition and redundancy.

2. The adjective "incorporated" has been added as a descriptor of "town" (p. 1, line 16; p. 2, line 18) to avoid confusion with unincorporated villages which would not need to be considered by the Commission in establishing district boundaries.

3. The Committee acquiesces in the substantive committee's insistence upon the inclusion of the adverb "absolutely" (p. 1, line 15; p. 2, line 18). The Committee is of the opinion that such usage imparts nothing of significance to the clause.

4. Considering that this proposal establishes single-member districts of a definite number and that these districts are, by definition, to be compact, contiguous and nearly equal in population, the Committee, with the agreement of the Co-Chairmen and Counsel of the substantive committee, deleted the statements respecting senatorial and representative ratios (p. 2, lines 1-2, 19-20).

B. Committee Proposal No. 2, Printer's No. 10.

1. Inasmuch as Sections 18 through and including 22 relate to the same subject, the Committee has consolidated these sections into one new Section 17 with sub-paragraphs arranged on a subject basis in chronological order as the subject with which each is concerned becomes operative.

2. The time schedule affecting the implementation of the Commission's report and/or action by the judiciary has been refined to make each stage of the reapportionment proceedings more precise.

3. With respect to the certification of members of the Commission, it was agreed that the responsibility for so doing should be made clear. The Committee on Style and Drafting and the Committee on Legislative Apportionment concur in the view that the President pro tempore of the Senate and the Speaker of the House of Representatives are the proper officers to make the required certification.

4. The Committee has deleted the reference to the Secretary of the Commonwealth (p. 2, line 1-2, 10) inasmuch as that constitutional office was removed by constitutional amendment adopted May 16, 1967 (Art. IV, Section 1). The substantive committee concurs in the language "the elections officer of the Commonwealth who under law shall have supervision over elections." Thus, if the authority of the Secretary of the Commonwealth is later changed by statute, this statement of the officer to whom certification is made need not be affected.

5. In order to make clear the substantive committee's intention, the Committee has added a sentence requiring that "The Commission shall act by a majority of its entire membership."

6. The proposal as referred to this Committee (p. 2, line 22) recites that the Commission shall file its report, as one alternative, "after the Federal decennial census has been certified." The Federal law, U. S. Code tit. 13, Section 141 (1967 Supp.) requires "the tabulation of total population by states . . . (to be) reported by the Secretary (of Commerce) to the President . . ." The Secretary of Commerce, in turn, certifies these figures to individual states upon request. The language has been changed to indicate that the reference point for the Commission to come into existence is the official report to the President, but that the preliminary plan need not be filed by the Commission until at least ninety (90) days after the appropriate census figures are made available to the Commission.

7. The requirement for publication of the reapportionment plans has been retained in the body of the proposal and combined into one sub-section. This Committee is given to understand that some delegates urge that the publication requirement be considered a schedule item. We strongly recommend against so doing inasmuch as it treats of a matter of substance and, as such, is deserving of separate treatment in the body of the proposal.

Respectfully submitted:

COMMITTEE ON STYLE AND DRAFTING

By: ROY H. JOHNSON
LAWRENCE L. PELLETIER
Co-Chairmen.

ANF: WPH: met

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1968 SESSION

PROPOSAL NO.

A PROPOSAL

Amending the Constitution of Pennsylvania providing for apportionment of legislative districts.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Sections sixteen and seventeen of article two of the Constitution of Pennsylvania are amended to read:

Section 16. Legislative Districts.—The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

SCHEDULE

The foregoing amendment to Article II of the Constitution of Pennsylvania if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

COMMITTEE PROPOSAL NO. 1

A PROPOSAL

Amending the Constitution of Pennsylvania providing for apportionment of legislative districts.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Sections sixteen and seventeen of article two of the Constitution of Pennsylvania are amended to read:

Section 16. LEGISLATIVE Districts—The [State] COMMONWEALTH shall be divided into fifty senatorial AND TWO HUNDRED THREE REPRESENTATIVE districts, WHICH SHALL BE COMPOSED of compact and contiguous territory as nearly equal in population as [may be] practicable. [and each] EACH SENATORIAL district shall [be entitled to] elect one Senator, AND EACH REPRESENTATIVE DISTRICT ONE REPSENTATIVE. [Each county containing one or more ratios of population shall be entitled to one Senator for each ratio, and to an additional Senator for a surplus of population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less than four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled to two or more Senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of Senators. No] Unless absolutely necessary no county, city, INCORPORATED town, [ward] borough, [or] township OR WARD shall be divided in [the formation of a] FORMING EITHER A SENATORIAL OR REPRESENTATIVE district. [The senatorial ratio shall be ascertained by dividing the whole population of the State by the number fifty.]

[Section 17. The members of the House of Representatives shall be apportioned among the several counties, on a ratio obtained by dividing the population of the State as ascertained by the most recent United States census by two hundred. Every county containing less than five ratios shall have one representative for every full ratio, and an additional representative when the surplus exceeds half a ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representatives alloted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives.]

SCHEDULE

THE FOREGOING AMENDMENT TO ARTICLE II OF THE CONSTITUTION OF PENNSYLVANIA IF APPROVED BY THE ELECTORATE VOTING ON APRIL 23, 1968, SHALL BECOME EFFECTIVE THE YEAR FOLLOWING THAT IN WHICH THE NEXT FEDERAL DECENNIAL CENSUS IS OFFICIALLY REPORTED AS REQUIRED BY FEDERAL LAW.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1968 SESSION

PROPOSAL NO.

A PROPOSAL

Amending the Constitution of Pennsylvania providing for apportionment of legislative districts.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section eighteen of article two of the Constitution of Pennsylvania is amended to read:

Section 17. Legislative Reapportionment Commission.—(a) In each year following that in which the Federal decennial census is officially reported as required by Federal law, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth. The commission shall act by a majority of its entire membership.

(b) The commission shall consist of five members: four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman selected as hereinafter provided. No later than the fourth Monday in January of the year following the year in which the Federal decennial census is officially reported as required by Federal law, the four members shall be certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections. The four members within forty-five days after their certification shall select the fifth member, who shall serve as chairman of the commission, and shall immediately certify his name to such elections officer. The chairman shall be a citizen of the Commonwealth other than a local, State or Federal official holding an office to which compensation is attached. If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within thirty days thereafter shall appoint the chairman as aforesaid and certify his appointment to such elections officer. Any vacancy in the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) No later than ninety days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer. The commission shall have thirty days after filing the preliminary plan to make corrections in the plan. Any person aggrieved by the preliminary plan shall have the same thirty-day period to file exceptions with the commission in which case the commission shall have thirty days after the date the exceptions were filed to prepare and file with such elections officer a revised reapportionment plan. If no exceptions are filed within thirty days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(d) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this section 17.

(f) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine, but no part thereof shall be paid until a preliminary plan is filed. If a preliminary plan is filed but the commission fails to file a revised or final plan within the time prescribed, the commission members shall forfeit all right to compensation not paid.

(g) If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed by this section, unless the time be extended by the Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

(h) Any reapportionment plan filed by the commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportioned districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts.

SCHEDULE

The foregoing amendment to Article II of the Constitution of Pennsylvania if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

COMMITTEE PROPOSAL NO. 2

A PROPOSAL

Amending the Constitution of Pennsylvania making changes relating to legislative apportionment.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section eighteen of article two of

the Constitution of Pennsylvania is amended to read:

Section [18]. 17. [The General Assembly at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into senatorial and representative districts agreeably to the provisions of the two next preceding sections.] Legislative Reapportionment Commission. (A) IN EACH YEAR FOLLOWING THAT IN WHICH THE FEDERAL DECENNIAL CENSUS IS OFFICIALLY REPORTED AS REQUIRED BY FEDERAL LAW, A LEGISLATIVE Reapportionment Commission shall be CONSTITUTED FOR THE PURPOSE OF REAPPORTIONING THE COMMONWEALTH. THE COMMISSION SHALL ACT BY A MAJORITY OF ITS ENTIRE MEMBERSHIP.

(B) THE COMMISSION SHALL CONSIST OF FIVE MEMBERS: FOUR OF WHOM SHALL BE THE majority and minority leaders of BOTH the Senate and the House of Representatives, or deputies appointed by EACH of them, AND A CHAIRMAN SELECTED AS HEREINAFTER PROVIDED. NO LATER THAN THE FOURTH MONDAY IN JANUARY OF THE YEAR FOLLOWING THE YEAR IN WHICH THE FEDERAL DECENNIAL CENSUS IS OFFICIALLY REPORTED AS REQUIRED BY FEDERAL LAW, THE four members shall be certified BY THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES to the ELECTIONS OFFICER OF THE COMMONWEALTH WHO UNDER LAW SHALL HAVE SUPERVISION OVER ELECTIONS.

The four members within forty-five days after their certification shall select THE fifth member, WHO SHALL serve as CHAIRMAN OF THE COMMISSION, AND SHALL IMMEDIATELY CERTIFY HIS NAME TO SUCH ELECTIONS OFFICER. THE CHAIRMAN shall be a citizen of the Commonwealth other than a local, State or Federal official HOLDING an office to which compensation is attached.

IF the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within thirty days thereafter SHALL appoint THE chairman AS AFORESAID AND CERTIFY HIS APPOINTMENT TO SUCH ELECTIONS OFFICER.

Any vacancy in the COMMISSION shall be filled within fifteen days in the same manner in which such position was originally filled.

(C) No later than ninety days after EITHER the COMMISSION has been duly certified or the POPULATION DATA FOR THE COMMONWEALTH AS DETERMINED BY THE Federal decennial census ARE AVAILABLE, whichever is later in time, the COMMISSION shall file a PRELIMINARY REAPPORTIONMENT PLAN with SUCH ELECTIONS OFFICER.

The COMMISSION shall have thirty days after filing THE PRELIMINARY PLAN to make corrections in THE PLAN.

Any PERSON aggrieved by the PRELIMINARY PLAN shall have the same THIRTY-DAY period to file exceptions with the COMMISSION in which case the COMMISSION shall have thirty days after the date THE EXCEPTIONS WERE FILED to prepare and file WITH SUCH ELECTIONS OFFICER a revised REAPPORTIONMENT plan. IF NO EXCEPTIONS ARE FILED WITHIN THIRTY DAYS, OR IF FILED AND ACTED UPON, THE COMMISSION'S PLAN SHALL BE FINAL AND HAVE THE FORCE OF LAW.

(D) Any aggrieved PERSON MAY file an appeal from the final plan directly to the Supreme Court WITHIN THIRTY DAYS AFTER THE FILING THEREOF. If, the appellant establishes that THE FINAL plan is contrary to law, the Supreme Court shall ISSUE AN ORDER REMANDING THE plan to the COMMISSION AND directing the COMMISSION to REAPPORTION the Commonwealth in A manner not inconsistent with such order.

(E) WHEN THE SUPREME COURT HAS FINALLY DECIDED AN APPEAL OR WHEN THE LAST DAY FOR FILING AN APPEAL HAS PASSED WITH NO APPEAL TAKEN, THE REAPPORTIONMENT plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment AS REQUIRED UNDER THIS SECTION 17.

(F) THE GENERAL ASSEMBLY SHALL APPROPRIATE SUFFICIENT FUNDS FOR THE COMPENSATION AND EXPENSES OF MEMBERS AND STAFF APPOINTED BY THE COMMISSION, AND OTHER NECESSARY EXPENSES. THE MEMBERS OF THE COMMISSION SHALL BE ENTITLED TO SUCH COMPENSATION FOR THEIR SERVICES AS THE GENERAL ASSEMBLY FROM TIME TO TIME SHALL DETERMINE, BUT NO PART THEREOF SHALL BE PAID UNTIL A PRELIMINARY PLAN IS FILED. IF A PRELIMINARY PLAN IS FILED BUT THE COMMISSION FAILS TO FILE A REVISED OR FINAL PLAN WITHIN THE TIME PRESCRIBED, THE COMMISSION MEMBERS SHALL FORFEIT ALL RIGHT TO COMPENSATION NOT PAID.

(G) IF A PRELIMINARY, REVISED OR FINAL REAPPORTIONMENT PLAN IS NOT FILED BY THE COMMISSION WITHIN THE TIME PRESCRIBED BY THIS SECTION, UNLESS THE TIME BE EXTENDED BY THE SUPREME COURT FOR CAUSE SHOWN, THE SUPREME COURT SHALL IMMEDIATELY PROCEED ON ITS OWN MOTION TO REAPPORTION THE COMMONWEALTH.

(H) ANY REAPPORTIONMENT PLAN FILED BY THE COMMISSION, OR ORDERED OR PREPARED BY THE SUPREME COURT UPON THE FAILURE OF THE COMMISSION TO ACT, SHALL BE PUBLISHED BY THE ELECTIONS OFFICER ONCE IN AT LEAST ONE NEWSPA-

PER OF GENERAL CIRCULATION IN EACH SENATORIAL AND REPRESENTATIVE DISTRICT. THE PUBLICATION SHALL CONTAIN A MAP OF THE COMMONWEALTH SHOWING THE COMPLETE REAPPORTIONMENT OF THE GENERAL ASSEMBLY BY DISTRICTS, AND A MAP SHOWING THE REAPPORTIONED DISTRICTS IN THE AREA NORMALLY SERVED BY THE NEWSPAPER IN WHICH THE PUBLICATION IS MADE. THE PUBLICATION SHALL ALSO STATE THE POPULATION OF THE SENATORIAL AND REPRESENTATIVE DISTRICTS HAVING THE SMALLEST AND LARGEST POPULATION AND THE PERCENTAGE VARIATION OF SUCH DISTRICTS FROM THE AVERAGE POPULATION FOR SENATORIAL AND REPRESENTATIVE DISTRICTS.

SCHEDULE

THE FOREGOING AMENDMENT TO ARTICLE II OF THE CONSTITUTION OF PENNSYLVANIA IF APPROVED BY THE ELECTORATE VOTING ON APRIL 23, 1968, SHALL BECOME EFFECTIVE THE YEAR FOLLOWING THAT IN WHICH THE NEXT FEDERAL DECENNIAL CENSUS IS OFFICIALLY REPORTED AS REQUIRED BY FEDERAL LAW.

PRESIDENT BRODERICK. This report will be printed tonight and it will be on the calendar tomorrow on third consideration.

SCHEDULE AND PROCEDURE

PRESIDENT BRODERICK. The Chair would like to make a suggestion that I hope all the Delegates will agree with and that will be unusual, but the suggestion is, I am advised that we can have the report ready on Proposal No. 6 which is the Local Government Proposal.

We have to call in the outfield again. May I please see Chairman Pelletier and Chairman Johnson? Apparently, my first information did not come through the right channel.

Fellow Delegates, I have just had a conference with the Chairman of Style and Drafting and they are going to try to report later today on Proposal No. 3 or Proposal No. 6, or, if we are very lucky, both of them. They are going to meet now.

My suggestion is, since we are going to have to be here tomorrow to vote on the final consideration of Proposals Nos. 1 and 2 and, also, the second consideration of the Judiciary, I would like very much, with your cooperation, if we could come back here for a short session at about 5:30 this evening before dinner, with the hopes that we will have an additional report from Style and Drafting.

The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, in the interest of saving time, as I understand Chairman Scranton, he said before that there were no other amendments that the committee knew of on Committee Proposal No. 7. If that is the case, why could we not suspend the rules and pass the committee proposal from second consideration to third consideration.

PRESIDENT BRODERICK. The body can do anything, of course, but I just want to say that I think the delegates should look at that proposal after it has been printed.

The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. It had come to my attention that this motion might be made, sir, and I discussed it with Mr. Amsterdam and both of us are opposed to it.

We feel very strongly that the people who have made so many changes in the Judiciary Article should have an opportunity to look at it. Nobody has brought to my attention any effort to make any major change. There is one thing going on which is extremely important and that is that both the staff and the counsel for the Judiciary are looking it over very thoroughly to see if there are any inconsistencies, so we do not have to have 82 votes on third reading to make minor changes. I would appreciate if you would hold it over, because it is not going to hold up Style and Drafting. They are not ready for it.

PRESIDENT BRODERICK. I think you have an excellent suggestion.

DELEGATE JIROLANIO. I did not make that a motion, I only made that a suggestion. I did not know the attitude of the two chairmen. Unfortunately, tomorrow is the funeral of Guy Davis and I understand there are going to be at least 10 or 12 members of this delegation that will not be here tomorrow because they are attending that funeral in due respect to a very fine gentleman employed by the Commonwealth. Therefore, it would be unfair to those men to have this important measure come up tomorrow on second reading with the privilege of amending the same. I expect to be here tomorrow and so do others, and that is the reason why I have done that.

PRESIDENT BRODERICK. I want to say to Delegate Jirolanio, I know the basis for his reasoning and it certainly touches a sympathetic cord. By the same token, I want you to know the Chair is very much worried that we finish our job and finish it on time. We have on the calendar tomorrow for third and final consideration Proposals Nos. 1 and 2 for second consideration, the Judiciary, and we may have with good luck from Style and Drafting these other maybe one or two other proposals and, if we get those out of the way tomorrow, that would mean we would not have to have a Saturday session and we can come in here on Monday and Tuesday to get our work done.

I want to remind you these proposals still have to go into Arrangement, Submission and Address to the People, and it would not be fair to them to throw something in there on Wednesday. That is the only thing I am personally concerned with, is that we get our job done.

The Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, in order to allow the Style and Drafting Committee to get to work forthwith, I would be very pleased if you would accept a motion to now recess this Convention until 5:30 o'clock today to receive the report on the proposals so that they can get back out of their committee by that hour.

PRESIDENT BRODERICK. Did you put that in the form of a motion?

DELEGATE SHOEMAKER. I did.

DELEGATE RAPPAPORT. Mr. President, I will second the motion.

PRESIDENT BRODERICK. It has been moved by Delegate Shoemaker, seconded by Delegate Rappaport, that

we adjourn until 5:30 to come back and accept the proposals, if they are ready.

DELEGATE IRVIS. The reason I am standing at the microphone is because I am one of the people who will not be here tomorrow, because I do intend to pay my respects to Guy Davis. I have heard rumors there will be motions to reconsider the vote by which certain amendments will be put into Section No. 7. If there are such motions and if you know them, I would appreciate the Chair inform me, because I want to know if I am going to miss something of very great importance.

PRESIDENT BRODERICK. May the Chair answer you?

DELEGATE IRVIS. Yes.

PRESIDENT BRODERICK. I can only tell you the Chair, and counsel and Parliamentarian know of no such motions, but this does not rule them out.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis. For what purpose does the gentleman rise?

DELEGATE IRVIS. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE IRVIS. I understand and I want to place upon the record the reason why I shall not be present tomorrow when the final vote is taken on, I think, Proposal No. 1 and Proposal No. 2. I will not be recorded. I do not want anyone to think I am not recorded because I do not wish to vote on those proposals. I must be away from my seat tomorrow.

SCHEDULE AND PLANNING

PRESIDENT BRODERICK. Would it inconvenience the delegates to give the committee more time than 5:30? What is a good time? We want to do it today. Now is the time to give them the opportunity to do their work.

DELEGATE IRVIS. I was under the impression by a couple people on the committee that 5:30 would give them over two hours.

PRESIDENT BRODERICK. Delegate Johnson, what do you think of 5:30?

DELEGATE JOHNSON. There is a mechanical problem. We are in agreement to having this put on computers in the form that we gave you of Proposals Nos. 1 and 2. If you will take them in some other form, we might have them ready.

Might I take this opportunity to announce that all of the members of the Committee on Style and Drafting are urgently requested to meet immediately after this session in our meeting room.

DELEGATE BARRON. Mr. President.

PRESIDENT BRODERICK. Yes, I understand from our Parliamentarian—and I want to answer you Delegate Johnson—that if you have your report we can take care of the mechanical part afterwards, providing, of course, it remains as is.

DELEGATE BARRON. Mr. President.

PRESIDENT BRODERICK. Delegate Barron?

DELEGATE BARRON. Considering the concern that all of us have in connection with the problem of the funeral services, and so forth, tomorrow and considering that it is being well hinted that this body is about to recess for the day, perhaps, to reconvene today, I would, if it is in order, propose the following motion, that amendments to Proposal No. 7 be filed with the President or the Parliamentarian by 5:00 o'clock this afternoon and that no further amendments, other than drafting and styling errors, be permitted thereafter.

PRESIDENT BRODERICK. Let us dispose of the motion we have on the floor. Let me say to Delegate Barron, your proposal raised many problems here. One of the principal problems is that many people have not had an opportunity to read this.

RECESS

PRESIDENT BRODERICK. We have a motion on the floor to recess until 5:30. We will unlock the voting machine. The motion is: Shall we now recess until 5:30 this afternoon?

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—105

Aberman	Feather	Michael	Scranton
Aurentz	Filson	Michener	Sebastian
Bagenstose	Gerber	Miller, D.	Shapiro
Baldrige	Goldstein	Miller, R.	Shettig
Baldus	Griffith	Moorhead	Shively
Banes	Hannum	More	Shoemaker
Barry	Harding	Morton	Shrager
Benfield	Hatter	Murray	Silverman
Bloom	Henderson	Nelson	Sprogell
Braham	Heyburn	O'Donnell	Stout
Brennan	Hook	Orban	Strickler
Broderick	Johnson	Orbin	Stroup
Brown	Keller, M.	Otto	Swope
Bunting	Kelly	Pasquerilla	Tate
Butera	King	Popil	Thomson
Caron	Kline	Pott	Thornburgh
Casey	Krill	Powell	Tomascik
Clark	Laputka	Rappaport	Tully
Clinger	Leach	Rea	Van Sant
Corey	Lee, L.	Reynolds	Waldron
Cortese	Leinbach	Richter	Welsh
Cosetti	Leonard	Rovner	Westerberg
Croop	Manderino	Sahli	Whittum
Cunningham	Mangery	Scales	Wilcox
Devlin	McGeary	Scarlett	Woodring
Erwin	Meyer	Scott	Woodside
Fawcett			

NAYS—14

Barron	Hostetler	Keller, J.	Redick
Fagan	Irvis	Mattioni	Roberts
Fohl	Jirolanio	McGlynn	Warman
Goldman	Kauffman		

NOT VOTING—44

Allison	Curran	Gabreski	Markley
Amsterdam	Dailey	Gehrlein	Musselman
Baldwin	Desmond	Gouger	Pechan
Bashoff	Donaldson	Gray	Pelletier
Benedict	Donolow	Himes	Percey
Buck	Dumbauld	Hocker	Prendergast
Burkholder	Fay	Horne	Quiles
Cain	Fineman	Huggins	Ruth
Camardella	Fleming	Lane	Sharp
Caputo	Forster	Lee, K.	Solomon
Conley	Fortney	Levin	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. The Convention is now in recess until 5:30 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

REPORT OF THE COMMITTEE ON STYLE AND DRAFTING FOR PROPOSAL No. 3

PRESIDENT BRODERICK. The purpose of this session, as you know, is to receive the report from style and drafting. The Chair now recognizes Chairman Pelletier of style and drafting.

DELEGATE PELLETIER. Mr. President, I rise in place to submit the report of the Committee on Style and Drafting for Proposal No. 3.

PRESIDENT BRODERICK. The Chair will accept that report and see that it is printed and will appear on the calendar.

COMMITTEE ON STYLE AND DRAFTING

519 North Office Building
Harrisburg, Pennsylvania 17106

February 22, 1968

To the Honorable,
The Delegates Assembled,
1967-1968 Pennsylvania Constitutional Convention

RE: Report on State Indebtedness

Mesdames and Sirs:

We are pleased to submit our Report on Committee Proposal Three relating to Commonwealth indebtedness and two auxiliary matters.

Preliminarily, the Committee wishes to acknowledge the personal assistance and cooperation of the Co-Chairmen of the substantive Committee on Taxation and State Finance as the text of this Proposal was examined and edited pursuant to Rule 22.

I. GENERAL

As previously, the Committee on Style and Drafting considered Proposal Three in the manner agreed upon by the Committee and approved by the Convention. In addition to preliminary conferences with the Co-Chairmen and counsel of the substantive Committee, copies of Style and Drafting's edited text were selectively distributed to members of the substantive Committee for comment. The advice of the Co-Directors of the Convention's Research Staff, the Director of the Convention Drafting Bureau, and of the Director of State Constitutional Drafting Studies at Columbia University was solicited and considered prior to approval by the full Committee of the edited text.

We reiterate our goal: to critically consider each proposal referred to this Committee to insure that the proposals finally submitted to the Convention for third consideration are clear, concise, unambiguous, and harmonious in style and manner of expression within the substantive Committee's proposal as amended on second consideration, with other pending substantive proposals, and with the remainder of the Constitution of 1874. To insure constancy in word usage and description in the revised article on taxation and finance, the Committee on Style and Drafting delayed rendering its report on Commonwealth indebtedness until Proposals Four and Five had been referred for consideration.

II. SECTION NUMBERING

Attached as an Exhibit to this narrative is a table showing the manner in which present existing sections in the taxation and finance article of the Constitution of 1874 would be affected by the repealer provisions contained in Proposals Three, Four, and Five of the Committee on Taxation and State Finance and in Proposal Six of the Committee on Local Government, assuming final passage of these proposals by the Convention and approval by the electorate. The Committee's intention, as the column on the right of the Exhibit indicates, is to organize the sections of this article to insure numerical sequence. The Convention should determine either to accept the Committee's recommendation with respect to proposed numbering as shown in the Exhibit and in each of the proposals being reported with respect to the Taxation and State Finance Article or, alternatively, to strike all section numbers in Proposals Three, Four and Five so as to permit the Governor by proclamation to specify the section numbers pursuant to Act No. 180 of August 17, 1965. If the Convention accepts the proposed numbering, the Committee strongly recommends that present existing sections 2 and 3 of Article IX be renumbered sections 5 and 6 respectively, and that present existing section 3 be amended by deleting the word "State" and substituting therefore the word "Commonwealth."

III. SIGNIFICANT CHANGES IN STYLE

1. In consultation with the substantive Committee, this Committee has inserted the descriptor "man-made or natural" and stricken the phrase "or other catastrophe", page one, line 15. This change was necessary to preserve the sense and purpose of the clause.

The Committee is not insensitive to the rationale of the Convention at the time this clause was amended on second consideration by deleting "riot or civil disorder" and inserting the phrase "or other catastrophe." However, this change would have effectively precluded the Commonwealth from incurring indebtedness to rehabilitate any area which might have had the misfortune to endure mob violence which, we understand, was not your intention.

The lexicographers consider disaster and catastrophe to be synonymous, although the latter is deemed to be of a greater order, viz. a "notable disaster." See Webster's International 3d ed., and 6 Words and Phrases. Two recent Pennsylvania appellate court cases likewise treat the words as being synonymous, differing solely in degree or

magnitude, but both involving an "unusual, extraordinary, sudden" or "an unexpected manifestation of the forces of nature." Goldberg v. R. G. Miller, 408 Pa. 7, 8 (1962); Rohr v. Logan, 206 Pa. Super. 232 (1965).

Thus, to accomplish that goal which the Convention obviously seeks, we recommend acceptance of the descriptive phrase "man-made or natural disaster."

2. On page two, line one, the word "State" has been added to the title of Treasurer to conform to present usage as in Article IV, section 1, "The Executive Department."

3. In subsection (2), the two operative clauses have been combined to avoid unnecessary duplication.

4. So that it is quite clear that all three of the officers named in subsection (2) must together undertake to either issue tax anticipation notes or refund debt, the Committee recommends the phrase "acting jointly". (Page 2, line 1).

5. The definition of tax anticipation notes has been further refined to accord with contemporary understanding of that term of art. This refinement is agreeable to both the substantive Committee and the Commonwealth's Counsel General.

6. At the suggestion of the substantive Committee's representatives subsection (3), (lines 8-11, page 2), was moved verbatim to precede what is now subsection (4) to establish a more logical sequence in presentation.

7. In subsection (4) certain changes in style were effected to more precisely state the intention of the Convention and, at lines 22-27, the calculation of debt outstanding was restated to avoid unseemly repetition.

8. The Committee calls the Convention's attention to the insertion of the description "fiscal" at line sixteen, page two. As originally drawn it was unclear whether reference was being made to five calendar or five fiscal years. The Committee has been advised the substantive Committee intended reference to fiscal periods certified by the Auditor General.

9. In subsection (B) (page 3, lines 1-5), this Committee suggested, and the substantive Committee concurred in a change in language to insure that the maturity of debt incurred for capital projects bears a direct relation to the estimated useful life of the projects and that the General Assembly's determination of this period of useful life, made in the law authorizing the projects, is a final determination. The Committee is of the view that the operation of the financial market place establishes adequate parametres to insure against the possibility, however remote, of an abuse of discretion in the determination of this judgment.

10. The second sentence of subsection (B) (page 3, lines 5-9), required further definition to achieve the sense and purpose of the Convention. The Convention and the substantive Committee obviously did not intend that the Commonwealth should be confined to serial bond issues. Yet the operative language "payable in . . . installments" seemed to limit issues solely to those serial in nature. Thus, so as not to preclude issuance of term obligations with a sinking fund, the operative words "amortized . . . amounts" are recommended.

Secondly, the Convention and substantive Committee desired that certain sums be paid either against the serial issue or into the sinking fund without precluding the Commonwealth, as the market would permit, from having a major final payment or "balloon" at the end of the financing period. Yet the language on second consideration, while requiring periodic payment, would have permitted the incongruity of an initial nominal payment. The Committee, therefore, recommends the language "substantial and regular" to describe the manner in which long-term debt is to be amortized.

To promote exact definition of the term within which the first amortized amount is to be paid against a serial issue or deposited to the sinking fund of a term issue, the Committee has rephrased the description phrase to insure that such payment is made or deposit effected any time after the obligation is assumed but prior to the expiration of a period of time equal to one-tenth the term of the debt. Thus on a 40-year bond, a payment must be made or deposit effected within four years from the date the obligation was issued.

11. The changes in language in subsection (C) were made to more clearly and precisely delimit the three exceptions from the definition of debt in this Proposal.

12. The change effected in subsection (D) is intended to remove unnecessary verbiage.

13. In sections 6 (page 3, line 29) and 9 (page 4, lines 3, 7 and 9), the word "Commonwealth" has been substituted for "state" to conform to common usage in other pending proposals. We again recommend the amendment of existing section 3 to delete "state" and insert "Commonwealth."

14. The nouns (line 2, page 4) were rearranged as a matter of style to conform to their prior use in the same subsection.

15. The description of type "municipalities" in section A (page 4, lines 3-9) were added to identify units of local government now in existence and to protect the Commonwealth from being obliged to assume the debt of any unit of local government which may hereafter be created. The descriptive phrase "any similar general purpose unit of government" as well as the listing of existing units of local government conforms to the usage in Proposal 6 of the Committee on Local Government.

Finally, in this same section 9, the limited number of situations in which the Commonwealth may assume municipal debt has been phrased to conform to those situations in which section 7 of this Committee Proposal 3 permits the Commonwealth to incur debt without limit. The Committee notes, however, that the provision for reha-

bilitation of areas affected by man-made or natural disaster has been deliberately omitted.

Respectfully submitted,

Committee on Style and Drafting
By: ROY H. JOHNSON
LAWRENCE L. PELLETTIER

ANF:WPH:mes

BY SECTION NUMBERS:—

Constitution of 1874	Committee Proposals (No. in Parenthesis)		Proposed Numbering
1	1	r (5)	1
	1A	(5)	2
1B			3
	1C	(5)	4
2			5 n.c.
3			6 n.c.
4	4	r (3)	7
5		R (3)	
6	5	(3)	8
7		R (6)	
8		R (6)	
9	6	(3)	9
10		R (6)	
11		R (3)	
12		R (3)	
13		R (3)	
14	14	r (4)	10
15		R (6)	
16		R (3)	
16		R (3)	
17		R (3)	
18			11 n.c.
19		R (6)	
21		R (3)	
22		R (3)	
23		R (3)	
24			24*n.c.
25			25*n.c.
	26	(4)	12
	27	(4)	13
	28	(4)	14

KEY: "r" revised in part
"R" repealed
"n.c." no change from present Constitutional language
"*" Present Sections 24, "Project 70", and 25 "Reclamation Fund" shall be repealed by Committee Proposal 3, section 4, when last bonds issued pursuant thereto. It seems logical, therefore, simply to leave those sections outside the new scheme of section numbers.

COMMITTEE PROPOSAL NO. 3

A PROPOSAL

Amending the Constitution of Pennsylvania further providing for Commonwealth indebtedness.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section four of article eight of the Constitution of Pennsylvania is amended to read:

[Section 4. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasions, suppress insurrection, defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed, in the aggregate at any one time, one million dollars: Provided, however, That the General Assembly, irrespective of any debt, may authorize the State to issue bonds, to the amount of one hundred millions of dollars, for the purpose of improving and rebuilding the highways of the Commonwealth.]

SECTION 7. Commonwealth Indebtedness.—(a) No debt shall be incurred by or on behalf of the Commonwealth except by law and in accordance with the provisions of this section.

(1) Debt may be incurred without limit to suppress insurrection, rehabilitate areas affected by MAN-MADE OR NATURAL disaster, or to implement unissued authority approved by the electors prior to the adoption of this article.

(2). The Governor, STATE Treasurer and Auditor General, ACTING jointly, may (I) issue tax anticipation notes having a maturity within the fiscal year OF ISSUE and payable EXCLUSIVELY from revenues received IN the same fiscal year,

AND (II) incur debt for the purpose of refunding other debt, IF such refunding debt matures within the term of the original debt.

(3) DEBT MAY BE INCURRED WITHOUT LIMIT FOR PURPOSES SPECIFICALLY ITEMIZED IN THE LAW AUTHORIZING SUCH DEBT IF THE QUESTION WHETHER THE DEBT SHALL BE INCURRED HAS BEEN SUBMITTED TO THE ELECTORS AND APPROVED BY A MAJORITY OF THOSE VOTING ON THE QUESTION.

(4) Debt may be incurred without the approval of the electors for capital PROJECTS SPECIFICALLY ITEMIZED in a capital budget, IF SUCH debt WILL not cause the amount of all net debt outstanding to exceed one and three-quarters times the average OF THE annual tax REVENUES deposited IN the previous five FISCAL years as certified by the Auditor General. FOR THE PURPOSES OF THIS SUBSECTION, DEBT OUTSTANDING SHALL NOT INCLUDE DEBT INCURRED UNDER SUBSECTIONS (1) AND (2)(I), OR DEBT INCURRED UNDER SUBSECTION (2)(II) IF THE ORIGINAL DEBT WOULD NOT BE SO CONSIDERED, OR DEBT INCURRED UNDER SUBSECTION (3) UNLESS THE GENERAL ASSEMBLY SHALL SO PROVIDE IN THE LAW AUTHORIZING SUCH DEBT.

(B) All debt incurred for capital PROJECTS shall mature within a period not to exceed the AVERAGE estimated useful life of the PROJECTS AS stated in the AUTHORIZING law, AND

WHEN SO STATED SHALL BE CONCLUSIVE. All DEBT, except INDEBTEDNESS PERMITTED BY SUBSECTION (2), (I), shall be AMORTIZED in SUBSTANTIAL AND REGULAR AMOUNTS, THE FIRST OF WHICH SHALL BE DUE PRIOR TO THE EXPIRATION OF A PERIOD EQUAL TO ONE-TENTH THE TERM OF THE DEBT.

(C) As used in this section, debt shall mean the issued and outstanding obligations of the Commonwealth and shall include obligations of its agencies or authorities TO THE EXTENT THEY are to be repaid from rentals or other charges payable directly or indirectly from revenues of the Commonwealth. Debt, shall not include EITHER (1) THAT PORTION OF OBLIGATIONS to be repaid from charges made to the public for the use of the CAPITAL PROJECTS FINANCED, AS determined by the Auditor General, or (2) OBLIGATIONS TO BE REPAID from lease rentals or other charges payable by a school district or OTHER local taxing authority or OBLIGATIONS TO BE REPAID by agencies or authorities created for the joint benefit of THE Commonwealth and one or more other State governments.

(D) If sufficient funds ARE NOT APPROPRIATED for the timely payment of the interest upon and installments of principal of all debt, the State Treasurer shall set apart from the first revenues thereafter received applicable to the appropriate fund a sum sufficient to pay such interest and installments of principal, and shall so apply the money so set apart. The State Treasurer may be required to set aside and apply such revenues at the suit of any holder of Commonwealth obligations.

Section 2. Sections six and nine of the article are amended to read:

Section [6] 8. COMMONWEALTH Credit not to be Pledged.—The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, CORPORATION OR association. [or corporation]

Section 9. Municipal Debt not to be Assumed by COMMONWEALTH. — The Commonwealth shall not assume the debt, or any part thereof, of any COUNTY, city, [county] borough, INCORPORATED TOWN or township OR ANY SIMILAR GENERAL PURPOSE UNIT OF GOVERNMENT unless such debt shall have been [contracted] INCURRED to enable the [State to repel invasion,] COMMONWEALTH TO suppress [domestic] insurrection [, defend itself in time of war,] or to assist the [State] COMMONWEALTH in the discharge of any portion of its present indebtedness.

Section 3. The existing sections four, five, eleven, twelve, thirteen, sixteen, sixteen, seventeen, twenty-one, twenty-two and twenty-three of article eight of the Constitution of Pennsylvania are hereby repealed.

Section 4. Effective when the last bonds have been issued under their authority, sections twenty-four and twenty-five of article eight of the Constitution of Pennsylvania are hereby repealed.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1968 SESSION

PROPOSAL NO.

A PROPOSAL

Amending the Constitution of Pennsylvania further providing for Commonwealth indebtedness.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section four of article eight of the Constitution of Pennsylvania is amended to read:

Section 7. Commonwealth Indebtedness.—(a) No debt shall be incurred by or on behalf of the Commonwealth except by law and in accordance with the provisions of this section.

(1) Debt may be incurred without limit to suppress insurrection, rehabilitate areas affected by man-made or natural disaster or to implement unissued authority approved by the electors prior to the adoption of this article.

(2) The Governor, State Treasurer and Auditor General, acting jointly, may (i) issue tax anticipation notes having a maturity within the fiscal year of issue and payable exclusively from revenues received in the same fiscal year, and (ii) incur debt for the purpose of refunding other debt, if such refunding debt matures within the term of the original debt.

(3) Debt may be incurred without limit for purposes specifically itemized in the law authorizing such debt, if the question whether the debt shall be incurred has been submitted to the electors and and approved by a majority of those voting on the question.

(4) Debt may be incurred without the approval of the electors for capital projects specifically itemized in a capital budget, if such debt will not cause the amount of all net debt outstanding to exceed one and three-quarters times the average of the annual tax revenues deposited in the previous five fiscal years as certified by the Auditor General. For the purposes of this subsection, debt outstanding shall not include debt incurred under subsections (1) and (2) (i), or debt incurred under subsection (2) (ii) if the original debt would not be so considered, or debt incurred under subsection (3) unless the General Assembly shall so provide in the law authorizing such debt.

(b) All debt incurred for capital projects shall mature within a period not to exceed the average estimated useful life of the projects as stated in the authorizing law and when so stated shall be conclusive. All debt, except indebtedness permitted by subsection (2) (i), shall be amortized in substantial and regular amounts, the first of which

shall be due prior to the expiration of a period equal to one-tenth the term of the debt.

(c) As used in this section, debt shall mean the issued and outstanding obligations of the Commonwealth and shall include obligations of its agencies or authorities to the extent they are to be repaid from lease rentals or other charges payable directly or indirectly from revenues of the Commonwealth. Debt shall not include either (1) that portion of obligations to be repaid from charges made to the public for the use of the capital projects financed, as determined by the Auditor General, or (2) obligations to be repaid from lease rentals or other charges payable by a school district or other local taxing authority or obligations to be repaid by agencies or authorities created for the joint benefit of the Commonwealth and one or more other State governments.

(d) If sufficient funds are not appropriated for the timely payment of the interest upon and installments of principal of all debt, the State Treasurer shall set apart from the first revenues thereafter received applicable to the appropriate fund a sum sufficient to pay such interest and installments of principal, and shall so apply the money so set apart. The State Treasurer may be required to set aside and apply such revenues at the suit of any holder of Commonwealth obligations.

Section 2. Sections six and nine of the article are amended to read:

Section 8. Commonwealth Credit not to be Pledged.—The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.

Section 9. Municipal Debt not to be Assumed by Commonwealth.—The Commonwealth shall not assume the debt, or any part thereof, of any county, city, borough, incorporated town or township or any similar general purpose unit of government unless such debt shall have been incurred to enable the Commonwealth to suppress insurrection or to assist the Commonwealth in the discharge of any portion of its present indebtedness.

PLANNING AND SCHEDULING

PRESIDENT BRODERICK. I want to point out that we now have received from the Committee on Style and Drafting today Nos. 1, 2 and 3, is that correct?

DELEGATE PELLETIER. That is right.

PRESIDENT BRODERICK. And they will be on the calendar tomorrow. They will be on the calendar, I might add, for third consideration and final passage tomorrow.

Now, also on the calendar tomorrow we will have the Judiciary Article which is Proposal No. 7, and we hope that we will be able to move that into Style and Drafting.

I want to say right at this point that I am personally glad that I am not on the Style and Drafting Committee, because you are going to have a busy weekend with the No. 7 Proposal; and you also have 4, 5 and 6.

DELEGATE PELLETIER. Mr. President, as I also indicated to you, if you would like us to make the effort and would like to call this body back at 9:00 o'clock, we will attempt to have Proposal No. 6 ready for you at that time. I do not guarantee we can do it, but we shall try.

PRESIDENT BRODERICK. Let me just say this, as far as the Chair is concerned, unless we hear a real objection, I know I will be here and be happy to receive the report. All those delegates who can be here, I urge you to come so that we can accept this report, if it is ready on No. 6, which would be Local Government.

That would give us on the calendar for tomorrow, then, 1, 2, 3 and 6.

So you may have some idea of how we will run, therefore, on Monday we would have up for final passage—well, we would receive 7 on Monday, hopefully, from Style and Drafting, and we could receive 4 and 5 tomorrow from Style and Drafting, hopefully.

DELEGATE PELLETIER. 4, certainly, and hopefully, 5.

PRESIDENT BRODERICK. This would put probably a few more on the calendar for final passage.

Tuesday we would be ready, if Style and Drafting can finish it over the weekend, for the Judiciary. We would be ready to receive that report on Monday and we would vote finally on it on Tuesday.

So that would give us, then, Wednesday to receive the report from Arrangement, Submission and Address to the People and vote on it Thursday, the 29th, the last day.

Now, I recognize Delegate Kline.

DELEGATE KLINE. Mr. President, I gathered from what you said that you hoped to take a final vote on Proposals Nos. 1, 2 and 3 tomorrow.

PRESIDENT BRODERICK. That is right.

DELEGATE KLINE. I would like to ask you to check with your Parliamentarian and see if there are any amendments to those proposals tomorrow, whether we could pass them finally tomorrow.

PRESIDENT BRODERICK. First of all, we have not received any amendments to Proposals Nos. 1, 2 and 3.

No. 2, if they are, they will be on our calendar under third consideration and final passage and amendments can only be accepted with the consent of the majority of those present. We have no amendments and, therefore, if we have no amendments, no debate, we could finally pass 1, 2, and 3.

I do think it is very important that we keep up with the schedule so that we can get passage of 1, 2 and 3 tomorrow, because, please remember we have not given Arrangement, Submission and Address to the People very much time. Even under this stepped-up schedule they will have to come in with a report next Wednesday that we will have to amend, accept and adopt on Thursday.

DELEGATE KLINE. Mr. President, I appreciate your concern and enthusiasm, but you have not answered my question. I will restate it. You can check with the Parliamentarian if you like:

In the event there happens to be amendments to 1, 2 and 3 tomorrow, can we pass them tomorrow after the amendments.

PRESIDENT BRODERICK. No, it will have to lay over until Monday.

DELEGATE KLINE. Thank you, Mr. President.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup. For what purpose does the gentleman rise?

DELEGATE STROUP. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE STROUP. On third consideration what is the vote that is required in order to have an amendment adopted?

PRESIDENT BRODERICK. On third consideration, moving it over to final passage only requires a simple majority, but for final passage you are going to require 82 votes. Now, did I answer your question?

DELEGATE STROUP. Mr. President, then I am slightly confused, I must admit that. I was under the impression that on third consideration for an amendment to be adopted it requires 82.

PRESIDENT BRODERICK. I thought you asked what the vote was to move it from third consideration to final passage. What is your question again?

DELEGATE STROUP. My question is with relation to an amendment on third consideration. I thought you stated, and this is what puzzles me, that a majority of those present could pass an amendment on third consideration.

PRESIDENT BRODERICK. Let me state it again. On third consideration, before this body can consider an amendment, it requires the consent of a majority of the delegates here to receive the amendment.

Now, if the majority of the delegates vote to consider the amendment and receive it, receive and consider it, then in order to pass that amendment a majority again is necessary. There will be two votes.

DELEGATE STROUP. If I understand this, tomorrow on amendments on third consideration, if we have 120 present, it will take only 61 to adopt the amendment. Am I right?

PRESIDENT BRODERICK. The majority of those present, first for a consent to receive the amendment and the same majority of those present to pass the amendment.

DELEGATE STROUP. Mr. President, this changes my thinking on amendments on third consideration considerably. I was under the impression that it would require a majority of the entire delegation to get an amendment on third consideration passed.

PRESIDENT BRODERICK. I will be happy to read that section of the Rules. Would you give me the Rules, please? The only thing we need is the Rule Book.

First of all, may I call Delegate Stroup's attention to the Rules on page 43. It says: "The Proposal as reported by the Committee on Style and Drafting may be amended upon consent of a majority of the delegates present."

That is on page 43, number 11, of the Rules.

DELEGATE PELLETIER. Mr. President, I direct your attention to page 45 under Rule 27, sub-Section 2, regarding amendments. How do you justify that decision when it clearly states that no amendment may be offered on first consideration or final passage?

PRESIDENT BRODERICK. I will be glad to answer that for you.

Third consideration and final passage are different. We first take up third consideration and then agree to move it from third consideration to final passage, and when is moved over to final passage there can be no amend ment.

DELEGATE PELLETIER. Then we need another day?

PRESIDENT BRODERICK. We do not need anothe day because, according to the Parliamentarian, we ca accomplish both on the same day, unless it is amended. it is amended, it goes back to Style and Drafting an comes back again.

The Chair recognizes Delegate Stroup.

DELEGATE STROUP. I know now, Mr. President, yo have conferred with our Parliamentarian and I shall abid by the decision made by the Chair, which changes m thinking process with relation to amendment on third co sideration. I shall restate it, as I understand it, for th benefit of the delegates and also for myself.

If any of us in this hall tomorrow would offer an amend ment on third consideration, it requires only a majorit of those in their seats and voting at that time to carr that amendment, am I correct?

PRESIDENT BRODERICK. That is right, and it als requires the consent of the majority to offer the amend ment to introduce it. We are going to have two votes.

DELEGATE STROUP. I understand that, but tha makes it much easier to amend on third consideration, a many of us here have believed before.

PRESIDENT BRODERICK. They are the rules we hav been working under and have adopted.

DELEGATE ABERMAN. Mr. President, may I call you attention for the moment to page 44 which is the sourc of my confusion. In the second paragraph of Item 14 Rule 26 where it says that no amendment to the Con stitution shall be deemed passed—

PRESIDENT BRODERICK. Just a moment. Where ar you?

DELEGATE ABERMAN. On page 44, second paragrap of Item 14 of Rule 26. In the third line it says no amend ment to the Constitution unless a majority of 82. It doe not say final passage.

PRESIDENT BRODERICK. The Parliamentarian say that is what it means, we need a vote of 82 for final pas age.

DELEGATE ABERMAN. This is the source of the con fusion. It does not say "final passage."

PRESIDENT BRODERICK. I can only say that every body must have been confused except the Parliamentar ian.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Del gate Desmond. For what purpose does the gentleman rise

DELEGATE DESMOND. I rise for a point of order.

PRESIDENT BRODERICK. The gentleman will state i

DELEGATE DESMOND. I have a doubt whether or n we have a quorum. Will you please call the roll and d termine that?

A DELEGATE. May I ask a question of follow-up o the senator's interpretation of the rules?

DELEGATE IRVIS. Mr. President, I do not mind stan ing here and yielding until all the learned gentlemen as questions about parliamentary procedure, but I would sug gest to the Chair that, inasmuch as I am standing he

with a separate question, the Chair rule on the quorum call and then that I be recognized so I might ask a separate question.

PRESIDENT BRODERICK. I am advised by the Parliamentarian that it requires 12 people to request a call of the roll. I just want to say, for what purpose are we worried about a roll call now?

DELEGATE IRVIS. I do not know. I did not suggest that, Mr. President.

PRESIDENT BRODERICK. I just want the body to know that we are ready for a motion to recess until 9:00 o'clock to accept another report, and we have no further business to conduct now.

As far as we are concerned, on these parliamentary questions, I want you to know I do not mind trying to answer them, but here is the Parliamentarian, here is the Rule Book, and he will be glad to stay here and answer them.

Now, I recognize Delegate Hocker.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis. For what purpose does the gentleman rise?

DELEGATE IRVIS. I rise for a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE IRVIS. I simply want to get one point clear for the delegates here. Is there any intention on the part of the Chair of conducting any other business at 9:00 o'clock tonight other than the acceptance of the report of Style and Drafting?

PRESIDENT BRODERICK. No, the Chair has no intention to accept any other business at 9:00 o'clock tonight except the report from Style and Drafting. The session was called the same as this session, to get a report in to expedite it so we can get these things on the final passage calendar tomorrow.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla. For what purpose does the gentleman rise?

DELEGATE PASQUERILLA. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE PASQUERILLA. Mr. President, so that we may all understand what the procedures are going to be now that we are getting into third consideration, can we follow up on the Senator's question? Assuming that we have 120 delegates here, it will take 61 votes to consider an amendment, is that correct?

PRESIDENT BRODERICK. That is right.

DELEGATE PASQUERILLA. It will take 61 votes to pass the amendment, is that correct?

PRESIDENT BRODERICK. That is right.

DELEGATE PASQUERILLA. But it will take 82 votes to finally pass what?

PRESIDENT BRODERICK. To finally pass the proposal.

DELEGATE PASQUERILLA. It takes 82. Now, if there are 120 people here, it will take 82 votes to pass Proposal No. 1, am I correct?

PRESIDENT BRODERICK. Absolutely.

DELEGATE PASQUERILLA. I just want everybody to understand that. Thank you.

PRESIDENT BRODERICK. And also Proposals Nos. 2, 3, 4, 5, 6, 7 and 8. It takes 82 votes for final passage.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate McGeary. For what purpose does the gentleman rise?

DELEGATE McGEARY. I rise for a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE McGEARY. I have been a little bit concerned since Representative Irvis' inquiry this morning. Maybe I misunderstood it. But I had the impression he was more or less asking that nothing important happen tomorrow. Now, I would like to be perfectly understood on this, that I have no plans to reconsider anything. I hope everything stays closed. But I do not think that this body can get in the position of telling anybody that we will not do something tomorrow. I think we should be open to do anything that the group feels it has to do.

PRESIDENT BRODERICK. I would just like to say, when you say we are not going to do anything important tomorrow, I think tomorrow we are going to do some of the most important work we have ever done, and that is, pass Proposals Nos. 1, 2—3, and maybe 8. To me that is important.

DELEGATE IRVIS. Mr. President, I may have confused more than one delegate by my statement, and that would not be the first time I succeeded in doing that, I am sure. But it was not my intention to ask any cessation of important activity by the delegate body tomorrow. It was simply my purpose to ascertain, if at all possible, what the plans were for tomorrow so that I might draw my own personal plans and make my own personal decisions. That was the only reason.

PRESIDENT BRODERICK. Delegate Irvis, that is the only reason that I took this opportunity to go over the calendar as I think it may be for tomorrow, and the calendar for Monday, Tuesday, Wednesday and Thursday, to give you an idea of what we are faced with.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. I am assuming that a proposal would be up for the final vote, and, as I understand it, it would then be necessary to have 82 votes. What would happen if that proposal—I hope it does not happen—would only get 81 votes?

PRESIDENT BRODERICK. You have just put your finger on the saddest thing that could happen to this Convention.

DELEGATE JIROLANIO. I agree with you. That is why I want an answer. What would happen then?

PRESIDENT BRODERICK. The proposal would fail to pass, and then we have flunked.

DELEGATE JIROLANIO. What would we do in that case when we have four areas to report back to the people?

PRESIDENT BRODERICK. I do not think we are going to have to cross that bridge today. When we do, I am going to make sure the Parliamentarian has the right answer.

DELEGATE JIROLANIO. Could we reconsider it to have another vote on it?

PRESIDENT BRODERICK. I would say we certainly can reconsider it. I think we should be able to reconsider it and have another vote.

RECESS

PRESIDENT BRODERICK. On the motion to recess until 9:30 p.m. the chair is willing to hear objections if there are any.

The Chair hears none, and the Convention is now in recess until 9:30 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro. For what purpose does the gentleman rise?

DELEGATE SHAPIRO. I rise for a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHAPIRO. I have a point of order regarding Rule 22.

One of the Philadelphia newspapers last Sunday carried a story to the effect that the Committee on Style and Drafting is attempting to make substantive changes in one or more of the committee proposals.

As a member of the Committee on Style and Drafting, but of my own volition and without the consent of that committee or its chairmen, I tried to check out the truth of this charge that Style and Drafting and its counsel were straying too far beyond their jurisdiction and attempting to substitute their own hackneyed ideas for the substance of the committee proposals.

My investigation has included conversations in depth with members and at least one of the co-chairman of each of the substantive committees, except that on the Judiciary Article.

Mr. Chairman, I have uncovered what I believe to be an outrageous plot to wreck this convention. It appears that each of the substantive committees has given meticulous attention to grammatical construction, has assiduously avoided inaccuracies, repetition, inconsistency and poor drafting and has produced proposals completely free of any differences, conflicts or unresolved matters of substance, thus leaving to the Committee on Style and Drafting nothing on which it might make recommendations.

Mr. Chairman, it appears to me that the substantive committees have completely usurped the function of the Committee on Style and Drafting, a most serious violation of Rule 22.

REPORT FROM COMMITTEE ON STYLE AND DRAFTING ON PROPOSAL No. 6

PRESIDENT BRODERICK. The Chair now recognizes the Chairman of the Committee on Style and Drafting, Chairman Pelletier.

DELEGATE PELLETIER. I stand in place and present Proposal No. 6. Lord help us, we hurried.

COMMITTEE ON STYLE AND DRAFTING

519 North Office Building

February 22, 1968

To the Honorable,
The Delegates Assembled,
1967-68 Pennsylvania Constitutional Convention

Re: Local Government

Mesdames and Sirs:

On behalf of the Committee we are pleased to submit our report on Committee Proposal No. Six relating to Local Government.

This Committee has worked closely with the Co-Chairmen and Counsel of the substantive Committee on Local Government, and we are pleased to report that all the changes in Proposal Six as reported herewith were made with the concurrence of those gentlemen.

The proposed new Article Nine deals comprehensively with the subject of local government, including not only those subjects covered by repealed sections in Articles Eight, Thirteen, Fourteen and Fifteen, but adding new provisions covering home rule charters, residual powers, optional forms of government, intergovernmental cooperation, area government, and initiative and referendum.

We have attempted to adhere closely to the substantive Committee's objectives of providing flexible and forward-looking guidelines for responsible local government in concise, general terms, avoiding the overly specific, unduly restrictive treatment frequently found in other state constitutions.

Following is a summary of the significant changes in drafting effected by this Committee:

I. SIGNIFICANT CHANGES IN STYLE

1. Two steps were taken to clarify Section 2. The four year provision delaying the self-executing home rule charter rights of a municipality was removed from the section and placed in the schedule, in view of the anticipated long term life of the Article. The sentence on self-executing home rule was re-drafted to clarify the fact that the voters of a municipality or its governing body may place the question of adoption of a home rule charter directly on the ballot or may place a proposed procedure for the framing, adoption, amendment or repeal of a charter on the ballot.

2. Section 7 was clarified to allow for the granting of powers directly to area government, in accordance with what was understood to be the intention of the Committee.

3. The provision as to Local Reapportionment was changed to conform to the style and usage in Proposals Nos. One and Two relating to reapportionment of the Commonwealth. This was done with the approval of the Co-Chairmen of the substantive committee and of its sub-committee.

4. Section 13 has been placed into the draft rather than merely referred to. This is an identical copy of existing Article 14, Section 8 which relates exclusively to Philadelphia. Two changes were made in cross references. These changes were cleared in advance with Special Counsel for the City of Philadelphia.

5. The definition section was changed in two respects. To clarify the Committee's intent, the phrase "any similar form of government" in the definition of "municipality" was changed to "general purpose unit of government." It was felt that this language better expressed the Committee's intention since the characteristic of municipalities which is common to all is the fact that they are "general purpose." In order to clarify the intention of paragraph 5, the definition of the word "initiative" has been changed to allow for the initiative to take place within an area affected as well as municipality affected. Language stating that no enabling legislation shall be required for initiative was also added at the suggestion of the substantive Committee.

6. The language of the schedule was simplified by sorting out and restating the effective dates of the various provisions. The self-executing home rule was made effective four years after adoption if the General Assembly fails to act within that time.

7. The provisions in Section 4 relating to Optional Form of County Government do not in the opinion of the Committee constitute a total "form of government," and the language of Section 4 has been changed to be in accord with this thought.

8. Minor changes were made in Sections 5, 7 and 8 so as more clearly to state the intention of the substantive Committee.

9. In a number of instances the phrase "as provided by the General Assembly" was changed to read "as provided by law," for the sake of consistency. Additional minor changes in punctuation and wording were made with the concurrence, or at the suggestion, of the representatives from the substantive Committee.

II. PROBLEM AREAS

1. Definition of Procedural Matter. An attempt was made to define the words "procedural matters." After extensive debate and discussion, the suggestion of the Local Government Committee Co-Chairmen, that the word be left for later definition by the courts, was accepted. The argument made was that since the instructions are to the General Assembly which has broad powers in any event, the greatest danger lay in overly restricting the definition. It was felt that the General Assembly could be relied on to act in the best interest of the Commonwealth.

2. The last sentence of the schedule was reviewed and, after discussion with Counsel for the Convention, amended. While the Style and Drafting Committee felt that the sentence should be excluded, they were informed that it had been included on the basis of discussion by the Local Government Committee and Counsel for the Convention; they therefore included the sentence as amended.

Respectfully submitted:

COMMITTEE ON STYLE AND DRAFTING
By: ROY H. JOHNSON
LAWRENCE L. PELLETIER
Co-Chairmen
WPH:AMF:met

Commonwealth of Pennsylvania

CONSTITUTIONAL CONVENTION

1967-1968

* * *

February 29, 1968.

The Honorable,
The Delegates Assembled,
Pennsylvania Constitutional Convention

Mesdames and Sirs:

The Committee on Style and Drafting is pleased to submit this abbreviated report. As the Delegates are aware, the Committee returned Committee Proposal No. 7 relating to the Judiciary late last evening. The purpose of this report following that submission pursuant to Rule 22 is to insure that the Convention's record properly indicates that the Committee discharged its responsibilities.

At the outset, the Committee wishes to acknowledge the assistance of Frank Garber, Esquire and Alice Drayer, both of the Legislative Reference Bureau. Without their unstinting cooperation all day yesterday and for half the night last night, the marked copy of Proposal No. 7 would not have been available. We also wish to note on the record that the many young ladies of the Legislative Reference Bureau who typed and proofed copy throughout the night, though nameless, deserve our deepest appreciation. In this same regard, our Counsel and the Committee acknowledge the long hours of discussion and writing spent by Counsel to the substantive committee, Carter Buller, and Arthur Frankston, that committee's research director.

Due to the pressure of time with respect to the Convention's desire that this proposal be returned on third consideration as soon as possible, we wish to advise that the most concentrated efforts were devoted to the body of the proposed article; this Committee's consideration of the schedule was deliberately limited to serious matters of grammatical expression and rearrangement of sections

to insure more logical presentation. This explanation is offered not as excuse, but solely to insure that the Delegates are aware that this Committee does not concur in the necessity for detailed schedules which are "legislative" in character. The circumstances of the moment as well as the practicalities of life required that we acquiesce in the substantive committee's judgment on this point.

As the Committee has reported previously, we consider hereafter the significant matters of drafting.

1. In every instance a conscious attempt was made to reenforce, in the matter of expression throughout the article and schedule, the concept of a "unified judicial system". Thus, at Section 1, the listing of courts precedes the statement of the justice of the peace. Having established that identification, the Committee thereafter referred to courts and justices of the peace in the unified judicial system.

2. The arrangement of the sections within the article was also considered and some sections rearranged. For example, following the several sections relating to the jurisdiction of the several courts in the unified judicial system, the Committee inserted the sections relating to the definition of judicial districts and to the concept of judicial administration.

3. The sections relating to election or appointment of judicial officers were rearranged and detailed section references inserted. While the Committee would agree that extensive cross-references in a constitutional document is not the best stylistic approach, the sense of the Committee was that these sections were so detailed that clearly identified cross-references within the section and to other sections were mandatory.

4. We would note our preference that the section relative to the referendum on the question of a qualifications commission be included in the schedule. However, after consideration by the Committee and consultation with the Co-Chairmen of the substantive committee, it was agreed that doing so would unnecessarily delay returning this Proposal to the Convention on third consideration calendar.

5. Undoubtedly some question will be raised respecting the Committee's decision to acquiesce in the inclusion of a detailed description of the organization and functions of a Judicial Inquiry and Review Board. The Committee concurs in the judgment of the substantive committee. This greater concern for detail is necessitated by the fact that the concept here contained is new to the Commonwealth. As a result, it is necessary that the wishes of the Convention be explicit. Once the concept has found acceptance and has functioned for a period of time, the detailed explanation can be amended out of the Constitution.

6. As the Committee has recommended in previous reports, we note with appreciation the promptness with which the Judiciary Committee met to act upon certain ambiguities and unresolved issues. Thus it was possible that this Committee could continue its deliberations in conjunction with sub-committees to the substantive committee, reviewing proposed language at the same time the standing committee was making a determination on the substantive matters involved.

7. Finally the Committee, in the brief time available for consideration and working from marked copy, sought to insure uniformity in expression, clarity by the judicious use of punctuation, and brevity of expression. We regret the necessity of so many correctional amendments this morning, but the Committee's recommendations were submitted on marked copy and time would not permit the usual repeated review sessions necessary to insure that the human errors in marking and transcription had been deleted.

Respectfully submitted,

COMMITTEE ON STYLE AND DRAFTING
By: ROY H. JOHNSON
LAWRENCE L. PELLETIER
Co-Chairmen

ANF/

PRESIDENT BRODERICK. Thank you.

The Chair accepts the report from Style and Drafting in connection with Proposal No. 6. It will be placed on the record, printed and be on the calendar, we hope, tomorrow. I think the fellow delegates will join me in thanking the Committee on Style and Drafting for working so hard to get in this report.

While we are thanking them, I think we should also remind them that we are expecting them to work this weekend so they will also produce a report on the judiciary, we hope, on Monday.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Leach.

DELEGATE LEACH. Mr. President, I move that this Convention do now adjourn until Friday, February 23, 1968 at 9 a.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Leach and seconded by Delegate Harding that this Convention do now adjourn until Friday, February 23, 1968 at 9 a.m., e.s.t.

The motion was agreed to, and (at 10:10 p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 **Friday, February 23, 1968** **Number 50**

The Convention was called to order at 9 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND HENRY J. SHARP, pastor of the Episcopal Church in Oaks, Pennsylvania, offered the following prayer:

Let us pray: O Lord, our heavenly Father, look with Thy favor upon our land and people. Though we may not always be deserving, Thou hast made us great among the nations of this earth. Let us not forget that this place and this power have come to Thee, and that we have them as a trust to use in Thy service. Save us from pride and arrogance; help us to see and respond to the needs of others.

Guide, we pray Thee, those to whom has been committed the leadership of this nation and this Commonwealth; grant to them gifts of wisdom and understanding, of counsel and of strength, that they may uphold what is right and follow what is true.

And to those, O Father, gathered here in behalf of the people of this Commonwealth, grant integrity of purpose and devotion to their cause, that they may be worthy of their high calling to serve their fellow men; all of which is asked through Jesus Christ. Amen.

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance to the Flag was recited by the Convention, led by Delegate Redick.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. There are no Journals to be approved this morning.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

DELEGATE MICHENER. Mr. President, I want to submit the following requests for leaves of absence:

The delegate from the 9th District, DELEGATE HEYBURN for a funeral;

The delegate ex officio, DELEGATE IRVIS for a funeral;

The delegate from the 37th District, DELEGATE REDICK because of registration;

The delegate ex officio, SENATOR KLINE, on account of business.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Dumbauld	Leonard	Sahli
Amsterdam	Erwin	Levin	Scales
Aurentz	Fagan	Manderino	Scarlett
Bagenstose	Fawcett	Mangery	Scott
Baldrige	Fay	Mattioni	Scranton
Baldus	Feather	McGeary	Sebastian
Baldwin	Fohl	Meyer	Shapiro
Banes	Gerber	Michael	Shettig
Barron	Goldstein	Michener	Shively
Barry	Gouger	Miller, D.	Shoemaker
Benedict	Gray	Miller, R.	Shrager
Benfield	Griffith	Moorhead	Silverman
Bloom	Hannum	Morton	Solomon
Braham	Harding	Nelson	Sprogell
Broderick	Hatter	O'Donnell	Stout
Brown	Henderson	Orban	Strickler
Buck	Himes	Orbin	Swope
Bunting	Hocker	Otto	Tate
Burkholder	Hook	Pasquerilla	Thomson
Camardella	Hostetler	Pelletier	Thornburgh
Caputo	Huggins	Popil	Tomascik
Caron	Jirolanio	Pott	Tully
Casey	Johnson	Powell	Van Sant
Clinger	Kauffman	Prendergast	Waldron
Cortese	Keller, J.	Rappaport	Warman
Cosetti	Keller, M.	Rea	Welsh
Croop	Kelly	Redick	Westerberg
Cunningham	Kelli	Reynolds	Whittum
Curran	Laputka	Richter	Wilcox
Dalley	Leach	Roberts	Woodring
Desmond	Lee, L.	Rovner	Woodside
Devlin	Leinbach		

PRESIDENT BRODERICK. The electric roll call tabulator indicates that we have 126 delegates present.

The Chair also notes the presence of the following delegates:

Allison	Filson	Markley	Percey
Bashoff	Goldman	McGlynn	Quiles
Butera	King	More	Ruth
Cain	Lee, K.	Murray	Stroup
Corey			

CALENDAR

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of **Committee Proposal No. 1, Printer's No. 21**, entitled:

Amending the Constitution of Pennsylvania providing for apportionment of legislative districts.

On the question,

Will the Convention agree to the proposal on third consideration?

PRESIDENT BRODERICK. The question is, will the Convention agree to advance Proposal No. 1 to final passage?

The Chair wishes the members to know that when a matter is on for third consideration and is called up, that this is the last opportunity to amend the proposal. Before an amendment may be received, however, the delegate who wishes to offer an amendment must obtain the consent of a majority of the delegates present.

The Chair recognizes Delegate Hook.

MOTION FOR PERMISSION TO RECEIVE HOOK AMENDMENT TO COMMITTEE PROPOSAL No. 1

DELEGATE HOOK. Mr. President, I would like to offer the following amendment to Proposal No. 1.

PRESIDENT BRODERICK. Would the delegate please state briefly what his amendment is in order that the body may vote as to whether they wish to receive your amendment.

DELEGATE HOOK. Mr. President, the amendment I am asking to present to this body is the amendment that I presented on the first day of our discussion on legislative apportionment and this amendment itself was never voted upon by this body. It particularly has to do with the matter of striking out the numbers "50" and "203" and allowing this to be determined by the reapportionment commission under Section 17 and approved by the General Assembly. This is a matter that I am vitally concerned with and I feel that a constitution should be stated without numbers being used.

PRESIDENT BRODERICK. The question before the Convention is whether the Convention will receive this amendment now, not whether they will accept the amendment, or not, only whether they will receive it from you.

DELEGATE HOOK. Mr. President, the purpose for bringing this forth at this time is the fact that I felt at the time I originally introduced this amendment that it was amended and the effect of that amendment was to put a requirement of two-thirds of the approval of the General Assembly. I felt myself that I had to bring this back to the Convention and let it be voted upon as is, and striking out the numbers that are shown. The reason for this is, I feel to freeze into the Constitution the figures 50 and 203 is a grave mistake. In this day and age, we do not know what the requirements of the General Assembly are going to be. We know there are various movements in process to reduce the size of the Legislature. We also know that in the Federal situation in Washington, where they have used the figure of 435, this is not actually in the Constitution of the United States. No numbers at all are mentioned. This is almost identical language as used in the Federal Constitution. I feel this gives to the State a much broader method of apportionment. I, therefore, would request that the delegate body here allow me to introduce this and approve not this particular amendment at this time but allow me to bring it upon the floor so we can discuss it and complete it. Win, lose or draw, I will accept the verdict of the delegates here, but I would like to have the opportunity of other delegates expressing an opinion on this to me and to have them speak on this matter.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I, unfortunately, take the position that to allow this proposed amendment to be discussed at this time will just be a re-hash of everything that we did for practically four days. We are now getting towards the end of the Convention. Of course, if you want to continue to get the Convention in a state of confusion, in a state where nothing is going to be accomplished, this is one of the things that will lead into that.

This body spent practically four complete days on the matter that we have now before us on third reading. To re-hash it would be unfair to the people who took part, it would be unfair to the men who are not here today, and certainly it would not be in the best interest to say that some men would like to discuss this again. This is only repeating what was repeated for four days. If a vote is given in the affirmative, that will only mean we will continue wasting time in re-hashing things.

Therefore, I definitely oppose this proposed right to have the consideration of this particular amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Michael.

DELEGATE MICHAEL. Mr. President, I think Delegate Jirolanio has brought up the issue that we should consider today. He has said that this matter was re-hashed over the four days and I think this is the point we need to make: This particular proposal was not discussed. If you remember, Governor Scranton mentioned that in the Federal Constitution there are no numbers listed for the House of Representatives. He felt that this would be something for us to consider. We did not consider that issue. We haggled over an amendment and we never got to the discussion of the issue. I think, for us to go home feeling satisfied that we have given full and fair consideration to the whole issue of apportionment, we must discuss the idea of having no numbers stated in the Constitution for the House of Representatives. I think, in all fairness to us and to our constituents back home, we should discuss this issue and I think, along with Delegate Hook, that the rest of us would certainly agree, if it has been debated fairly and voted upon fairly, then we can go home feeling satisfied that we have done the will of the Convention on apportionment.

I, too, would urge that we at least consider the amendment that Delegate Hook has presented this morning.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I believe that after Delegate Hook has spoken in favor of his present proposal, the question would be in order.

DELEGATE ROBERTS. I second that.

PRESIDENT BRODERICK. You are making a motion. I want you to restate it. It was seconded by Delegate Roberts. What is your motion?

DELEGATE SOLOMON. My motion is that we consider the question after Delegate Hook has spoken and close the debate.

DELEGATE BALDRIGE. Mr. President. It was stated

that we never voted on the number of representatives. I respectfully call the Chair's attention to an amendment which was voted down by a vote of 117 to 32 on what I believe was the second day of discussion of this. It was the Orbin amendment in which they were striking out the number 203 and leaving the representative districts no number.

DELEGATE HOOK. That is not correct, Mr. President.

PRESIDENT BRODERICK. I just want to say to Delegate Baldrige that when the Hook amendment came to the desk for duplication, I had the Parliamentarian and the clerk check the amendments to see if this was one that had been voted on. Now, we will recheck that.

Apparently we did not vote on it

DELEGATE HOOK. I would like to make a clarification.

The Orbin Amendment said "not more than 203."

DELEGATE BALDRIGE. No, Mr. President, I think I have it right here in front of me.

It says "not more than." It struck out the 203.

DELEGATE HOOK. I believe I would like to interrogate Delegate Orbin on that.

PRESIDENT BRODERICK. Would the assembly be at ease so that we can see whether we voted before on this?

We have checked the amendments. We find no amendment having been voted upon.

I have a motion before the Convention, and the motion is that the debate on this question be closed and that we vote on the pending question after we hear from Delegate Hook. I am going to unlock the voting machine on that motion, and all those in favor of closing the debate and voting on the pending question, after we hear from Delegate Hook, will vote "yea," those against the motion will vote "nay."

On the question,

Will the Convention agree to receive the amendment?

The roll was recorded as follows:

YEAS—89

Aberman	Fagan	Leonard	Rea
Amsterdam	Fay	Manderino	Redick
Bagenstose	Feather	Mangery	Reynolds
Baldrige	Goldstein	Mattioni	Richter
Baldwin	Gouger	McGeary	Roberts
Banes	Griffith	Meyer	Rovner
Benedict	Hannum	Michael	Sahli
Benfield	Harding	Miller, R.	Scales
Bloom	Hatter	Moorhead	Scarlett
Braham	Henderson	Murray	Sebastian
Broderick	Hook	Nelson	Shapiro
Brown	Hostetler	O'Donnell	Shrager
Buck	Jirolanio	Orban	Solomon
Bunting	Johnson	Orbin	Stout
Burkholder	Kauffman	Otto	Strickler
Butera	Keller, J.	Pasquerilla	Swope
Corey	Kelly	Pelletier	Thomson
Cortese	Krill	Popil	Tomascik
Cunningham	Laputka	Pott	Tully
Dailey	Leach	Powell	Warman
Desmond	Lee, L.	Prendergast	Welsh
Devlin	Leinbach	Rappaport	Westerberg
Erwin			

NAYS—39

Aurentz	Croop	Keller, M.	Sprogell
Baldus	Curran	Levin	Tate
Barron	Dumbauld	Michener	Thornburgh
Barry	Fawcett	Miller, D.	Van Sant
Camardella	Filson	Morton	Waldron
Caputo	Gerber	Scranton	Whittum
Caron	Gray	Shettig	Wilcox
Casey	Himes	Shively	Woodring
Clinger	Hocker	Shoemaker	Woodside
Cosetti	Huggins	Silverman	

NOT VOTING—35

Allison	Fleming	Irvis	Pechan
Bashoff	Fohl	King	Percey
Brennan	Forster	Kline	Quiles
Cain	Fortney	Lane	Ruth
Clark	Gabreski	Lee, K.	Scott
Conley	Gehrlein	Markley	Sharp
Donaldson	Goldman	McGlynn	Stroup
Donolow	Heyburn	More	Wilmarth
Fineman	Horne	Musselman	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

DELEGATE HOOK. Mr. President, I move the question.

A DELEGATE. I second it.

PRESIDENT BRODERICK. Therefore, the question before the House is will the Convention agree to receive the amendment to Proposal No. 1, Printer's No. 21, which Delegate Hook wishes to offer.

We will now unlock the voting machine and proceed to vote on that question alone, whether we wish to receive the amendment for the purpose of consideration.

Did we ring the bell for those on the outside, if there may be some out there to come in?

The question recurs,

Will the Convention agree to the amendment offered by Delegate Hook?

The roll was recorded as follows:

YEAS—54

Amsterdam	Clinger	McGlynn	Sebastian
Bagenstose	Cosetti	Michael	Shapiro
Baldus	Dumbauld	Michener	Shively
Barry	Fawcett	Miller, R.	Sprogell
Bloom	Filson	Morton	Stout
Braham	Gerber	O'Donnell	Strickler
Broderick	Hocker	Orbin	Swope
Brown	Hook	Otto	Tate
Buck	Huggins	Pelletier	Thornburgh
Bunting	Johnson	Popil	Tomascik
Burkholder	Kelly	Richter	Welsh
Caputo	Leinbach	Scott	Whittum
Caron	Mangery	Scranton	Woodside
Casey	Mattioni		

NAYS—78

Aberman	Fay	Lee, L.	Reynolds
Aurentz	Feather	Leonard	Roberts
Baldrige	Fohl	Levin	Rovner
Baldwin	Goldstein	Manderino	Sahli
Banes	Gouger	McGeary	Scales
Barron	Gray	Meyer	Scarlett
Benedict	Griffith	Miller, D.	Shettig
Benfield	Hannum	Moorhead	Shoemaker
Butera	Harding	More	Shrager
Camardella	Hatter	Murray	Silverman
Corey	Henderson	Nelson	Solomon
Cortese	Himes	Orban	Thomson
Croop	Hostetler	Pasquerilla	Tully
Cunningham	Jirolanio	Pott	Van Sant
Curran	Kauffman	Powell	Waldron
Dailey	Keller, J.	Prendergast	Warman
Desmond	Keller, M.	Rappaport	Westerberg
Devlin	Krill	Rea	Wilcox
Erwin	Laputka	Redick	Woodring
Fagan	Leach		

NOT VOTING—31

Allison	Fineman	Horne	Pechan
Bashoff	Fleming	Irvis	Percey
Brennan	Forster	King	Quiles
Cain	Fortney	Kline	Ruth
Clark	Gabreski	Lane	Sharp

Conley	Gehrlein	Lee, K.	Stroup
Donaldson	Goldman	Markley	Wilmarth
Donolow	Heyburn	Musselman	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MICHENER. May I ask the clerk if a vote was recorded for Delegate Brennan?

PRESIDENT BRODERICK. We will check.

Delegate Brennan is recorded as having voted.

DELEGATE MICHENER. I don't see Delegate Brennan here.

DELEGATE BROWN. He is not here, but he asked me to vote for him.

PRESIDENT BRODERICK. Delegate Brown, in accordance with the rules, unfortunately, one delegate cannot vote for another delegate, except pursuant to the rules.

APPEAL FROM RULING OF THE CHAIR

DELEGATE BROWN. I will take an appeal.

PRESIDENT BRODERICK. This is in the rules.

The Chair is now going to order the vote of Delegate Brennan stricken.

DELEGATE JIROLANIO. As I understand it, the vote was already announced by the Chair. If I understand parliamentary proceedings, you have to challenge the question of the vote before the vote is announced by the Chair. You announced the vote.

PRESIDENT BRODERICK. I did announce the vote. Just one second and we will rule on that.

DELEGATE JIROLANIO. All right.

APPEAL WITHDRAWN

PRESIDENT BRODERICK. The Chair recognizes Delegate Brown.

DELEGATE BROWN. I will take a lady's prerogative and now change my mind. The only reason I did it is because it has been done before. I think so strongly about this I was hoping that, perhaps, we could win this thing.

PRESIDENT BRODERICK. Let me say that this one vote would not in any way change the result, but please be at ease until I get a ruling from the Parliamentarian.

I take it, Delegate Jirolanio, since the appeal was withdrawn, your question to the Chair is now withdrawn, and we may proceed.

DELEGATE JIROLANIO. Yes, Mr. President.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. For what purpose does the gentleman rise?

DELEGATE SHOEMAKER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHOEMAKER. According to the report of the Committee on Style and Drafting, which is on our desk this morning concerning Proposals Nos. 1 and 2, there are several of what they list as substantive recommendations contained therein, some of which may well have considerable merit.

My question is this:

Is there any way that this body can consider those recommendations and, perhaps, adopt the same without throwing the proposal itself back to second consideration?

PRESIDENT BRODERICK. The method for adopting any changes of substance in connection with a proposal that is on third consideration is by the use of the amendment process and, in order to get an amendment, you have to go through the same procedure that we just went through with Delegate Hook's request that this body accept an amendment.

DELEGATE SHOEMAKER. And if such an amendment was then accepted, it would put the proposal back to second consideration?

PRESIDENT BRODERICK. No. The proposal would then go back into Style and Drafting.

DELEGATE SHOEMAKER. And it would come out on third consideration. Am I correct?

PRESIDENT BRODERICK. That is right. It would be in the same position it is in now.

The Chair now recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Does not the rule state that if there is a substantive change Style and Drafting will submit a report to the Convention, and then what does the Convention do with it? There is a special provision in the rules that talks about it, is that right?

PRESIDENT BRODERICK. Yes, indeed.

The delegates can read the report, and the delegates can then make their determination as to whether they wish to amend the proposal. That is the process that we are in right now.

The Chair now recognizes Delegate Devlin.

DELEGATE DEVLIN. Mr. President, I would like to speak on Proposals 1 and 2 that are before you.

PRESIDENT BRODERICK. Only Proposal No. 1 is in front of us.

DELEGATE DEVLIN. I want to reflect on Proposal No. 2 as we go over some of the problems we have on Style and Drafting.

As you know, it was around or about the 8th of February that we passed over Proposals Nos. 1 and 2 to Style and Drafting. Their counsel met with our counsel and we discussed, perhaps, some language changes, grammatical changes, moving a few commas around and taking some extraneous matter out of the original draft. During this time the Committee on Style and Drafting felt that there were some areas that we should have included in Proposals Nos. 1 and 2.

The recommendations or the report that is before you reflects the thinking of our own committee dealing with the numbering of the Senatorial districts. It is the intention of the committee to come out with a report that would have a number in it, 50 Senators, or in this case 203 House Members. We feel that it is quite explicit that

there are 50 Senatorial districts and that they shall be numbered.

We also feel, and we have the advice of counsel of this Convention on this, that the schedule of 1873 pertaining to the odd numbered Senatorial districts running in the presidential year and an even number running in the gubernatorial year is still in force and it is binding upon the amendment, Sections 16 and 17. Therefore, we feel that there is no need to put to this Constitution the technique or the method of numbering the districts.

What was proposed here was brought out on this floor in other proposals, and we feel that this particular method that they wish to use in a sequential numbering of districts, will do two things:

First, it will limit the committee or the men who will do the reapportionment to a particular way of numbered districts.

Secondly, because of the geographic boundary lines not being one under the other, or one beside the other, the word "sequence" has little or no meaning.

In the second part of their report in which they deal with the proposition that a Senator's term shall not expire if his district has been changed very little or not at all, it conflicts with their first proposition that the Senatorial district should be numbered sequentially.

This would mean that a senator whose term would come up on an even numbered year, could not be numbered in a sequence order, but would have to have an even number in that Senatorial district, so this is contradictory and again it would be very difficult for the commission to follow this pattern.

They felt, No. 3, in which the commission would be telling the Supreme Court how to make a finding and when it should come up with its findings and, in effect, write the law that they are asking the Supreme Court to judge upon, is out of the purview of the commission and, although these recommendations were thought out very well, argued very well by counsel for Style and Drafting, our counsel advised us of these particular problems we are now faced with.

The Committee on Reapportionment is perfectly satisfied with the end product that the Committee on Style and Drafting has come up with and placed on your desk for your approval. It is our hope and desire we can move along in this Convention and pass this over for final vote.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. I would like to interrogate a member of the Style and Drafting Committee, if I might, to inquire as to the substance?

PRESIDENT BRODERICK. Will Delegate Gerber yield one second?

DELEGATE GERBER. Yes, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Chairman Johnson of Style and Drafting.

DELEGATE JOHNSON. I think it would be helpful at this point to go over in some detail the report that each delegate has been given from the Committee on Style and Drafting. The delegates have not had an opportunity to read this and it gives the rationale of our approach. It states the limitations of the committee and defines our position. If you will turn to that report, we will consider it in some detail.

All we do, you will note, is pursuant to Rule 22, and rather than read that rule, let us just note that we are given the power first to examine and edit proposals to avoid inaccuracy, repetition and inconsistency or poor drafting, and to consider and make recommendations on any differences, conflicts or unresolved matters of substance.

In addition, in the second place, we have the power to rephrase or regroup language or sections of the proposal as long as the sense, and this is a quotation, "the sense or purpose of any proposal referred is not changed."

The third place to recommend referral of proposal to the originating substantive committee and let us hope this does not happen because of the time limitation.

Four, to resolve any inconsistency or conflict in conference with the originating substantive committee, and failing so to do, to notify the Convention and await its instructions. That Mr. Gerber is what you have reference to in unresolved matters of substance.

We adopted further procedures that are detailed here and, first of all, we distributed for preliminary analysis and comment to the co-directors of the Convention Research Bureau, Mr. John Ferguson, Mr. Harold Alderson, and to the Director of the Convention Drafting Bureau, Frank Garber, and to the counsel of this Committee, and we are indeed fortunate to have two young very able attorneys, Andrew Farley and William Hackney, who have worked far beyond the call of duty in this regard. We called from New York a very eminent consultant, Frank P. Grad, Director of State Constitutional Drafting Studies at Columbia University, who has advised six State Conventions similar to the one which we are now sitting.

The Committee's counsel prepared revision proposals referred to the committee after the second consideration. Our end goal as you know here has always been to critically consider each proposal referred to the committee to be sure that the report finally submitted to this Convention is clear, concise, unambiguous and harmonious in style and manner of expressions within the substantive committee's proposal as amended on second consideration.

I am very grateful to the co-chairmen of this committee, Delegate Fagan and Delegate Devlin, who have worked with us at this juncture and it is my understanding that they are approving our report.

We also have to consider how this fits in with the remainder of the Constitution of 1874. We call attention to the concluding sentence of the middle paragraph:

"Of necessity, the arbiter in making a final judgment with respect to the Committee's report has to be the Committee itself."

Now you have before you, our report in four parts. One is the complete edited text of the Substantive Committee proposal in a clean copy. You will find at the end of the printed report the clean copy in each instance of Committee Proposals 1 and 2. We then have a new print of the proposal of the Substantive Committee as approved by the Convention on second consideration. Here you will find the drafting changes.

We have a resume of the committee's proposals for unresolved matters of substantive and let me make it clear that here we are making no recommendations, we are simply calling attention to these unresolved matters already referred to by Chairman Devlin. No member of the committee has a motion to introduce at this point, but we

do suggest how such proposals might be worded if delegates care to take them up.

Then we have here, of course—this is the document you are now examining—the full text of our narrative in explaining this action.

Now, if I may turn for a moment to the substantive recommendations. We simply call attention to the fact that these districts were once numbered in a normal logical pattern and maps are available to indicate this numbering, starting with some common geographical point. We feel that this is a substantive matter, its omission is serious, but we are not as a committee recommending any action but merely giving the wording of a proposal which we feel will take care of it.

As Delegate Devlin has commented, there is a problem of the continuation of incumbents. We feel that there is a possibility that some Senators would be faced with the prospect of standing for election three times within a six-year period. We do appreciate the changes in the terms of Senators are outside of the call of this Convention. We believe the failure of the Substantive Committee to consider alternative procedures caused by omission, the same result, that is, the term of the Senators are effectively reduced to two years in violation of the present Constitution, Article II, Section 3. We suggest a way out of this dilemma and the wording of that you will find at the top of page 5. Now, as to the effective date, notice that Section 17 provides that a reapportionment plan becomes final in one of three ways. As the Substantive Committee rightly notes, the time schedule set forth in Section 17 is designated to accomplish the reapportionment, including all judicial proceedings as necessary prior to the primary election in the first even numbered years and after the Federal decennial consensus has been officially reported.

But we believe that there is a contingency that ought to be considered. It may be remote, but it does exist. Perhaps, the final apportionment plan would not be available. Whether it is a result of delays in reporting the census or, more likely, because all remedies available to the degree of persons under Section 17 have not been exhausted until after the primary election, but prior to the general election.

The significant problem would then be, is a special primary election held in the new district, or does a nominee from the old district run in the new district? The committee respectfully suggests the following language for the Convention's consideration. You have heard Delegate Delvin's comment, he feels that we are dictating to the Supreme Court if that action is taken.

Let me emphasize again, Mr. President, we are merely calling attention to these matters and the committee has no recommendations.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber for a question.

DELEGATE GERBER. Thank you very much for your very helpful report.

It seems to me that your first recommendation, which appears on page 4, pursuant to the number of Senatorial districts, appears to be an effort to avoid future litigation arising from the present number existing. Was this the thought of some of the members of the Committee?

DELEGATE JOHNSON. Yes. Some of the members of the committee did express that thought, yes.

DELEGATE GERBER. It seems to me, also, that this attempt to obviate the apparent inequities in the numbering of the districts, being on an inconsistent basis, it is a hodge-podge all over the Commonwealth, is that correct, too?

DELEGATE JOHNSON. The committee also considered that, yes.

DELEGATE GERBER. It seems to me, also, that the odd numbered seats which run in a presidential year can tend to favor candidates for a certain party and the even numbered seats, which run in the gubernatorial year, tend to favor candidates of the opposition party. The present numbering system permits numerical gerrymandering, does it not?

DELEGATE JOHNSON. I believe the gentleman is correct, yes.

DELEGATE GERBER. It would also seem to me that, in view of the fact that I know of a proposal that was presented here on the floor at the early part of this Convention and sent to the Committee—a proposal which I introduced—addressed itself to this very problem. Is it this committee's feeling that if this substantive change is not made that the, shall we say, Convention proposal will be pregnant with litigation?

DELEGATE JOHNSON. That could happen, yes.

DELEGATE GERBER. I have no further questions on No. 1.

Now I am addressing myself to No. 2 on page 5.

Mr. President, it seems to me that this gets to the very heart of the most difficult problem of reapportionment. It seems to me that is the most serious problem here. I have three questions and I want to know how these can be answered without this paragraph.

One, what happens when as a result of reapportionment a district is created where there is more than one incumbent and they are not up that year, or one of them is not up that year, depending on the odd and even numbered seats. How do we approach that problem?

DELEGATE JOHNSON. That problem is not resolved in the present Proposals 1 and 2.

DELEGATE GERBER. Secondly, Mr. President, what happens in the situation where an incumbent who is of a district and so much of it is taken away because his district is too small to run from and he is put into another district? How is that resolved?

DELEGATE JOHNSON. That, also, is not resolved.

DELEGATE GERBER. It would appear, then, that the only question that is resolved is when a new district is created and there are no incumbents, then anybody can file, is that right?

DELEGATE JOHNSON. That is true.

DELEGATE GERBER. I thank the gentleman and his committee very much for highlighting these two critical questions, which it seems to me neither Proposal No. 1 nor 2 meet head on.

DELEGATE JOHNSON. Mr. President, our committee is further prepared to go over somewhat in detail, pointing out the changes that were made in preparing what we call the clean copy at the end. Is it your desire or would the delegates want to go over proposals with the help of the committee to see just what changes have been made?

PRESIDENT BRODERICK. Well, Chairman Johnson, this is a decision that I would think would rest in the

hands of your committee. Whether or not you think these delegates would be vitally interested in the changes you made, or whether they are self-evident to them by reading the clean copy and looking at the other copy, would be your committee's decision. I do not want to cut it off if you think it should be done. By the same token, we do not want to just use up time.

DELEGATE JOHNSON. I am quite willing to defer to the will of the delegates. You will find the rationale of the committee approach on pages 6 and 7. If you wish to examine these without the co-chairmen going over them with you, that is quite all right with me.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I have an inquiry which I would like to direct to Delegate Delvin, if he will stand for interrogation.

PRESIDENT BRODERICK. I will ask Delegate Devlin whether he will stand for interrogation.

DELEGATE SHAPIRO. Mr. President, Delegate Devlin referred to a schedule in the 1874 Constitution as still being in force and effect with respect to the numbering of districts. I wonder if he has a copy of that and could read us the provision from the 1873 schedule.

DELEGATE DEVLIN. I do not know, Delegate Shapiro, but I am sure you do.

DELEGATE SHAPIRO. I do not. I am wondering whether it can be provided, whether the Delegates could be given that information. Also, a statement from counsel as to whether or not that schedule provision does remain in force at the present time.

DELEGATE DEVLIN. Mr. President, let me comment on this matter. I think it is Article I of the schedule of 1874 and it simply says that the even numbered districts would run I believe, in 1876. The odd numbered districts would run in 1875. This continued on until 1966.

In 1966 the Supreme Court of Pennsylvania reapportioned the Senatorial Districts of the State and, by their action, they sustained the method of numbering the districts pursuant to the schedule of 1874. So not only is the schedule in force, but the Supreme Court of Pennsylvania has also ruled on it, so we will have a continuation of having 25 senators run in what I call a presidential year and have 25 run in a gubernatorial year. This will continue. This is what Mr. Comisky has advised me. My own counsel, Mr. Davis, also. I am sorry I do not have a copy with me.

DELEGATE SHAPIRO. I would like to suggest that if this matter is as important as I think it is and is as important as Delegate Devlin apparently thinks it is, that before any decision is made on it, the delegates be furnished with a copy of that provision of the schedule and an opinion from counsel for the Convention as to whether or not that is still in effect. This is with all due respect to the legal opinion just rendered by Delegate Devlin. I think we ought to have that information and the benefit of our counsel's opinion on it before we take any action on the committee's report.

DELEGATE DEVLIN. That is a very good point. I think we should do that. Maybe Mr. Davis has a copy of the Constitution.

PRESIDENT BRODERICK. Delegate Shapiro, I am advised by the attorney for that committee that a copy will be provided.

DELEGATE SHAPIRO. The other part of my request is that we be furnished with the opinion of counsel for the Convention as to whether or not that schedule is still in effect.

PRESIDENT BRODERICK. We can get an opinion, but I do not know how quickly. We will certainly try to get an opinion.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber. For what purpose does the gentleman rise?

DELEGATE GERBER. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GERBER. Mr. President, pursuant to a schedule from the former Constitution being in effect, how do we know what will affect from the former Constitution other than this schedule which I know I was not aware of? Are we supposed to consider modification and changes of former schedules we are presently not aware of? This is something completely new to me since I have been here.

PRESIDENT BRODERICK. I take it your question is directed to the chairman of that committee. They did not answer those questions.

DELEGATE GERBER. I do not know who can answer the question, but the question I have is simply this, I am not presented, as would be a member of a different Committee, with certain schedules. I am not aware of what the schedules in that area deals with. I am not aware of whether those schedules are currently in effect.

Some completely new and some different ones have been presented to me here on the floor this morning. This may be a matter of ignorance on my part. If it is, I apologize very sincerely to the Chair. But I never heard of this schedule being carefully applicable at this time.

PRESIDENT BRODERICK. Is there an inquiry similar to the inquiry of Delegates Shapiro when he was asking an opinion as to the applicability of that schedule?

DELEGATE GERBER. Yes. Also the applicability of any other schedule we do not know about right now.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barron.

DELEGATE BARRON. In view of what is an obvious conflict, or problem, at least, and considering the difficulty I had in thrashing through with interim appointments yesterday, it seems to me quite evident that some effort should be made to either plainly schedule this matter in our new articles or, if need be, embrace it within the language of our new article.

PRESIDENT BRODERICK. Does this not depend on what we receive from counsel as an opinion in connection with the question that has been raised?

DELEGATE BARRON. In all deference to learned counsel—and I have great deference to learned counsel, Mr. President,—I suggest that this is an excellent opportunity to make this manifestly plain and clear by saying precisely what we have in mind.

If I may raise another issue, Mr. President, I believe we have a general repealer in this area. How much of the

schedule of the Constitution of 1874 falls by implication with the repealer of the Sections here touched?

There is an applied repealer, certainly if we reworked these sections, be it 16 and 17 or if it is integrated into 16 alone.

PRESIDENT BRODERICK. I realize that what you are raising are important questions of law that have to be decided by counsel first and then by the delegates.

Now I recognize Delegate Braham.

DELEGATE BRAHAM. I wish to express my opinion that any appeal to the former convention, the former schedules, would only be made by the courts in the case of absolute necessity. We are drafting a new Constitution and the common sense of the thing would indicate that we are not providing that our people must look through our Constitution schedule and then look through prior ones to see whether there is anything inconsistent. Ours is the only Constitution.

Now, this is not to say that the Supreme Court, if they found another vacuum, might not be driven to the point of considering prior procedures but we ought not to tolerate the idea that people have to examine this and the prior Constitutions before they decide the question of the Constitutional law of this State.

Furthermore, while there is nothing particular before us, I would like to express my opinion that we ought to receive this opinion, the report of the Committee on Style, with the utmost respect. You see there is not any faction against any other faction, or anything of the sort. When we receive this report of the Committee on Style, it is an appeal from "Philip Sober" to "Philip Drunk." This Committee on Style ought to be our opinion after careful reflection and, therefore, we ought to treat it with the utmost respect. As far as I am concerned, I would be willing to consent to consider any of them because I think they are so important.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Fohl.

DELEGATE FOHL. Mr. President, may I interrogate Delegate Johnson, please?

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE FOHL. With respect to the recommendation on page 4 regarding the numbering of districts, how do other state constitutions handle this?

For example, I do not believe that the most recent constitution, the one in Maryland, establishes as constitutional stature the mechanism for numbering districts. Could you give us a rundown on the other states in the Union?

DELEGATE JOHNSON. I cannot do that in detail, but as you have indicated, there is a varied pattern. Some states do and others do not, but I have not the details on it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, as a member of the Style and Drafting Committee, I think that we are discussing a problem that has been considered and met by the committee. The intention of the committee was to incorporate the decision of the Supreme Court of Pennsylvania, which attached to that decision two maps, one numbering the senatorial districts and the other numbering the representative districts, and it was our intention until such time as the commission met those maps would serve to govern the numbering of this Commonwealth. I think that if the point is to be made, the only point is that when this is printed, this will adopt these maps.

PRESIDENT BRODERICK. The Chair recognizes Delegate Devlin.

DELEGATE DEVLIN. Mr. President, I have this information, and I would like to comment on it.

PRESIDENT BRODERICK. Yes. You may proceed. This is one of the most important discussions we have had in this Convention. We are now up to the question which is, will the Convention agree to advance this proposal for final passage, and I think it deserves careful attention.

DELEGATE DEVLIN. Our committee was charged with revising Sections 16, 17 and 18 of our Constitution. This deals with senatorial district ratios, representative districts and legislative apportionment.

What we are now dealing with is Section 3 of Article II, "Terms of Members." It simply says with regard to senators, "Senators shall be elected for a term of four years and Representatives for a term of two years." You then have to turn to the schedule on page 105 of your blue manual in which these 50 senatorial districts were divided into two groups, and in Section 3—and I will not bore you with the details of this, unless the Chair wants me to—it states that a general election in the years of 1874 and 1875, that 25 senators will run in one of those years and 25 will run in the other, giving you this split senatorial election that we have every four years. I raised the question with Mr. Davis, and he, in turn, spoke to Mr. Comisky. This was what information, what documents, what law, do we use as a commission to keep the divided senate, and he says, "It is a good question."

He said you would have to depend upon the scheduling that refers to Section 2, Terms of Senators and Representatives, which you have little or nothing to do with under the call of this Convention. That, therefore, enforced the schedule and Schedule 3, I believe it is. Terms of Senators, we did not touch that part of the schedule, and that particular section is the force of the law today. What we deal with was strictly 16, 17 and 18. Sixteen deals with reapportionment of the legislative, 17 deals with the senatorial, and 18 is who will do it, and this seemed to me to be a very concise, succinct and a very obvious answer that we are now dealing with things that were not within the call, and it has no bearing at all upon our committee's work.

Therefore, we concluded that we should not touch it under those directions from our counsel.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gerber.

DELEGATE GERBER. May I please interrogate Delegate Devlin?

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE GERBER. Mr. President, pursuant to the advice received from learned counsel, how do they and the delegate explain the fact that the schedule in the 1873 Constitution was not followed in 1966?

DELEGATE DEVLIN. Mr. President, when you ask a layman like me a question like that, I always go to my

counsel. I am sorry, sir, but I cannot answer that question.

DELEGATE GERBER. I cannot interrogate counsel.

DELEGATE DEVLIN. However, I will say this that in 1966, and this is a layman's view, the Supreme Court of Pennsylvania followed the schedule of 1873 in numbering the senatorial districts, and in their court order stated what particular districts will run for two years, and what particular districts will run for four years, therefore, recreating the balance that we have now; 25 run in the even years and 25 run in the odd years.

It seems to me, that this is a direct and simple answer to the question, which is in the affirmative.

DELEGATE GERBER. Is it the committee's position, then, after the reapportionment of 1971, the 1970 census and the election of 1972, that all 50 state senators would run again, half for two years and half for four years?

DELEGATE DEVLIN. I cannot precipitate the thinking of the commission, nor should I, and this is one of the objections I have of putting this material in the schedule or in the Constitution.

The commission is empowered to redistrict the senatorial and legislative districts. I believe everybody will submit to that argument and, in so doing, there "may be," not "shall be," some conflict in which two senators are thrown in the same district, creating a problem of who shall run and for how many years. There may be a situation where there will be a vacancy in a senatorial district, and there may be another problem, if we would take the Committee's report. We would start in one corner of the State and start numbering and, suppose that we start in Erie County, and in that senatorial district up in that section and that is an even number, and that district has not been changed because Erie's population grew to such a degree that you did not have to change it, amend the ratio of one vote one man principal, and it is an even number, and you change it to an odd number.

This, in turn, would create another problem, that is why we say that the commission that we are forming is empowered not only to redistrict the senatorial and representative districts, but they are also empowered to solve the problems that you have brought up.

If the people are not satisfied with the commission's work when it is finished, this Proposal No. 2 allows appeals to be made to the commission, deal with all the problems that you all talked about today and, if you are not satisfied with those decisions, then you could go to the Supreme Court of Pennsylvania. It is our feeling that in situations such as you have referred to, where you have two men in the same district, the Supreme Court will eventually solve that problem, and should.

DELEGATE GERBER. The delegate still did not answer my question with his speech. My question was:

In 1972 when you have the problems that you clearly state your committee did not address itself to, are 50 State Senators going to have to run again and, evidently the delegate does not know the answer.

DELEGATE DEVLIN. Mr. President, I said at the very outset I cannot precipitate the thinking of the commission, what lines it will draw, etc.

DELEGATE GERBER. Was the Commission bound by the schedule of 1873 and, if it is bound by the schedule of 1873 and, if it follows the precedent set in 1966, then in 1972 we are going to have 50 Senators up for election?

I am not trying to precipitate. I am trying to follow precedent.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker. For what purpose does the gentleman rise?

DELEGATE HOCKER. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE HOCKER. I have seen this type of thing happen on the floor of this House many times.

It is the ruling of this delegation that when a man is interrogating he addresses the Chair, and then the delegates, and they do not start hollering at each other.

PRESIDENT BRODERICK. You are absolutely correct Delegate Hocker. That is the proper procedure.

DELEGATE HOCKER. I wish that would be the way it would happen.

It is "Mr. President." It is "Mr. This," or "Mr. That."

PRESIDENT BRODERICK. All questions should be directed to the Chair.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair recognizes Delegate Leach.

DELEGATE LEACH. There is no amendment before the Convention, as I understand it, sir. We are discussing Proposal No. 1, Printer's No. 21, is that correct?

This is what has been presented to us by the Style and Drafting Committee. It appears to me that the co-chairman of the Style and Drafting Committee said a little bit ago that they had met with the committee and they had resolved this.

I, therefore, now move that we consider the adoption of Committee Proposal No. 1, Printer's No. 21, only.

PRESIDENT BRODERICK. The question before the body right now is, will the Convention agree to advance Proposal No. 1 to final passage? I just wish to explain that this is the time and this is the last opportunity to accept amendments. Once it goes over to final passage, we then vote on whether it should be passed finally. Now, are you, in effect, making a motion that we close debate now and vote on the question?

DELEGATE LEACH. Correct, sir.

DELEGATE DESMOND. I second the motion.

DELEGATE SHAPIRO. Mr. Chairman, I have made a request for inquiry for legal opinion—

PRESIDENT BRODERICK. Let me state the motion that is before the Convention, and I will recognize you.

The motion has been made by Delegate Leach, seconded by Delegate Desmond, that debate on the question be closed and we vote on the pending question. We have that motion now.

I recognize Delegate Shapiro.

DELEGATE SHAPIRO. I asked for a legal opinion as to whether or not the schedule that was referred to by Delegate Devlin remains in effect and whether it controls the question. In other words, the committee has made a recommendation that something additional in the way of substance be considered, and Delegate Devlin has replied

that they have considered this matter, but they feel themselves controlled by provisions of the 1873 constitution schedule.

I should like to know for myself, at least, before I vote on any proposal, or any motion to advance Proposal No. 1, whether or not we are controlled by the Schedule of 1873 and, if so, what it says. I do not see how we can vote intelligently without that information before us.

PRESIDENT BRODERICK. Delegate Shapiro, your request for an opinion of counsel was relayed by the Chair to counsel and, like all other lawyers, they cannot give instant opinions. They are working on it. This is a matter that does go to the motion and, I want to, however, point out that I will have to confer with the Parliamentarian and counsel on this, but I do think the two recommendations in the committee report pertain and apply to Proposal No. 2 specifically and not to Proposal No. 1. The Chair is making that as a suggestion, and is right now going to ask the Parliamentarian and counsel if that is not correct before we vote on the motion.

I am advised by the counsel that both of the recommendations in the committee report would apply to Proposal No. 2. Now, this does not mean that you cannot receive your opinion, of course.

DELEGATE SHAPIRO. Mr. President, it would appear to me that Proposal No. 1 deals with districts and the composition of districts, and what we are talking about is the numbering of districts. Proposal No. 2 deals with the composition and procedures of a Commission.

PRESIDENT BRODERICK. I can only tell you what the counsel has said and what the ruling of counsel to that effect is.

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. I would like to reiterate what I said a few moments ago, because we seem to be ignoring it. If we will address ourselves to the schedule attached to Proposal No. 1, it says, "The foregoing . . . amendment shall become effective the year following that in which the next Federal decennial census is officially recorded."

The clear intention of the Committee on Style and Drafting was that this proposal would become effective after the data from the census was available to the commission until such time the cases of the Supreme Court of Pennsylvania, which construed the Constitution of 1873 was to be the law, and under that law in 1966, they attached two schedules to their decision which numbered the districts in accordance with the doctrine of Baker v. Carr and it is that law that this Commonwealth will be governed by until such time as this constitutional amendment is adopted by the people, and the Federal Census Bureau gives the data to the President of the United States, from which you get the results.

PRESIDENT BRODERICK. There is a motion on the floor and the motion is by Delegate Leach, seconded by Delegate Desmond, I believe, that the debate on this question be closed and we vote on the pending question. Now, we will take a vote on that motion, and we will unlock the voting machines.

All those who are in favor that we close the debate and we vote on the pending question will vote "yea," those opposed to the motion will vote "nay."

On the question,
Will the Convention agree to the motion?

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Feather. For what purpose does the gentleman rise?

DELEGATE FEATHER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE FEATHER. If we vote to pass this on final passage, are we adopting Committee Proposal No. 1 as changed by the Style and Drafting Committee as far as wording is concerned.

In other words, are we adopting the clean copy version?

PRESIDENT BRODERICK. Delegate Feather, what we are doing right now is voting to advance Proposal No. 1, Printer's No. 21, which is before you. I might add that you have been given a clean copy of this proposal, so you will see how it reads, and the proposal on the first and second pages shows the changes that have been made. In other words, they are both the same.

DELEGATE FEATHER. Then we are adopting the clean copy of Proposal No. 1, in effect?

PRESIDENT BRODERICK. I am advised that you are not technically adopting the clean copy. You are adopting Proposal No. 1, and Proposal No. 1, the official version, appears on page 1, and page 2 and page 3. The clean copy is for the information of the delegates so that it will make easy reading. They should both be the same.

DELEGATE FEATHER. I do not know if the Style and Drafting Committee intended that. Would it take an amendment by Style and Drafting to put it into the language which they preferred, not substantive changes, but just language changes. Would it take a formal amendment, which may be too late.

PRESIDENT BRODERICK. Frankly, Delegate Feather, I do not quite understand your question.

PROPOSAL No. 1, Printer's No. 21, that was distributed, does include the changes in language that were made by Style and Drafting.

I am going to ask Chairman Johnson or Chairman Pelletier to verify that.

DELEGATE JOHNSON. The answer is "yes," Mr. President.

PRESIDENT BRODERICK. The answer is, yes, and the answer is that the clean copy and the other copy are the same language, when you adopt it.

DELEGATE LEACH. Mr. President, may we proceed to vote. Again, I move the question.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—98

Aberman	Devlin	Lee, L.	Roberts
Aurentz	Erwin	Leinbach	Rovner
Bagenstose	Fagan	Leonard	Sahli
Baldrige	Fawcett	Levin	Scales
Baldus	Feather	Manderino	Scarlett
Baldwin	Filson	Mangery	Scranton
Banes	Fohl	McGeary	Scott
Barron	Goldstein	McGlynn	Sebastian
Barry	Gray	Meyer	Shively
Bashoff	Griffith	Miller, D.	Shrager
Benedict	Hannum	Miller, R.	Solomon

Benfield	Harding	Moorhead	Stout
Brown	Hatter	More	Strickler
Butera	Himes	Morton	Stroup
Camardella	Hostetler	Murray	Thomson
Caputo	Huggins	Nelson	Tomasčik
Caron	Jirolanio	Orban	Tully
Clinger	Johnson	Orbin	Van Sant
Corey	Kauffman	Otto	Waldron
Cortese	Keller, J.	Pasquerilla	Warman
Croop	Keller, M.	Pott	Westerberg
Cunningham	Krill	Powell	Whittum
Curran	Laputka	Reynolds	Wilcox
Dailey	Leach	Richter	Woodring
Desmond	Lee, K.		

NAYS—34

Bloom	Gouger	Pelletier	Shettig
Braham	Henderson	Percey	Shoemaker
Broderick	Hocker	Popil	Silverman
Buck	Hook	Prendergast	Sprogell
Bunting	Kelly	Rappaport	Swope
Casey	Mattioni	Rea	Tate
Cosetti	Michael	Redick	Thornburgh
Dumbauld	Michener	Shapiro	Woodside
Gerber	O'Donnell		

NOT VOTING—31

Allison	Donolow	Goldman	Musselman
Amsterdam	Fay	Heyburn	Pechan
Brennan	Fineman	Horne	Quiles
Burkholder	Fleming	Irvis	Ruth
Cain	Forster	King	Sharp
Clark	Fortney	Kline	Welsh
Conley	Gabreski	Lane	Wilmarth
Donaldson	Gehrlein	Markley	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring. For what purpose does the gentleman rise?

DELEGATE WOODRING. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE WOODRING. Mr. President. May I inquire how Delegate Brennan voted?

DELEGATE BROWN. May I represent Delegate Brennan for a moment?

PRESIDENT BRODERICK. In an unofficial capacity, yes.

DELEGATE BROWN. If Delegate Brennan were here, I am sure he would vote "yes!"

PRESIDENT BRODERICK. In other words, there has been no vote cast for Delegate Brennan, is that correct?

DELEGATE BROWN. Yes.

PRESIDENT BRODERICK. That is in accordance with the rules. Thank you.

PRESIDENT BRODERICK. The question recurs,

Will the Convention agree to advance Proposal No. 1, Printer's No. 21 to final passage?

On the question,

Will the Convention agree to Proposal No. 1 on third consideration?

The roll was recorded as follows:

YEAS—110

Aberman	Fagan	Leonard	Sahli
Amsterdam	Fawcett	Levin	Scales
Aurentz	Fay	Mandarino	Scarlett
Bagenstose	Feather	Mangery	Scott
Baldrige	Filson	McGeary	Scranton
Baldwin	Fohl	McGlynn	Sebastian
Banes	Goldstein	Meyer	Shively
Barron	Gray	Miller, D.	Shoemaker
Barry	Griffith	Miller, R.	Shrager
Basboff	Hannum	Moorhead	Silverman
Benedict	Harding	More	Solomon
Benfield	Hatter	Morton	Stout
Braham	Himes	Murray	Strickler
Broderick	Hocker	Nelson	Stroup
Butera	Hostetler	Orban	Swope
Cain	Huggins	Orbin	Thomson
Camardella	Jirolanio	Pasquerilla	Tomasčik
Caron	Johnson	Pelletier	Tully
Clinger	Kauffman	Pott	Van Sant
Corey	Keller, J.	Prendergast	Waldron
Cortese	Keller, M.	Powell	Warman
Croop	King	Rea	Welsh
Cunningham	Krill	Redick	Westerberg
Curran	Laputka	Reynolds	Whittum
Dailey	Leach	Richter	Wilcox
Desmond	Lee, K.	Rovner	Woodring
Devlin	Lee, L.	Ruth	Woodside
Erwin	Leinbach		

NAYS—28

Baldus	Cosetti	Mattioni	Rappaport
Bloom	Dumbauld	Michael	Roberts
Brown	Gerber	Michener	Shapiro
Buck	Gouger	O'Donnell	Shettig
Bunting	Henderson	Otto	Sprogell
Caputo	Hook	Percey	Tate
Casey	Kelly	Popil	Thornburgh

NOT VOTING—25

Allison	Fineman	Goldman	Markley
Brennan	Fleming	Heyburn	Musselman
Burkholder	Forster	Horne	Pechan
Clark	Fortney	Irvis	Quiles
Conley	Gabreski	Kline	Sharp
Donaldson	Gehrlein	Lane	Wilmarth
Donolow			

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MICHENER. What is the next item to come before this Convention? We are a little confused in my corner.

PRESIDENT BRODERICK. We are now about to finally adopt, I hope, Proposal No. 1.

The question is, will the Convention finally pass this proposal and under the rules, it is required to receive 82 votes. I now unlock the voting machine. All those voting "yea" will vote to pass the proposal finally.

We are ready for the next question.

I want to point out, this Proposal No. 1 has been considered on three different days according to the rules, and it has been agreed to and we are now ready for the question. Will the Convention finally pass this proposal and the Chair wishes to point out for final adoption it requires 82 votes. Are we ready for the question?

DELEGATE SULLIVAN. Mr. President, I move the question.

PRESIDENT BRODERICK. Delegate Sullivan wishes to close debate of Proposal No. 1.

DELEGATE SULLIVAN. Mr. President, I wish to remind the Convention that we have a man on first base, so let us move him along.

And said proposal having been read at length the third time, considered and agreed to,

On the question,
Shall the proposal be adopted?

The roll was recorded as follows:

YEAS—102

Aberman	Fagan	Lee, L.	Richter
Amsterdam	Fawcett	Leinbach	Rovner
Aurentz	Fay	Leonard	Sahli
Bagenstose	Feather	Levin	Scales
Baldrige	Filson	Manderino	Scarlett
Baldwin	Fohl	Mangery	Scott
Banes	Goldstein	McGeary	Sebastian
Barron	Gray	McGlynn	Shively
Bashoff	Griffith	Meyer	Shoemaker
Benedict	Hannum	Miller, D.	Shrager
Benfield	Harding	Miller, R.	Silverman
Brsham	Hatter	Moorhead	Solomon
Broderick	Himes	More	Strickler
Butera	Hocker	Morton	Stroup
Cain	Hostetler	Nelson	Thomson
Camardella	Huggins	Orban	Tomascik
Caron	Jirolanio	Orbin	Tully
Corey	Johnson	Pasquerilla	Van Sant
Cortese	Kauffman	Pelletier	Waldron
Croop	Keller, J.	Pott	Warman
Cunningham	Keller, M.	Powell	Westerberg
Curran	King	Prendergast	Whittum
Dailey	Krill	Rea	Wilcox
Desmond	Laputka	Redick	Woodring
Devlin	Leach	Reynolds	Woodside
Erwin	Lee, K.		

NAYS—35

Baldus	Cosetti	Michener	Shapiro
Barry	Dumbauld	O'Donnell	Shettig
Bloom	Gerber	Otto	Sprogell
Brown	Gouger	Percey	Stout
Buck	Henderson	Popil	Swope
Bunting	Hook	Rappaport	Tate
Caputo	Kelly	Roberts	Thornburgh
Casey	Mattioni	Ruth	Welsh
Clinger	Michael	Scranton	

NOT VOTING—26

Allison	Fineman	Heyburn	Murray
Brennan	Fleming	Horne	Musselman
Burkholder	Forster	Irvis	Pechan
Clark	Fortney	Kline	Quiles
Conley	Gabreski	Lane	Sharp
Donaldson	Gehrlein	Markley	Wilmarth
Donolow	Goldman		

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was adopted.

REFERRAL TO COMMITTEE

PRESIDENT BRODERICK. It will, according to the rules, be referred to the Committee on Arrangement, Submission and Address to the People for their action, and they will go to work again.

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,
The Convention proceeded to the third consideration of **Committee Proposal No. 2, Printer's No. 22, entitled:**

Amending the Constitution of Pennsylvania making changes relating to legislative apportionment.

On the question,
Will the Convention agree to the proposal on third consideration?

PRESIDENT BRODERICK. Again, I say this is the last opportunity to amend this proposal and again I point out before an amendment may be received for consideration, the delegates must obtain the consent of the majority of the delegates present.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. It seems to me we now have before this body proposals, two of them, and we have a report from the Committee on Style and Drafting concerning these very same proposals. I am not aware that the report from Style and Drafting has actually been officially received or approved or even accepted by this body. To the best of my knowledge, the report has simply physically reached the desks of the delegates.

Would it not be in order at this point to move that the report of the Committee on Style and Drafting on Committee Proposals 1 and 2 be accepted by this Convention?

PRESIDENT BRODERICK. I am advised by the Parliamentarian, and the Chair rules, that we do not have to accept the report or vote on the acceptance of the report. What is before the body this morning are the specific proposals and, of course, the report is presented for the information of the delegates. There are proposals in the report, and if any Delegate wishes to offer an amendment to carry into effect any of the suggestions made, then that delegate must go through the same procedure that Delegate Hook went through earlier.

DELEGATE O'DONNELL. I take it the report of the Committee on Style and Drafting is merely advisory and has no official status whatever in this body.

PRESIDENT BRODERICK. That is the ruling of the Chair. It is an advisory report.

DELEGATE O'DONNELL. If I understand the Chair's ruling regarding the two substantive matters concerned in the report of the Committee of Style and Drafting, it is that the Convention counsel was not yet able to resolve a fairly intricate legal question, is that correct, in the short time involved?

PRESIDENT BRODERICK. Are you referring to the inquiry of Delegate Shapiro?

DELEGATE O'DONNELL. Yes, sir. Does not the inquiry of Delegate Shapiro have to be answered before an intelligent vote on this subject can be made?

PRESIDENT BRODERICK. This is something that the Chair cannot answer, but I will accept that as a question to the delegates. In other words, they have to determine in their own minds whether they need counsel's report before they can intelligently vote. I want to point out as we did before, when this body moves the question, that is the will of the body.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. I note the Committee on Style and Drafting has for example at the tail end, suggestions by way of a possible amendment on page 4. Is it necessary this amendment actually go through the drafting service and be prepared in usual form?

PRESIDENT BRODERICK. That is so. Our rules require that all amendments be prepared by the Convention Drafting Bureau and there be no exception here, and I think that would be certainly an advantage because at this stage, it is more important than ever that amendments be prepared correctly.

DELEGATE O'DONNELL. In view of the novelty of this procedure, at least to me, I would ask leave to prepare an amendment as detailed on page 4 in the report of the Committee on Style and Drafting. I do not know that that would take very much time, but I would ask that this body remain at ease until an opportunity to do that can be done.

PRESIDENT BRODERICK. What Delegate O'Donnell is saying, as I determine it, is that he wishes to offer an amendment to Proposal No. 2, Printer's No. 22, and before this body determines whether it will receive such an amendment, of course, they should have a copy of the amendment in front of them. If the Delegate will come down, we have the staff present here to prepare the requested amendment.

The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I move the question on Proposal No. 2.

SEVERAL DELEGATES. Seconded.

DELEGATE MICHENER. There has been no second acknowledged yet. They have been made, but not acknowledged.

PRESIDENT BRODERICK. I will agree and recognize that you had the microphone and you may proceed, Delegate Michener. I have had a motion that will be seconded as soon as you finish.

DELEGATE MICHENER. Mr. President, the three recommendations for caution made by the Style and Drafting Committee are quite substantive and they might help us to avoid error. I think it would be intolerable for them to be dismissed without discussion. I would propose the move of this body may even be that they may clearly not be accepted, but not to discuss them would be folly. No part of our deliberation yet has brought us more disfavor with the press than the way the size of the Legislature has been handled.

It would, therefore, be very prudent for us not to railroad something through at this moment, and I am sure that Delegate Solomon would not want to cut off debate on substantive matters and I, therefore, recommend that if his motion does receive a second we ought to, in prudence, not accept it.

PRESIDENT BRODERICK. I now again refer to the motion of Delegate Solomon and the motion is that debate on this question be closed and we vote on the pending question. Is there a second?

DELEGATE DESMOND. Second.

PRESIDENT BRODERICK. There is a second by Delegate Desmond. We, therefore, have a question before the House on the motion, and the motion is that debate be closed and that we vote on the pending question.

Now we are going to vote on that motion. We unlock the voting machine. All those in favor of closing debate will vote "yea," all those in favor of not closing debate will vote "nay."

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—59

Aurentz	Erwin	Lee, K.	Reynolds
Bagenstose	Fagan	Lee, L.	Richter
Baldrige	Fay	Leonard	Roberts
Baldwin	Feather	Levin	Scranton
Bashoff	Fohl	Mangery	Sebastian
Benedict	Goldstein	Meyer	Solomon
Benfield	Griffith	Miller, D.	Strickler
Butera	Hannum	Miller, R.	Stroup
Cain	Harding	More	Thomson
Cortese	Hatter	Morton	Tomasetik
Croop	Jirolanio	Nelson	Van Sant
Curran	Kauffman	Pasquerilla	Waldron
Dailey	Keller, J.	Pott	Warman
Desmond	Krill	Powell	Westerberg
Devlin	Leach	Prendergast	

NAYS—76

Aberman	Cosetti	Manderino	Scales
Amsterdam	Cunningham	Mattioni	Scarlett
Baldus	Dumbauld	McGeary	Scott
Banes	Fawcett	McGlynn	Shapiro
Barron	Filson	Michael	Shettig
Barry	Gerber	Michener	Shively
Bloom	Gouger	Moorhead	Shoemaker
Braham	Gray	O'Donnell	Shrager
Broderick	Henderson	Orban	Silverman
Brown	Himes	Orbin	Sprogell
Buck	Hocker	Otto	Stout
Bunting	Hook	Pelletier	Swope
Burkholder	Hostetler	Percey	Tate
Camardella	Huggins	Popil	Thornburgh
Caputo	Johnson	Rappaport	Tully
Caron	Kelly	Rea	Welsh
Casey	King	Redick	Whittum
Clinger	Laputka	Ruth	Wilcox
Corey	Leinbach	Sahli	Woodring

NOT VOTING—28

Allison	Fleming	Horne	Musselman
Brennan	Forster	Irvis	Pechan
Clark	Fortney	Keller, M.	Quiles
Conley	Gabreski	Kline	Rovner
Donaldson	Gehrlein	Lane	Sharp
Donolow	Goldman	Markley	Wilmarth
Fineman	Heyburn	Murray	Woodside

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon. For what purpose does the gentleman rise?

DELEGATE SOLOMON. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SOLOMON. Mr. President, my motion was not intended to close off debate, my motion certainly was

intended to close off discouragement of this body by those who have neither the solutions nor the answers for the problem which we are now presently faced with. This goes for counsel as well. We do not have any answers. Are we to sit here until March 5th? We have to get going and I do hope that the debate is enlightening, but when legal counsel is sought, then it will be given. If there are no answers which might impede this proposal, let us have a vote and move on.

PRESIDENT BRODERICK. The Chair just wishes the body to know that it is my understanding that there is an amendment being prepared. The amendment is being prepared?

DELEGATE O'DONNELL. Yes, sir. It would be impractical to incorporate all three subjects in one amendment. They are actually preparing three amendments so this body can pick or choose those which they may favor.

REMARKS BY DELEGATE SHAPIRO

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. Chairman, although we have not been furnished with an opinion, we have been furnished—or, at least, I have been furnished—with a copy of the pertinent provisions of the schedule to which Delegate Devlin referred of the 1873 Constitution.

Let me preface my remarks by focusing on one specific recommendation of the Committee on Style and Drafting. That Committee recommended that there was an unresolved matter of substance dealing with the numbering of Legislative districts and suggests the following language for the Convention's consideration:

"Senatorial districts shall be numbered in sequence commencing at one geographical point in the Commonwealth. Representative districts shall be numbered in sequence commencing at one geographical point in the Commonwealth."

I call your attention specifically to the fact that this does not say that we shall start the numbering in Erie, or in any corner of the State. It does not say where in the State we start, but it simply says that we start at one point and number sequentially, so that the commission could, if this amendment were adopted, start by numbering at any present uneven numbered district in the Commonwealth. I submit that in the light of that recommendation, the provisions referred to by Delegate Devlin of the 1873 schedule have absolutely no pertinence. I will read them. Section 3 of that schedule, "Election of Senators.

"At the general election in the years 1874 and 1875, Senators shall be elected in all districts where there shall be vacancies."

I think that the direction as to what shall be done in the years 1874 and 1875 would not remain in force and effect in 1968, 1969, 1970, 1971, and so on.

It goes on:

"Those elected in the year 1874 shall serve two years and those elected in the year 1875 shall serve for one year."

Again, I do not think it takes an opinion of counsel to let us know that this has no pertinence to the present Constitution that we are writing.

It then said:

"Senators now elected and those whose terms are unexpired shall represent the districts in which they reside until the end of the terms for which they were elected."

I submit that those terms that are referred to in that sentence have long since expired.

Section 4 reads:

"Election of Senators (Continued). "At the general election in the year 1876, Senators shall be elected from even numbered districts to serve for two years and from odd numbered districts to serve for four years."

That, again, refers to the general election of 1876 and I submit has no pertinence to what we are doing now or what will be done by the Legislative Reapportionment Commission provided for in Committee Proposal No. 2 in the years 1970, 1971, and thereafter.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman. For what purpose does the gentleman rise?

DELEGATE ABERMAN. I rise to a parliamentary inquiry.

PRESIDENT BRODERCK. The gentleman will state it.

DELEGATE ABERMAN. It is my understanding as a member of Style and Drafting that when we presented substantive recommendations A, B and C these recommendations were to be presented to the body. I would like to inquire of the Parliamentarian whether or not the language which represents the proposed draft of these three recommendations from Style and Drafting could be acted on in the form of a motion directly from this report or would it require a separately prepared amendment.

PRESIDENT BRODERICK. The Chair has stated, Delegate Aberman, several times this morning, that the process is that they must be offered as an amendment and the amendment procedure under consideration is the same procedure that we used when Delegate Hook offered his amendment. In other words, you have to have consent to receive the amendment.

DELEGATE ABERMAN. We have to have it printed up separately?

PRESIDENT BRODERICK. Yes. That, in effect, was the question asked by Delegate O'Donnell, and I believe by someone else.

DELEGATE ABERMAN. I was assuming their question was with a different amendment. My question was about the precise language presented by the report, which is in the report and is printed and is on everyone's desk at the present time.

PRESIDENT BRODERICK. The precise language in the report is advisory to the Delegates. If anyone wishes to offer an amendment in that precise language, or wishes to offer an amendment in different language, we have the same question presented.

REMARKS BY DELEGATE DEVLIN

PRESIDENT BRODERICK. The Chair recognizes Delegate Devlin.

DELEGATE DEVLIN. In response to Delegate Shapiro, we are not at odds as to the intent of the commission to

set up Senatorial districts. I think we are splitting hairs on saying that we are. The commission is empowered to draw 50 senatorial districts as of right now. They shall number them. If there are 50, they shall be numbered.

The questions that are arising are not so much whether or not we are going to have 50 senators, but, are 25 of them going to serve four years and are 25 going to serve two years and then be up for re-election, or will it be some other type of a combination?

Our committee feels that the commission is empowered to solve all these problems and resolve those that have been presented to us by Delegate Johnson in a very able and very clear fashion. If they are not resolved, those who wish to file a complaint have the constitutional right under this article to do so. Any aggrieved person may do it. If it is not to their satisfaction, then the Supreme Court shall take immediate jurisdiction and resolve the problems.

There is no way that I can see that we cannot solve and resolve all the problems that have been presented by the Style and Drafting Committee on the commission when it is duly constituted.

PRESIDENT BRODERICK. As I understand it, then, no one wishes to be heard until we receive the amendments. Perhaps, it would be a welcome suggestion if we were to be at ease for about 15 minutes. Is that agreeable to the body? We will be at ease for 15 minutes in the hope that we can have these amendments prepared.

SENATOR JOHNSON WELCOMED

PRESIDENT BRODERICK. Before we proceed I thought it would be nice to introduce a former guest, and at this particular time I would like to call attention to the fact that back in my right-hand corner, which is right field, we have with us today former Senator Bob Johnson. Bob, would you just raise your hand so we can give you our welcome.

BARBARA AND ROLAND WRIGHT WELCOMED

PRESIDENT BRODERICK. Back there with Bob we have Barbara and Roland Wright. Roland is the editor of the Main Line Times, and a personal friend of mine, and I would like them to stand, and we will give them a cordial greeting. I might add that they are the guests of Delegate Kauffman, Delegate Whittum, and Delegate Gerber.

JOURNALISM STUDENTS WELCOMED

Also some place in the room we have Sue Wolf and Mike Stover from Cedar Cliff High School, Camp Hill. They are journalism students. I want to tell you that Miss Wolf is the daughter of our Convention Historian, Dr. Wolf.

SENIORS OF WAYNESBORO HIGH SCHOOL WELCOMED

In addition, I understand that up there in the balcony we have seniors from the Waynesboro High School. We will give them a big hand, too. I want you to know we are very happy to have you with us. I might add that they are the guests of Delegate Keller.

WIFE & FAMILY OF DELEGATE CLINGER WELCOMED

DELEGATE BRAHAM. There are some guests with us whom I would like to introduce. They are the family of Delegate William Clinger, his wife, Julia Wittler Clinger, who is my niece, their children, Eleanor Clinger, William III and James Clinger.

PRESIDENT BRODERICK. Where are they? There they are back there. Give them a big hand.

DELEGATE BRAHAM. Their family home is in Warren, Pennsylvania.

PRESIDENT BRODERICK. We are happy to have with us Mrs. Clinger and your wonderful family, and I want you to know that your husband has been doing a great job. We are glad he is with us.

MOTION ON PERMISSION TO SUBMIT O'DONNELL AMENDMENT Nos. 1, 2 and 3

PRESIDENT BRODERICK. This amendment is going to be distributed and I suggest to you that you withhold your remarks until the pages have had an opportunity to distribute what I will refer to as the O'Donnell Amendment No. 1.

I want you to know what the question is before the Convention. The question is, will the Convention agree to receive an amendment to Proposal No. 2, the amendment now being offered by Delegate O'Donnell, and, of course, we have to vote on whether this body will receive an amendment, and it requires the consent of the majority of the delegates present.

Before I recognize Delegate O'Donnell, I will ask him to make his remarks as brief as he can, consistent with a thorough explanation of the purpose of his amendment.

Now, you may proceed, Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I offer here three amendments.

I will address myself to the first, all three may be in keeping with what the commentary of the Philadelphia Inquirer this morning referred to as the "clean hands" amendment.

I am not sure whether I can deliver 42 votes in support of them, or not. I have not asked. In any event, these are the three proposals—

MOTION ON PERMISSION TO SUBMIT O'DONNELL AMENDMENT No. 1

PRESIDENT BRODERICK. Delegate O'Donnell, would you yield for one second?

It would be in keeping with our procedure if you would first take up No. 1. We will vote on No. 1 and then take up No. 2. We only have distributed No. 1, so if you will confine your remarks to No. 1, we will then vote on it.

DELEGATE O'DONNELL. This is an amendment which is suggested by the Committee on Style and Drafting. It was first brought to the attention of the Committee on Style and Drafting by Professor Graham, the gentleman who was brought in here as an expert consultant to that committee. It is very, very simple. All it does is say that after the reapportionment plan is adopted and after all of the legal machinery, and court appeals, and

everything else, are concluded, the election concerned will be the next general election which may conveniently be held after the plan is filed and is final.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera. For what purpose does the gentleman rise?

DELEGATE BUTERA. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BUTERA. I apologize to the gentleman for interrupting him, but is the gentleman discussing the amendment which he is about to offer, or whether he may offer the amendment?

PRESIDENT BRODERICK. Let me just say this, it is my understanding, and we have previously allowed the proposer of an amendment at this stage to explain what the amendment is so that the body can intelligently vote on whether they wish to give their consent to receive the amendment.

So, therefore, you may proceed Delegate O'Donnell.

DELEGATE O'DONNELL. I will try to steer between the rocks and Scylla and Charybdis, Mr. President. I do not quite know how to ask this body to consider an amendment without telling them what is in it.

The thrust of the amendment very simply, as I pointed out before, contemplates the possibility that the Reapportionment Committee may have filed its report in good time, but it further contemplates the distinct possibility that an aggrieved party may have filed an appeal to the Supreme Court, and that the Supreme Court may hand out a final opinion at sometime, perhaps, during the middle of the year. If it handed down its final opinion and final order in the middle of the year, it would require bringing into play cumbersome special election machinery.

All this does is say that when you get finished reapportioning, whatever is the final reapportionment plan, if that plan is filed 60 days before the primary election preceding a general election, then we will go right through the usual ordinary garden variety election process to elect the senators and the representatives.

It further says that if it is not so filed, we will wait until the next reasonable opportunity to hold an election. It has been suggested that this tells the Supreme Court what to do. I must say I just cannot even follow the argument. All this does is say at what election this machinery will go into effect, and it says that after the plan is filed the election will be the next convenient election. It says nothing more, nothing less. There are no hooks, tricks, or anything else involved with it.

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to receive this amendment being offered at this time to Proposal No. 2 by Delegate O'Donnell, and if we are ready for that question, we will unlock the voting machine and we will proceed to vote. All those voting "yea" will agree that the amendment may be introduced, and those voting "nay" will express their opinion that the amendment should not be introduced.

On the motion,

Will the Convention agree to receive the first amendment offered by Delegate O'Donnell?

The roll was recorded as follows:

YEAS—43

Aberman	Caputo	Huggins	Scales
Amsterdam	Casey	Johnson	Shapiro
Baldus	Cosetti	King	Shettig
Barry	Cunningham	Mattioni	Shrager
Bashoff	Dumbauld	McGlynn	Silverman
Braham	Feather	Michael	Sprogell
Broderick	Filson	Michener	Stout
Brown	Gerber	O'Donnell	Swope
Bunting	Gouger	Popil	Tate
Burkholder	Harding	Rea	Welsh
Camardella	Hook	Ruth	

NAYS—80

Allison	Fawcett	Levin	Rovner
Aurentz	Fay	Manderino	Sahli
Bagenstose	Fohl	Mangery	Scarlett
Baldrige	Goldstein	McGeary	Scott
Baldwin	Gray	Meyer	Scranton
Barron	Griffith	Miller, D.	Sebastian
Benedict	Hannum	Miller, R.	Shively
Benfield	Hatter	Moorhead	Shoemaker
Bloom	Henderson	More	Solomon
Buck	Himes	Morton	Strickler
Butera	Hocker	Murray	Stroup
Cain	Jirolanio	Nelson	Thomson
Caron	Kauffman	Orban	Thornburgh
Clinger	Keller, J.	Orbin	Tomascik
Corey	Keller, M.	Otto	Tully
Cortese	Kelly	Pasquerilla	Van Sant
Croop	Krill	Pott	Waldron
Curran	Laputka	Powell	Westerberg
Dailey	Leach	Prendergast	Whittum
Desmond	Lee, K.	Rappaport	Wilcox
Devlin	Lee, L.	Reynolds	Woodring
Erwin	Leinbach	Richter	Woodside
Fagan	Leonard		

NOT VOTING—30

Banes	Forster	Irvis	Percey
Brennan	Fortney	Kline	Quiles
Clark	Gabreski	Markley	Redick
Conley	Gehrlein	Musselman	Roberts
Donaldson	Goldman	Lane	Sharp
Donolow	Heyburn	Pechan	Warman
Fineman	Horne	Pelletier	Wilmarth
Fleming	Hostetler		

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

MOTION ON COMMENT TO OFFER O'DONNELL AMENDMENT No. 2

PRESIDENT BRODERICK. I now recognize Delegate O'Donnell, and the question before us is, will the Convention agree to receive this amendment, which I will refer to as O'Donnell Amendment No. 2.

DELEGATE O'DONNELL. Mr. President, I request the consent of this body to offer the amendment which has been distributed. It is an amendment to Committee Proposal No. 2, Printer's No. 22. I think it pretty well speaks for itself. Again, this is part of the recommendation of the Committee on Style and Drafting and, again, it is a matter which was suggested by committee counsel and by its official consultant.

I would first like to thank the body for their kind consideration of that last problem.

This amendment goes to one thing, and one thing alone. We found in 1963 when the Supreme Court was required to apportion the State after about 40 years that it put almost all the offices in the State into one great big grabbag and everybody had to run again for every kind of office. The reason for it, of course, was the fact that the State

Senate had not been effectively reapportioned for more than 40 years. It is not contemplated that the population changes in Pennsylvania will be significant. The population change between 1950 and 1960 was trifling. The population change projected between 1960 and today is trifling.

If we do, in fact, as we intend to do, apportion this State every 10 years, there is no reason to suspect that more than a few seats in the Senate will be affected. The difficulty with Committee Proposal No. 2 as it now exists is that it would require every Senator in the entire Commonwealth of Pennsylvania to run for reelection, even if his district has not been affected at all.

It would seem to me to be an absurd situation to require every Senator to stand for reelection, particularly in view of the provision presently in the Constitution of Pennsylvania that a man elected to office shall serve during good behavior and until impeached.

Why should we abridge and cut down that man's term of office to a point where he may have to run every two years for three successive general elections for a four-year term, even though his district has not been affected in any substantial degree.

I think it is just too simple really to contemplate further argument, and I ask the consent of this body to offer this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, as a member of the Style and Drafting Committee, I think that the second and third amendments to be proposed by Delegate O'Donnell are very critical amendments and should not be dismissed perhaps as lightly as the first one.

We must see to the particular problem addressed to this amendment, because of the fact that I feel it is our duty as the Constitutional Convention, to see to a problem which, in the heat of the battle, may be avoided at all costs. I find it impososible to add anything to Delegate O'Donnell's very excellent resume of the situation and I, therefore, call the question on the amendment.

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to receive this amendment which we have designated the O'Donnell Amendment No. 2 to Proposal No. 2? Therefore, we will unlock the voting machine. All those voting "yea" will vote their consent to receive the amendment, those voting "nay" will vote that they do not consent to receive the amendment.

It requires the consent of the majority of the delegates present in order to present the amendment for consideration.

On the motion,

Will the Convention agree to receive the second O'Donnell Amendment?

The roll was recorded as follows:

YEAS—51

Aberman	Camardella	Huggins	Ruth
Amsterdam	Caputo	Johnson	Shapiro
Aurentz	Caron	King	Shettig
Baldus	Casey	Mattioni	Shrager
Banes	Cosetti	McGeary	Silverman
Barry	Cunningham	McGlynn	Sprogell
Bashoff	Dailey	Michael	Stout
Braham	Dumbauld	Michener	Swope
Broderick	Ellson	Morton	Tate
Brown	Gerber	Murray	Tomasello
Buck	Gouger	O'Donnell	Welsh
Bunting	Hocker	Popil	Woodring
Burkholder	Hook	Rappaport	

NAYS—82

Allison	Feather	Leonard	Sahli
Bagenstose	Fohl	Levin	Scales
Baldrige	Goldstein	Manderino	Scarlett
Baldwin	Gray	Mangery	Scott
Barron	Griffith	Meyer	Scranton
Benedict	Hannum	Miller, D.	Sebastian
Benfield	Harding	Moorhead	Shively
Bloom	Hatter	More	Shoemaker
Butera	Henderson	Nelson	Solomon
Cain	Himes	Orban	Strickler
Clinger	Jirolanio	Orbin	Stroup
Corey	Kauffman	Otto	Thomson
Cortese	Keller, J.	Pasquerilla	Thornburgh
Croop	Keller, M.	Pott	Tully
Curran	Kelly	Powell	Van Sant
Desmond	Krill	Prendergast	Waldron
Devlin	Laputka	Rea	Westerberg
Erwin	Leach	Reynolds	Whittum
Fagan	Lee, K.	Richter	Wilcox
Fawcett	Lee, L.	Rovner	Woodside
Fay	Leinbach		

NOT VOTING—30

Brennan	Fortney	Kline	Percey
Clark	Gabreski	Lane	Quiles
Conley	Gehrlein	Markley	Redick
Donaldson	Goldman	Miller, R.	Roberts
Donolow	Heyburn	Musselman	Sharp
Fineman	Horne	Peehan	Warman
Fleming	Hostetler	Pelletier	Wilmarth
Forster	Irvis		

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

MOTION ON CONSENT TO OFFER O'DONNELL AMENDMENT No. 3

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I trust and have taken heed to be brief on the theory that faint heart never won fair lady. I will offer the third amendment here as recommended by the Committee on Style and Drafting. This amendment simply requires that the Senatorial districts in the Commonwealth be numbered in sequence beginning at a single geographical point. The purpose is, of course, this: Should the State be reapportioned in such a fashion that the State must then decide that half of its Senators will run for two-year terms and the other half for four-year terms to provide for the staggering, that we have always felt desirable in Pennsylvania, and which is presently required, in the Constitution? The sole method for doing that effectively is to state that those Senators in even numbered districts shall stand for office in two years and those in odd numbered districts shall stand for office in four years. Unfortunately, unless the State is required constitutionally to be numbered sequentially, it permits whatever party, Democratic, Republican, Socialist, or whatever party might happen to be in power at the moment, to fix the numbers in such a way that its members stand in four years and the other parties' members in the main stand for election in two. It is a form of gerrymandering or, perhaps, more properly put, political piracy, or however you would like.

The fact of the matter is, this amendment keeps everybody honest. We call it perhaps more properly the truth

in Packaging Bill, and I ask the consent of this convention to offer the amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. Chairman, I think a request I made earlier has been misunderstood.

The Committee on Style and Drafting made a recommendation on this matter that there be included in the reapportionment bill or in Proposals Nos. 1 or 2, language as offered in the amendment by Delegate O'Donnell.

Delegate Devlin then announced one reason the Legislative Reapportionment Committee had not included such language was because this matter was covered by the schedule of the 1873 Constitution, and that he had had an opinion of counsel to the Legislative Reapportionment Committee to that effect.

I then requested the delegates be furnished with a copy of the language to which he referred and an opinion of counsel. What I wanted, as an opinion of counsel, was whether, in fact, anything in the 1873 schedule did cover the matter of numbering of districts. What we have gotten instead, and perhaps it is my fault in not stating my question more clearly, is an opinion from counsel for the Legislative Reapportionment Committee which deals with the question of election of Senators from odd numbered districts in odd numbered years and even numbered districts in even numbered years.

The Committee on Style and Drafting, and that amendment that is offered to you now, does not address itself directly to that question. It simply addresses itself to the question of whether or not the Reapportionment Commission, which is going to do the reapportioning, should be given any direction by the Constitution as to the sequence in which the numbering of districts should be accomplished.

I submit, that the language which I read to you earlier, the language to which Delegate Devlin referred to in the 1873 Constitution schedule does not address itself to this problem and Delegate Devlin did not receive an opinion of legislative reapportionment counsel, or any other counsel, that that problem is covered by the schedule for the 1873 Convention.

If we do not adopt this amendment, there is no guidance in the Constitution that we now will have after the adoption of our present proposals by the electorate. The Reapportionment Commission will be free to number any way they choose. They can put No. 1 in Erie County, No. 2 in Philadelphia, No. 3 in Scranton and No. 4 in Pittsburgh, and jump all over the State in that fashion. Now, there is nothing to stop them from doing this.

The amendment offered is intended to make them start at some point in the State and continuously number in sequence.

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, in order of importance, this third amendment is the most important. The procedure that was just described by Delegate Shapiro is, in fact, very critical. We are not clear at this moment whether, in fact, we have met the problem of deciding how the districts shall be numbered. It was the intention of Style and Drafting to adopt the numbering plan which was put into the Supreme Court order of 1966.

If the opinion of our counsel is that this is the binding numerical districting for the Commonwealth of Pennsylvania, that should be the opinion which will be issued by the counsel for the Chair.

However, I would like to address myself not to the Style and Drafting question, but to the question presented by this amendment. I am sure all of us realize we were elected from Senatorial districts and we are probably more than passingly, familiar with the Senatorial districting map which is attached to the small pamphlet handed out at the beginning of the session which indicates the membership and from whence they came.

If you examine that, you will see rather than being in an interesting, and consecutive and sequential order, the City of Philadelphia is blessed with the following numbers: 1, 2, 3, 4, 5, 6, 7, 8, 36. That delightful little bit of what is called in the report "gerrymandering" is the topic to which this amendment is addressed.

Once upon a time, the numbers went, 1, 2, 3, 4, 5, 6, 7, 8, 9. The effect of 1 through 9 meant that in the odd years, Nos. 1, 3, 5, 7 and 9 ran with the President. If we put together the facts there is a Democratic President and Democratic Administration, in Philadelphia that meant that those five gentlemen had a fairer than better average of being elected.

If you take the even numbers and run them in the even numbered years, you will find out this might be vice-versa. Now, what has happened? They have changed the proposal of five odd and four even to five even and four odd. We think in Style and Drafting Committee this issue should have been met and further, I think, that this amendment is a proper amendment to be considered and one that should be issued as guidance to any Commission that needs to deal with this problem and in the event an aggrieved party takes an appeal to the Supreme Court, this issue should be mandatory and binding upon the Supreme Court, so that the next order that comes out will not have such a delightful sequence of numbers. I, therefore, ask you to permit this amendment to come to the floor.

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, much of what I was about to say was covered by Delegate Aberman. In looking over the little wallet index that they gave us, I also very uniquely see Allegheny County numbered 37 and 38, and there is a number missing, number 40. There is a number missing 42, 43, 44, and 45. It looks like a bingo card. The numbers are scattered every which way over the little map.

I think the entire issue boils down to one basic concept and one basic idea. We all say we are against gerrymandering. We believe this is a good, honest approach in government. Here is the test right here and right now.

If you honestly and truly are against gerrymandering, you are going to vote for Delegate O'Donnell's amendment. It is as simple as that.

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I heartily agree with what has been said, that the question of gerrymandering can very easily occur.

However, I rise in oppostion to this for the simple reason that if you read the language, if that language would stop

gerrymandering, I would then say to each one of us in here that we should vote for it. But it does not do so.

All the amendment does is this, members of the Convention. It says to number in sequence and to start at a geographical point. Let us take a geographical point. You can start anywhere you want. Let us assume you would start in Mifflin County—Delegate Barron comes from that distinguished county—and then you would go south. Then you would go west. Then you could go north. Then you could go down south again. You could do everything that the gerrymanderer would want you to do.

This does not solve the problem. I believe in what learned counsel, Delegate O'Donnell, said. I would heartily agree with him that if this language would save us from what he believed we could be in danger of, we should vote for it. But, as the language is now drawn, unfortunately—and, of course, all lawyers disagree, and it is pretty hard to disagree with learned counsel O'Donnell, but I must disagree with him, so I ask you to turn this down.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gouger.

DELEGATE GOUGER. Mr. President, you are insistent on my doing this and I shall do so. That is facetious. In an equally facetious manner, I discovered this morning why all Philadelphia lawyers wear vests. I somehow relate this to the vest pocket vote of 1942 that was so eloquently referred to in a morning paper.

Seriously, Mr. President, I rise in support of this amendment and, in supporting this amendment, I should like to make one thing abundantly clear: I am quite sure, in our inexperience in presenting the first amendment to this proposal, that we brought about misunderstanding about what those of us who advocated this amendment were trying to do. We were honestly trying to bring something meaningful out of our Committee. I felt, with considerable feeling, that our committee had not functioned to its fullest capabilities. I felt that it had not functioned as this delegation, as this Convention, intended that it should function. I felt, when we were denied adequate research and denied the opportunity to have people familiar with the subject appear before us, that we were being denied the ingredients upon which we could make an intelligent decision.

I had no more notion about apportionment, no more fixed ideas about what the size of the Legislature should be, when I walked into that Committee as I did 10 years ago when I knew absolutely nothing about it.

I came to learn; I came to listen to evidence; I came to debate; I came to try to arrive at fruitful decisions, and decisions in the best interests of all the people of Pennsylvania and not on behalf of any establishment, any group, any party, or any other special interest.

When our meetings became so infrequent that I was moved to try to inquire as to what were our intentions, when our debate was so inadequate that we were not able to inform ourselves fully on the subjects; when attendance became so poor that we found ourselves in the unhappy position of passing resolutions of a committee on the basis of a five to four vote and other votes actually illegal. We did not raise the question in time in the hopes that something fruitful could, sooner or later, be worked out.

Now this is the situation in which those of us earnestly and sincerely are trying to present to the people of Pennsylvania something meaningful. This was our objective. I had no fixed notions about numbers—and it got off into a numbers game by those clever enough to maneuver it into that position. I did feel, and I feel now, that we have committed more crimes in the name of "the people" here than can be enumerated, I sadly suspect, but I did feel they needed this word that is now getting a good working over—"flexibility." I felt the Legislature, itself, needed flexibility.

Here is one constructive thing, unfortunately, arising not out of the Committee—because while this was discussed as a result of Delegate Gerber's making a recommendation to the committee that numbering be consecutively, it was discussed, but, to the best of my knowledge, was never voted on, and I attended every meeting of both my committee and the standing committee, at least those that I knew anything about.

Here is a constructive move. As it stands right now, what are we going to offer the people on this ballot? We will offer them 203 or 203. This gives them really a great breadth of selection, a great exercise in intellect as to what to vote for or against.

True, we have an apportionment commission and I think it speaks well for the intent of the committee and their regard for the people of Pennsylvania to gratuitously, if you please, submit to us at least one thing that could be highly constructive and could come out of these discussions.

Mr. President, I stand in firm approval of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, I think it is rather evident that the O'Donnell amendment is a necessity and it is evident because even the Pennsylvania Supreme Court, when it had the responsibility of apportioning the General Assembly vested in it, saw fit not to number the senatorial districts in a manner free of any political consideration.

This certainly, therefore, seems to me that those of us who have voted to create a reapportionment commission have an obligation to those people who will serve on that commission to set guidelines for the manner in which they should draw the lines of the Senate of Pennsylvania consistent with the United States Supreme Court decision of Baker versus Carr.

It seems to me that there is no less invidious gerrymandering when you play the numbers game of odds and evens than there is when you have one Senator representing 50 to 100,000 more people than another Senator because you are not giving the people of that district, when you play the numbers game, a fair chance. You are not doing it because history has shown here in our Commonwealth that in the gubernatorial years there is a Republican bias. When I say bias, I do not mean that in an unkind way. It leads that way if you look and see that since the Civil War we have only elected a Democratic Governor five times: Patterson twice before the turn of the century and Governors Earle, Leader and Lawrence since.

Secondly, I think it is clearly obvious that in a presidential year there is a Republican lead but it does not lead nearly as much as in a gubernatorial year. When you

play the numbers game, you are choosing your state Senate and which party will control.

I think if we were elected here to this Convention not to permit this kind of game to continue to be played—and, Mr. President, I submit to you that the Pennsylvania Supreme Court won varsity letters to play in this game the last time out; all of them—and if we permit this to happen again, we are going to permit the numbering of the districts to determine which party is going to control.

This can happen just as easily for the party to which I belong as to the party to which I do not belong. It seems to me the only way you can be fair is to number them in a consecutive, geographically contiguous manner, and with all due respect to my learned and honored colleague, Senator Jirolanio, I can see the problem he presents and it is a real one. But, on the other hand, though it presents a problem, it seems to me that it helps solve others, and it is not a matter of whether or not there is a problem, it is how few problems there are.

I do think the O'Donnell amendment would help solve many problems. It may leave others unsolved but the ones that it leaves unsolved are still unsolved, but it gets to others. Therefore, Mr. President, I respectfully urge you to support the O'Donnell amendment and let us reduce the opportunity for those people in future years to play the numbers game.

I do not stand here in criticism of the committee, I do not stand here in criticism of any member on it, I stand here in respect of every one of them. I merely suggest that they give this thought another chance and I am sure that if they do they will see the wisdom in the O'Donnell amendment, which is really the product of the Style and Drafting Committee, chaired by Delegates Pelletier and Johnson.

PRESIDENT BRODERICK. The Chair recognizes someone that will speak for the other side. The Chair recognizes Chairman Fagan.

DELEGATE FAGAN. Mr. President, I rise at this time to defend the integrity of the Legislative Apportionment Committee.

By innuendos by previous speakers, it has been attempted to be pointed out here that many of our meetings were not conducted properly. I would like to take opposition to that viewpoint. I feel, at all times, that the Legislative Apportionment Committee conducted its business in a very sincere and honest manner. I would like to state that the time has arrived, in my opinion, to appeal to the consciences of this delegate body because it seems that we have some very unsportsmanlike conduct that is prevailing at the present time.

I sat through these deliberations since the beginning of the Convention and voted for and against many proposals, but when the time arrived, when it was the opinion of the majority of this delegation that my judgment was not to prevail, I so went along with it.

I feel that even though this is a very historical group and body that is gathered here for the purpose of changing the Constitution of the Commonwealth of Pennsylvania, I feel that it can be compared with any athletic event that takes place or any of us have ever participated in.

I feel the time for good sportsmanship is here and I think we ought to get on with the business of this Convention, notwithstanding the fact that the number 203 or 50 has been disagreeable to many of the committee members or any of the delegates in this particular Convention. I feel that the majority opinion must prevail. I feel that the sub-committees have carried out their work along with the Committee on Legislative Apportionment.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair recognizes Delegate Fagan.

DELEGATE FAGAN. I feel that we had enough debate on the subject and I move you on this question, Mr. Chairman.

DELEGATE HATTER. I second that.

PRESIDENT BRODERICK. It has been moved by Delegate Fagan, seconded by Delegate Hatter, that the debate of this question be closed and that we vote on the pending question.

I just want to say that we have had one or two people that have been up at the microphone and I do not know whether you want to include them in your motion so they can speak or not, or exclude them.

DELEGATE KING. If you please, Mr. President—and the body—I simply want to make an inquiry. I am concerned about the exercise of my vote in an intelligent manner and I wanted to direct a question to Delegate O'Donnell.

I am not speaking for or against the amendment. I am not speaking personally, as some of the remarks have taken on, except to say this to Delegate Gouger, that all Philadelphia lawyers do not wear vests. I am very concerned, unless I missed it in your explanation, with how you feel that the potential problem of gerrymandering will be solved by saying that senatorial districts shall be numbered in sequence commencing at one geographical point. I think perhaps my question might be tied in with Delegate Jirolanio's question to you about who is to say goes east, west, north or south. I noticed that Delegate Gerber said something about sequential and contiguous numbering. Why do you feel that saying simply numbered in sequence commencing from one geographic point will cure the problem of potential gerrymandering, without respect to whether one point is—I am not concerned about any of that at this point. I just want an explanation so I can vote intelligently. Would you please explain?

DELEGATE O'DONNELL. The point, Delegate King, is the Committee does not feel that the problem of gerrymandering is entirely solved by this language. We were unable to arrive at language which entirely solved the problem, because certainly the notion of numbering in sequence from a geographical point, includes and connotes the notion of contiguous numbering. The problem, however, is that we felt that this was an approach which would make gerrymandering 10 times more difficult; let us put it that way. If we have not solved the problem in its entirety, we have at least addressed ourselves to it and made it a great deal more difficult.

PRESIDENT BRODERICK. We have a question on the floor, and there is a motion by Delegate Fagan and it was seconded by Delegate Hatter that we close debate, and vote on the pending question.

We are not voting on the amendment right now. We are only voting on the question as to whether the Convention would agree to receive the amendment, and I can answer your question after we vote.

The question now is, should this debate now be closed and we will vote on the pending question, and the voting machine is unlocked on the motion to close debate, and we will vote on the pending question. All those who wish to close debate will vote "yea," those who wish to keep debate open will vote "nay."

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—85

Amsterdam	Fay	Leinbach	Richter
Baldrige	Fohl	Leonard	Roberts
Baldwin	Goldstein	Levin	Rovner
Barry	Gouger	Manderino	Sahli
Benedict	Gray	McGeary	Scales
Benfield	Griffith	Meyer	Scarlett
Bloom	Hannum	Miller, D.	Sebastian
Braham	Harding	Moorhead	Shively
Camardella	Himes	More	Solomon
Caron	Hocker	Murray	Stout
Corey	Jirolanio	Nelson	Strickler
Cortese	Johnson	O'Donnell	Stroup
Cosetti	Kauffman	Orbin	Thomson
Croop	Keller, J.	Otto	Thornburgh
Cunningham	Keller, M.	Pasquerilla	Tomascik
Curran	King	Percey	Van Sant
Dailey	Krill	Pott	Waldron
Desmond	Laputka	Powell	Westerberg
Devlin	Leach	Rappaport	Whittum
Erwin	Lee, K.	Rea	Wilcox
Fagan	Lee, L.	Reynolds	Woodring
Fawcett			

NAYS—47

Aberman	Burkholder	Mangery	Shapiro
Allison	Butera	Mattioni	Shettig
Aurentz	Cain	McGlynn	Shoemaker
Bagenstose	Caputo	Michael	Shrager
Baldus	Casey	Michener	Silverman
Banes	Dumbauld	Morton	Sprogell
Barron	Feather	Orban	Swope
Bashoff	Filson	Popil	Tate
Broderick	Gerber	Prendergast	Tully
Brown	Henderson	Ruth	Welsh
Buck	Hook	Scott	Woodside
Bunting	Kelly	Scranton	

NOT VOTING—31

Brennan	Forster	Hostetler	Pechan
Clark	Fortney	Huggins	Pelletier
Clinger	Gabreski	Irvis	Quiles
Conley	Gehrlein	Kline	Redick
Donaldson	Goldman	Lane	Sharp
Donolow	Hatter	Markley	Warman
Fineman	Heyburn	Miller, R.	Wilmarth
Fleming	Horne	Musselman	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro. For what purpose does the gentleman rise?

DELEGATE SHAPIRO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHAPIRO. If the motion is adopted and if the amendment is adopted, does this amendment, or does the proposal as amended, go back to the Committee on Style and Drafting for further opportunity to correct the language?

PRESIDENT BRODERICK. Yes, it does.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. For what purpose does the gentleman rise?

DELEGATE SHOEMAKER. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHOEMAKER. Is all debate closed, except for closing statements, or is all debate closed?

PRESIDENT BRODERICK. The question before the House is, will the Convention agree to receive Amendment No. 3 being offered by Delegate O'Donnell, and we are opening up the voting machine, and we are now voting on that. All those voting "yea" will agree to receive this amendment and all those voting "nay" will vote to reject it.

This is only on the consent, not on the amendment.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—52

Aberman	Camardella	Johnson	Prendergast
Allison	Caputo	Kelly	Rappaport
Amsterdam	Casey	King	Roberts
Bagenstose	Cunningham	Mattioni	Ruth
Baldus	Dumbauld	McGlynn	Scales
Banes	Feather	Michael	Shapiro
Barry	Filson	Michener	Shettig
Bashoff	Gerber	Murray	Silverman
Braham	Gouger	O'Donnell	Sprogell
Brown	Harding	Orbin	Stout
Buck	Henderson	Pelletier	Swope
Bunting	Hook	Percey	Tate
Burkholder	Huggins	Popil	Welsh

NAYS—83

Aurentz	Fawcett	Levin	Scott
Baldrige	Fay	Manderino	Scranton
Baldwin	Fohl	Mangery	Sebastian
Barron	Goldstein	McGeary	Shively
Benedict	Gray	Meyer	Shoemaker
Benfield	Griffith	Miller, D.	Shrager
Bloom	Hannum	Moorhead	Solomon
Broderick	Hatter	More	Strickler
Butera	Himes	Morton	Stroup
Cain	Hocker	Nelson	Thomson
Caron	Jirolanio	Orban	Thornburgh
Clinger	Kauffman	Otto	Tomascik
Corey	Keller, J.	Pasquerilla	Tully
Cortese	Keller, M.	Pott	Van Sant
Croop	Krill	Powell	Waldron
Curran	Laputka	Rea	Westerberg
Dailey	Leach	Reynolds	Whittum
Desmond	Lee, K.	Richter	Wilcox
Devlin	Lee, L.	Rovner	Woodring
Erwin	Leinbach	Sahli	Woodside
Fagan	Leonard	Scarlett	

NOT VOTING—28

Brennan	Fleming	Horne	Musselman
Clark	Forster	Hostetler	Pechan
Conley	Fortney	Irvis	Quiles
Cosetti	Gabreski	Kline	Redick
Donaldson	Gehrlein	Lane	Sharp
Donolow	Goldman	Markley	Warman
Fineman	Heyburn	Miller, R.	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

The question recurs,
Will the Convention agree to the Proposal on third consideration?

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair will recognize Delegate Leach.

DELEGATE LEACH. I move you, sir, the question on the acceptance of Committee Proposal No. 2, Printer's No. 22.

DELEGATE J. W. KELLER. I second the motion.

PRESIDENT BRODERICK. Let me state the question before the House which is, will the Convention agree to advance Proposal No. 2, Printer's No. 22, to final passage?

I have had a motion by Delegate Leach, it was seconded by Delegate Keller, that we close debate and vote on that question, and we will open up the machine to see which side prevails. All those voting "yea" will vote in effect to close debate and vote on the pending question, those voting "nay" will indicate that they wish debate to remain open.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—98

Amsterdam	Desmond	Lee, K.	Roberts
Aurentz	Devlin	Lee, L.	Rovner
Bagenstose	Erwin	Leinbach	Sahli
Baldrige	Fagan	Leonard	Scales
Baldwin	Fawcett	Levin	Scarlett
Barry	Fay	Manderino	Sebastian
Bashoff	Feather	Mangery	Shapiro
Benedict	Fohl	McGeary	Shively
Benfield	Goldstein	Meyer	Shoemaker
Bloom	Gray	Miller, D.	Shrager
Braham	Griffith	Moorhead	Solomon
Buck	Hannum	More	Strickler
Burkholder	Harding	Morton	Stroup
Butera	Hatter	Murray	Swope
Cain	Himes	Nelson	Tate
Camardella	Hocker	Orbin	Thomson
Caputo	Jirolanio	Otto	Thornburgh
Caron	Johnson	Pasquerilla	Tomascik
Clinger	Kauffman	Pelletier	Tully
Corey	Keller, J.	Pott	Van Sant
Cortese	Keller, M.	Powell	Waldron
Croop	Kelly	Rea	Westerberg
Cunningham	Krill	Reynolds	Whittum
Curran	Laputka	Richter	Wilcox
Dailey	Leach		

NAYS—37

Aberman	Filson	Michael	Scott
Allison	Gerber	Michener	Scranton
Baldus	Gouger	O'Donnell	Shettig
Banes	Henderson	Orban	Silverman
Barron	Hook	Percey	Sprogell
Broderick	Huggins	Popil	Stout
Brown	King	Prendergast	Welsh
Bunting	Mattioni	Rappaport	Woodring
Casey	McGlynn	Ruth	Woodside
Dumbauld			

NOT VOTING—28

Brennan	Fleming	Horne	Musselman
Clark	Forster	Hostetler	Pechan
Conley	Fortney	Irvis	Quiles
Cosetti	Gabreski	Kline	Redick
Donaldson	Gehrlein	Lane	Sharp
Donolow	Goldman	Markley	Warman
Fineman	Heyburn	Miller, R.	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

DELEGATE ABERMAN. Mr. President, before you proceed there has to be a question answered.

PRESIDENT BRODERICK. We will now unlock the voting machine and receive the vote. Those voting "yea" vote to advance Proposal No. 2, Printer's No. 22, to final passage.

The question recurs,

Will the Convention agree to the proposal on third consideration?

DELEGATE MICHENER. Mr. President.

PRESIDENT BRODERICK. Would you yield, please?

DELEGATE MICHENER. No, sir.

PRESIDENT BRODERICK. Would you yield until we announce the vote?

DELEGATE MICHENER. I do not want the vote announced, Mr. President. I want to know how Delegate Butera voted on that. I do not see him in his seat. Was he registered as voting?

PRESIDENT BRODERICK. He just walked back inside the room.

DELEGATE BUTERA. I am here. I think I signaled to the delegate next to me to vote for me.

DELEGATE MICHENER. It was called to my attention that he was not in his seat.

DELEGATE BUTERA. When that last vote was called, I was answering a question on a radio interview, and I came into the room and asked Delegate Baldwin to vote for me. I do not see anything wrong with that.

PRESIDENT BRODERICK. Let me just say, Delegate Butera, it is not in accordance with our rules.

DELEGATE BUTERA. Then, Mr. President, I suggest you strike the vote.

PRESIDENT BRODERICK. Would the Delegate take his seat and we will now vote over on the same question? I just want to say that our rules are clear that every delegate must cast his own vote.

DELEGATE CAMARDELLA. Mr. President.

PRESIDENT BRODERICK. I recognize Delegate Camardella.

DELEGATE CAMARDELLA. I am a little bit disturbed, Mr. President. First of all, I do not see why we should be harrassed here to vote again. He should lose his vote, as far as I am concerned. I do not see why we have to go over a vote again. The votes have been final, and that is it.

PRESIDENT BRODERICK. The vote was not final.

DELEGATE BUTERA. Mr. President, that is perfectly all right with me. It is only a vote to—

PRESIDENT BRODERICK. To advance the proposal for final passage.

DELEGATE BUTERA. I am perfectly willing to lose my vote.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I really feel compelled at this time, and it is the first time I publicly disagreed with Delegate Michener, and I have frequently disagreed on many issues of substance with Delegate Butera.

DELEGATE BUTERA. Mr. President, since I am the subject of this debate, I move that we close the debate, and get on to more important business. I appreciate the gentleman's consideration, but we are just taking up the time of the Convention.

PRESIDENT BRODERICK. I understand now that the

body is ready to accept the vote, and that the Butera vote will be stricken. I understand that is the feeling of the body?

The question recurs,
Will the Convention agree to the proposal on third consideration?

The roll was recorded as follows:

YEAS—108

Amsterdam	Dailey	Lee, L.	Sahli
Aurentz	Desmond	Leinbach	Scales
Bagenstose	Devlin	Leonard	Scarlett
Baldrige	Erwin	Levin	Scott
Baldus	Fagan	Manderino	Scranton
Baldwin	Fawcett	Mangery	Sebastian
Barron	Fay	McGeary	Shively
Barry	Feather	Meyer	Shoemaker
Bashoff	Fohl	Michener	Shrager
Benedict	Goldstein	Miller, D.	Silverman
Benfield	Gray	Moorhead	Solomon
Braham	Griffith	More	Strickler
Broderick	Hannum	Morton	Stroup
Buck	Harding	Murray	Swope
Butera	Hatter	Nelson	Tate
Cain	Himes	Orban	Thomson
Camardella	Hocker	Orbin	Thornburgh
Caputo	Jirolanio	Otto	Tomascik
Caron	Johnson	Pasquerilla	Tully
Casey	Kauffman	Pelletier	Van Sant
Clinger	Keller, J.	Pott	Waldron
Corey	Keller, M.	Powell	Welsh
Cortese	Kelly	Prendergast	Westerberg
Cosetti	Krill	Rea	Whittum
Croop	Laputka	Reynolds	Wilcox
Cunningham	Leach	Richter	Woodring
Curran	Lee, K.	Rovner	Woodside

NAYS—27

Allison	Filson	Mattioni	Roberts
Banes	Gerber	McGlynn	Ruth
Bloom	Gouger	Michael	Shapiro
Brown	Henderson	O'Donnell	Shettig
Bunting	Hook	Percey	Sprogell
Burkholder	Huggins	Popil	Stout
Dumbauld	King	Rappaport	

NOT VOTING—28

Aberman	Fleming	Horne	Musselman
Brennan	Forster	Hostetler	Pechan
Clark	Fortney	Irvis	Quiles
Conley	Gabreski	Kline	Redick
Donaldson	Gehrlein	Lane	Sharp
Donolow	Goldman	Markley	Warman
Fineman	Heyburn	Miller, R.	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I move the question.

DELEGATE CAIN. I second it.

PRESIDENT BRODERICK. Delegate Solomon has moved that the debate on the question be closed and we vote on the question, and that was seconded by Delegate Cain.

Now, I will open up the machine and we will vote on whether we will close the debate and vote on the question. All those voting "yea" will vote to support the motion that we close debate and proceed to vote. Those voting "nay" will vote to keep the matter open.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—110

Allison	Desmond	Leonard	Roberts
Amsterdam	Devlin	Levin	Rovner
Aurentz	Erwin	Manderino	Sahli
Bagenstose	Fagan	Mangery	Scales
Baldrige	Fawcett	McGeary	Scarlett
Baldwin	Fay	Meyer	Scott
Barry	Feather	Michener	Scranton
Bashoff	Fohl	Miller, D.	Sebastian
Benedict	Goldstein	Moorhead	Shively
Benfield	Gray	More	Shoemaker
Braham	Griffith	Morton	Shrager
Broderick	Hannum	Murray	Silverman
Buck	Harding	Nelson	Solomon
Burkholder	Hatter	Orban	Strickler
Butera	Himes	Orbin	Stroup
Cain	Hocker	Otto	Swope
Camardella	Jirolanio	Pasquerilla	Tate
Caputo	Johnson	Pelletier	Thomson
Caron	Kauffman	Percey	Thornburgh
Casey	Keller, J.	Popil	Tomascik
Clinger	Kelly	Pott	Tully
Corey	King	Powell	Van Sant
Cortese	Krill	Prendergast	Waldron
Cosetti	Laputka	Rappaport	Welsh
Croop	Leach	Rea	Westerberg
Cunningham	Lee, K.	Reynolds	Whittum
Curran	Lee, L.	Richter	Wilcox
Dailey	Leinbach		

NAYS—25

Aberman	Dumbauld	Huggins	Shapiro
Baldus	Filson	Mattioni	Shettig
Banes	Gerber	McGlynn	Sprogell
Barron	Gouger	Michael	Stout
Bloom	Henderson	O'Donnell	Woodring
Brown	Hook	Ruth	Woodside
Bunting			

NOT VOTING—28

Brennan	Forster	Hostetler	Musselman
Clark	Fortney	Irvis	Pechan
Conley	Gabreski	Keller, M.	Quiles
Donaldson	Gehrlein	Kline	Redick
Donolow	Goldman	Lane	Sharp
Fineman	Heyburn	Markley	Warman
Fleming	Horne	Miller, R.	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

And said proposal having been read at length the third time, considered and agreed to,

On the question,
Shall the Proposal finally pass?

PRESIDENT BRODERICK. The question, will the Convention finally pass this Proposal? It requires 82 affirmative votes.

Have we rung the bell? We have. All the delegates have now voted.

The roll was recorded as follows:

YEAS—112

Amsterdam	Dailey	Lee, L.	Rovner
Aurentz	Desmond	Leinbach	Sahli
Bagenstose	Devlin	Leonard	Scales
Baldus	Erwin	Levin	Scarlett
Baldrige	Fagan	Manderino	Scott
Baldwin	Fawcett	Mangery	Scranton
Banes	Fay	McGeary	Sebastian
Barron	Feather	Meyer	Shively
Barry	Fohl	Michener	Shoemaker
Bashoff	Goldstein	Miller, D.	Shrager
Benedict	Gray	Moorhead	Silverman
Benfield	Griffith	More	Solomon
Braham	Hannum	Morton	Strickler
Broderick	Harding	Murray	Stroup
Buck	Hatter	Nelson	Swope

Butera	Himes	Orban	Tate
Cain	Hocker	Orbin	Thomson
Camardella	Jirolanio	Otto	Thornburgh
Caputo	Johnson	Pasquerilla	Tomascik
Caron	Kauffman	Pelletier	Tully
Casey	Keller, J.	Percey	Van Sant
Clinger	Keller, M.	Popli	Waldron
Corey	Kelly	Pott	Welsh
Cortese	King	Powell	Westerberg
Cosetti	Krill	Prendergast	Whittum
Croop	Laputka	Rea	Wilcox
Cunningham	Leach	Reynolds	Wondring
Curran	Lee, K.	Richter	Woodside

NAYS—24

Aberman	Dumbauld	Huggins	Roberts
Allison	Filson	Mattioni	Ruth
Bloom	Gerber	McGlynn	Shapiro
Brown	Gouger	Michael	Shettig
Bunting	Henderson	O'Donnell	Sprogell
Burkholder	Hook	Rappaport	Stout

NOT VOTING—27

Brennan	Forster	Hostetler	Pechan
Clark	Fortney	Irvis	Quiles
Conley	Gabreski	Kline	Redick
Donaldson	Gehrlein	Lane	Sharp
Donolow	Guldman	Markley	Warman
Fineman	Heyburn	Miller, R.	Wilmarth
Fleming	Horne	Musselman	

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was adopted.

REFERRAL TO COMMITTEE

PRESIDENT BRODERICK. The proposal has passed and will be referred to the Committee on Arrangements, Submissions, and Address to the People.

MOTION TO COMBINE PROPOSALS ON BALLOT

PRESIDENT BRODERICK. The Chair recognizes Delegate Baldrige.

DELEGATE BALDRIGE. Mr. President, I hope that I have a motion which will be non-controversial.

I understand we have very few places on the ballot, nine in total, and the Judiciary Committee and local government needs most of them for State taxation and finance.

Therefore, I move you that when this is submitted to Arrangement and Address to the People, Proposals Nos. 1 and 2 may be combined into one ballot question.

PRESIDENT BRODERICK. If this is in the nature of a recommendation, it will be received, but this is the work of the Committee on Arrangements and Address to the People, as I do not think such a motion would be in order.

That question will come up when we adopt the report.

DELEGATE BALDRIGE. According to the Act this is the only question that this Convention is dealing with, which mandates that it shall be one question on the ballot, sir.

MOTION WITHDRAWN

PRESIDENT BRODERICK. Do I understand, in this circumstance, you withdraw your motion?

DELEGATE BALDRIGE. Yes.

PRESIDENT BRODERICK. Because this would be usurping the power of the committee and, when the report of the committee reaches this floor, anyone, naturally, if that does not agree with the manner in which they have set up the question, this will be then open for discussion and acceptance or rejection.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. Mr. President, would the speaker in opposition to my proposed amendment, Delegate Fagan, consent to be interrogated?

PRESIDENT BRODERICK. He has indicated that he will.

DELEGATE O'DONNELL. Mr. President, I wonder if Delegate Fagan in his comment concerning unsportsmanlike conduct intended that any of it should apply to me and, if so, in what way?

DELEGATE FAGAN. Mr. President, during the remarks that I made there was no reference made to Delegate O'Donnell because, if I would have had any reference to make about him, I would have mentioned him by name. It is a name that we are all familiar with here in the Convention. To go a little bit further, I address my remarks to the conduct of the Committee on Legislative Apportionment, and there were no references made about him as an individual, as a delegate, or to the amendments which he was proposing.

DELEGATE O'DONNELL. I thank the gentleman.

PERMISSION GRANTED COMMITTEE TO MEET DURING SESSION

PRESIDENT BRODERICK. The Chair now recognizes the Chairman of the Committee on Style and Drafting, Chairman Pelletier, who wishes to make a request.

DELEGATE PELLETIER. Mr. President, I would like to request that the Convention now move to the consideration of Proposal No. 7 on second consideration and that the Committee on Style and Drafting be allowed to leave and meet in the room on this floor so we will be available for votes, but with leave to approve the two reports which we have to make on Proposals Nos. 3 and 6. This is not to approve the proposals, but the written report.

PRESIDENT BRODERICK. Unless the Chair hears objections, this will be permitted. In other words, we will go over to Proposal No. 7, which is on second consideration, with the understanding that the bell will be rung if there is any additional consideration to be given to Proposal No. 7, so you will be notified to go back in.

MEETING OF COMMITTEE ON ADMINISTRATION AND FINANCE

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. Before many of the delegates start leaving, and I see there is quite a bit of scurrying around, I thought I had better make an important announcement with reference to the Committee on Administration and Finance. This is a very important meeting which we intend to hold on Monday at 12:00 o'clock noon. We expect all the members to be there. We are going to serve sandwiches and each of them are going to pay for their sandwiches and refreshments. I want to make that announcement in advance.

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of Committee Proposal No. 7, Printer's No. 23, entitled:

A Proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

On the question,

Will the Convention agree to the proposal?

SCRANTON-AMSTERDAM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATES SCRANTON and AMSTERDAM offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 9, by inserting between lines 25 and 26: (e) Should any two or more justices or judges of the same court assume office at the same time, they shall cast lots for priority of commission forthwith, and certify the results to the Governor who shall issue their commissions accordingly.

The question recurs,

Will the Convention agree to the amendment offered by Delegates Scranton and Amsterdam?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, this is a provision which is in the substantial form that was in the present Constitution and was overlooked. It should be provided for in this Constitution.

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. In accordance with an amendment put in by Judge Woodside, we provided in courts of 7 or less that the judges shall be the President Judges or Chief Justice as the case may be for longest and continuous service. Because of this situation, we have to provide as the old Constitution did, in the event there are two or more justices or judges who assume offices at the same time, they shall cast lots for priority of commission and that is all this does.

PRESIDENT BRODERICK. Does anybody wish to be heard either pro or con in connection with this matter? If not, we will proceed to vote.

On the question,

Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—120

Allison	Curran	Lee, K.	Roberts
Amsterdam	Dailey	Lee, L.	Sahli
Aurentz	Desmond	Leinbach	Scales
Bagenstose	Devlin	Leonard	Scarlett
Baldrige	Erwin	Levin	Scott
Baldus	Fagan	Manderino	Scranton
Baldwin	Fawcett	Mangery	Sebastian
Barron	Fay	Mattioni	Shapiro
Barry	Feather	McGeary	Shettig
Bashoff	Filson	McGlynn	Shively
Benedict	Fohl	Meyer	Shoemaker
Benfield	Gerber	Michael	Shrager
Bloom	Goldstein	Michener	Silverman
Braham	Gray	Miller, D.	Solomon
Broderick	Griffith	Moorhead	Sprogell
Brown	Hannum	More	Stout
Buck	Harding	Murray	Strickler
Bunting	Halter	Nelson	Swope
Burkholder	Himes	O'Donnell	Thomson
Butera	Hocker	Orban	Thornburgh
Cain	Hook	Orbin	Tomascik
Camardella	Huggins	Otto	Tully
Caputo	Jirolamo	Pelletier	Van Sant
Caron	Johnson	Percey	Waldron
Casey	Kauffman	Popil	Welsh
Clinger	Keller, J.	Powell	Westerberg
Corey	Kelly	Prendergast	Whittum
Cortese	Krill	Rappaport	Wilcox
Cosetti	Laputka	Rea	Woodring
Croop	Leach	Richter	Woodside

NAYS—2

Banes	Henderson

NOT VOTING—41

Aberman	Fortney	King	Quiles
Brennan	Gabreski	Kline	Redick
Clark	Gehrlein	Lane	Reynolds
Conley	Goldman	Markley	Rovner
Cunningham	Gouger	Miller, R.	Ruth
Donaldson	Heyburn	Morton	Sharp
Donolow	Horne	Musselman	Stroup
Dumbauld	Hostetler	Pasquerilla	Tate
Fineman	Irvis	Pechan	Warman
Fleming	Keller, M.	Pott	Wilmarth
Forster			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

STOUT AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Stout.

DELEGATE STOUT. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE STOUT offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 11), page 6, line 11, by removing the period after "Senate" and inserting: ; provided, however, that such appointment shall not require the advice and consent of the Senate in the event the Governor appoints a person from a list of persons qualified for the office submitted to him by a State Judicial Qualifications Commission composed of four non-lawyer electors appointed by the Governor and three non-judge members of the bar of the Supreme Court, two to be appointed by the Supreme Court and one to be appointed by the Superior Court. The members of the commission shall serve for terms of seven years, staggered so that one member shall be selected each year, and no more than four of the members of the commission shall be members of the same political party. The commission shall consider all names submitted to it and recommend to the Governor not less than ten nor more

than twenty of those qualified for each vacancy to be filled. During the term for which he has been appointed, no member of the commission shall hold any office in a political party or political organization nor shall he hold any public office or appointment for which he receives any compensation. Vacancies in the Judicial Qualifications Commission shall be filled for the balance of the term by the appointing authority.

Amend Schedule (Sec. 21), page 34, line 24, by striking out "the three" and inserting: two

Amend Schedule (Sec. 21), page 34, line 26, by striking out ", four years"

Amend Schedule (Sec. 21), page 34, line 26, by striking out "two" where it appears the second time and inserting: one

Amend Schedule (Sec. 21), page 34, line 27, by striking out "members" and inserting: a member

Amend Schedule (Sec. 21), page 34, line 27, by removing the period after "party" and inserting: and the Superior Court shall appoint the remaining non-judge member of the bar of the Supreme Court of Pennsylvania for a term of four years.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman. For what purpose does the gentleman rise?

DELEGATE KAUFFMAN. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KAUFFMAN. Mr. President, this matter has been considered and it has been reconsidered, and under our Rule No. 21, appearing on pages 22 and 23 of the Rules, it is out of order.

The question has been considered and reconsidered and the rule expressly provides that when a motion for reconsideration is decided, that decision shall not be reconsidered, and no question—and I repeat—no question shall be twice reconsidered.

The question that was voted on and was considered and then was reconsidered was whether we are going to have selection of statewide judges by a panel or whether we are going to have judges appointed by the Governor with two-thirds consent of the Senate. This matter has been before this body not only once but twice.

Therefore, under our rules, this amendment is out of order.

RULING BY THE CHAIR

PRESIDENT BRODERICK. The Chair will rule on this, if you will be at ease. We are going to state the reason.

The Chair with the aid of counsel and the Parliamentarian has come to the conclusion that this amendment—referred to as the Stout amendment—in the form that it is submitted at this time was never previously considered by this body.

There is at least one technical change in it and that is in connection with members of the commission. I note that it says two will come from the Supreme Court and one from the Superior Court, as far as the lawyer members are concerned.

It is the ruling of the Chair that this amendment can be presented without a motion to reconsider.

DELEGATE KAUFFMAN. Mr. President, just to make sure that the record is clear, the rules do not speak in terms of amendments. The rules speak in terms of a question. The question was considered and was reconsidered.

I think it is very, very, very clear that this question has been before this body. I do not think there is a person in the Convention who in good faith would stand up and say that this question has not been before this body and reconsidered by this body.

The rules say "question." Mr. President, I respectfully submit that if you are going to let a little technicality like this—

DELEGATE WELSH. Mr. President.

PRESIDENT BRODERICK. One delegate at a time, please. I recognized Delegate Kauffman.

DELEGATE WELSH. I suggest he is out of order.

DELEGATE KAUFFMAN. Mr. President, I suggest Delegate Welsh is out of order.

Mr. President, I am speaking to the ruling of the Chair and I think I have the right to be heard, Mr. President.

PRESIDENT BRODERICK. You have a right to be heard if you wish to appeal. The Chair has ruled that this amendment has not been considered by this House in this form.

DELEGATE KAUFFMAN. May I ask the Chair a question?

PRESIDENT BRODERICK. You may.

DELEGATE KAUFFMAN. If this is voted down and another one comes in and says that we will have eight members on the nominating commission instead of seven, will that be another amendment? Then if amendments come in with nine, ten and eleven, we will never finish this Convention.

PRESIDENT BRODERICK. The result may be as you have stated, but I do not think it will be. But I can tell you this, that the Chair has consistently, in ruling on whether we needed a motion to reconsider, made the determination on the basis of whether the question—which is the amendment being offered—was in effect similar or substantially the same.

I say that we have always ruled that where there was a difference in the language, a substantial difference—and there is in this amendment—the amendment could be considered. I can only tell you that this has been the consistent basis of the Chair's ruling. We have ruled in some instances that we needed a motion to reconsider. But in this particular instance the Chair has ruled that we do not need a motion to reconsider because we have never considered this language, and it has a different thrust as far as the Chair's interpretation.

DELEGATE KAUFFMAN. Is it the Chair's interpretation that the only—and I repeat—the only difference in this proposal is that, instead of having three members of the panel appointed by the Supreme Court, you are going to have two appointed by the Supreme Court and one appointed by the Superior Court?

PRESIDENT BRODERICK. Let me just say the Chair does not say just "only." The Chair says that is one. Now, it takes a lot of time for the Chair to read and reread.

I have pointed out to you one difference. There may be more. But we only need one substantial difference to rule and, as far as the Chair is concerned at this point, the

Chair has ruled that this amendment can be accepted without a motion to reconsider.

Now, as I say, Delegate Kauffman, you can take an appeal from the Chair's ruling.

MOTION TO LAY ON TABLE

DELEGATE KAUFFMAN. Mr. President, I would like to move at this time to lay this matter on the table until Monday, for the reason that yesterday afternoon it was asked on several occasions whether there were going to be any further amendments to the Judiciary Article. Those who introduced this amendment knew very well that they were going to do so. They knew also very well that many of the members today were not going to be here on Friday afternoon.

In addition, Mr. President, we just amended the article, so that it has to lay over until Monday to advance, anyhow. Therefore, I move to lay this matter on the table.

PRESIDENT BRODERICK. It has been moved by Delegate Kauffman, seconded by Delegate Keller, that this amendment being offered by Delegate Stout be laid on the table until Monday.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegat O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. What would be the effect on the timing of events here, considering that we must adjourn by next Thursday, if this were laid on the table until Monday and passed on Monday? Then, Committee Proposal No. 7 would not then reach third consideration until Thursday?

PRESIDENT BRODERICK. Wednesday?

DELEGATE O'DONNELL. On Wednesday.

PRESIDENT BRODERICK. In other words, if it is amended on Monday, it has to appear on the calendar on Tuesday. We then move it over to Style and Drafting on Wednesday.

DELEGATE O'DONNELL. It would then be susceptible of amendment on Tuesday, as well, sir?

PRESIDENT BRODERICK. Certainly.

DELEGATE O'DONNELL. In other words, it would continue on second consideration—

PRESIDENT BRODERICK. I think the answer to your question is that when you do this you are delaying one session day.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera. For what purpose does the gentleman rise?

DELEGATE BUTERA. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BUTERA. In an effort to resolve this, is it not possible for the parties who are opposing each other on this particular amendment to agree as gentlemen that we move the measure to third reading today and that we then discuss the amendment on third reading on Monday? We will not lose a day that way.

PRESIDENT BRODERICK. Delegate Butera, if that is a point of inquiry—and I take it to be, and not debate on this—we have already amended this matter once. It has to appear on the calendar on Monday.

PARLIAMENTARY INQUIRIES

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey. For what purpose does the gentleman rise?

DELEGATE CASEY. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE CASEY. If the motion to lay on the table is carried, how many votes will be required on Monday to remove it from the table?

PRESIDENT BRODERICK. It will take a majority of votes to put it on the table and it takes a majority of votes to remove it from the table.

DELEGATE CASEY. A second point of parliamentary inquiry. Does not the proponent of the amendment have the option to now withdraw the amendment and offer it on Monday as a matter of right, without the consent of a majority of the delegates present at that time?

PRESIDENT BRODERICK. Yes, indeed. The Convention has not as yet voted on the motion to table, and there is no question that the proposer of the amendment has a right until that time to withdraw his amendment. At least, that has been our procedure and shall continue to be unless we are overruled.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron. For what purpose does the gentleman rise?

DELEGATE BARRON. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BARRON. I would ask that I be permitted to rise and challenge Delegate Kauffman and to observe that to the best of my knowledge there has never been an issue vesting in the Governor an option of which form the Governor wishes to use in selecting.

DELEGATE KAUFFMAN. I introduced such an amendment the other day, Delegate Barron.

PRESIDENT BRODERICK. That matter has been decided. No appeal was taken. And of course now we have a motion.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman. For what purpose does the gentleman rise?

DELEGATE KAUFFMAN. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KAUFFMAN. Is it not true that because the article already has been amended today it has to lay over until Monday, anyhow?

PRESIDENT BRODERICK. That is right.

DELEGATE KAUFFMAN. And this would not delay it at all?

PRESIDENT BRODERICK. Yes, if you amend it again on Monday it will delay. If you do not amend on Monday, it will not delay. It is that simple.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton. For what purpose does the gentleman rise?

DELEGATE SCRANTON. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SCRANTON. When Delegate Amsterdam and I put in this amendment, which we had to for a technicality that the lawyers found, I was under the impression that we could then move to suspend the rules and move on to third reading. Is that correct or incorrect?

PRESIDENT BRODERICK. You can always move to suspend the rules and, if you suspend the rules, it is going to require a vote of 109 to suspend the rules.

DELEGATE SCRANTON. I understand.

PRESIDENT BRODERICK. Now we have a motion before us offered by Delegate Stout.

DELEGATE STOUT. Mr. President, I rise to introduce an amendment to Committee Proposal No. 7.

PRESIDENT BRODERICK. Just at this time that is out of order. The reason I recognized you was because—I think it was Delegate Casey who had an inquiry as to withdrawing—and I see the amendment is not withdrawn, so we will vote on the motion to table.

We will now unlock the voting machine and the question before the House is whether to table the amendment offered by Delegate Stout. The motion is whether it be tabled. All those voting "yea" will vote to table, those voting "nay" will vote not to table.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—76

Aurentz	Devlin	Kelly	Rappaport
Bagenstose	Erwin	King	Richter
Baldrige	Fagan	Krill	Rovner
Baldwin	Fawcett	Laputka	Sahli
Banes	Fohl	Leach	Scales
Barry	Gerber	Lee, K.	Scarlett
Bashoff	Goldman	Leonard	Scott
Benedict	Goldstein	Levin	Shettig
Benfield	Griffith	Mangery	Shively
Butera	Hannum	Mattioni	Shoemaker
Cain	Harding	McGlynn	Shrager
Camardella	Hatter	Meyer	Solomon
Caputo	Henderson	Miller, D.	Strickler
Corey	Hocker	Orbin	Thomson
Cortese	Huggins	Otto	Tully
Croop	Jirolanio	Pasquerilla	Van Sant
Cunningham	Kauffman	Pott	Waldron
Curran	Keller, J.	Powell	Westerberg
Desmond	Keller, M.	Prendergast	Whittum

NAYS—55

Allison	Cosetti	Michener	Scranton
Amsterdam	Dailey	Moorhead	Sebastian
Baldus	Fay	More	Shapiro
Barron	Feather	Morton	Sprogell
Bloom	Filson	Murray	Stout
Braham	Gray	Nelson	Swope
Broderick	Himes	O'Donnell	Tate
Brown	Hook	Orban	Thornburgh
Buck	Johnson	Pelletier	Tomascik
Bunting	Lee, L.	Percey	Welsh
Burkholder	Leinbach	Popil	Wilcox
Caron	Manderino	Rea	Woodring
Casey	McGeary	Roberts	Woodside
Clinger	Michael	Ruth	

NOT VOTING—32

Aberman	Fleming	Hostetler	Quiles
Brennan	Forster	Irvis	Redick
Clark	Fortney	Kline	Reynolds
Conley	Gabreski	Lane	Sharp
Donaldson	Gebrlein	Markley	Silverman
Donolow	Gouger	Miller, R.	Stroup
Dumbauld	Heyburn	Musselman	Warman
Fineman	Horne	Pechan	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

MOTION TO SUSPEND RULES

DELEGATE BUTERA. Is it in order to move to suspend the rules to move Committee Proposal No. 7 to third reading at this time so as to possibly save a day next week?

PRESIDENT BRODERICK. Yes, it is in order to suspend the rules.

DELEGATE BUTERA. Mr. President, I so move.

DELEGATE BANES. Second.

PRESIDENT BRODERICK. Will you go back to the microphone again, Delegate Butera?

Now, Delegate Butera, as I understand, your motion is that we suspend Rule 26, sub-Section 6, which says "a proposal which has been amended shall remain on second consideration calendar for action after the proposal is reprinted showing the amendment agreed to," and what you want to do right now is suspend that rule?

DELEGATE BUTERA. Yes, Mr. President. I move to suspend the rule so that Committee Proposal No. 7 can be placed on the third consideration calendar.

PRESIDENT BRODERICK. And your motion has been seconded by Delegate Banes.

DELEGATE BUTERA. If I may speak upon the motion?

PRESIDENT BRODERICK. Yes, indeed, you may proceed.

DELEGATE BUTERA. The amendment which was inserted today by the committee co-chairman was one of form. I do not feel as though the delegates in voting to suspend the rules are really doing something which they are not quite sure of, because the committee proposal is intact except for a very, very minor amendment inserted today. I would urge that everyone vote in favor of the motion, in case next week the committee proposal is amended. We will save a day by doing it this way.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. Mr. President, what does this now do to the motion that has been laid on the table? It is kind of hard for me to think of a matter on third consideration while a motion is on the table. How many votes will be needed now to lift it from the table so that it can be acted upon on Monday?

PRESIDENT BRODERICK. The majority present can remove it from the table. I am advised by the Parliamentarian that this amendment has been offered. It is on the table. As we have heretofore stated, it will re-

quire a majority vote of those present to remove it from the table, and then, if it is removed from the table, it can be voted upon because it has already been offered and it will not require consent, which would be, in effect, the same thing, because you are getting the majority vote required to remove it from the table. A majority vote is necessary for consent and then the amendment would be presented.

DELEGATE O'DONNELL. Do I understand, then, sir, the effect of placing this on third consideration would have no effect whatever on the position of the Stout amendment as of Monday?

PRESIDENT BRODERICK. None that the Chair can see now. It has an effect on the proposal if it is accepted, then it goes over again.

DELEGATE O'DONNELL. Yes, sir, that is understood.

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, may I speak to the Butera motion?

PRESIDENT BRODERICK. Yes, you may.

DELEGATE CASEY. I rise to speak in opposition to the Butera motion for the following reasons.

We have before us now one of the most far-reaching articles of this Convention, a subject in which 11,000,000 people are vitally interested. The Commonwealth—all of its people—and the news media are watching what we do with this proposal, and with good reason.

I would suggest to the Convention that this proposal in its present form, which was just delivered into our hands this morning and which differs substantially, in my judgment, from the proposal as it left the Judiciary Committee, is entitled to the mature reasoning and dispassionate judgment of every member of this Convention.

I would suggest, Mr. President, that we found yesterday, many of us, because of the fatigue and extreme pressure under which all of us have been working, that we were perhaps confused with respect to the reach of some of the amendments that have been made.

There is a serious question in my mind whether the original thesis of the Judiciary Committee, the unified court system, the tremendous new power, unprecedented power, which we are giving to the Supreme Court of Pennsylvania under this proposal, the judicial members, I would suggest and remind this Convention, who are now being selected under this proposal, as amended by an appointive system rather than the system which the Judiciary Committee initially recommended, raising a serious question of whether these Supreme Court justices, who will now be given this tremendous power and who will be selected during the decades that lie before us, not by merit selection as the Judiciary Committee originally recommended, but by the appointive system, which has been characterized, and I think properly so, by Governor Scranton as an outrageous political system, whether or not moving to suspend the rules on this question—

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. I do not believe that the learned delegate, Mr. Casey, former Senator, is talking on the motion.

DELEGATE CASEY. Mr. President, I am talking directly to the motion and I am suggesting that the effect of this motion will be to push this matter along without the mature and deliberate consideration to which it is entitled. I think we have the right to know the effect of this motion and we have a right to know the far-reaching importance of what we are considering here. I resent very much any effort to ram this thing through this Convention.

It has already been amended. It will lay over until Monday, anyway. I think these delegates have the right to consider whether or not they want to do this. I think it would be a very bad mistake. There are many people in this Commonwealth who are very concerned about this problem, and I see no benefit in moving it into third consideration.

If, as Governor Scranton suggested, this motion were made Tuesday, that is an entirely different matter than from making the motion today.

PRESIDENT BRODERICK. Did you complete your statement?

DELEGATE CASEY. No, I have not, Mr. President.

PRESIDENT BRODERICK. You may proceed.

DELEGATE CASEY. We have a basic question to decide with this proposal and that question is:

Does this proposal accomplish judicial reform in Pennsylvania?

How can we decide this question when over a hundred amendments have been offered and when this very complex proposal has just been delivered to our desks this morning? There may be delegates here who will want to discuss this matter and will want to offer amendments, who will want to interrogate the co-chairmen of the Committee with respect to the reach of this proposal, who will want further elaboration, for example, on the reason why the magisterial system in Philadelphia survives this Article, why traffic court judges, for example, should not be learned in the law in the face of recommendations made by the Committee of 70 and other interested groups in this Commonwealth.

These are questions which can only be answered, I suggest, by moving this proposal along in an orderly fashion, giving the delegates an opportunity to review it over the weekend and decide whether or not this proposal is in proper form to submit to the 11 million people of this Commonwealth.

I have serious doubts in my own mind that this is the case and I would remind Delegate Jirolanio and everyone in this room that we are going to be expected and asked to sell this product to the people of this Commonwealth. I want to know what is in the product. I want to know whether it is judicial reform or not before I am called upon to do this. I think we need more study than this body has given this proposal to decide this question.

Therefore, I oppose the motion.

MOTION WITHDRAWN

DELEGATE BUTERA. The motion was not intended in any way to do the things which Delegate Casey alleges.

I am perfectly willing to withdraw the motion. I just thought that perhaps we could save time next week so that we are not rushed at the end of the session with the most important proposal before us.

I will withdraw the motion because it is not that important to me. I just wanted to make certain that everyone in this Hall realizes that we are getting down to the wire and I thought, in no way, would this motion affect the deliberate debate on Proposal No. 7. I will withdraw the motion.

If someone else wants to make it, let them get on the "hot seat."

PRESIDENT BRODERICK. I understand Delegate Butera has now withdrawn his motion.

Is that agreeable to Delegate Banes, who seconded it?

DELEGATE BANES. It is.

PRESIDENT BRODERICK. Therefore, the motion has been withdrawn.

MOTION TO HAVE SATURDAY SESSION

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I wish to speak to make a revolutionary proposal.

I will put it in this form:

I move that this Convention be in session tomorrow, Saturday, February 24th, in view of the remarks of Senator Casey, with which I agree, as to the amount and importance of the matter still remaining before us.

PRESIDENT BRODERICK. Delegate Braham, are you putting that in the form of an adjournment motion now? I want to point out that we are still waiting for Style and Drafting in connection with Proposals Nos. 3 and 6.

DELEGATE BRAHAM. I did not intend it as a motion to adjourn, but I will make it at that time, when the appropriate time comes, yes.

PRESIDENT BRODERICK. Delegate Braham has just declared his intention to make such a motion of adjournment when we reach the conclusion of our business today.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Johnson. For what purpose does the gentleman rise?

DELEGATE JOHNSON. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JOHNSON. Mr. President, I just wanted to inquire what is the status of the Convention and how long it will be in session.

PRESIDENT BRODERICK. I just want to say that we have been considering Proposal No. 7, Printer's No. 23, and, unless there is further business in connection with that proposal, unless I hear to the contrary, I will assume that we have completed discussion of it and we will go over again on second consideration.

Are there any further Amendments? Anything further in connection with Proposal No. 7?

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton. For what purpose does the gentleman rise?

DELEGATE SCRANTON. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SCRANTON. In view of the fact that we now will be on second reading again on Monday, or perhaps on Saturday, what does this do to Style and Drafting?

PRESIDENT BRODERICK. What it does to Style and Drafting is, frankly, we were counting on Style and Drafting working this weekend perhaps on the Judiciary article, if we could have moved it on, but apparently we have not been able to do that because it is still on second consideration on Monday. If we move it from second consideration into Style and Drafting on Monday, they can probably get a report back to us on Tuesday.

DELEGATE SCRANTON. May I make a suggestion, then?

I suggest that in view of the fact that, as far as I know, this is the only amendment left for the Judiciary Committee, of course, if it stays on second reading others can come, could we not send it as it is—not formally but informally—to Style and Drafting and let them look at it and work on it, since this only refers to one section?

PRESIDENT BRODERICK. There is no problem there. The work is always available to Style and Drafting, and I might add that Style and Drafting has been considering all our proposals as we have been advancing them. That is a question of their own internal procedures.

DELEGATE SCRANTON. I have the floor and I want to yield the floor to the Chairman.

PRESIDENT BRODERICK. You asked me where we are. It appears we have completed our consideration today of Proposal No. 7, Printer's No. 23, and that proposal will go over until Monday on second consideration.

Therefore, we are now ready to consider either Proposal No. 3 or Proposal No. 6. Have I answered your question?

DELEGATE JOHNSON. You have, and yet we are not ready to present those proposals at the present time. We have a commentary on them that we are preparing that must be shown to our committee members.

How long does the Convention plan to be in session?

PRESIDENT BRODERICK. The answer to that question is best obtained by my saying to the chairman, how long is it going to take you to prepare your report on Proposals Nos. 3 and 6?

DELEGATE JOHNSON. Delegate Aberman, a member of the committee, has the answer to that.

DELEGATE ABERMAN. Mr. President, on the question of the committee report for No. 6, it is my understanding that the Chair would accept Proposal No. 6 without the report for the moment.

Proposal No. 6 is printed. The report is in the process of being printed. If the Chair would accept Proposal No. 6, it could come forward within the next 10 or 15 minutes.

No. 3, as I understand it, is also in the same situation. The report is being prepared. The proposal is prepared.

I do not know what the Chair wishes to do, but it seems rather an insignificant amount of time, if we can get two proposals prepared for third reading, to ask the delegation to stay and eat lunch, possibly, and we will be ready to move two more into final reading.

PRESIDENT BRODERICK. I think that is in line with the Chair's inquiry as to how long it is going to take to

prepare the reports on Proposals Nos. 3 and 6. How much time do you need?

DELEGATE ABERMAN. How long do the delegates wish to eat lunch, would be the answer.

PRESIDENT BRODERICK. Let me put it quite clearly to you. Is it going to be a question of 10 minutes or is it a question of an hour?

WIFE AND FAMILY OF DELEGATE ABERMAN WELCOMED

PRESIDENT BRODERICK. I will recognize Delegate Gerber.

DELEGATE GERBER. Mr. President, I would like to rise for a point of personal privilege to introduce the wife and two sons of Delegate Aberman, who is doing such a wonderful job, his lovely wife Meryl, and his two sons, John and Lawrence Aberman.

PRESIDENT BRODERICK. We are going to ask them to stand, and we will give them a warm greeting.

REQUEST BY DELEGATE PASQUERILLA

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I would like to earnestly call to the attention of these delegates, if they would please bear with us, I think it is extremely important that we make a real effort to finally pass Proposals Nos. 3 and 6 today, with the problem of the Judiciary, and Style and Drafting, and with the problems that we have I understand we also have Proposals Nos. 4 and 5. Time is becoming a real problem, so I would urge that each and every one of us stay here and come back here at 2:30 so that we can complete these two proposals.

PRESIDENT BRODERICK. I join in the request, Delegate Pasquerilla, that we do complete consideration of these proposals.

MEETING OF COMMITTEE ON STYLE AND DRAFTING

DELEGATE JOHNSON. The Committee on Style and Drafting will meet immediately following this recess in Room 500 for luncheon and business.

RECESS

PRESIDENT BRODERICK. The Chair has a motion to recess until 2:30. The Chair is willing to hear objections to that if there are any.

The Chair hears none, and the Convention is now in recess until 2:30 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired the Convention will come to order.

WIFE AND GUEST OF DELEGATE WARMAN WELCOMED

PRESIDENT BRODERICK. Fellow Delegates, while we are waiting for the report, we are not going to go into formal session, so I think it would be a good opportunity to introduce Mrs. Warman, the wife of Delegate Warman. She is here with a friend, Mrs. Marcia Bartlett. They are back there and I think we should give them our warm cordial greeting.

WIFE OF DELEGATE SWOPE WELCOMED

PRESIDENT BRODERICK. We will recognize Delegate Swope.

DELEGATE SWOPE. There was a time some 30 years ago when I was usually introduced by the naming of my name and one of the titles that I might have had, but in recent years I am usually introduced as Judge Swope's father or Helen Swope's husband. Helen being here, I wish the delegates to meet her.

PRESIDENT BRODERICK. Please stand and we will give you a cordial welcome.

GUEST OF DELEGATE SHOEMAKER WELCOMED

DELEGATE SHOEMAKER. Mr. President, while we are still informally here, I would like to introduce a member of the Fourth Estate from the Patriot News who serves as Editor of York County, Mr. Harry McLaughlin.

PRESIDENT BRODERICK. We are very happy to have Mr. McLaughlin with us.

ANNOUNCEMENT BY CHAIR

PRESIDENT BRODERICK. Fellow Delegates, I have been getting reports periodically from Style and Drafting, and so you will know at least as much as I know and maybe some of you know a lot more about the status, as to No. 6, they are still working on their report, and as to No. 3, they have completed their report and it is in the process of being duplicated. I understand it is going to take about 15 more minutes to complete the duplication and distribution.

Unless something comes along to change it, as soon as we get the report on Proposal No. 3, distributed, we will take up Proposal No. 3. When Dr. Pelletier and Dr. Johnson were in a few minutes ago—I see they are still here—it was a question of having the report on Proposal No. 6 ready at that time in approximately an hour. I think by the time we finish our consideration of No. 3, we will be ready to consider Proposal No. 6.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Markley. For what purpose does the lady rise?

DELEGATE MARKLEY. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The lady will state it.

DELEGATE MARKLEY. Mr. President, I was delayed attending the funeral of Mr. Guy Davis, and I am now on record as being present, but, if I had been present, I would have voted in the affirmative on Proposals Nos. 1 and 2. I would like it recorded.

PRESIDENT BRODERICK. We will have the remarks of Delegate Markley placed upon the record and we are happy to have her with us.

MR. AND MRS. E. R. BELLOWS WELCOMED

PRESIDENT BRODERICK. While they are still present, I want to call to the attention of my fellow delegates the fact that Mrs. E. R. Bellows and her husband are here. Mrs. Bellows is the First Vice President of the League of Women Voters from Pittsburgh and, if she and her husband will stand, we will be very happy to give them our cordial greeting.

RESOLUTION

DELEGATE WARMAN requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 23, 1968.

On February 8, 1968, I, Delegate Edwin G. Warman was called upon in my capacity as Consultant to the United States Department of State to travel to Jamaica, West Indies.

While in St. James, Delegate Warman was invited to the parlour of His Worship, the Mayor of St. James, Montego Bay, Jamaica. His Worship expressed an avid interest in the activities and deliberations of the Pennsylvania Constitutional Convention of 1967-1968; therefore be it

RESOLVED, That the Constiutional Convention of Pennsylvania express its thanks to His Worship, the Mayor of St. James, Montego Bay, Jamaica, West Indies, for his interest in our deliberations; and be it further

RESOLVED, That a copy of this resolution be transmitted to His Worship, the Mayor of St. James, Montego Bay, Jamaica, West Indies.

CALENDAR

COMMITTEE PROPOSALS ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to third consideration of Committee Proposal No. 3, Printer's No. 24, entitled:

A proposal amending the Constitution of Pennsylvania further providing for Commonwealth indebtedness.

On the question,

Will the Convention agree to the proposal on third consideration?

PRESIDENT BRODERICK. We are on Proposal No. 3, Printer's No. 24, on today's calendar which is on there for third consideration and the question before the House is, will the Convention agree to advance Proposal No. 3 to final passage.

The Chair now recognizes the Chairman of the Committe on Style and Drafting, Chairman Pelletier.

DELEGATE PELLETIER. Mr. President, you have certainly been extremely tolerant and long-suffering and this is one case were Xerox failed us. We were sure that these reports would be ready by 2:30, or shortly thereafter, and the schedule has not been met.

Before I give the report of the Committee on Style and Drafting relative to Committee's Proposal No. 3, I would like to request you make two changes in your copy of the committee proposal. These are typographical errors and should be deleted.

The first is on page 3 in line 2. "Average" should not be there. It presently reads, "to exceed the average estimated useful life." "Average" should be deleted.

Then, moving down to line 18 on the same page, the "2" that is just prior to, "Obligation to be repaid" should obviously be "3," so that that "2" on line 18 just before "obligations to be repaid" should quite obviously be "3" and we will make that change and then I think the copy is as it should be.

PRESIDENT BRODERICK. Does the Chair hear any objection to correcting these typographical errors?

DELEGATE PELLETIER. The first error is on line 2 of page 3 where the line presently reads, "a period not to exceed the average estimated useful life." "Average" should be deleted. "Average" should be deleted from that line.

PRESIDENT BRODERICK. I just want to add that I see a few of the delegates are looking at the report of the Committee's—

DELEGATE PELLETIER. I am sorry, Committee Proposal 3, Printer's No. 24, and on that page 3, line 2, the word "average" should be deleted. Again, on line 18 the enumeration of "2" should be changed to "3."

PRESIDENT BRODERICK. May the Chair just ask the question whether your clean copy also contains the same error?

DELEGATE PELLETIER. I believe it does, yes.

PRESIDENT BRODERICK. May I suggest we also correct the clean copy. I understand this was a typographical error. Where would that be, Chairman Pelletier? I am advised by the Parliamentarian that the word "average" is on line 11 on page 2 of the clean copy, and the other one is not there, I understand.

DELEGATE PELLETIER. It would be on page 2 of the clean copy, line 11 and on line 22.

COMMITTEE REPORT

COMMITTEE ON STYLE AND DRAFTING RELATIVE TO PROPOSAL No. 3

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. Mr. President, I stand in place and offer the following report.

COMMITTEE ON STYLE AND DRAFTING

519 North Office Building
Harrisburg, Pennsylvania 17106

February 22, 1968

To the Honorable,
The Delegates Assembled,
1967-1968 Pennsylvania Constitutional Convention

RE: Report on State Indebtedness

Mesdames and Sirs:

We are pleased to submit our Report on Com-

mittee Proposal Three relating to Commonwealth indebtedness and two auxiliary matters.

Preliminarily, the Committee wishes to acknowledge the personal assistance and cooperation of the Co-Chairmen of the substantive Committee on Taxation and State Finance as the text of this Proposal was examined and edited pursuant to Rule 22.

I. GENERAL

As previously, the Committee on Style and Drafting considered Proposal Three in the manner agreed upon by the Committee and approved by the Convention. In addition to preliminary conferences with the Co-Chairmen and counsel of the substantive Committee, copies of Style and Drafting's edited text were selectively distributed to members of the substantive Committee for comment. The advice of the Co-Directors of the Convention's Research Staff, the Director of the Convention Drafting Bureau, and of the Director of State Constitutional Drafting Studies at Columbia University was solicited and considered prior to approval by the full Committee of the edited text.

We reiterate our goal: to critically consider each proposal referred to this Committee to insure that the proposals finally submitted to the Convention for third consideration are clear, concise, unambiguous, and harmonious in style and manner of expression within the substantive Committee's proposal as amended on second consideration, with other pending substantive proposals, and with the remainder of the Constitution of 1874. To insure constancy in word usage and description in the revised article on taxation and finance, the Committee on Style and Drafting delayed rendering its report on Commonwealth indebtedness until Proposals Four and Five had been referred for consideration.

II. SECTION NUMBERING

Attached as an Exhibit to this narrative is a table showing the manner in which present existing sections in the taxation and finance article of the Constitution of 1874 would be affected by the repealer provisions contained in Proposals Three, Four, and Five of the Committee on Taxation and State Finance and in Proposal Six of the Committee on Local Government, assuming final passage of these proposals by the Convention and approval by the electorate. The Committee's intention, as the column on the right of the Exhibit indicates, is to organize the sections of this article to insure numerical sequence. The Convention should determine either to accept the Committee's recommendation with respect to proposed numbering as shown in the Exhibit and in each of the proposals being reported with respect to the Taxation and State Finance Article or, alternatively, to strike all section numbers in Proposals Three, Four and Five so as to permit the Governor by proclamation to specify the section numbers pursuant to Act No. 180 of August 17, 1965. If the Convention accepts the proposed numbering, the Committee strongly recommends that present existing sections 2 and 3 of Article IX be renumbered sections 5 and 6 respectively, and that present existing section 3 be amended by deleting the word "State" and substituting therefore the word "Commonwealth."

III. SIGNIFICANT CHANGES IN STYLE

1. In consultation with the substantive Committee, this Committee has inserted the descriptor "man-made or natural" and stricken the phrase "or other catastrophe", page one, line 15. This change was necessary to preserve the sense and purpose of the clause.

The Committee is not insensitive to the rationale of the Convention at the time this clause was amended on second consideration by deleting "riot or civil disorder" and inserting the phrase "or other catastrophe." However, this change would have effectively precluded the Commonwealth from incurring indebtedness to rehabilitate any area which might have had the misfortune to endure mob violence which, we understand, was not your intention.

The lexicographers consider disaster and catastrophe to be synonymous, although the latter is deemed to be of a greater order, viz. a "notable disaster." See Webster's International, 3d ed., and 6 Words and Phrases. Two recent Pennsylvania appellate court cases likewise treat the words as being synonymous, differing solely in degree or magnitude, but both involving an "unusual, extraordinary, sudden" or "an unexpected manifestation of the forces of nature." Goldberg v. R. G. Miller, 408 Pa. 7, 8 (1962); Rohr v. Logan, 206 Pa. Super. 232 (1965).

Thus, to accomplish that goal which the Convention obviously seeks, we recommend acceptance of the descriptive phrase "man-made or natural disaster."

2. On page two, line one, the word "State" has been added to the title of Treasurer to conform to present usage as in Article IV, section 1, "The Executive Department."

3. In subsection (2), the two operative clauses have been combined to avoid unnecessary duplication.

4. So that it is quite clear that all three of the officers named in subsection (2) must together undertake to either issue tax anticipation notes or refund debt, the Committee recommends the phrase "acting jointly." (Page 2, line 1).

5. The definition of tax anticipation notes has been further refined to accord with contemporary understanding of that term of art. This refinement is agreeable to both the substantive Committee and the Commonwealth's Counsel General.

6. At the suggestion of the substantive Committee's representatives subsection (3), (lines 8-11, page 2), was moved verbatim to precede what is now subsection (4) to establish a more logical sequence in presentation.

7. In subsection (4) certain changes in style

were effected to more precisely state the intention of the Convention and, at lines 22-27, the calculation of debt outstanding was restated to avoid unseemly repetition.

8. The Committee calls the Convention's attention to the insertion of the description "fiscal" at line sixteen, page two. As originally drawn it was unclear whether reference was being made to five calendar or five fiscal years. The Committee has been advised the substantive Committee intended reference to fiscal periods certified by the Auditor General.

9. In subsection (B) (page 3, lines 1-5), this Committee suggested, and the substantive Committee concurred in, a change in language to insure that the maturity of debt incurred for capital projects bears a direct relation to the estimated useful life of the projects and that the General Assembly's determination of this period of useful life, made in the law authorizing the projects, is a final determination. The Committee is of the view that the operation of the financial market place establishes adequate parametres to insure against the possibility, however remote, of an abuse of discretion in the determination of this judgment.

10. The second sentence of subsection (B) (page 3, lines 5-9), required further definition to achieve the sense and purpose of the Convention. The Convention and the substantive Committee obviously did not intend that the Commonwealth should be confined to serial bond issues. Yet the operative language "payable in . . . installments" seemed to limit issues solely to those serial in nature. Thus, so as not to preclude issuance of term obligations with a sinking fund, the operative words "amortized . . . amounts" are recommended.

Secondly, the Convention and substantive Committee desired that certain sums be paid either against the serial issue or into the sinking fund without precluding the Commonwealth, as the market would permit, from having a major final payment or "balloon" at the end of the financing period. Yet the language on second consideration, while requiring periodic payment, would have permitted the incongruity of an initial nominal payment. The Committee, therefore, recommends the language "substantial and regular" to describe the manner in which long-term debt is to be amortized.

To promote exact definition of the term within which the first amortized amount is to be paid against a serial issue or deposited to the sinking fund of a term issue, the Committee has rephrased the description phrase to insure that such payment is made or deposit effected any time after the obligation is assumed but prior to the expiration of a period of time equal to one-tenth the term of the debt. Thus on a 40-year bond, a payment must be made or deposit effected within four years from the date the obligation was issued.

11. The changes in language in subsection (C) were made to more clearly and precisely delimit the three exceptions from the definition of debt in this Proposal.

12. The change effected in subsection (D) is intended to remove unnecessary verbiage.

13. In sections 6 (page 3, line 29) and 9 (page 4, lines 3, 7 and 9), the word "Commonwealth" has been substituted for "state" to conform to common usage in other pending proposals. We again recommend the amendment of existing section 3 to delete "state" and insert "Commonwealth."

14. The nouns (line 2, page 4) were rearranged as a matter of style to conform to their prior use in the same subsection.

15. The description of type "municipalities" in section A (page 4, lines 3-9) were added to identify units of local government now in existence and to protect the Commonwealth from being obliged to assume the debt of any unit of local government which may hereafter be created. The descriptive phrase "any similar general purpose unit of government" as well as the listing of existing units of local government conforms to the usage in Proposal 6 of the Committee on Local Government.

Finally, in this same section 9, the limited number of situations in which the Commonwealth may assume municipal debt has been phrased to conform to those situations in which section 7 of this Committee Proposal 3 permits the Commonwealth to incur debt without limit. The Committee notes, however, that the provision for rehabilitation of areas affected by man-made or natural disaster has been deliberately omitted.

Respectfully submitted,

Committee on Style and Drafting
By: ROY H. JOHNSON
LAWRENCE L. PELLETIER

ANF: WPH: mes

BY SECTION NUMBERS:—

Constitution of 1874	Committee Proposals (No. in Parenthesis)		Proposed Numbering
1	1	r (5)	1
	1A	(5)	2
1B			3
	1C	(5)	4
2			5 n.c.
3			6 n.c.
4	4	r (3)	7
5		R (3)	
6	5	(3)	8
7		R (6)	
8		R (6)	
9	6	(3)	9
10		R (6)	
11		R (3)	
12		R (3)	
13		R (3)	
14	14	r (4)	10
15		R (6)	
16		R (3)	
16		R (3)	
17		R (3)	
18			11 n.c.

19		R (6)	
21		R (3)	
22		R (3)	
23		R (3)	
24			24*n.c.
25			25*n.c.
	26	(4)	12
	27	(4)	13
	28	(4)	14

KEY: "r" revised in part
"R" repealed
"n.c." no change from present Constitutional language
"*" Present Sections 24, "Project 70", and 25 "Reclamation Fund" shall be repealed by Committee Proposal 3, section 4, when last bonds issued pursuant thereto. It seems logical, therefore, simply to leave those sections outside the new scheme of section numbers.

PRESIDENT BRODERICK. The Chair on behalf of all of the delegates thanks the Committee on Style and Drafting for an excellent report.

The question still before the Convention is will the Convention agree to advance Proposal No. 3 to final passage? I want to point out that this is the opportunity to amend, and are we ready for the question?

The question recurs,

Will the Convention agree to the proposal on third consideration?

The roll was recorded as follows:

YEAS—114

Aberman	Erwin	Leonard	Sahli
Amsterdam	Fagan	Levin	Scales
Aurentz	Fawcett	Manderino	Scarlett
Bagenstose	Fay	Mangery	Scott
Baldrige	Feather	Markley	Scranton
Baldus	Filson	Mattioni	Shapiro
Baldwin	Fohl	McGeary	Shettig
Barron	Gerber	McGlynn	Shively
Benedict	Goldman	Meyer	Shoemaker
Benfield	Goldstein	Michael	Shrager
Bloom	Gouger	Michener	Sprogell
Braham	Griffith	Miller, D.	Stout
Broderick	Hannum	Moorhead	Strickler
Brown	Harding	More	Stroup
Buck	Hatter	Morton	Swope
Bunting	Henderson	Murray	Tate
Butera	Himes	Nelson	Thomson
Camardella	Hocker	Orban	Thornburgh
Caron	Hook	Orbin	Tomascik
Casey	Hostetler	Otto	Tully
Corey	Jirolanio	Pasquerilla	Van Sant
Cortese	Johnson	Pelletier	Warman
Cosetti	Kauffman	Popil	Welsh
Croop	Keller, J.	Pott	Westerberg
Cunningham	Krill	Powell	Whittum
Curran	Laputka	Prendergast	Wilcox
Dailey	Leach	Roberts	Woodring
Desmond	Lee, L.	Rovner	Woodside
Devlin	Leinbach		

NAYS—0

NOT VOTING—49

Allison	Dumbauld	Keller, M.	Rappaport
Banes	Fineman	Kelly	Rea
Barry	Fleming	King	Redick
Bashoff	Forster	Kline	Reynolds
Brennan	Fortney	Lane	Richter
Burkholder	Gabreski	Lee, K.	Ruth
Cain	Gehrlein	Miller, R.	Sebastian
Caputo	Gray	Musselman	Sharp
Clark	Heyburn	O'Donnell	Silverman
Clinger	Horne	Pechan	Solomon
Conley	Huggins	Percey	Waldron
Donaldson	Irvis	Quiles	Wilmarth
Donolow			

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

And said proposal having been read at length the third time, considered and agreed to,

On the question,

Shall the proposal pass finally?

The roll was recorded as follows:

YEAS—114

Aberman	Erwin	Leonard	Sahli
Amsterdam	Fagan	Levin	Scales
Aurentz	Fawcett	Manderino	Scarlett
Bagenstose	Fay	Mangery	Scott
Baldrige	Feather	Markley	Scranton
Baldus	Filson	Mattioni	Shapiro
Baldwin	Fohl	McGeary	Shettig
Barron	Gerber	McGlynn	Shively
Benedict	Goldman	Meyer	Shoemaker
Benfield	Goldstein	Michael	Shrager
Bloom	Gouger	Michener	Sprogell
Braham	Griffith	Miller, D.	Stout
Broderick	Hannum	Moorhead	Strickler
Brown	Harding	More	Stroup
Buck	Hatter	Morton	Swope
Bunting	Henderson	Murray	Tate
Butera	Himes	Nelson	Thomson
Camardella	Hocker	Orban	Thornburgh
Caron	Hook	Orbin	Tomascik
Casey	Hostetler	Otto	Tully
Corey	Jirolanio	Pasquerilla	Van Sant
Cortese	Johnson	Pelletier	Warman
Cosetti	Kauffman	Popil	Welsh
Croop	Keller, J.	Pott	Westerberg
Cunningham	Krill	Powell	Whittum
Curran	Laputka	Prendergast	Wilcox
Dailey	Leach	Roberts	Woodring
Desmond	Lee, L.	Rovner	Woodside
Devlin	Leinbach		

NAYS—0

NOT VOTING—49

Allison	Dumbauld	Keller, M.	Rappaport
Banes	Fineman	Kelly	Rea
Barry	Fleming	King	Redick
Bashoff	Forster	Kline	Reynolds
Brennan	Fortney	Lane	Richter
Burkholder	Gabreski	Lee, K.	Ruth
Cain	Gehrlein	Miller, R.	Sebastian
Caputo	Gray	Musselman	Sharp
Clark	Heyburn	O'Donnell	Silverman
Clinger	Horne	Pechan	Solomon
Conley	Huggins	Percey	Waldron
Donaldson	Irvis	Quiles	Wilmarth
Donolow			

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was adopted.

REFERRAL TO COMMITTEE

The proposal is passed and is referred to the Committee on Arrangement, Submission and Address to the People.

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of Committee Proposal No. 6, Printer's No. 25, entitled:

A proposal amending the Constitution of Pennsylvania providing for local government in Pennsylvania.

On the question,

Will the Convention agree to the proposal on third consideration?

PRESIDENT BRODERICK. The Chair recognizes the Chairman of the Style and Drafting Committee, Chairman Pelletier.

CHAIRMAN PELLETIER. Mr. President, we have a number of typographical changes that we would like to read, if we may, and we would like to ask that they be put in the proposal.

PRESIDENT BRODERICK. Would you like the delegates to have in front of them Proposal No. 6, Printer's No. 25?

DELEGATE PELLETIER. Yes.

PRESIDENT BRODERICK. You may proceed.

DELEGATE PELLETIER. If they will look at that on page 1, line 16, would you delete the comma which would come after amendment;

On page 2, line 3, insert "electors" for "voters;"

The same thing on line 5;

On page 2, line 12, delete "by law."

Page 2, line 13, "electors" again inserted for "voters;"

On page 2, line 21, delete "the general assembly" and insert "by law;"

Delete "determined" and insert: "provided" in line 21;

Page 2, line 25, "provided" for "prescribed;"

Page 2, line 25, delete "general;"

Page 2, line 27, delete "state treasury" and add the "Commonwealth;"

Page 2, line 28, again "provided" for "prescribed."

Page 2 again, line 30, the very beginning of the line, "these officers" instead of "said officers;"

On page 3, line 1, "receiving" instead of "having;"

Again on page 3, line 5, substitute "law" for "the general assembly," that is at the end of the line, it should be "provided by law" rather than "provided by the general assembly;"

Page 3, line 8, delete the comma after municipality;

Page 3, line 9, delete the first comma in the line after "body;"

Page 3, line 25, again for uniformity's sake, "electors" instead of "voters;"

Page 4, line 14, delete "on" at the end of the line so it would be imposed by this section, and then on the next line delete "it" in line 15;

Page 4, line 15, delete "by general law" so that it reads "the general assembly shall prescribe the debt limits;"

Page 4, on line 19, we would like to change it so it would read "the debt limit to be prescribed in every such case," that is, transposing "in every such case" to come after "to be prescribed;"

Page 4, lines 22 and 23, delete "majority vote at a public election" and insert "referendum;"

Line 23, page 4, again, "provided" for "prescribed;"

On line 26 on page 4, delete the second and third commas, the comma after "shall" between "shall" and "have," and the comma between "doing" and "adopt," those commas should be deleted;

On page 5, line 6, insert a comma after "reapportioned before by its governing body;"

Delete the comma after "body" on line 7;

Again on page 7, line 14, "electors" for "voters."

I am sorry, but these changes seem to produce a better conformity of language.

DELEGATE HOOK. On line 15 on page 4, Mr. President.

PRESIDENT BRODERICK. Yes, Delegate Hook.

DELEGATE HOOK. Mr. President, I want to ask one question, and this has to do with page 4, line 15, where the section says "the general assembly shall provide or prescribe"—you want to leave in the word "prescribe"?

DELEGATE PELLETIER. Yes; that is intentional.

DELEGATE HOOK. That is what I thought.

DELEGATE PELLETIER. Yes.

COMMITTEE REPORT

COMMITTEE ON STYLE AND DRAFTING RELATIVE TO PROPOSAL No. 6

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. Mr. President, I stand in place and read the following report:

COMMITTEE ON STYLE AND DRAFTING

519 North Office Building

February 22, 1968

To the Honorable,
The Delegates Assembled,
1967-68 Pennsylvania Constitutional Convention

Re: Local Government

Mesdames and Sirs:

On behalf of the Committee we are pleased to submit our report on Committee Proposal No. Six relating to Local Government.

This Committee has worked closely with the Co-Chairmen and Counsel of the substantive Committee on Local Government, and we are pleased to report that all the changes in Proposal Six as reported herewith were made with the concurrence of those gentlemen.

The proposed new Article Nine deals comprehensively with the subject of local government, including not only those subjects covered by repealed sections in Articles Eight, Thirteen, Fourteen and Fifteen, but adding new provisions covering home rule charters, residual powers, optional forms of government, intergovernmental cooperation, area government, and initiative and referendum.

We have attempted to adhere closely to the substantive Committee's objectives of providing flexible and forward-looking guidelines for responsible local government in concise, general terms, avoiding the overly specific, unduly restrictive treatment frequently found in other state constitutions.

Following is a summary of the significant changes in drafting effected by this Committee:

I. SIGNIFICANT CHANGES IN STYLE

1. Two steps were taken to clarify Section 2.

The four year provision delaying the self-executing home rule charter rights of a municipality was removed from the section and placed in the schedule, in view of the anticipated long term life of the Article. The sentence on self-executing home rule was re-drafted to clarify the fact that the voters of a municipality or its governing body may place the question of adoption of a home rule charter directly on the ballot or may place a proposed procedure for the framing, adoption, amendment or repeal of a charter on the ballot.

2. Section 7 was clarified to allow for the granting of powers directly to area government, in accordance with what was understood to be the intention of the Committee.

3. The provision as to Local Reapportionment was changed to conform to the style and usage in Proposals Nos. One and Two relating to reapportionment of the Commonwealth. This was done with the approval of the Co-Chairmen of the substantive Committee and of its sub-committee.

4. Section 13 has been placed into the draft rather than merely referred to. This is an identical copy of existing Article 14, Section 8 which relates exclusively to Philadelphia. Two changes were made in cross references. These changes were cleared in advance with Special Counsel for the City of Philadelphia.

5. The definition section was changed in two respects. To clarify the Committee's intent, the phrase "any similar form of government" in the definition of "municipality" was changed to "general purpose unit of government." It was felt that this language better expressed the Committee's intention since the characteristic of municipalities which is common to all is the fact that they are "general purpose." In order to clarify the intention of paragraph 5, the definition of the word "initiative" has been changed to allow for the initiative to take place within an area affected as well as municipality affected. Language stating that no enabling legislation shall be required for initiative was also added at the suggestion of the substantive Committee.

6. The language of the schedule was simplified by sorting out and restating the effective dates of the various provisions. The self-executing home rule was made effective four years after adoption if the General Assembly fails to act within that time.

7. The provisions in Section 4 relating to Optional Form of County Government do not in the opinion of the Committee constitute a total "form of government," and the language of Section 4 has been changed to be in accord with this thought.

8. Minor changes were made in Sections 5, 7 and 8 so as more clearly to state the intention of the substantive Committee.

9. In a number of instances the phrase "as provided by the General Assembly" was changed to read "as provided by law," for the sake of consistency. Additional minor changes in punctuation and wording were made with the concurrence, or at the suggestion, of the representatives from the substantive Committee.

II. PROBLEM AREAS

1. Definition of Procedural Matter. An attempt was made to define the words "procedural matters." After extensive debate and discussion, the suggestion of the Local Government Committee Co-Chairmen, that the word be left for later definition by the courts, was accepted. The argument made was that since the instructions are to the General Assembly which has broad powers in any event, the greatest danger lay in overly restricting the definition. It was felt that the General Assembly could be relied on to act in the best interest of the Commonwealth.

2. The last sentence of the schedule was reviewed and, after discussion with Counsel for the Convention, amended. While the Style and Drafting Committee felt that the sentence should be excluded, they were informed that it had been included on the basis of discussion by the Local Government Committee and Counsel for the Convention; they therefore included the sentence as amended.

Respectfully submitted:

COMMITTEE ON STYLE AND DRAFTING
By: ROY H. JOHNSON
LAWRENCE L. PELLETIER
Co-Chairmen

WPH:ANF:met

COMMITTEE PROPOSAL
NO. 6

A PROPOSAL

Amending the Constitution of Pennsylvania, providing for local government in Pennsylvania.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. The Constitution of Pennsylvania is amended by adding a new article to read:

ARTICLE IX
LOCAL GOVERNMENT

Section 1. Local Government.—The General Assembly shall provide by general law for local government within the Commonwealth. Such general law shall be uniform as to all classes of local government regarding procedural matters.

Section 2. Home Rule.—Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment, or repeal of a home rule charter shall be by referendum. THE GENERAL ASSEMBLY SHALL PROVIDE THE PROCEDURE BY WHICH A HOME RULE CHARTER MAY BE FRAMED AND ITS ADOPTION, AMENDMENT OR REPEAL PRESENTED TO THE VOTERS. IF THE GENERAL ASSEM-

BLY DOES NOT SO PROVIDE, A HOME RULE CHARTER OR A PROCEDURE FOR FRAMING AND PRESENTING A HOME RULE CHARTER MAY BE PRESENTED TO THE VOTERS BY INITIATIVE OR BY THE GOVERNING BODY OF THE MUNICIPALITY. A municipality WHICH HAS a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.

Section 3. Optional Plans.—Municipalities shall have the right and power to adopt optional forms of government as provided by LAW. The General Assembly shall provide by law optional forms of government for all municipalities. An optional form of government shall be presented to the voters by initiative, BY the governing body of the municipality, or by the General Assembly. Adoption or repeal of an optional form of government shall be by referendum.

Section 4. County Government.—County officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, RECORDERS of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be PROVIDED by law.

County officers except for public defenders who shall be appointed as shall be determined by the General Assembly, shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies shall be filled in such a manner as may be provided by law.

County officers shall be paid only by salary as prescribed by general law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or State Treasury, or OTHERWISE prescribed by law.

Three county commissioners shall be elected in each county. In the election of said officers each qualified elector shall vote for no more than two persons, and the three persons having the highest number of votes shall be elected.

PROVISIONS FOR county government IN THIS SECTION shall APPLY TO EVERY county EXCEPT A COUNTY which has adopted a home rule charter or an optional form of government. ONE OF THE optional FORMS of county government PROVIDED BY THE GENERAL ASSEMBLY shall INCLUDE THE PROVISIONS OF THIS SECTION.

Section 5. Intergovernmental Cooperation.—A municipality, by act of its governing body, may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility WITH, OR delegated to transfer any function, power, or responsibility to, one or more other governmental units including other municipalities or districts, the Federal government, any other state or its governmental units, or any newly created governmental unit.

Section 6. Area Government.—The General Assembly shall provide for the establishment and dissolution of government of areas involving two or more municipalities or parts thereof.

Section 7. Area-wide Powers.—The General Assembly may grant powers to AREA GOVERNMENTS OR TO municipalities within a given geographical area in which there exists intergovernmental cooperation or area government and designate the classes of municipalities subject to said legislation.

Section 8. Consolidation, Merger or Boundary Change.—Uniform Legislation. The General Assembly shall, within two years following the adoption of this article, enact uniform legislation establishing the procedure for consolidation, merger or change of the boundaries of municipalities.

Initiative. THE VOTERS OF ANY MUNICIPALITY SHALL HAVE THE RIGHT, BY initiative and referendum, to consolidate, merge and change boundaries BY a majority vote of those voting thereon in each municipality, without the approval of ANY governing BODY.

Study. The General Assembly shall designate an agency of the Commonwealth to study consolidation, merger and boundary changes, advise municipalities on all problems which might be connected therewith, and initiate local referendum.

Legislative Power. Nothing herein shall prohibit or prevent the General Assembly from providing additional methods for consolidation, merger OR CHANGE OF BOUNDARIES.

Section 9. Appropriation for Public Purposes.—The General Assembly shall not authorize any municipality or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual. The General Assembly may provide standards by which municipalities or school districts may give financial assistance or lease property to public service, industrial or commercial enterprises if it shall find that such assistance or leasing is necessary to the health, safety or welfare of the Commonwealth or any municipality or school district. Existing authority or any municipality or incorporated district to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual, is preserved.

Section 10. Local Government Debt.—Subject only to the restrictions imposed on it by this section, the General Assembly shall by general law prescribe the debt limits of all units of local government including municipalities and school districts. For such purposes, the debt limit base shall be a percentage of the total revenue, as defined by the General Assembly, of the unit of local government computed over a specific period immediately preceding the year of borrowing. The debt limit in every such case to be prescribed shall exclude all indebtedness (1) for any project to the ex-

tent that it is self-liquidating or self-supporting or which has heretofore been defined as self-liquidating or self-supporting, or (2) which has been approved by majority vote at a public election held in such manner as shall be prescribed by law. The provisions of this paragraph shall not apply to the City or County of Philadelphia.

Any unit of local government, including municipalities and school districts, incurring any indebtedness, shall, at or before the time of so doing, adopt a covenant, which shall be binding upon it so long as any such indebtedness shall remain unpaid, to make payments out of its sinking fund or any other of its revenues or funds at such time and in such annual amounts specified in such covenant as shall be sufficient for the payment of the interest thereon and the principal thereof when due.

Section 11. Local REAPPORTIONMENT.—Within the year following THAT IN WHICH THE Federal decennial census IS OFFICIALLY REPORTED AS REQUIRED BY FEDERAL LAW, and at such other times as the governing body of any municipality shall deem necessary, each MUNICIPALITY HAVING A governing body NOT ENTIRELY ELECTED AT LARGE shall BE REAPPORTIONED BY ITS GOVERNING BODY, OR as shall otherwise be provided by uniform law, into districts WHICH shall be COMPOSED OF compact AND contiguous, TERRITORY AS NEARLY equal in population AS PRACTICABLE, FOR THE PURPOSE OF DESCRIBING THE DISTRICTS FOR THOSE NOT ELECTED AT LARGE.

Section 12. Philadelphia Debt.—The debt of the City of Philadelphia may be increased in such amount that the total debt of said city shall not exceed thirteen and one-half per cent of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding three per cent upon such average assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law.

In ascertaining the debt-incurring capacity of the City of Philadelphia at any time, there shall be deducted from the debt of said city so much of such debt as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in construction, purchase or condemnation of any public utility, or part thereof, or facility therefor, if such public improvement or public utility, or part thereof, or facility therefor, whether separately, or in connection with any other public improvement or public utility, or part thereof, or facility therefor, may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, shall be as now prescribed, or which may hereafter be prescribed by LAW.

In incurring indebtedness for any purpose the City of Philadelphia may issue its obligations maturing not later than fifty years from the date thereof, with provision for a sinking fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said City of Philadelphia for the purpose of the construction or improvement of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred.

No debt shall be incurred by, or on behalf of, the County of Philadelphia.

Section 13. ABOLITION OF COUNTY OFFICES IN PHILADELPHIA.—(1) IN PHILADELPHIA ALL COUNTY OFFICES ARE HEREBY ABOLISHED, AND THE CITY SHALL HENCEFORTH PERFORM ALL FUNCTIONS OF COUNTY GOVERNMENT WITHIN ITS AREA THROUGH OFFICERS SELECTED IN SUCH MANNER AS MAY BE PROVIDED BY LAW.

(2) LOCAL AND SPECIAL LAWS, REGULATING THE AFFAIRS OF THE CITY OF PHILADELPHIA AND CREATING OFFICES OR PRESCRIBING THE POWERS AND DUTIES OF OFFICERS OF THE CITY OF PHILADELPHIA, SHALL BE VALID NOTWITHSTANDING THE PROVISIONS OF SECTION THIRTY-TWO OF ARTICLE III OF THIS CONSTITUTION.

(3) ALL LAWS APPLICABLE TO THE COUNTY OF PHILADELPHIA SHALL APPLY TO THE CITY OF PHILADELPHIA.

(4) THE CITY OF PHILADELPHIA SHALL HAVE, ASSUME AND TAKE OVER ALL POWERS, PROPERTY, OBLIGATIONS AND INDEBTEDNESS OF THE COUNTY OF PHILADELPHIA.

(5) THE PROVISIONS OF SECTION TWO OF THIS ARTICLE SHALL APPLY WITH FULL FORCE AND EFFECT TO THE FUNCTIONS OF THE COUNTY GOVERNMENT HEREAFTER TO BE PERFORMED BY THE CITY GOVERNMENT.

(6) UPON ADOPTION OF THIS AMENDMENT ALL COUNTY OFFICERS SHALL BECOME OFFICERS OF THE CITY OF PHILADELPHIA, AND UNTIL THE GENERAL ASSEMBLY SHALL OTHERWISE PROVIDE, SHALL CONTINUE TO PERFORM THEIR DUTIES AND BE ELECTED, APPOINTED, COMPENSATED AND ORGANIZED IN SUCH MANNER AS MAY BE PROVIDED BY THE PROVISIONS OF THE CONSTITUTION AND THE LAWS OF THE COMMONWEALTH IN EFFECT AT THE TIME THIS AMENDMENT BECOMES EFFECTIVE, BUT

SUCH OFFICERS SERVING WHEN THIS AMENDMENT BECOMES EFFECTIVE SHALL BE PERMITTED TO COMPLETE THEIR TERMS.

Section 14. Definitions.—As used in this article, the following words shall have the following meanings:

"Municipality" means a county, city, borough, incorporated town or township or any similar GENERAL PURPOSE UNIT of government which shall hereafter be created by the General Assembly.

"Initiative" means the filing with the applicable election officials at least ninety days prior to the next primary or general election of a petition containing a proposal for referendum signed by electors comprising five per cent of the number of voters voting for the office of Governor in the last gubernatorial general election in each municipality OR AREA affected. The applicable election offical shall place the proposal on the ballot in a manner fairly representing the content of the petition for decision by referendum at said election. Initiative on a similar question shall not be submitted more often than once in five years. NO ENABLING LAW SHALL BE REQUIRED FOR INITIATIVE.

"Referendum" means approval of a question placed on the ballot, by initiative or otherwise, by a majority vote of the electors voting thereon.

Section 2. Sections seven, eight, ten, fifteen and nineteen of article eight; section one of article thirteen; sections one, two, three, four, five, six, seven AND EIGHT of article fourteen and sections one, two, three, four, and five OF article fifteen are repealed.

Section 3. THIS NEW ARTICLE AND THE REPEAL OF EXISTING SECTIONS SHALL TAKE EFFECT ON THE DATE OF APPROVAL BY THE ELECTORATE, EXCEPT THAT THE FOLLOWING SECTIONS SHALL TAKE EFFECT ON THE EFFECTIVE DATE OF LEGISLATION ADOPTED PURSUANT TO THE SECTIONS OR THE DATE INDICATED BELOW, WHICHEVER SHALL FIRST OCCUR.

THE FIRST, THIRD AND FOURTH PARAGRAPHS OF SECTION EIGHT SHALL TAKE EFFECT TWO YEARS AFTER THE EFFECTIVE DATE. THE SECOND SENTENCE OF SECTION ONE, THE FOURTH SENTENCE OF SECTION TWO, ALL OF SECTION THREE, THE THIRD PARAGRAPH OF SECTION FOUR, AND THE FIRST PARAGRAPH OF SECTION TEN SHALL TAKE EFFECT FOUR YEARS AFTER THE EFFECTIVE DATE. The second sentence of section one and the first paragraph of section eight on Uniform Legislation shall be construed SO AS TO BE CONSISTENT WITH the jurisdiction of this Convention.

PRESIDENT BRODERICK. I think I express the feeling of the fellow delegates when I say we thank the Committee on Style and Drafting for coming through with their report.

On the question,

Will the Convention agree to the proposal on third consideration?

MOTION FOR CONSENT TO OFFER AMENDMENT TO COMMITTEE PROPOSAL No. 6

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, I hate at this late hour to take up your time, but I have had an amendment which has been prepared and been in our possession for some hours waiting for this report to come in. This is not a long or, I believe, a controversial proposal. The reason I take your time to explain it is because I realize I need a majority vote here for you to consider it.

This proposal merely specifies the manner in which public defenders will be selected in counties under 100,000 population and differs from the mandated public defenders in that area.

As it is now written, these county officers are mandated in every county in the Commonwealth, and so this is the proposal that I want to present to make it optional in counties having a population of 100,000 or less.

I ask your permission to present my amendment.

PRESIDENT BRODERICK. The body understands that the delegate must obtain the consent of a majority of the delegates present.

On the motion,

Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—69

Amsterdam	Devlin	Jirolanio	Prendergast
Baldrige	Erwin	Johnson	Rovner
Baldus	Fagan	Krill	Sahli
Baldwin	Fawcett	Laputka	Scott
Barron	Fay	Leach	Shettig
Bloom	Filson	Lee, K.	Shrager
Braham	Forster	Lee, L.	Sprogell
Broderick	Gerber	Leonard	Stout
Brown	Goldman	Meyer	Strickler
Casey	Goldstein	Michener	Stroup
Corey	Gouger	Moorhead	Swope
Cortese	Griffith	More	Tomascik
Cosetti	Hannum	Nelson	Warman
Croop	Hatter	O'Donnell	Welsh
Cunningham	Henderson	Orban	Wilcox
Curran	Himes	Popil	Woodring
Dailey	Hocker	Powell	Woodside
Desmond			

NAYS—35

Aberman	Keller, J.	Murray	Shively
Buck	Levin	Orbin	Shoemaker
Bunting	Manderino	Otto	Tate
Camardella	Mangery	Pasquerilla	Thomson
Feather	Markley	Pelletier	Thornburgh
Fohl	Mattioni	Roberts	Tully
Harding	McGeary	Scales	Van Sant
Hook	McGlynn	Scarlett	Westerberg
Kauffman	Michael	Shapiro	

NOT VOTING—59

Allison	Clinger	Irvis	Rappaport
Aurentz	Conley	Keller, M.	Rea
Bagenstose	Donaldson	Kelly	Redick
Banes	Donolow	King	Reynolds
Barry	Dumbauld	Kline	Richter
Bashoff	Fineman	Lane	Ruth
Benedict	Fleming	Leinbach	Scranton
Benfield	Fortney	Miller, D.	Sebastian
Brennan	Gabreski	Miller, R.	Sharp
Burkholder	Gehrlein	Morton	Silverman
Butera	Gray	Musselman	Solomon
Cain	Heyburn	Pechan	Waldron
Caputo	Horne	Percey	Whittum

Caron	Hostetler	Pott	Wilmarth
Clark	Huggins	Quiles	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

CROOP AMENDMENT TO COMMITTEE PROPOSAL No. 6

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, I now present an amendment to Committee Proposal No. 6.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE CROOP offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 4), page 2, line 19, by inserting after "law.": In counties having a population of one hundred thousand or less, the need for the office of public defender shall be determined by majority vote of the county commissioners and judges.

Amend Sec. 1 (Sec. 4), page 2, line 20, by inserting after "defenders": in counties having a population of greater than one hundred thousand

Amend Sec. 1 (Sec. 4), page 2, line 21, by inserting after "Assembly,": and except for public defenders in counties having a population of one hundred thousand or less, who shall be elected by majority vote of the county commissioners and judges,

On the question,

Will the Convention agree to the amendment?

DELEGATE CROOP. Mr. President, I want to thank the delegate body for giving me this consideration, because I believe this to be a very important matter so far as the people are concerned and those we look to for the ratification of what we do here in the past 90 days.

My amendment to the constitutional article as now before the House provides as follows:

In counties having a population of 100,000, or less, the need for the office of public defender shall be determined by a majority vote of the county commissioners and judges.

Now, my explanation for that is that there are a number of counties that have even less than three attorneys in them.

Some of them have two and some have one. That respective attorney is the district attorney, and there is no one even to fill this office. So there certainly would be no mandated need there.

If the need should ever occur in the future, I feel that this language provides the means where on a local level the county commissioners, in conjunction with and acting as a unit board, could decide this problem and handle it very well.

This is the main stress of my amendment, so that it is not a constitutional mandated county office. As a matter of fact, I was rather surprised when this office of public defender became a constitutional mandated office. I feel that it has had not only much too much glory added to it, but much too much expense added to the taxpayers. Certainly, in our little rural counties and those under this population, I feel the amendment has a just place and should be considered favorably.

PRESIDENT BRODERICK. The Chair now recognizes a Chairman of the Local Government Committee, Chairman Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, this particular amendment still constitutes the office of public defender, but only merely defines it further as to who is to have it and under what conditions. So, therefore, we still have the office of public defender in the Constitution.

I would like to remind the delegates that this particular office of public defender was not a committee recommendation, but it was an amendment presented to this floor by a delegate. It was defeated as an elective office. It was reinserted as a further amendment to be as prescribed by the General Assembly.

Now, it seems to me if we are going to have public defenders—and this body voted to have them—I would much rather have them in the broader sense as provided by law, because the General Assembly could then lay down various types of laws as to how much time a public defender could serve, what his salary should be by counties, and we should not have the mish-mash that we would have in here by determining whether the county commissioners should determine it or the General Assembly.

It would seem to me that the broad interpretation which was originally passed by this Convention, as provided by law, would suit it better in the Constitution than this particular amendment.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Manderino.

DELEGATE MANDERINO. Mr. President, may I make a statement on this? I should like to ask the delegates to reject this amendment. The purpose of the amendment, again, I think is one that is a good objective, but I should like to point out several things.

One, throughout the entire local government article we have tried to inject a philosophy that a Constitution guarantees rights to people equally and, if you have a problem of a given right, then it exists in every square foot of the Commonwealth.

As my co-chairman mentioned, the public defender was not originally a committee recommendation, but the body did adopt the public defender on the philosophy enunciated that in every place in the Commonwealth at some point someone in poverty or destitute might have need of a public defender.

In some counties this is true, it might be just once a year. This does not mandate, as with other County offices, that it should be a full-time office. The General Assembly might designate a system where a man is paid $200 to be a public defender in a given county. The General Assembly might also mandate or pass by law that the appointment of the public defender would be by local officials.

When this amendment was first proposed, that discussion took place with the proposers and it was left open and broad deliberately by the Convention and determined by the Convention for that purpose.

We feel that we would be saying in the Constitution that in certain areas there is a basic right certain people have for a public defender, but in other places they do

not. This does not mean that small counties have to have a full-time public defender. It does not mean that a defender who is available. If there are no cases in a given It simply says that there shall be provided a public defender who is available. If there are no cases in a given county, then there is nothing for the public defender to do.

I should like to reiterate that if there is a basic right given in the Constitution because people need it—in some places it may be needed 24 hours a day and other places just one day every month—it is still a basic right and I would like to suggest that if it is needed and is a basic right of the indigent who are accused of crime all over the Commonwealth, it should be every place in the Commonwealth.

It is flexible enough that we think that the General Assembly can take care of your extremely rural areas by the way the amendment was drafted. We had many proposals in committee—whether it was home rule, or optional forms, or what it was—to put population limitations. We did not wish to discriminate anywhere with population because we thought that that gets into a legislative matter rather than a constitutional matter, and anything that goes into a Constitution should be a kind of right that should not be limited as to population.

Therefore, we should like to ask that the amendment not be accepted, even though I have no disagreement with the purpose of it. The objective can be achieved very easily through the General Assembly. I am sure that that body will certainly take into consideration the various differing needs of the government throughout other parts of the Commonwealth.

PRESIDENT BRODERICK. The Chair will now recognize Delegate Orbin.

DELEGATE ORBIN. Mr. President, I would like to direct an interrogation to Delegate Croop.

PRESIDENT BRODERICK. Yes, I am sure he will stand for interrogation. Proceed with your question.

DELEGATE ORBIN. Delegate Croop, you provide for a majority vote of the county commissioners and judges. What happens in the counties where you have one judge or where you have three judges and the number is equal and there is a tie?

DELEGATE CROOP. This would be a matter that they would have to dispose of. I am merely creating a fictitious board comprised of either—probably the more correct English should have been "judge, or judges," but I think when we use the broad term we are looking into the future. The county that might now have one judge could have two in the future, and then it would be this board of county commissioners and judge, or judges. Whichever way, if they had a tie vote, they would have to decide.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, if I were to interpret the modification in Section 4 of this language, "And such others as may from time to time be provided by law," as to also modify sheriffs, bailiffs and county commissioners, then I must come to the conclusion—and I hope Delegate Pasquerilla is listening to me—that the Legislature has the right to set up these offices, or not.

But I do not think at all that his interpretation is correct in modification. I believe that the General Assembly, insofar as this particular section is concerned, has no right to designate these offices unless there are such others as may be provided by law.

If my interpretation of this linguistic situation is correct, then, certainly, we are mandating public defenders as constitutional offices willy-nilly, and I need some clarification as to this problem.

PRESIDENT BRODERICK. Chairman Pasquerilla, go ahead.

DELEGATE PASQUERILLA. Mr. President, this body by a vote already mandated public defenders as a constitutional office as prescribed by law. The question before us now is to take it out in certain areas but still have it as a constitutional office in counties having a population greater than 100,000. We have just discriminated against counties.

As to your answer, Senator, the body here voted once before, not a committee report, but by an amendment process and we already created the office of public defender to be provided by law. Delegate Croop's amendment does not eliminate the office of public defender.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. The question which I directed was as to the modification as was explained to the delegates. I believe I am correct as far as the modification of that language in that section is concerned. I feel quite sure that such other offices as provided by law is a modification of such other offices and not the public defenders in that section.

If that is true—and I believe I am correct with my knowledge of English construction—I would go to the next paragraph, which says something else. It says, "county officers except for public defenders who shall be appointed as shall be determined by the General Assembly, . . . as may be provided by law."

Then we have an inconsistency, in one place we set up a constitutional office; in the next place we say the General Assembly shall provide for it.

PRESIDENT BRODERICK. The Chair recognizes Chairman Manderino.

DELEGATE MANDERINO. I think the first paragraph of that section mandates the offices and it mandates, according to the amendment passed, a public defender.

Then, the second paragraph mandates election of all the mandated offices except for one. In that mandated office, the public defender, the amendment that was passed provided that that mandated office would be appointive, as provided by law. The interpretation that I would have would be that it is now mandated, a public defender throughout the Commonwealth, and it is not an elective office, but an appointed office, and the General Assembly shall determine how that appointment is to be made.

It could be made as of this amendment now by commissioners or judges, depending upon what the General Assembly determined, as to the appointment.

DELEGATE STROUP. Mr. President, in response to Delegate Manderino, he has stated my interpretation for modification. I think that is correct so far as that section is concerned.

Then we go into the next paragraph. Mr. President, I direct this interrogation to the gentleman. In the next paragraph we would not have public defenders in any

other counties, as I understand this, unless the General Assembly sets it up for that particular county. Am I now correct?

DELEGATE MANDERINO. As I would read that, there is a public defender mandated, but it is left to the General Assembly as to how that officer is to be appointed. The General Assembly determines how the public defender is to be appointed.

In other words, they might pass a law saying that a county shall appoint a public defender by vote of the commissioners, as this amendment says, or it could be appointed by some other system.

DELEGATE STROUP. Mr. President, I am slightly confused, I must admit. I have my first point clarified. Now, I am satisfied in the language there. But in the second, I now must come to a conclusion, I believe, from the response of Delegate Manderino that we do have a public defender in all our counties mandated as a constitutional office.

DELEGATE MANDERINO. Yes.

DELEGATE STROUP. Then I must conclude, going so far as to provide for public defenders, the Legislature must pass laws in order to make that possible, is that correct?

DELEGATE MANDERINO. Yes. There is enabling legislation necessary in order to determine the method of appointment. That is correct.

DELEGATE STROUP. One more question, what is the schedule which imposes upon the General Assembly the time element when this must be done?

DELEGATE MANDERINO. There is no time element.

DELEGATE STROUP. I have clarified the situation, at least, in my own mind. I thank the gentleman.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. President, I happen to be a member of the committee that formulated this whole program. I know the care that was put into it, the time that was put into it, and the amendment that was proposed for the public defender.

The amendment was put in, of course, to provide for uniformity. Originally, the public defender was on a uniform basis. This amendment is going to destroy completely the policy of uniformity in this particular constitutional office. I think that that is a basic mistake in policy for us to even consider.

The second point I want to make is that this is purely a legislative matter when you get into percentages and figures as to who shall and who shall not have these powers. It is purely legislative, and, to my knowledge, always has been.

I want to just call attention to another matter, that is the matter of expediting the program of this Convention. I believe this would certainly delay this very important article for at least a day. I urge a "no" vote on this particular amendment.

I am not against public defenders, not in the least, but I think the implementation of the constitutional article, as developed in the discussion between the Chairmen, shows that this is a legislative matter and that this particular amendment should be defeated.

AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. Delegate Croop, I want to point out to you that you can speak twice on an amendment, and I do not want you to lose your closing. Of course, if they ask you a question, you may answer it.

DELEGATE CROOP. I may save your time. I wish to withdraw my amendment.

PRESIDENT BRODERICK. We will consider the amendment withdrawn.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber. For what purpose does the gentleman rise?

DELEGATE GERBER. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GERBER. On Page 7, line 16, I note two words, "or area" has been inserted by Style and Drafting.

Will you please clear up, in my mind, at any rate, what effect you think these two words have on the meaning as the committee originally presented the proposal? I understood it then, and right now it seems to me rather ambiguous.

DELEGATE MANDERINO. I think the answer to that, Style and Drafting did insert those words because throughout the proposal where we speak of referendum, we referred to the vote in the municipality but there was one place where we referred to the area affected, I believe, in Section 5, if I am not mistaken, where it speaks of—maybe I have the wrong section, wait until I check this a moment—yes, at the end of the second line in Section 5 we speak "in the area affected." Therefore, they felt there would be confusion on referendum if it did not state in each municipality or the area affected, so that if it is a matter that concerns the whole municipality the referendum would be there, but if it were a situation involving an area, then it would come under the "or" clause.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron. For what purpose does the gentleman rise?

DELEGATE BARRON. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BARRON. One brief question to either the Committee on Local Government or the Committee on Style and Drafting.

Page 4, line 15, the words "by general law" were deleted.

As I am sure we are all by this time well aware, the concept of the general law has a precise meaning in Pennsylvania history. Do I understand from the Committee on Style and Drafting that you feel that the words all units of local government and including municipalities and school districts makes it, by general law, unnecessary, so that there would be a blanket coverage by a general law of the proposition of debt limits?

DELEGATE PASQUERILLA. No, we did not take that out.

DELEGATE BARRON. Style and Drafting took that out?

DELEGATE PASQUERILLA. He is talking about Section 10, line 17 and line 18.

DELEGATE BARRON. Line 15. Local government left it in.

Knowing the dean of the law school was on it, I have great respect for his learning and ability.

DELEGATE MANDERINO. In line 15 it was taken out. Style and Drafting, not only in this article, but in other articles feels—and I agree with them—that "by law" has no different meaning than "by general law," and even if you do not mention that the General Assembly shall prescribe, it means law and it is governed by other sections of the Constitution.

No substantive change was intended. That is Style and Drafting's approach throughout all the articles.

On the question,

Will the Convention agree to the proposal on third consideration?

The roll was recorded as follows:

YEAS—102

Aberman	Fay	Levin	Scales
Amsterdam	Feather	Manderino	Scarlett
Baldrige	Filson	Mangery	Scott
Baldus	Fohl	Markley	Shapiro
Baldwin	Forster	Mattioni	Shettig
Barron	Gerber	McGeary	Shively
Bloom	Goldman	McGlynn	Shoemaker
Braham	Goldstein	Meyer	Shrager
Broderick	Gouger	Michael	Sprogell
Brown	Griffith	Michener	Stout
Buck	Hannum	Moorhead	Strickler
Bunting	Harding	More	Stroup
Camardella	Hatter	Murray	Swope
Casey	Henderson	Nelson	Tate
Corey	Himes	O'Donnell	Thomson
Cortese	Hocker	Orban	Thornburgh
Cosetti	Hook	Orbin	Tomascik
Croop	Jirolanio	Otto	Tully
Cunningham	Johnson	Pasquerilla	Van Sant
Curran	Keller, J.	Pelletier	Warman
Dailey	Krill	Popil	Welsh
Desmond	Laputka	Prendergast	Westerberg
Devlin	Leach	Roberts	Wilcox
Erwin	Lee, K.	Rovner	Woodring
Fagan	Lee, L.	Sahli	Woodside
Fawcett	Leonard		

NAYS—1

Powell

NOT VOTING—60

Allison	Clinger	Irvis	Quiles
Aurentz	Conley	Kauffman	Rappaport
Bagenstose	Donaldson	Keller, M.	Rea
Banes	Donolow	Kelly	Redick
Barry	Dumbauld	King	Reynolds
Bashoff	Fineman	Kline	Richter
Benedict	Fleming	Lane	Ruth
Benfield	Fortney	Leinbach	Scranton
Brennan	Gabreski	Miller, D.	Sebastian
Burkholder	Gehrlein	Miller, R.	Sharp
Butera	Gray	Morton	Silverman
Cain	Heyburn	Musselman	Solomon
Caputo	Horne	Pechan	Waldron
Caron	Hostetler	Percey	Whittum
Clark	Huggins	Pott	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

And said proposal having been read at length the third time, considered and agreed to.

On the question,

Shall the proposal be adopted finally?

The roll was recorded as follows:

YEAS—101

Aberman	Feather	Levin	Scales
Amsterdam	Filson	Manderino	Scarlett
Baldrige	Fohl	Mangery	Scott
Baldus	Forster	Markley	Shapiro
Baldwin	Gerber	Mattioni	Shettig
Barron	Goldman	McGeary	Shively
Bloom	Goldstein	McGlynn	Shoemaker
Braham	Gouger	Meyer	Shrager
Broderick	Griffith	Michael	Sprogell
Brown	Hannum	Michener	Stout
Buck	Harding	Moorhead	Strickler
Bunting	Hatter	More	Stroup
Camardella	Henderson	Murray	Swope
Casey	Himes	Nelson	Tate
Corey	Hocker	O'Donnell	Thomson
Cortese	Hook	Orban	Thornburgh
Cosetti	Jirolanio	Orbin	Tomascik
Croop	Johnson	Otto	Tully
Cunningham	Keller, J.	Pasquerilla	Van Sant
Curran	Krill	Pelletier	Warman
Dailey	Laputka	Popil	Welsh
Desmond	Leach	Prendergast	Westerberg
Erwin	Lee, K.	Roberts	Wilcox
Fagan	Lee, L.	Rovner	Woodring
Fawcett	Leonard	Sahli	Woodside
Fay			

NAYS—1

Powell

NOT VOTING—61

Allison	Conley	Irvis	Quiles
Aurentz	Devlin	Kauffman	Rappaport
Bagenstose	Donaldson	Keller, M.	Rea
Banes	Donolow	Kelly	Redick
Barry	Dumbauld	King	Reynolds
Bashoff	Fineman	Kline	Richter
Benedict	Fleming	Lane	Ruth
Benfield	Fortney	Leinbach	Scranton
Brennan	Gabreski	Miller, D.	Sebastian
Burkholder	Gehrlein	Miller, R.	Sharp
Butera	Gray	Morton	Silverman
Cain	Heyburn	Musselman	Solomon
Caputo	Horne	Pechan	Waldron
Caron	Hostetler	Percey	Whittum
Clark	Huggins	Pott	Wilmarth
Clinger			

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was adopted.

REFERRAL TO COMMITTEE

PRESIDENT BRODERICK. This proposal is passed and is referred to Committee on Arrangment, Submission and Address To The People.

I, frankly, would like to thank all the delegates for having stayed to accomplish a very noble purpose and the Chair recognizes Chairman Pelletier.

DELEGATE PELLETIER. Mr. President, I was going to say the same thing. The Committee on Style and Drafting thanks the delegates for their patience this afternoon and may I ask the Committee members to meet with us down here when we adjourn.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. For what purpose does the gentleman rise?

DELEGATE SHOEMAKER. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHOEMAKER. Mr. President, I rise to a point of personal privilege.

We of the Convention have often recognized guests and visitors in our midst. It has not been customary to mention those who have served with us as staff, for we have,

perhaps, assumed their jobs were well compensated. It is not in all cases true. Some of our loyal staff have risen far above and beyond the mere requirements of their responsibilities. It is my intention at this time to formally express upon the record the sincere appreciation of not only myself, but that of the Local Government Committee for one who has provided such service. It has been our happy experience to have as counsel to our committee Abe Fromkin. He has spared none of his great capabilities in time and talents to aid us in our tasks.

My own meager vocabulary is surely inadequate to fully detail the superlative quality and quantity of his work, nor can I find sufficient words to express the warm comradeship he has established with our membership.

Therefore, at this time I wish to sincerely and simply express before this body and on the record of this Convention my own, and on behalf of the membership of the Local Government Committee:

Thank you, Abe, for a job well done.

RECOGNITION OF PAGES

PRESIDENT BRODERICK. The Chair recognizes Delegate Henderson.

DELEGATE HENDERSON. Let us not forget the young ladies and young men who have served as pages during this hectic week.

PRESIDENT BRODERICK. I am happy you called it to my attention and, before we vote on the adjournment resolution, the Chair has been very fortunate to have with it each week a group of students serving as honest pages. They are outstanding young men and young women in their respective schools and have been selected by their principals.

I would like to introduce them to you and ask them to rise as I call their names. When I have introduced all of them, let us show our appreciation by giving them a fine round of applause. We appreciate very much their contribution.

The students are:

Joseph Seibert,

Sheila Stover, from Columbia High School, Columbia,

Joseph Eckert,

John Fedora, from Stevens Trade School, Lancaster,

Dave Kent, from Shippensburg Sr. High School, Shippensburg,

Gerald Stoner and Louise Hopper, from Bermudian Springs High School at York Springs,

Tom Stucky, from Newport High School, Newport,

Robert Shiffer, from Millersburg High School, Millersburg,

Richard Bitting, from Halifax High School, Halifax,

Donna Lerew and Tom Corse, from Susquehannock High School at Glen Rock,

Lester Abel and Gail Buzby, from Hershey High School, Hershey, and

Roger Kelly, from Carlisle High School, Carlisle.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, I move that this Convention do now adjourn until Monday, February 26, 1968, at 1:30 p.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Braham, seconded by Delegate Henderson, that this Convention do now adjourn until Monday, February 26, 1968, at 1:30 p.m., e.s.t.

The motion was agreed to and (at 5:35 p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 Monday, February 26, 1968 Number 51

The Convention was called to order at 1:30 p.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

PRESIDENT BRODERICK. Our session today will be opened with prayer, and today we have with us as Chaplain, the Rev. John Hanks of the Salem Evangelical Lutheran Church, Belmont, Pennsylvania.

Please rise.

REV. HANKS. Let us pray.

Eternal and Ever Blessed Lord, Creator and Ruler of man and his destiny: We bow in recognition of the Power that hath made us, and surrounded us with the potentials of the age in which we live. We say with the Psalmist of old, "If I ascend on the wings of the dove, Thou are there, if I make my bed in Sheol, behold Thou art there."

Truly we recognize Thy presence in our midst for without Thee we lack wisdom, we falter in our judgments, and fail in our best efforts. We invoke Thy guidance upon us this day. Unto us has been committed weighty tasks, proper choices, fields of leadership, as we seek for our blessed Commonwealth, the principles of sound reason and worthwhile purpose. Make us ever cognizant of the task before us, and may our choices be in accord with the principles of honesty, integrity, and truth. In Thy Great Name we ask it. Amen.

PRESIDENT BRODERICK. Please remain standing for the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance to the Flag was recited by the Convention, led by Delegate Redick.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. There are no Journals to be approved this morning.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

DELEGATE MICHENER. Mr. President, I want to submit the following requests for leaves of absence:

The delegate from the 44th District, HENRY P. OTTO, for February 26, 1968;

The delegate from the 42nd District, THOMAS L. FAGAN, for February 26, 1968;

The delegate from the 32nd District, LOUIS L. MANDERINO, for February 26, 1968.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

TWENTIETH DISTRICT VISITORS WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilmarth.

DELEGATE WILMARTH. Mr. President, it is with a great deal of pleasure that I would like to introduce three guests from the 20th Senatorial District. These three women are extremely active in community affairs and it is with a great deal of pleasure that I introduce Mrs. Jack Masters, Mrs. Arlan Brown and Mrs. Shirlee Granger.

PRESIDENT BRODERICK. If we can please have our guests stand, we will give them our usual cordial greeting.

WIFE AND GUEST OF DELEGATE BRAHAM WELCOMED

PRESIDENT BRODERICK. While we are making introductions, I have been advised that we have with us today, the wife of one of our delegates, Delegate Walter Braham. His wife is here with a guest, Mrs. George S. Call of Harrisburg, Pennsylvania, and I would like them to stand so we can give them our greeting.

We are very happy to have you with us.

MOTHER AND DAUGHTER OF DELEGATE BENEDICT WELCOMED

PRESIDENT BRODERICK. Also, I have been advised that another delegate has her guests here today, both her mother and her daughter and I am speaking of Delegate Benedict and Mrs. Elsie Graham Praul, her mother, and Mrs. James Monteith, her daughter. Would they like to stand so we can recognize them?

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Datley	Kline	Ruth
Allison	Desmond	Krill	Sahli
Amsterdam	Devlin	Laputka	Scales
Aurentz	Dumbauld	Leach	Scarlett
Bagenstose	Erwin	Lee, K.	Scott
Baldrige	Fawcett	Lee, L.	Scranton
Baldwin	Fay	Lehnbach	Sebastian
Banes	Feather	Leonard	Shapiro
Barron	Filson	Levin	Sharp
Barry	Fleming	Mangery	Shettig
Benedict	Fohl	Markley	Shively
Benfield	Forster	Mattioni	Shoemaker
Bloom	Fortney	McGeary	Shrager

Braham	Gabreski	Michael	Silverman
Brennan	Gerber	Michener	Solomon
Broderick	Goldstein	Miller, D.	Sprogell
Brown	Gouger	Miller, R.	Stout
Buck	Griffith	Moorhead	Strickler
Bunting	Hannum	Morton	Stroup
Burkholder	Harding	Nelson	Swope
Butera	Hatter	O'Donnell	Tate
Cain	Henderson	Orban	Thomson
Camardella	Heyburn	Orbin	Thornburgh
Caputo	Himes	Pasquerilla	Tomascik
Caron	Hook	Pechan	Tully
Casey	Horne	Pelletier	Van Sant
Clark	Hostetler	Popil	Waldron
Clinger	Huggins	Pott	Warman
Conley	Irvis	Powell	Welsh
Corey	Jirolanio	Rappaport	Westerberg
Cortese	Johnson	Rea	Whittum
Cosetti	Kauffman	Redick	Wilcox
Croop	Keller, J.	Reynolds	Wilmarth
Cunningham	Keller, M.	Roberts	Woodring
Curran	Kelly	Rovner	Woodside

PRESIDENT BRODERICK. The electric roll call tabulator indicates that 140 delegates have recorded their presence.

The Chair also notes the presence of the following delegates:

Baldus	Gray	Meyer	Prendergast
Bashoff	Hocker	More	Quiles
Gehrlein	King	Murray	Richter
Goldman	McGlynn		

CALENDAR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 7, Printer's No. 26,** entitled:

A Proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

On the question,

Will the Convention agree to the proposal on second consideration?

PRESIDENT BRODERICK. We are going to continue our discussion in connection with Proposal No. 7, Printer's No. 26.

The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, I am sure I do not have to remind my fellow delegates that virtually all of us have made tremendous sacrifices over the last three months here at this Convention. I do not believe that there is a single one of us who would like to see what this Convention recommends defeated at the polls. We have all worked hard and I believe we have produced proposals of which we can all be very proud, particularly in my opinion, with regard to the Judiciary Article.

Unfortunately, a great many of the advantages and innovations in reforms have been ignored by a lot of people, particularly the press, and they have been focusing attention on one of the things we have not done which in their opinion should have been done and the opinion of many of us should not have been done.

However, we now have on the table of this Convention a motion for an amendment which is virtually identical to an amendment which I offered to this Convention last Wednesday. This amendment in my opinion is not the best that I would like to see, but certainly it is better than what existed before and certainly it is far better than having what product this Convention proposes to the people defeated at the polls.

I want to assure and insure everyone that in proposing the original amendment and in working with the people who helped to pass it, I, personally, and none of those who are working with me to my knowledge, had any political ambitions at all, nor were we given any promises of anything, nor have I been given any promises to say what I am about to say here by anyone. This is something which I decided over the weekend after a long and serious period of soul searching. It is something which I in my own conscience feel must be done, because I do not want to see this Convention a failure.

I think we have in our power to make today a dramatic demonstration to the people of the Commonwealth of Pennsylvania what we need, and want, and perhaps even more important, that we deserve their support. In the Judiciary Article, we have put in a unified Judicial System. We have put in reforms for justices of the peace. We have put in merit retention and we put in the option to adopt a Community Court throughout the Commonwealth.

We have done a great many good and important things that we cannot, we must not risk and as much as I would not like, if I had the choice in a vacuum, to compromise the position which I have been advocating with regard to selection of statewide judges, I am willing to make that compromise in order to insure that the product of this Convention will receive the overwhelming support of all of the people of this Commonwealth.

I hope and I trust that this is the last principle important issue to come before this Convention. I hope and I trust this will be the last amendment offered to the Judiciary Article, and that if we take this amendment off the table and if we pass it and if we make this dramatic demonstration to the people that we are motivated primarilly, principally, solely not for our own personal self interest but for the best interest of the Commonwealth of Pennsylvania, that our message will be received, that the people will know that the delegates here have been working hard for all of the people and not for themselves, and the press I believe will know that we seriously intend to produce the very best for all of the people.

STOUT AMENDMENT TAKEN FROM THE TABLE

DELEGATE KAUFFMAN. Mr. President, I move that the Stout amendment be taken from the table.

On the motion,

Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—96

Aberman	Feather	Mrungery	Scarlett
Amsterdam	Filson	Markley	Scott
Bagenstose	Forster	Mattioni	Scranton
Baldrige	Fortney	McGeary	Sharp
Baldwin	Gabreski	McGlynn	Shively
Barron	Hannum	Michael	Shoemaker
Bloom	Harding	Michener	Shrager
Braham	Hatter	Miller, R.	Sprogell
Brennan	Himes	Moorhead	Stout
Broderick	Hook	Morton	Strickler
Brown	Horne	Nelson	Stroup

Buck	Hostetler	O'Donnell	Swope
Bunting	Huggins	Oliver	Tate
Burkholder	Johnson	Participa	Thornburgh
Camardella	Kauffman	Pechan	Tomasella
Caputo	Kelly	Pelletier	Tully
Caron	Kosik	Popit	Van Sant
Casey	Laputka	Rea	Waldron
Clark	Leach	Richter	Welsh
Clinger	Lee, K.	Roberts	Westerberg
Conley	Lee, L.	Rovner	Whittum
Coretti	Leinbach	Ruth	Wilcox
Curran	Leonard	Sahli	Woodring
Desmond	Levin	Scales	Woodside

NAYS—45

Allison	Devlin	Henderson	Pott
Aurentz	Dumbauld	Heyburn	Quiles
Banes	Erwin	Hocker	Rappaport
Barry	Fawcett	Irvis	Redick
Benedict	Fay	Jirolanio	Reynolds
Benfield	Fleming	Keller, J.	Sebastian
Butera	Fohl	Keller, M.	Shettig
Cain	Gerber	Kline	Solomon
Corey	Goldstein	Meyer	Thomson
Cortese	Gouger	Miller, D.	Warman
Croop	Griffith	Orbin	Wilmarth
Cunningham			

NOT VOTING—22

Baldus	Fineman	Manderino	Percey
Bashoff	Gehrlein	More	Powell
Dailey	Goldman	Murray	Prendergast
Donaldson	Gray	Musselman	Shapiro
Donolow	King	Otto	Silverman
Fagan	Lane		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed.

STOUT AMENDMENT

The question recurs,

Will the Convention agree to the Stout amendment?

PRESIDENT BRODERICK. The Chair recognizes the proposer of the amendment, Delegate Stout.

DELEGATE STOUT. Mr. President, due to a serious physical occurrence over the weekend I would like to ask to be excused from actively participating in the discussion and turn the matter, for the moment, over to Governor Scranton.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. I did not know Delegate Stout was going to ask me to say anything. I think everyone knows precisely how I feel about this. I feel very strongly, from the standpoint of the Convention as a whole, that it would be very important to do this. It gives an alternative arrangement on the part of the Governor. It is, in my opinion, a step forward for Pennsylvania.

I think in view of the thinking on the part of the media, particularly in the State, it would end the Convention on a note which would mean their support in putting across all the many fine things that we have done in this Convention, instead of the accentuation of the things that have, in their opinion, not been good.

We had some splendid items as a result of this Convention. The Local Government provision is, as we all know, not only excellent, it is extraordinarily good.

We have done some fine things in the set up of the arrangement for Apportionment, particularly with the Commission.

We have made much progress for Pennsylvania in the taxation field, in the unified judicial system and in the complete reform of the magistrate and justice of the peace system.

I think, if this will give us—which, apparently, it will—the support of a great many of the media to put this Convention's efforts across to the people, it is very well worthwhile from that standpoint.

Furthermore, from the standpoint of operation of the selection of statewide judges, it makes it possible for the Governor to have an alternative arrangement, which would make it the burden of him, which, in essence, it is, any time that a Governor makes an appointment of a statewide judge, the criticism or, indeed, any kind of commendation—which they rarely get—comes to him. It is, therefore, important for him to realize that whichever method he uses, that he select good judges. If either method works out so that he does not, he will be condemned for so doing. Perhaps this is the proper way to have it be. The Governor is responsible for the appointments and he is either lauded or criticized for what he does.

Therefore, in the alternative, he has two methods.

If one method turns out to have the results that he has made unfortunate choices, then that other method can be used.

I say to you that I think this would be not only a step forward for the state but a step forward in method but, likewise, a tremendous benefit to putting across in the State as a whole the many fine things that the various committees and the Convention, as a whole, has done here in the last three months.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scott.

DELEGATE SCOTT. Mr. President, I have taken very little of your time on this Convention floor but I wish to say a few words about this amendment for two or three minutes.

I am not a lawyer. I am not a member of the Judiciary Committee. I am not an expert on the subject of judicial selection. I am a politician and the mayor of one of our Pennsylvania cities, and I am proud of being both, but I know in my heart that judges should not be politicians or be subject to political pressures.

The method of selection for our statewide courts now in Proposal No. 7 can subject the judges of our highest courts to such pressures, and even if such pressure would not be exerted, it could appear to be there. We owe it to the people of Pennsylvania to remove, as far as possible, even the appearance of political pressures.

Delegate Stout's proposal is not perfect but it is a step in the right direction. It will give the Governor of Pennsylvania an opportunity to adopt what many States have found to be as nearly a non-political method of selection as possible. I am supporting this amendment because I believe that good government is good politics and this amendment is in the interest of good government.

I urge all my fellow delegates to support it. Be not wary in well-doing, ladies and gentlemen.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, I would like to interrogate Governor Scranton or one of the proponents of the proposal, please.

PRESIDENT BRODERICK. Delegate Scranton, it has

been requested that you stand for interrogation in connection with this proposal by Delegate Barry.

Will the gentleman permit himself to be interrogated?

DELEGATE SCRANTON. I shall, Mr. President.

DELEGATE BARRY. Mr. President, this proposal calls for standard terms of seven years each to members of this Commission. Does that mean that the terms would carry over into the succeeding Governor's term?

DELEGATE SCRANTON. Well, it would, unless the Governor succeeds himself. As you know, under the amendment which we passed last spring, a Governor—not Governor Shafer—but anybody who follows him can run for a second term.

DELEGATE BARRY. Mr. President, in the event he does not succeed himself or at least during his second term, and for that Governor who does not succeed himself, he would come on with the same six members of this Commission already appointed?

DELEGATE SCRANTON. That is right.

DELEGATE BARRY. Mr. President, he would have no control over it?

DELEGATE SCRANTON. That is correct.

DELEGATE BARRY. Do you not think that is a serious disadvantage to this type of Commission as proposed?

DELEGATE SCRANTON. No. Because, as you know, the experience that they had with them in the other states have clearly indicated in most cases that as this type of Commission gets going, it becomes more and more nonpolitical. I feel very strongly that this would be the case in Pennsylvania, too, and I may say this is one of the reasons why I advocated it.

DELEGATE BARRY. But the Governor would arrive at the same decision without the method of the selection of at least six of the people.

DELEGATE SCRANTON. That is correct.

I do not think governors should have complete control of the Commission. In fact, I do not think that is what they are intended for. They are to be independent people to decide for themselves as to the caliber of the persons that might be selected and then to present a list to the Governor.

In his true mind, and nobody denies this, under the system that we have established, there would be a list of ten to twenty names, and if the governor chooses this method of selection it would be a list of ten to twenty names from which he would select, and it is highly likely that if there is a person of very high caliber in which he would be interested in appointing him, he might easily select one of them in the ten to twenty names. I do not deny that. This happened before.

DELEGATE BARRY. The other question I want to ask concerned the statement, I think both by Delegate Scranton and Delegate Kauffman, that there are a lot of groups that this proposal would tend to get up in an election year for a Judicial Article, and for the other articles before the Convention. What groups is the delegate referring to?

DELEGATE SCRANTON. I did not mention any groups, Mr. President.

Let me be perfectly blunt about this: I think that everybody who has read the newspapers or listened to the radio or television across the State, generally—this is not true of every newspaper or every radio station or every television station, but they have been criticizing the Convention primarily on two things.

One is on the set number of members of the Legislature which we have agreed to, 50 and 203.

The other is on the lack of the Convention's agreement concerning the merit selection of judges on any basis.

Now, you know as well as I do that we turned this down as an option locally, so that all local judges will be elected. The only question which has been tremendously debated here is on the statewide basis. I feel very strongly that we would get their support. I think they have been slightly unfair about this—if you want an honest answer—to select two of the things to particularly condemn that which the Convention has or has not done. Nevertheless, they have done this very, very strongly, and in my opinion, giving an alternative arrangement to the Governor for statewide judges only is comparatively little to obtain in particular, and I feel it is a good alternative to get the support of the media, which are very important to us in putting over a great many things. Yes, there are other groups, but I never worry about any kind of special interests. All I am interested in is getting the whole effort of the Convention across to the people.

DELEGATE BARRY. Mr. President, are there any particular groups that the gentleman thinks should be placated by this amendment?

DELEGATE SCRANTON. No. I am not interested in placating anyone, Mr. President.

I do not think that if we are opposed to something, if we should stand for it just to placate a group, this never has appealed to me any more than it would anybody else, but I think we have a reasonable arrangement here. Let me answer you this way, too: You know that there are a great many people in this Convention who feel that judges on a local level should be elected. When you get the Statewide basis, we would generally break it down into three parts. We had some who thought they ought to be elected. We had some who thought they ought to be chosen by the Governor and confirmed by the Senate. We had some that thought the selection by a panel basis was the right way to do it.

Now, we will have, it seems to me, heavy support of the Convention as a whole, if we have this alternative; because they are going to be elected locally, which is of paramount importance to those who want election of judges on a statewide basis. If this is approved, we would have two other alternatives, and therefore, we would be leaving the Convention, I think, with a very fine feeling that the three major groups in it all had a part in this particular field.

DELEGATE BARRY. Frankly, though, Mr. President, I cannot see why the adoption of this proposal will suddenly give overwhelming support within certain groups to the Convention that was not there before.

DELEGATE SCRANTON. I do not think that I or anybody else, at least I did not ever say that we should be concerned about certain groups, Mr. President. I am not worried about certain groups. I do feel that we have within the Convention a three-part type feeling about this. All of them will now be involved in one way or another, which is important, so we have very strong unanimity of opinion within the Convention itself. Secondly, Mr. President, I think it would help us a great deal with media, particularly in the State to get support for a great many things that have been done right by this Convention that at the present moment they are not even talking about.

DELEGATE BARRY. You know, of course, Mr. President, that the Pittsburgh Press has come out against the so-called merit plan very wholeheartedly.

DELEGATE SCRANTON. Yes, sir, I do, Mr. President.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, I rise in hearty support of this amendment.

I think that this Convention has done well through its Judicial Committee so far to give us a very good Judicial Article. In my opinion, it is not good enough now, and I think that if we pass this amendment, and complete this article, we will have a very good Judicial Article. I have been quite concerned since the provision of the Article, as it now stands, provides for the appointment of statewide judges by the Governor with the advice and consent of two-thirds of the Senate.

I have been in State Government in many ways, and I just cannot see how in the world a very successful appointment of judges—we are going to have a lot to appoint—are going to occur on time and with fairness to the individuals concerned and also, without having an unusual amount of political maneuvering in connection with it. I think that this Commonwealth is ready for some kind of reform in the matter of selection of statewide judges, and I think this panel system in the alternative will get very fine support throughout the Commonwealth of Pennsylvania. I have not heard a great deal from the citizens of Pennsylvania about support for this Judicial Article in connection with statewide judges, on the appointment, as it now stands, and therefore, I think we would make a great mistake if we do not go now and complete this, and as I said, make a very fine Judicial Article.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I rise to speak against this amendment. We have been here for almost three months. During that period of time all I have heard is, "let's keep politics out of the Convention." Members of the Convention, I just want you to take stock of your minds and your own souls and ask yourself this question. Did politics creep into the minds and into the bodies and into the souls of the members of this Convention since we recessed last Friday?

It is all right for particular groups who look at it one way and think that they are the God-saving people to express their opinions, but it is absolutely no good to have someone not agree with their opinion. In my humble opinion, as an individual, it is just as bad to have pressure put on you as the exercise of politics by a particular party, and I know and I repeat, I know, that pressure has been exerted upon some members of this Convention to have them vote a particular way. I know that some members have been called long distance and asked to come here and vote for this particular amendment, and gentlemen when that takes place in the Convention then it loses the bipartisan support that it is entitled to. What do you have in this amendment? You are just fooling the people. You are telling the people that the Governor has two particular ways of doing a particular thing. Let us be practical. Let us talk practicability.

If he has a Senate in his favor, two-thirds, he can do either one or either one, which ever one you want to say or do.

Naturally, the first governor who is going to have the opportunity of making this selection is going to be coy and he is going to say, "Well, I will take the Commission's recommendation just to be nice," and from then on you will find that the governors will be afraid to take it away from the Commission. We have a government in Pennsylvania of checks and balance. Are we afraid of our checks and balance system? Absolutely not. We have it in our Constitution. We have had it in our Constitution of the United States, and you have it in most all the states of the Union, and under this particular thing, you will be taking away the rights and you might say, the Governor does not have to do it that way, as the bill now is the appointment would have to be made by the governor with the consent and advice of two-thirds of the Senate of the Commonwealth of Pennsylvania. No. Certain groups do not want this. This is politics. Why? Because it does not agree with their particular theory, and everything that you say against the so-called plan and everything that you say against a particular group that is interested in their own way of thinking is not constructive, that you are out to destroy the Constitutional Convention.

I said this before and I will repeat it now. I am not here to destroy the Constitutional Convention. I am here to uphold it, but I am here for one thing, I am here representing the people of my district, the 18th Senatorial District, and the people of the Commonwealth of Pennsylvania, and I assure you that when I have their support, when I have their ideas, then I will not be bought or sold or swayed or pampered or hit over the head in any way, shape or matter or form to take away from me the will of my mind and the will to express my vote. This is exactly what you are doing. You have played the cards right. You have waited to the end of the game and you threw that fast ball hoping and praying we could not see it as it came across the plate and struck us out. We the people, who are interested in free democracy, and we want to give the electorate, the people of the Commonwealth of Pennsylvania their right to select who they want, now are being taken a little step further and being fed a little graft, or as they say in Court, a little dust so that the jury cannot see the true issues of the case; and this is what they are doing now. They are asking us to go along with this amendment. We do not like—and I say "we" I mean respectively certain groups in Pennsylvania, one group in particular who I pay dues to, and another group who I have in my own city, they are the dictators of this Convention, not the common people of Pennsylvania, and I think it is about time we rise and show ourselves as true Americans, as true Pennsylvanians, and let us say to this group, "You are politicking more and worse than any other group in the State of Pennsylvania," and let the Legislature do it with the advice and consent of the Senate, be it as it is now, because it is the method of government that we have in checks and balance, and I ask each and everyone of you to vote down this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Sharp.

DELEGATE SHARP. Mr. President, I recognize that in the light of this Convention this is just a few moments before midnight and we are, in a manner of speaking, in

the final hours of our deliberations here. I know that there are undoubtedly delegates here who feel that these discussions we are embracing have been covered before; that this field has been previously plowed. As a matter of fact, there are probably those who feel that the field has not only been plowed, but it is now being harrowed as well. To those persons who might feel this way I say to you that if this is so, then it is good; for if by double plowing and double harrowing we can insure a true and honest crop from the seed that we plant here, then the time that we have devoted in these final moments will not have been in vain and will have been worthwhile. I am wholeheartedly in favor of this amendment. I am in favor of this amendment not to open an old wound, not like a campaigner who has lost a previous battle and wishes to fight it over, but because I believe that somber reflection on this principle before us will recognize and will make us recognize the fact that we perhaps have exercised judgment in too much haste in our previous actions. How can we be sure that the appropriate means of appointing appellate judges for the next century in Pennsylvania is by the Governor with the advice and consent of the Senate, and that this is the highest and best means available to this Commonwealth for time to come? For those of you who can be sure, I am envious of you. I cannot be so sure. The reason I cannot be sure, Mr. President, is because I spent time with my constituents this weekend discussing exactly this problem, and I found that among my constituents, persons I talked to, that although they had some reservations concerning legislative apportionment, they have no strong feelings with regard to a unified judicial system primarily because they probably do not completely understand it. They were not aghast nor were they shocked at the Local Government Article with its changes because of the built-in referendum features. But I found that person after person expressed displeasure at the appointment of judges on the appellate level by a pure political mechanism. After talking to these persons, I might say, Mr. President, I was troubled in my mind and I was troubled in spirit, and I was not certain that if those who shared my misgivings might not believe that this body had indeed erred in its previous conclusion. For that reason I should like to reconsider this amendment. Might I say, Mr. President and fellow delegates, that the passage of this amendment is no sacrifice to honor nor is it any sacrifice to principle, for the amendment changes not what we have previously done, it supplements what we have done. It does not violate a single principle of our previous action. It does change the ability of the Governor to make the appointment with the advice and consent of the Senate, if he so chooses, but it does provide an additional vehicle which, if needed, if to be used, is there available for the use of the Governor.

It would seem to me, fellow delegates and Mr. President, that by the adoption of this we are not applying alternatives in a gray or in a black area, but we are providing a method available to the Governor to use in his sound discretion. I would say this, Mr. President, that we are not by this amendment fooling the people. If I thought that for one moment I would be urging the members of this delegation to in any way violate the oath we took on the first day, I would rather this amendment go down in ignominious defeat than to a sacrifice of principle. I take issue with Delegate Jirolanio that this is not political. I stand here speaking before you out of no political motive, out of no political gain, out of no political persuasion. I speak to you here out of inmost and deep conviction. I do not see, fellow delegates, how we can err in passing this amendment. I do feel that if we do not pass this amendment we will have erred; and for that reason, if err we must, I would rather that we err on the side of the angels by providing the extra method for the selection of judges which is consonant with democratic principles and is consonant with the integrity that we owe to ourselves and those who have sent us here. I thank you.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, may I interrogate one of the proponents of the present amendment?

PRESIDENT BRODERICK. Certainly. Is Delegate Stout here? He apparently does not wish to be interrogated. How about Delegate Scranton?

DELEGATE GOLDMAN. Mr. President, may I ask the gentleman if I am not correct in the statement that the true test of the effectiveness of any appellate court is its decisions?

DELEGATE SCRANTON. Certainly, Mr. President.

DELEGATE GOLDMAN. The true test, then, is the weight and validity of the decisions which it hands down?

DELEGATE SCRANTON. Yes, Mr. President.

DELEGATE GOLDMAN. Am I also correct in assuming, Mr. President,—and this again I am drawing from my own legal background—that, along with several other states throughout this entire country, Pennsylvania cases from its appellate courts are cited with substantial authority in other jurisdictions, in other states?

DELEGATE SCRANTON. Yes, sir; that is true, Mr. President.

DELEGATE GOLDMAN. So that historically Pennsylvania has been noted as a fairly good state for appellate court decisions?

DELEGATE SCRANTON. Yes, sir.

DELEGATE GOLDMAN. I have no further questions, Mr. President. I would like to make a couple comments, if I may, please.

PRESIDENT BRODERICK. You may proceed.

DELEGATE GOLDMAN. Mr. President, coming in this afternoon I was a little bit concerned, as I believe everyone here is, about the issue that is presented before us. We now have proposed to put into the Constitution a manner of selecting our appellate court judges which, without any question in my mind, is going to be very, very political. Any time that you need two-thirds concurrence of the Senate, this has to be extremely political. I also recognize, however, that this particular amendment is not going to necessarily cure that politics. I recognize, at least in my own mind, that within a panel system we are going to remove politics perhaps from the mainstream of public knowledge but we will in fact not be eliminating politics at all. We are simply going to be transferring it to another group.

Mr. President, I noted also or recalled also on the way in that we had initially a very, very close vote on the manner of the selection of our appellate court judges. I interrogated Delegate Scranton for the purpose of proving, if I may, that Pennsylvania has always been one of the leading states for its appellate court decisions, recog-

nized throughout all of this country as being a leading state in this field, and yet, in the past we have always elected our judges. But this does not mean that these elections have necessarily given us bad decisions. As a matter of fact, it has just been repeated that these decisions have been good, have been leading decisions throughout the country.

Mr. President, I am going to ask am I in order to offer an amendment to this amendment? The nature of it would be that we will continue to elect our judges as we have in the past and allow the people by referendum to decide themselves whether or not they want a panel system.

PRESIDENT BRODERICK. It is in order to offer an amendment to an amendment if it is properly prepared and, of course, the amendment must be prepared by the Drafting Bureau. The only thing that I would ask at this time, is that you would promptly have the amendment prepared.

DELEGATE GOLDMAN. I recognize that, Mr. President.

PRESIDENT BRODERICK. Now, if it meets with the approval of the delegates, we can proceed to discuss this matter while the amendment to the amendment is being prepared.

I now will recognize Delegate Michener.

DELEGATE MICHENER. Mr. President, I desire to speak on only one small point, but that is a most important one. Before I came to this Convention, the one idea which had been hammered into my mind with hardest force was that a panel was no good in a changing society because the members of the panel would all be White Anglo-Saxon Protestants, the WASPs, and they would never appoint a Catholic or a Negro or a Jew or a Puerto Rican or anyone else. For reasons which I will divulge at the end of this, this line of reasoning was very strong with me.

I heard two delegates who I have come to think of as my closest friends in this Convention sit in my apartment and tell me of the miserable treatment they had received in coal fields in their youth, when the coal companies determined who would be judges and anybody who was not a White Anglo-Saxon Protestant was in a murderous situation, and they swore to me that never would they vote for a panel, and I doubt whether anything I would say would change their minds now, but there are other delegates who have had this suspicion who are not so strong in that belief as the two that I referred to, and, whose opinions I respect so much, and I address myself to those delegates in particular.

Does a panel as it operates today, provide for the bench only White Anglo-Saxon Protestants? Forty years ago it did. This state would not have afforded such a panel because we had not then the educating influence of World War II where men of all groups worked together. We did not have the educating influence of recent years when we have seen great negroes appointed to positions of importance in this nation, when one of them today through something of a panel method, is sitting on our Supreme Court, when they have reached the highest ranks that our society can give.

We had not had the experience then, in which I participated so deeply in electing for the first time, a Roman Catholic to be the Supreme Magistrate of this society. The ideas that prevailed 40 years ago do not prevail today in Pennsylvania, that I know. Let us suppose that someone from the back of this room is one day elected Governor of this Commonwealth. Do you not think that that man is going to appoint to his judicial panel men and women just like the 163 of us here? He would be idiotic if he did not. He would want the best he can get. He would want men of wide experience. He would want men of all religions, all persuasions, all colors and I would expect his panel to look pretty much the way you and I look.

Have you heard any animosity in this Convention against people from a minority group? Have you heard any voting against those people? Have you had any lack of fellowship among the delegation on that score? Has this been a WASP convention? It has not.

Pennsylvania is no longer that kind of State. Pennsylvania is a State where men like the one I had dinner with the other day who had been the head of a great industry said, "We are looking for the bright young men of the other groups. We are looking for these men to whom we can appoint to positions of importance." I would suppose that the panel system working in Pennsylvania, in the future, not the past, would provide for the judges of this Commonwealth, precisely a cross-section of the lawyers who are now sitting amongst us and they are not all of one group, believe me. I speak to this point with a certain force for reasons which are not known to this body. If you have read my books, you know I always bear testimony to this fundamental idea, that there is a brotherhood that is growing in this country. I do not write about White Anglo-Saxon Protestants alone, because I know there is a broader horizon in this State today.

I do not shy away from the hard problems of an arising group in the Hawaiian Islands simply because it was not popular to write about. I do not shy away from writing about the great problems it concerns because I know something about it, and I do not stand here today in the closing hours of this Convention and speak to you as what I appear to be, a White Anglo-Saxon Protestant from a very good college, living in a fine part of the State. I am not that man.

Within recent years, I have undergone the experience of wanting to buy a house in a fine part of this nation and being told that I could not buy it. I have wanted to join certain clubs in Hawaii and found that the five top clubs on the island were closed to me, and I fought that like a tiger because I do not actually believe in those things.

For a curious reason, which none of you know about, I am sure, in recent years I have had to be very careful about where I die because in seven States of this Federal Union, I was not legally married and if my death put my estate in the hands of those States, anybody could come in and overthrow it because I was not a legal citizen.

Believe it or not, I have had at some time, to be careful where I travelled because any boob seeing me go through could have arrested me and put me in jail for breaking the stupid laws of that State. As you know, the Supreme Court outlawed all this nonsense a few months ago; only a few months ago. We live in the kind of nation where that nonsense is being outlawed. No Governor of this State would dare appoint a panel that believed in those ideas. He would appoint a panel of all of us and believe me, if he got me on it, he would have a tiger by the tail

because I would be looking for the good young men of the rising groups. I would be looking for a broad stature of judges over this State and so would almost everyone of you if you are in the future elected to such a panel.

We would be looking for only three things; lawyers who have demonstrated their ability, lawyers who had given evidence of a sense of judicial mind, and above all, men of integrity.

PRESIDENT BRODERICK. I just want to remind you that you have two minutes to go. You have two minutes in which to conclude.

DELEGATE MICHENER. Mr. President, there is no word better in the English language than to close with the one I just did which concerns this great State so much. We are looking for, as our judges, men of integrity.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I do not stand here today in an attempt to help teach our learned secretary something of the history of this State. I do not wish to contravert him. At the same time, I do say to the Convention that much that was said in the committee has not been said from the floor. We are sensible and sensitive to the fact that we have had a bad press and this Convention, in some respects, has had some bad motherhood. We still do not know who the fathers are.

I would ask the delegates again to look at this amendment. Since Delegate Stout is physically not in good shape today, and I do not mean to pick on him, but this amendment last week was known as the Clinger Amendment. It was known as several other amendments. I sat through six days of heavy debate on the judiciary article. We are faced with it today.

Delegate Kauffman sees fit to say that it is not any different than the amendment he proposed. Well, that is for Delegate Kauffman to say. But there was one essential thing that was raised, personified in the person of Governor Scranton, that would help this amendment and make it so that the people of Pennsylvania can have it given to them without an after taste lasting for the next 40 years.

When Governor Scranton, in that memorable period in Philadelphia, appointed a panel to select five new judges, he reserved to himself the right of additional panels of names submitted to him if he felt they were not to his choosing. This is the history in some of the other states. In New York, just three weeks ago—and this is in the record. I refer to Delegate Curran. You read it into the record—they had to move beyond a selective type panel and take a man whom the panel had determined was unfit, and lifted him up and made him a judge.

Now I say to you—and I am asking Governor Scranton—and I know the Governor is not the author of this amendment, but we should, if we go along with it, allow the future governors of the Commonwealth of Pennsylvania the same thing that Governor Scranton wanted when he was governor of Pennsylvania. He secured the finest five judges in the history of Philadelphia. He was so good, the performance was never repeated.

This is what I say: I am not going to offer the amendment—I am afraid that with bringing this back on the floor again does nothing. The governor appoints a new judge. He does it with his left hand, two-thirds of the Senate, and the right hand with his selection panel. I am not asking anybody to vote against it. I am asking some member with a stronger stomach than I have here today—because if you think politics did not operate over the weekend, you do not know anything about Pennsylvania politics. Special interests, people with no responsibility, not even minority groups, I am not speaking about the Pennsylvania Bar Association, I am speaking about some of the female affiliates.

I am not here to turn this thing over. I want one of you thought-scarred lawyers to give the next governors of Pennsylvania the same right that Governor Scranton asked for himself; what will cure the panel thing?

Believe it, WASP is not the answer, Delegate Michener. The history of Pennsylvania will tell you. The Law Journals—the Yale, the Harvard Law Journals—let me quote here—do you want to hear it? Are there any Yale or Harvard boys in the hall? I mean on our side.

If the executive can make his judicial choice only from a limited roster supplied to him by a commission composed of the successful and conservative members of the community, then it is obvious that no one who deviates from the professional norm—labor lawyers for example—may apply. This is out of the Harvard Law Review quoting a Yale Law Review. We are making it simple. This, basically, was it. I would be in favor of an amendment if Delegate Clinger, Delegate Rea, Delegate Thornburgh and a few others would get up and have the decency to use the Pennsylvania experience, if you please, and not the experience of the State of Missouri.

I am for the best judges that Pennsylvania can have. I was not opposed—in fact, I stood, I think, earliest, for the appointment of the appellate court judges—but in the heat of this last rhubarb—and that is what it has been. We have not even taken time out to look at the amendment, and note that the governor must take this panel. The Rockefeller System evolved from a situation where those who were on the panel were not of his political party and had no interest in anyone who was not of the right party; that was in the New York Times; it is in the records of this Convention.

Very recently, the City of St. Louis—they have a member of the trade school out there who tells the man what judges he will appoint; that was in the Wall Street Journal just nine days ago.

Let us make it healthy. Let us do the best we can. We have been slowed up now. Let us take a few more minutes. I appeal to you men who say that you stand for the best thing that can come out of this Convention. Give the governor the right to ask for additional panels if he is not satisfied with the choice. I am sure those delegates who, in this hall and in the judiciary committee, sought for the best will have given you the best. As far as these pressure groups, TV stations, newspapers who have a story to tell, let them tell their story, but when you people of the Pennsylvania Bar realize we have locked in every trial court justice in the Commonwealth with a "yea" and "nay" vote after he served only 10 years; that we have given you gubernatorial appointments for most of the statewide appellate judges; that we have given you a discipline and removal tool that we never had in the history of the state; we not only have reformed our judiciary system but it will be the finest of the 50 states in the United States.

I say try to listen today and do the best you can. God save the Commonwealth and this Article and this Convention.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I would first like to speak, if I may, for about 30 seconds to a point of personal privilege.

On the editorial page of the Philadelphia Inquirer this morning, a newspaper reporter who was here only one day since December 1st stated that I was approached by a reformer. I do not know what a reformer is. I have never seen one. I know that a lot of people say that they are in favor of reform. They bring forth plans that are reform. But I really do not know what a "reformer" is. It further says that I was approached in the interest of wiping out the magistrates courts in the City of Philadelphia and substituting a system where a judge was required to demonstrate sufficient knowledge of the law to qualify as lawyers.

"He is said to have replied . . ."

Which shows the weakness of hearsay evidence,

". . . that he . . ."

That is me,

". . . he was elected a delegate by the Democratic organization and sent to Harrisburg to do the bidding of the power behind that machine."

Well, gentlemen, I would like to remind the Convention that of the three of us who were elected to the First Senatorial District, the man with the highest votes was my good friend, Americo Cortese, who is a Republican, and that the Republicans carried my district and that if Republicans had not split their tickets and voted for me —and I say that in the presence of the Republican County Chairman—I would not be here.

I voted for local option in Philadelphia for the magistrates because I believe in home rule. I have the honor to be co-chairman of that subcommittee. I voted to require magistrates in the City of Philadelphia who were not learned in the law to take the special courses and I voted in favor of abolishing the traffic court in Philadelphia and putting in the community court. Thus, every statement in this little column is a patent untruth. I might say that there have been some reporters here, including those working for the same newspaper, who have been here every day since the Convention started. While I have not always agreed with their stories, their stories have been fair and have been honest and I commend them for it. What I dislike intensely are what we used to call, in the Army, the 90-day wonders—although, I suppose we are 90-day wonders—but these are the people who come here one day, go home and write articles.

We are engaged here in a discussion of how we should choose our judges. The basic requirement of an orderly society is to have judges who are respected by the people. I was struck by this the Saturday before last, when we read the story of Jethro, which is in the 18th Chapter of Exodus. Jethro was the father-in-law of Moses and after the children of Israel had come out from Egypt and were in the desert—I might say, parenthetically, living off their welfare checks, although then they called it manna—Jethro visited his son-in-law and found that Moses was spending most of his time settling the disputes of the people. We are told that when his father-in-law saw all that he was doing for the people, he queried, "What sort of thing is this you are doing for the people? Why do you sit alone while all the people have to stand about you from morning to evening?" They had a trial backlog then, too. The answer of Moses to his father-in-law was: "The people come to me to consult God. Whenever they have disagreements, they come to me to have me settle the matter between them and make known to them God's decisions and regulations."

Jethro later remonstrated with Moses and said it is too much work and advised him to choose men of the people to judge the people, set up an appellate court system, and he said that one of the qualifications of the judge is that he be a man of valor, a man of strong intestinal fortitude and of personal moral courage. I think this is what we are talking about here. I think we all agree on that. Our problem is to discuss how we can choose such men.

Governor Scranton has made a very cogent, convincing argument for non-partisanship. He believes that if we can take the political process out of it, then we will have better judges. I submit this is our basic disagreement in this Convention. Let us discuss that point. What is non-partisanship that the panel is supposed to bring about? How does it work? What is its result?

I would like to quote from a study of the Reform Movement in America wherein Lorin Peterson quotes from a speech given by the eminent American historian Charles Beard at the 1916 meeting of the National Municipal League and this is what Charles Beard had to say: "Non-partisanship has not worked, does not work and will not work in any major city in the United States." This was in 1916.

"The causes of parties lay deeper than election laws. The causes of parties being social and economic, we must expect the continued existence of party organizations in our municipal affairs. The task of the reformer is not the enactment of non-partisan laws but the development of legislation and public opinion that will make parties responsible for the conduct of municipal government. Men who want wise and just government in cities are likely to do as much good by cooperating with the parties and insisting upon the establishment of sound party principles and genuine party responsibilities as they are by running to the legislature for a few non-partisan election laws." Mr. Peterson goes on to say, "Reformers' love of governmental gadgetry extended to voting," and this is discussing limited voting, cumulative voting, etc.

I would submit that a panel system is governmental gadgetry.

I got in party politics five years ago because I believed along with Charles Beard that this is the way for better government in the United States.

PRESIDENT BRODERICK. Delegate Rappaport, you have two minutes.

DELEGATE RAPPAPORT. Thank you, sir.

What is the effect of the non-partisan election practices?

I am reading from the study made by the American Academy of Political and Social Sciences. After discussing the problems of the past and nobody knowing who the candidates are, they go on to say, "Non-partisan election practices were effective, also, to increase the influence of the mass media on voters; because they are dependent on

the mass media for their information. Without the familiar device of party levels to aid in selecting candidates, voters may find it difficult to select from among the sometime substantial list of names on the ballot."

This has been the experience in California where, because of cross-filing, party organizations, were torn down, and they have a movie actor for Governor and a movie actor as a United States Senator. I say to you, and I have said to many of my friends here, I would rather have our friend, William Devlin, selecting our judges in Philadelphia than chancellor of the Bar Association. Because, with neither man will I have a chance of becoming a judge, but I know that the man who will be selected by Delegate Devlin will be a man who has the intestinal fortitude to stand in an election and to go out and talk to the people, and would not be fearful when a group of mothers comes storming down to City Hall and calls on that judge to change his mind on a sentence, which happened to one of the judges which were selected by a panel appointed by Governor Scranton.

I want judges who have guts.

PRESIDENT BRODERICK. Sorry, your time is up, Delegate Rappaport.

The Chair now recognizes Delegate Huggins.

DELEGATE HUGGINS. Mr. President, I think that since the birth of this Convention, not long ago, we have been suffering from a number of pains. It probably all started about with our favorite analogy that we use for arguing to prove a point, which was press pain. These pains came about because we were afraid of what the press would say about us, what they have said about us. I think that this has been an interesting pain. We have suffered from another pain during this Convention that I would like to term gas pains, from hot air excessively overdone, and we did not know where to put them.

Now, we are suffering in the last couple of weeks with another pain called the "panel pain." It aches us. It causes greater verbosity to come forth from the shallow mouth of meek man. I think this is an interesting pain, but as one delegate, a non-lawyer delegate who waded through the issues presented in this particular amendment, waded through the issues that were presented to the delegates here on the floor, I do not think I want to leave this place with a chain pain around the neck of a governor, which is exactly what we have without this amendment.

It is for this reason, Mr. President, that I can honestly say to you and to this distinguished body, forget the other pains, but the future pain is the one we need to concern ourselves about, and this is the one we need to vote for, not the pain but the solution.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Banes.

DELEGATE BANES. Mr. President, under the guise of reform on the judiciary comes a Trojan horse for the people designed to subvert their will, in the shape of the proposed panel selection candidates for the office of judge in this Commonwealth. The human cry which is responsible for calling this Convention I am sure did not involve the merit selection of our judges by panel in the eyes of the electorate. I am certain that not one man in a thousand knows and understands this issue, and as a result of this type of selection, he will lose his right to vote for a judge, or those who will be responsible for passing on the qualifications of the judges to be appointed.

This supposed reform of the judiciary is a phony issue designed to force upon the people a royal commission for the selection of judicial candidates to take away from our people a fundamental right, and I want to call to your attention, if you will begin reading on page 86 of your manual, where they begin telling us about the history of selection of our judges, you will find for example, that the contribution of the United States to the judicial systems of the World is a popular election of judges.

I also want to remind you that in the 1838 Convention of the Pennsylvania Convention, there was, at that time, a battle and struggle waged to take away from the governor the right to appoint judges and give it to the people. The manual tells us that the political groups joined together and denied this right to the people.

You will also read that in 1850, finally, the people did get an amendment passed which gave to them the right to elect their judges.

Mr. President, this proposal before us here, in part, will take away that sacred right for which our forefathers not only in this country, but also in the nations on the continents of Europe, the struggle for which they all fought to gain the freedoms, one of which, of course, was the popular election of judges. I, therefore, intrigue you to defeat this proposal.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Filson.

DELEGATE FILSON. Mr. President, by and large the Judiciary Article which has been formulated at this Convention is good. I would not be presumptuous enough to say that everybody in this hall certainly must be in favor of good judges. We came here to give the Commonwealth of Pennsylvania the best Constitution that we could possibly formulate. The issue is how do we arrive at a process whereby we get the best judges for the Commonwealth of Pennsylvania.

We have argued this in the sub-Committees. We have argued in the Committee and we have argued it to no end on the floor.

The one thing which I want to place before you particularly is this, and I suspect that everybody in this delegation understands what unprecedently and unparalleled powers have been formulating into this Judicial Article. If we go home from this Convention and we have not come up with the process whereby we can get the best judges on our appellate courts, we certainly have fallen flat on our face, because I submit to you that in the unified court system we must necessarily, in order to make it work, have the best judges that the Commonwealth of Pennsylvania has ever had. This is the most powerful unified court system ever, of which I have knowledge. I must say that a corrupt Supreme Court could corrupt the judicial system of the Commonwealth of Pennsylvania in very short order. They have the power to hear the incompatible activity by which charges or from which charges may be brought against them. It is as has been said on the floor, it is like correcting their own examination paper. This, unless you get the best judges for the Supreme Court, has the seed of its own corruption sown in this Judicial Article.

This amendment which we have on the floor does not

hurt in any manner, but has been originally offered hereby the selection of judges of the Supreme Court, and the other appellate courts with the advice and consent of the Senate, it gives the governor an alternate plan, and I submit to you with these two plans, it would be most incumbent upon any governor of the Commonwealth of Pennsylvania to search his conscience and to search the Commonwealth far and wide to come up with the best judges that he can possibly secure to man the Supreme Court.

Do you realize that it is within the power of the Supreme Court as to whether or not it subscribes or prescribes canons of ethics for the minor judiciary, the justices of the peace? Do you realize that under the Article wherein judges against who complaints have been brought, will finally be charged or tried in hearings before the Supreme Court? Do you realize that if we had improper judicial officers on this Supreme Court, what a white-wash we could have, what a political white-wash we could have for the whole system?

I submit to you, open your mind and reflect in your own conscience what you are going to do about the selection of judges, because I submit to you that this is probably—and I subtract the word "probably" from what I just said—I submit to you, that the selection of judges for the appellate courts in Pennsylvania is the most important element which we have come to in this Convention to consider. Let us not let the citizens of the Commonwealth of Pennsylvania down.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. I have a short suggestion regarding this, Mr. President. I notice that the amendment as presented to us—and I think I have the correct one—indicates that the first part applies to Section 11. I notice that the amendment schedule relates to Section 21—and I am taking this from Printer's No. 23, and I believe the current Printer's No. 12 does the same thing—Section 21 according to its terms applies to Section 12(a) of the main portion of the committee proposal, and I merely wanted to point out that this probably should be corrected, unless I am confused, before it is finally adopted, so that there be no later confusion and necessity for a subsequent amendment.

PRESIDENT BRODERICK. Thank you, Delegate Shoemaker.

And now the Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I have been promising myself and several interested delegates, ever since I came here, that I would go through at least two days without speaking to this Convention. I do not think I have yet succeeded. I am deeply troubled by the position in which I find myself, and I want to make my position clear in front of this delegate body.

I do not think there are any venal men or women on the floor of this Convention. I do think we come from vastly different backgrounds, that we differ in our viewpoint of history and we differ as to what we think will work and will not work. I stand here to reiterate my original position, which I took the first time I took this microphone, and that position is a very simple one. I believe that the further we remove the process of government from the people, the greater the risk to democracy. I am not in favor of the present amendment nor do I favor what we have written particularly into the Constitution so far, the appointment of appellate judges with the advice and consent of two-thirds of the Senate.

I spoke to a member of the Pennsylvania Bar Association, whom I regard very highly, at 11:00 o'clock last night and told him quite honestly I had not made up my mind as to the Stout Amendment. I have since made it up. I think there are a number of delegates here who, because of their lack of contact with the practical aspects of politics—and I think that there are a number of observers in the room who are not delegates who, because of their lack of contact with the practical aspects of politics—have fallen in a trap of generalization. We Americans tend to stylize things, to generalize, and set up stereotypes. One of the stereotypes is that the newspaper reporter is a hard-drinking, woman-chasing rascal—which some of them are—perhaps. Another is that the policeman is basically dishonest and bribable, which is an interesting thing, I mean, that we put them in their positions but we tend to believe that they are all corrupt. All policemen are corrupt except our fathers and our brothers and our uncles who may happen to be policemen.

I have noted on the floor of this delegate body, in diminishing volume, thank goodness, the stereotype that legislators are ipso facto questionable as far as their morality is concerned. I note with a great deal of disturbance the stereotype moving now through this hall that politics is by definition dirty. Everyone who has stepped up here to the microphone has said in effect, without even arguing the point, we must take politics out of this. The question is, why? Well, not everyone, you are right, sir. You did not.

This is an interesting stereotype in the American mind. We are all political animals. Every single solitary one of us seated here today is a political animal, and every single solitary member of the Pennsylvania Bar Association is a political animal. And there is politics played with no more fanaticism any place than in universities across this land. Every single one of us is, to one degree or another, a politician. I say this to you and I say it in all sincerity. I was a school teacher. I became an attorney and I became a politician. I have had wide associations among attorneys, school teachers, and politicians. I have yet to find that I could turn my back on a politician when he gave his word.

I say to you, if you think that by creating a panel or a commission you are eliminating politics, disabuse yourself of that thought. You have seen the American Bar Association and other groups use the tools of politics over this weekend. The very people who have said to you and to me, "We decry politics as far as the selection of our judges is concerned," have used the tools of pressure and persuasion over this weekend to bring about a result which they quite sincerely and honestly believe is best for the people. I do not say that they are wrong in doing this. I say that they have a perfect right to do it. But the same pressures that were brought to bear on you can, I submit to you, conceivably be brought to bear on any commission which has to submit ten or twenty names to a governor. How do you think those names are going to get before the commission? How do you think the commission's list of names are going to get before the governor? Do you think for one minute that the Pennsylvania Bar Association is going to sit silently by and let any

governor appoint any four people whom he wishes or any one person whom he wishes with no comment? You cannot be that foolish. They are not evil in their intent. They believe sincerely that they know what is best, that what they are doing is best for the people. I contend that only the people know what is best for the people. I say this to you again—and I hope not to have to say it again and again—I do not stand here believing that newspaper editorial writers and TV Commentators and members of the Pennsylvania Bar Association or members of the legal profession or any other group know what is best for the general populace of the Commonwealth of Pennsylvania. I defy anyone of you, no matter how learned, no matter how high in status, to prove to me that any place in history has it been shown that a government long survives when it is removed from the will of the governed, and that is precisely what we are about to do here. I regret very much that we have come to this position, for we are now running scared. Even the best of us are running scared. The newspapers have threatened us. The League of Women Voters has threatened us. The members of the Bar Association have threatened us. You remember when it was thought that legislators were threatening. We rose in our indignation against this threat. But we are now being threatened by saying: If you do not do as we think is best, we will oppose your offering. I say to these people who would oppose, go ahead; that is your American right to do so; but it is equally my right to stand here and propose what I believe is best. I think we are going in the wrong direction with this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Caron.

DELEGATE CARON. May I yield to Senator Casey, sir?

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I rise not as an editorial writer, not as a reporter, not as a television commentator, not as a member of the League of Women Voters, not as a spokesman for the Pennsylvania Bar Association, not as an Eleventh hour convert to the principles embodied in this amendment, but as one who on this floor and in the votes that have been taken has consistently supported this principle, because I happen to believe it is right. Yes, I called some people over the weekend and asked them to vote for this amendment because I think it is right; because I think it is time that the Commonwealth of Pennsylvania adopt a system in the selection of judges that blinds itself to their partisan labels, that considers only their qualifications, their ability as practitioners, and their ability to serve the people of this State.

If I believed for one minute that this amendment would result in the exclusion of minority groups from the appellate courts of Pennsylvania, I would fight it with every bit of strength I have got in my body, because I happen to be a member of one of those minority groups. I do not question for a minute that, as an active member of a political party in Pennsylvania, I personally would probably have a much better chance of getting on the appellate bench in Pennsylvania under the elective system or under the appointive system, subject to two-thirds ratification by the Senate; but that is not the issue. The issue is not how best can we get on the Bench in Pennsylvania; the issue is, what is the best system for the administration of justice in Pennsylvania? What system will restore to the people full confidence in the workings of the appellate system in Pennsylvania? Will it be politics under the amendment? I do not think anyone in his right mind can say that politics will ever be completely eliminated but at least it will give us for the first time in this State a thorough, systematic ongoing search for the best judicial talent that is available to serve on the Appellate Bench in Pennsylvania.

Now, I have heard a lot of talk about we cannot take it away from the people. Do you not realize that the present proposal has already crossed that bridge? Do you not realize that the present proposal right now in its present form, apart from the Stout Amendment, says the governor shall select these judges subject to two-thirds ratification by the Senate of Pennsylvania? This is a system that Governor Scranton—and I agree with him—has said is outrageously political.

Now there has been a lot of talk about reformers and about those who wear the white hats in this Convention. I have had just about enough of it, because, my fellow delegates, the eleven million people in this State that are watching us are reformers. They wear white hats. The organizations and the press media that make this Convention possible wear white hats. They are reformers, too. We have got to give them a product they can be proud of. I think this amendment goes a long way towards achieving that goal.

I stand here to ask you to support this Stout Amendment because I believe it is best for the judicial system in Pennsylvania and best for all of the people of Pennsylvania.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Caron.

DELEGATE CARON. Mr. President, I would like to make two brief statements. I am one of the delegates who came here uncommitted to anything other than my conscience and I would like to add that nobody has threatened me. I would like to vote my conscience and therefore I move the question.

PRESIDENT BRODERICK. As I understand Delegate Caron has made a motion that we close debate and vote on the question, but I want to point out that we have an amendment to the amendment which we have to vote on first and he has every right under our procedure to present that amendment, and therefore I would have to rule at this time that the motion was out of order and I thought it was understood that we were hearing the pros and cons of the original proposal until you were ready, Delegate Goldman.

DELEGATE GOLDMAN. If it is agreeable with the body, this of course is up to them, I can tell you generally what I intend to encompass within this amendment, Mr. President.

PRESIDENT BRODERICK. Delegate Goldman, in accordance with our procedure, I understand the amendments will be ready in just a few minutes and I think the delegates would feel better if they have your amendment in front of them.

May I recognize Delegate O'Donnell who has been standing for quite a while.

DELEGATE CARON. I will withdraw the request subject to the time the amendment comes back out.

PRESIDENT BRODERICK. Thank you. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I have risen solely for the purpose of making a motion similar to Delegate Caron with the exception of those who are standing up I felt would be permitted to address this Convention and then close. I understand that would not be in order at this time either.

PRESIDENT BRODERICK. No. We have to, as you understand, accept the amendment being offered by Delegate Goldman.

The Chair now recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I appear before you on behalf of Delegate William B. Stout who announced earlier he would be unable to make any statement to this body.

I want to tell you a little bit about Delegate Stout before I start.

I met Delegate Stout formally on August 4, 1967, when we ran as delegates to the Convention before our committee people. At that time, William Stout had no conception of the judiciary. Even though I was with him for a period of 3 months now continuously, William Stout and I have very seldom talked about the subject matter and he had served very faithfully on the Construction and Reorganization Committee under Judge Woodside and I would like to read into the record Delegate Stout's statement as to his reason for introducing the proposal.

"Mr. Chairman, Fellow Delegates:

After a weekend of serious reflection, I have come to some conclusions concerning that extremely vital subject which has engaged our attention the past two weeks, the proposed Judiciary Article. It is my understanding that many other delegates have devoted equally serious reflection to this subject over the weekend, and therefore, I rise to test my conclusions against theirs. I do this with the hope that we may find quite a number of us, each operating independently within our own individual homes and minds, have arrived at the same conclusions.

The first conclusion I would ask you to consider, and this I think cannot be disputed, is that on the method of selection of statewide judges, we have not observed in this body anything approaching unanimity of opinion. Whatever votes have been taken have been extremely close, and the decisions that we have committed ourselves to at this date have passed by a very slim majority. And that majority was, as a matter of fact, of those voting, not of this entire body of 163 delegates. I would like you to consider some of those votes.

Delegate Kauffman's original amendment which would have filled vacancies in statewide judgeships by gubernatorial appointment with two-thirds consent of the Senate was defeated, 67 for, 79 against.

Delegate Woodside's amendment to the original Kauffman amendment, which would have substituted majority consent of the Senate for the two-thirds consent, was defeated, 60 for, 81 against.

Immediately after these two votes, Delegate Kauffman proposed an amendment which would have made the governor's choice from the list of names given to him by a judicial qualifications commission discretionary rather than mandatory; and if the governor decided not to choose from that list he would have the alternative of appointing someone other than a person among the 10 to 20 persons on that list, and in this case such an appointment would have required the two-thirds consent of the Senate. This amendment was also defeated, 61 for, 75 against.

All three of these votes occurred last Tuesday afternoon, February 20. The following day, Wednesday, February 21, a motion to reconsider Delegate Kauffman's original amendment, that is, appointment by the governor with two-thirds consent of the Senate, passed 84 for, 64 against. The vote on the amendment itself followed, and this carried, 78 for, 65 against. Thus, at this moment, we now have our statewide judgeships filled by gubernatorial appointment with two-thirds consent of the Senate.

Last Friday, February 23, I, Delegate Stout, presented another amendment which was tabled at that time. My fellow delegates, we have now arrived at the crucial moment. This is our last opportunity to pass upon the method of selection for statewide judgeships.

I have reviewed the previous votes on this subject in detail because I thought it important to determine whether my conclusions match up with yours. My conclusion is that, as the debates and votes clearly show, we found this issue to be the "hottest," most controversial issue of this Convention. My next conclusion is that we have found an honest difference of opinion on this issue—a difference that is so close that on one day one side prevailed by a slim margin, and on the very next day the other side prevailed by a slim margin.

I submit that this difference is not totally irreconcilable. I submit further, my fellow delegates, that this Convention is not primarily an occasion to win victories or absorb defeats. As sloppily sentimental as this may sound, we are gathered here to do what is best for Pennsylvania. Without attempting to be dramatic, it is a fact that in a very real sense we have the future of Pennsylvania in our hands.

Let us remember that on this issue we have expended a great deal of effort, thought, devotion, and emotion, both in the committee and on the floor of this House. Overnight the majority of one day became the minority of the next day. Overnight the minority of one day became the majority of the next day. The side which prevails at this moment certainly cannot claim omniscience. Any fair statement of delegates on the prevailing side cannot reasonably claim the other side absolutely wrong."

I have proposed an amendment whereby it is possible to adopt the best of both contending viewpoints. If we had a clear-cut majority on the Kauffman amendment, let alone real unanimity of opinion, I would consider myself out of order in speaking on behalf of the Stout amendment at this late date.

But we do not have a clear-cut majority. We have a

sizeable number of sincere delegates who are genuinely dissatisfied with the proposal as it now stands. Delegate Stout's amendment would serve to acknowledge their viewpoint in this proposal, at the same time that it does not take away the vitals of that viewpoint which has prevailed to this date.

In effect, the Stout amendment gives the governor the latitude and flexibility to effectuate either viewpoint or both viewpoints. Who are we to say that in some future time one governor may not be, at different moments during his term, in real need of both viewpoints in order to produce the best possible results. Surely, any honest appraisal of the two methods would have us conclude that there is merit in both. Are we really bound to choosing one or the other?

If you will recall the third vote I discussed a few minutes ago, that is Delegate Kauffman's second amendment on Tuesday, February 20, it is almost exactly what Delegate Stout is now proposing, namely to give the governor the choice of exercising either of two alternatives in the selection of statewide judgeships.

When Delegate Kauffman's original amendment fell on a close vote, Delegate Kauffman himself presented this as his second choice. Of course, he could not know then that his original amendment would carry the day a mere 24 hours later. In all fairness, I hope it is not going too far to suggest that Delegate Kauffman himself might reasonably support the Stout amendment, and I say this sincerely and without any intention whatever of directing his vote. All that I am asking is that Delegate Kauffman and others who voted in support of his amendments consider very carefully the Stout amendment. And perhaps they will conclude, as I have, that it is an honest attempt to bring together the best of both worlds.

In the years to come, perhaps others will happily recall that in a strange, circuitous, perhaps fumbling but always striving and honest way, the delegates to the Pennsylvania Constitutional Convention of 1967 and 1968 finally arrived at the best of both worlds.

Mr. President, I have for myself something to say and I do not know how much time I have left. I would like to quote from Judge Samuel I. Rosenman who was President of the Association of the Bar of the City of New York and Co-Chairman of the Mayor's Committee on the Judiciary. "I was co-chairman of this committee from its beginning and until my election as President of the Association of the Bar of the City of New York. Even with its shortcomings, I firmly believe it has affirmatively improved the caliber of the judges appointed in this city. And, negatively, it has helped by the discouragement which it has given to political district leaders who used to recommend obviously unqualified followers of the Mayor, but who are now deterred by the realization that before their candidates can be considered by the Mayor, they must pass the scrutiny of this nominating committee.

Therefore, I support Delegate Stout's Amendment and I ask the governing body to vote in favor of it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, like all of you, I have sat here and listened to the honest dedicated debate of both sides of this most critical issue. I have heard every speaker rise to state that he or she stands for a system of selection of judges on the appellate level which will bring good judges. I pose a question to you. How many have stood and said we do not have a good appellate court now? How many have stood and said that our present Supreme Court and the seven men that sit on it should be subject to reform? How many have stood here and said that our present Superior Court and the men that sit on it should be the subject of reform?

As I understood it when I came to this Convention as a delegate, when I pledged myself to reforming the judiciary of Pennsylvania, I was not speaking about individuals, because from my knowledge as a lawyer, as a member of the Montgomery Bar, the Pennsylvania Bar and the American Bar, our judges were a splendid representation of the American Judiciary. I thought we were here to help improve our system by creating a unified judicial system and a unified administration of justice and we did that. What is happening to us today? It is not a question of reform, but we are here quaking in the fear of the unregistered lobbyist.

I look at you who had the courage to run, who had the courage to put your name on the ballot, who had the courage to have your name put in the newspapers and on the public media, vote them down because if we do not vote them down, they will try to run this State. The next thing they will do is tell the governor who to pick for a judge. I trust the Senate and I trust this Legislature and I trust our judges because they have had the courage to come out and stand up for something. They had the courage to put their names in public lights. They had the courage to put their name on the lines. But these groups have not. They did not even have the honesty to register as a lobbyist. If you are voting in favor of the Stout Amendment, you are giving in to the League of Women Voters, everyone of them. I say to you here today that this Convention cannot stand up at all and stand up as a proud group if they are run by people who do not have the courage to get into public life.

I heard Senator Casey's eloquent speech for reform. But the panel is not the answer because I ask this question, who is going to watch the panel? We have all sorts of systems to watch our judges. We have systems now to watch our Legislature. We have a system to watch our governor. Who will watch the panel? Who will determine whether or not the panel is standing up to its responsibility? Who will know how they select the people whose names they send to the governor? As Representative Irvis stated, it is going to happen through the same telegram and phone calls and with the governor having the right to seek re-election, is that governor going to quake the way some delegates have quaked under the pressure of these telegrams and phone calls?

Mr. President, I submit to you that if you have the courage to stand up and run for public office, if you have the courage to stand up to a microphone and speak for what you believe in, if you have the courage to put your name on the line as a lobbyist, such as other lobbyists have done here, and if you have the courage to believe in the right for the people of Pennsylvania to select their branches of office—and I submit this is one way of selection, indirectly, through your elected State Senator, and we all ran from Senatorial districts and we purportedly represented the people because they elected us and they elected the Senators—then I submit to you that the original Kauffman Amendment was a good amendment and the original Kauffman Amendment was a manner of giving the

people an opportunity to have the judiciary and appellate level that was representative of all of Pennsylvania. To permit us to bend, to come in with a hyper-panel—what will we come up with here? If the first governor that has to select a vacancy in an appellate court, if he has this same group of sneaker-wearing people who will come right over there to the reception room and say, "You have to do it our way because, if you don't, we will accuse you of being political," you are then putting a real pressure on the man. If you want a system the way Delegate Solomon said, where the governor can send it back, O.K., but that is not this amendment. I submit to you, Mr. President, this is just a back door way of attempting to come in here and jam a panel selection—a panel, I submit to you, that you do not know who they are or what they will be like, you do not know where they will come from, they are not allowed to be elected officials, they are not allowed to hold political office—who will pick them? Where will they come from, the League of Women Voters?

Vote this amendment down, please, and save Pennsylvania from the hidden pressure, the real hidden pressure that was after this Convention.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gray.

DELEGATE GRAY. Mr. President, although I came in late, I heard so much about politics and so forth that I am reminded of a story. I feel you need this story here.

It seems as though there was a gentleman out west running for Congress. Excuse me, Congressman. The issue involved in his Congressional area was the matter of the building of a dam. When he was down below the area where the dam was to be built, where the people wanted the dam to irrigate their crops, he proclaimed himself for the dam. Then, when he was up above the area where the dam was to be built and where the people's land would be taken away because of water because of the forthcoming anticipated dam, there he would say he was against the dam. It got around that we was saying down below the dam, he was for the dam, and up above the dam, he was against the dam.

On the 4th of July, they had a big picnic and they invited him. When he got up to speak, he saw people from below the dam and he saw people from above the dam. They had him at the site of the dam. He said, "I see where I am. When I was below the dam, I was for the dam. When I was above the dam, I was against the dam. Now that you have me at the dam, I don't give a damn."

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, fellow delegates, I suppose that we set this all down with regard to Proposal No. 7 and the Stout Amendment, and as I view it, it comes to whether we advocate freedom and liberty. Ever since Patrick Henry stood in the Virginia House of Delegates, almost 200 years ago and gave his famous speech saying, "Give me liberty or give me death," this country has gone through a series of liberties.

There was the Emancipation Proclamation, World War I and II, Korea, the Vietnam, Virginia vs. Browne, and even the various acts of the Legislative body, not only in this State but in the Federal Congress, such as the Civil Rights Act. Even in this Constitution, I think we have recognized freedoms for the various municipalities for home rule, freedom from piecemeal annexation and various other freedoms which we have already granted in this Constitution. I maintain that unless we adopt this amendment, we are not granting freedom to this present governor or any other governor in the State of Pennsylvania because, as I see it, I doubt seriously whether there will ever be another Constitutional Convention in this State. I believe that we have a right, a duty and an obligation to grant freedom to this governor and every other governor in Pennsylvania history from now on, because unless we do, this selection of statewide judges will not be in accordance with the way we view things. The minority rules, we do not believe in them. The present Proposal No. 7 provides minority rule, and if you do not believe it, just look at it. Two-thirds of the Senate. The majority of the Senate would not govern here. It would be the minority. I am against minority rule. I am in favor of majority rule. That is why I am in favor of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, just a comment of some levity which might be appropriate to the intensity of our proceedings. Some years ago, there appeared before a political rally of some five or six thousand people a candidate for a rather high office who spoke in stentorian tones and with all the passion that he could command for a reform. He called for land reform. He called for municipal reform. He called for State government reform. He called for tax reform. He called for all kinds of reform for a half hour or more. Then, a bewhiskered and begrizzled old gentleman from the rear of the audience stood up and, in a very loud voice, cried out, "Sir, what we need here tonight is chloroform."

PRESIDENT BRODERICK. The Chair now recognizes Delegate Fay.

DELEGATE FAY. Mr. President, I have been sitting here and listening about taking the judges out of politics and I would like to ask one question.

I heard Delegate Gerber explain why it should remain as it is, but I have not heard from the people who have proposed this amendment and who are for it what is so wrong with the present system. I have not heard anyone yet get on this floor and say why they should be elected by the people. I am very curious to know why they have not made an issue of why the people should not elect the judges. Over the weekend, I received a telephone call asking me to vote for this amendment. I said, "What is in this amendment?" Well, do you know they were unable to tell me what the amendment was about? I said, "Now, why are you so interested in this amendment?" They said, "Because the Pennsylvania Bar Association is for it." I said, "Well, that does not convince me. That does not tell me anything, either. What makes you think they are so right?"

It was the same with the League of Women Voters. I have no quarrel with them. Up in our area they represent the country club set. They do not represent the little people. In fact, they do not represent anybody in our area. Why I say that is because I am a politician and I will admit that, but I never see them at the polls. I would like to know how many delegates we have here, and lawyers, on a very dull Primary, which it will be, how many

will be out there trying to get voters to the polls? I always said that a Primary is like Tag Day in Scotland. Nobody is out. That is why I like to measure the League of Women Voters or any organization by what they do to get to the people and get them to the polls. If I am for something, I work at the polls.

I would like to get back to my first question. I have not heard what was so bad about the selection of our judges by the people and I would certainly like to hear from some of the delegates why it is bad. In my opinion, to sum it up, I think it is only a matter of who is going to pick them.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Michael.

DELEGATE MICHAEL. I am almost speechless. Since I have come to the Convention I have been called naive, I have been called an idealist. I have been called a Democrat, and I even begin to feel rather predatory when Delegate Irvis says that we are attacking him.

I want to speak in two respects today. First as an individual member of this body, and secondly as a member of the League of Women Voters, and I want to explain that: you say there are no politics, and nobody who is running for office, in the League of Women Voters. There are two of us on the floor. There are others who ran for delegates to the Convention. We ran on party tickets. We had party workers helping us. We had members of the League of Women Voters who are party members who helped us and worked for us, but now let us, before I go any further, explain the relationship of the League of Women Voters to individual members, and then I want to explain the relationship of the League of Women Voters to the community and to this Constitutional Convention as far as issues are concerned. As members of the League we do belong to a political party, and we are urged and encouraged by the League of Women Voters to work for the party of our choice. The only time when we may not is if you are board members, because the policy of the League of Women Voters is non-partisan.

Let me explain that. I resigned from the board of the League of Women Voters of Greater York when I chose to run for this Convention, and I did that because we do not have party labels attached to our policies. The League studies issues. It studies issues like water pollution, problems of taxation in the locality, election laws. These are a few of the issues it studies. It studies them for two or three years before the group comes to a stand, and that stand is the stand of the League of Women Voters.

We do not support any particular politician. We support the issues. If a man stands for those issues, then probably our members will vote for him, or they will encourage voters to consider the issues and then decide for which candidate they will vote, and this is a very important feature of the League. We have had to operate this way because women's suffrage did not come until 1920, and the League was formed at that time and has been working to educate voters and to educate women voters ever since that time to be intelligent, active, participating citizens in the politics of this country. The purpose of the League is to "promote political responsibility through informed and active participation in government."

I think that this is something that is very important that we understand. You say we are not practical politicians. I know a number of committee women who are members of our own local League. One of our members was Prothonotary in York County, so I do know our people are actively engaged in politics and are not quite as naive as you paint us. You call us the country club set. Yet our membership is open to any woman citizen over 21. I will give you a most recent instance which took place in York County. Members of the League worked in the economically-impoverished sections for the Office of Economic Opportunity, with approval of both political parties. Our members worked getting those people out to register. They worked getting those people out to vote, making them realize that their vote counts and what it counts for. I do not think you could find any group in the country that works harder at voter education than the League of Women Voters. When you say that we are not interested, that we do not know the voter, I think you need to look at the facts. The League publishes election law information for the voter. They publish and distribute the Voters Guide, which many local newspapers print as a public service. The League of Women Voters is the only group that sets up such a sheet giving biographical information on every candidate who chooses to answer a questionnaire, who answers questions on political issues. They include both parties, or three parties, if you have a Constitutional Party running. These guides are distributed through schools, through organizations, public squares, shopping centers, everywhere, to get non-partisan information out to the voters so that we can make intelligent judgments.

I give you this background because I feel you raised the question of the League of Women Voters as a lobby. There is no financial gain that we could get out of anything that we advocate. The League is a non-profit organization. The important thing is that we want educated voters in the country and in this State of Pennsylvania. This is why the League is interested in the Constitutional Convention. The League has studied these issues for 14 years in the State of Pennsylvania. This is why the League feels it can take a stand on items like the Judiciary and Local Government, for example. You have to study those articles before coming to a conclusion. The delegates and the citizens in the State of Pennsylvania have to read the material and really weigh both sides before they finally come to a judgment. This is, I think, as I said, one of the most important things that we, as citizens, that we as Constitutional Convention delegates do when we are looking at any public issue to weigh the facts of both sides, and to come to what we consider the most informed judgment that we can.

Now, the last speaker asked for what reasons do those who are for this amendment, who would like to see the selection of judges, support that proposal. I say that the League has worked with women voters and worked with men voters, and has worked with voters period. I think they would come up with the same conclusion that Delegate Clinger came up with the other day when he said he interviewed a random number of people as to how many of them knew who they voted for in the last statewide election for judges, and his percentage was mighty small, as I think you would find this in any area that you checked the voters in, and that most of them would not remember who they had voted for for a statewide judge. We feel that the voters really do not exercise the choice here if they do not know the judge that they are voting for, they vote for the presidential candidate or they are vot-

ing for the governor, and the judge goes in with the party that wins, rather than going on his individual qualifications.

Let us discuss the panel selection. The man has applied to run. This amendment states that applicants are to be considered by the Commission, and then this Commission makes out a list of 10 or 20 judges, so that the governor does have a choice here, and then with the merit retention system, the voters can look at the judge without any party label.

Delegate Fay asked this question, and I will go back to the Luzerne County judge who objected to political pressures, who objected to giving a party contribution for every campaign whether he was involved or not, who objected to having any commitment to a party that might interfere with his judgment as a judge. Now, we have had a good bench in Pennsylvania. I will agree with the other speakers, but here we offer an alternative for a better bench. We do not have as good a bench as we might have, because there are men who will not run under the present system. If they have to contribute to the campaign, they will not run. If they have to be committed to a party, they will not run. If they feel there are favors involved, they will not run; there are many men who will not run on that basis. In that respect we limit our choice, and the final, the last reason is, as Governor Scranton and I both mentioned before, the judiciary is not necessarily the place where you reflect the will of the majority.

As Governor Scranton said, the Bill of Rights would be in bad shape if we had to depend on the will of the majority, and so I think you have here three reasons, three positive reasons, for choosing the selection of judges rather than election of judges. This particular proposal, the Stout Amendment, gives us two alternatives. It gives us the selection panel, and if this does not work, then the governor may choose the judges with two-thirds advice and consent of the Senate. I think we have good positive reasons for adopting the Stout Amendment.

EASTER SEAL BOY WELCOMED

PRESIDENT BRODERICK. I wonder if my fellow delegates would permit me to interrupt at this time to introduce a young boy who has been waiting for some time to be introduced.

He is five-year-old David Castellani, the son of Mr. and Mrs. John Castellani of Peckville, and he is the guest today of Delegate Scranton. I might add he is the Easter Seal boy of 1968, and he has been waiting back there, and if you will please bring him in, I think we will show him our joy and pleasure in having him with us today.

Do you think we could ask David to come down front? He is accompanied by his parents, Mr. and Mrs. John Castellani.

I want you to know that we are very happy and proud to have you with us today, David. As you all know, David represents all the handicapped children and adults in Pennsylvania as our Pennsylvania Easter Seal child of 1968. We are very, very proud of him and the good work that he is now doing, and will do for the handicapped in Pennsylvania.

PRESIDENT BRODERICK. David, I want you to know that we are sorry that we kept you waiting out there so long, but even a presiding officer did not think this debate would go this long.

DAVID CASTELLANI. That is all right.

PRESIDENT BRODERICK. He said, "That is all right."

RESOLUTION

DELEGATE RUTH requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 26, 1968.

Five year old David Castellani has been chosen to represent all the handicapped children and adults of Pennsylvania as the 1968 Pennsylvania Easter Seal Child.

David, the son of Mr. and Mrs. John Castellani, 108 Ontario Street, Peckville, was born with cerebral palsy. When he was fifteen months old he began receiving physical and speech therapy at the clinic of the Northeastern Pennsylvania Society for Crippled Children and Adults in Scranton. At the age of two and a half years, his speech had improved to the point where it was considered normal and he was discharged from this service. More therapy lay ahead, however, in the form of physical therapy to improve his leg muscles and to teach him to walk. David was fitted with short leg braces and crutches, which he continues to use.

David, with his parents, made an appearance on television this morning with Governor Raymond P. Shafer and Secretary of Highways and 1968 Pennsylvania Easter Seal Campaign Chairman, Robert G. Bartlett, to launch the 1968 Easter Seal Campaign.

His visit to this Pennsylvania Constitutional Convention of 1967-1968 is evidence of his courage and determination, and is an example to us all; therefore be it

RESOLVED, That this Pennsylvania Constitutional Convention of 1967-1968 congratulate David Castellani for being selected as the 1968 Pennsylvania Easter Seal Child, and express its appreciation for his visit to this body; and be it further

RESOLVED, That this Convention designate David as "Honorary Page" to this Convention; and be it further

RESOLVED, That a copy of this resolution be transmitted to David Castellani, 108 Ontario Street, Peckville, Pennsylvania.

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I would just like to amend the record to show that not only Governor Scranton but Delegate Casey and Delegate Popil, who are also here representing 234,000 people in Lackawanna County, are very proud, indeed, of this courageous young gentleman and his very gracious mother and dad for being with us today.

PRESIDENT BRODERICK. Very good. I am certainly glad that he has bi-partisan support, because that is what your campaign is going to have. I thank you very much for being with us, and thank you Mr. and Mrs. Castellani for bringing David in.

WIFE OF DELEGATE CAMARDELLA WELCOMED

PRESIDENT BRODERICK. While we are recognizing visitors I want to say that I am very proud to introduce the wife of one of our delegates who is about to take the microphone, Delegate Camardella, and I understand Mrs. Camardella is here. Is that right? Would you stand up, Mrs. Camardella, so we can give you our warm cordial greeting. There she is.

GUESTS OF DELEGATE BROWN WELCOMED

PRESIDENT BRODERICK. I understand we also have present Mrs. William Ritts of Butler and she is a guest of Delegate Brown of Butler.

Now, where are you, Mrs. Ritts? Will you stand? There she is.

WIFE OF DELEGATE CUNNINGHAM WELCOMED

PRESIDENT BRODERICK. And we have another wife of one of our delegates, Delegate Fred Cunningham. His wife is here today. Would you please stand so we can tell you how pleased we are that you are with us? There she is.

WIFE OF DELEGATE McGLYNN WELCOMED

PRESIDENT BRODERICK. And not only that, by golly, we have the wife of Delegate McGlynn here today from Philadelphia. Mrs. Bridgit McGlynn, where are you, so that we can give you our cordial welcome?

I understand that she is up in the gallery. Is that right, Delegate McGlynn? There she is, his wife. It is good to see you.

BOB ROVNER WELCOMED

PRESIDENT BRODERICK. And I also understand we have the son of Delegate Rovner here today. Robert, I understand, is in his last year of high school. Where is Bob Rovner? He is out. Well, that is understandable.

You tell him we are very happy he was at least in here for a short time. That is probably all he could take.

AL BANES AND FRIEND WELCOMED

DELEGATE BANES. Mr. President, may I also rise to a point of personal privilege?

PRESIDENT BRODERICK. You may, Delegate Banes.

DELEGATE BANES. I would like to introduce my dear son, Al Banes, and his fraternity brother, Jack Donaldson, from Lehigh. They are here spending the afternoon with us this afternoon.

PRESIDENT BRODERICK. Thank you, and if they will stand up we will show them how happy we are that they are here.

PRESIDENT BRODERICK. I will recognize Delegate Bunting who has been holding onto the microphone for a long time.

DELEGATE BUNTING. Mr. President, I want to comment very pointedly on the suggestion that we had not criticized the existing appellate court judges. I say to you folks that we are not here today to criticize the past and condemn the past. We are here to build for the future and we must not look over our shoulders. We must be willing to look ahead, look forward. I say this is where we need the real courage.

However, I do not suggest that anybody who does not want to look at what I consider in a forward direction lacks courage, because this is not the way we measure valor, courage, and things of that nature. But I do say we are here to build for the future and not to defend the past. Now, as far as the League of Women Voters is concerned I do not believe they need to be defended. But I want it to appear on the record that I do not join in the ridicule of their efforts. Mr. President, I join in Senator Casey's statement that all of the groups that have indicated their desires for Constitutional revision and reform exercise a beneficial effort, and at least they make us think on a broader scope as to the problems before us. I do think this weekend's activity, though, is significant for another reason. I direct this to Delegate Irvis, if he is still here; and that is that we would certainly not want any individual judge who is deciding a case of state significance to be subject to the telephone calls, the political influence, if you will, that has been raised over this weekend. That is what we mean when we say let us keep the judges as removed as possible from the political scene. Not that the judge does not have fortitude, courage, and is able to withstand this effort, but why should he be subjected to it? It was said a few days ago that Justitia, the Goddess of Justice, wears a blindfold. I still think our objective should be to keep that blindfold in place.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. President, I will be very brief. During the proceedings of this Convention I very, very seldom agreed with Delegate Gerber but I want to take this occasion to personally congratulate him upon his very enlightening remarks to this Convention relative to a certain organization of lobbyists or non-lobbyists, I am not quite sure which. But to say the least they have been consistent, I have for years observed their activities. I will say that they have been consistent. I have said many times that they are a bunch of very fine ladies who can be wrong more consistently than any single group I have ever seen in my life.

PRESIDENT BRODERICK. The Chair recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, I rise at this point with a heavy heart and in disgust. I was sent here by my constituents. I was elected by the Democratic Party. I did not feel at that time I was obligated to the Democrats or Republicans by the mere fact that I was endorsed by them. I had the feeling that my constituents sent me here to do an honest job, a non-partisan job. I was very, very happy on December 1st when this whole membership, this delegation, committed themselves as non-political.

As I sit here today and hear what has taken place over the weekend, I also am subject to some of the phone calls and telegrams. I do not think this has any bearing on it. I find here today name calling that is degrading this Convention, that is putting this Convention in deep, deep trouble. I am only hoping and praying that we can get on the right footing and stop this name-calling, political

or whatever you want to call it. Let us get down to the more moral issue. Let our conscience be our guide and vote as we should with a moral obligation to ourselves and to our people, rather than stay here and call names—vultures and what not. I urge this Convention at this point, let us get on with the business, with the serious business, and forget this political movement with the words and what not. I think at this moment, Mr. President, we must stand up and be counted. Let our conscience be our guide and vote on this issue.

I move right now to vote on the Stout Amendment.

PRESIDENT BRODERICK. Delegate Camardella, what we are frankly waiting for now is the preparation of the Goldman Amendment. We have and it has been our procedure to accept an amendment to an amendment.

DELEGATE CAMARDELLA. Mr. President, may I suggest a 15-minute recess? The longer we stay here the more we degrade this Convention.

AFTER RECESS

GOLDMAN AMENDMENT TO COMMITTEE PROPOSAL No. 7

On the question recurring,

Will the Convention agree to the amendment being offered by Delegate Stout to Committee Proposal No. 7?

DELEGATE GOLDMAN offered the following amendment to the amendment offered by Delegate Stout:

Amend the amendments, page 1 of amendments, by inserting before the first line;

Amend Sec. 1 (Sec. 11), page 5, lines 18 to 24 by striking out all of lines 18 to 23 and "(b)" in line 24 and inserting: Section 11. Election of Judges.—(a)

Amend Sec. 1 (Sec. 11), page 5, line 24 by striking out "in any judicial district,"

Amend Sec. 1 (Sec. 11), page 5, line 25 by inserting after "of" where it appears the first time: justice or

Amend Sec. 1 (Sec. 11), page 5, line 26 by inserting after "appointed": justice or

Amend Sec. 1 (Sec. 11), page 5, line 26 by inserting after "elected": justice or

Amend Sec. 1 (Sec. 11), page 5, line 29 by inserting after "the" where it appears the last time: justice or

Amend Sec. 1 (Sec. 11), page 5, line 30 by striking out all of said line and inserting: to serve or by the electors of the Commonwealth in the case of a Statewide justice or judge. Whenever a justice or judge

Amend Sec. 1 (Sec. 11), page 6, line 2 by inserting after "said": justice or

Amend page 1 of the amendments by striking out lines 1 to 4

Amend page 1 of the amendments by striking out "Governor appoints a person from a" in line 5 and inserting:

Amend Sec. 1 (Sec. 11), page 6, by inserting between lines 12 and 13: (b) The question of whether or not a State Judicial Qualifications Commission shall be established shall be placed upon the ballot in a primary election by petition which shall be in such form as shall be prescribed by the officer of the Commonwealth having supervision over elections. Any such petition shall be filed with such officer and shall be signed by a number of electors equal to five per cent of the total votes cast for the office receiving the highest number of votes in the last preceding general election. The manner of signing such petitions, the time of circulating them, the affidavits of the persons circulating them and all other details not contained herein shall be governed by the general laws relating to elections. The question shall not be placed upon the ballot in a judicial district at more than one election during any five-year period.

Should the State Judicial Qualifications Commission be established, then the Governor shall appoint a person from a

Amend page 1 of the amendments by inserting between lines 22 and 23:

Amend Sec. 1 (Sec. 12), page 7, lines 8 to 13 by striking out all of lines 8 to 12 and "(c)" in line 13 and inserting: (b)

Amend Sec. 1 (Sec. 12), page 7, line 13 by inserting after "Each": justice,

Amend Sec. 1 (Sec. 12), page 7, line 18 by striking out "(d)" and inserting: (c)

Amend Sec. 1 (Sec. 12), page 8, line 12 by striking out "(e)" and inserting: (d)

On the question,

Will the Convention agree to the amendment to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, I apologize for the delay in preparation of my amendment to the amendment, but the session starting in the afternoon and the quickness of the calling of the Stout Amendment on the table prevented it from being ready sooner. Let me explain exactly what I am trying to accomplish. I believe after the number of drafts we have gone through on this amendment, I certainly hope that the words say what I intend them to say. Let me explain them to you so you know exactly what we are talking about. We have been involved in discussion of the election of statewide judges. We have been saying that we want to take these judges out of politics and we want them to make their decisions and their final judgments free from any political consideration. Yet, we also know and this has been admitted to by the proponent to the Stout Amendment that our current Statewide judges are rendering decisions that are good throughout this entire country, that the decisions being rendered by our appellate courts, are being used as reference by other appellate courts throughout the entire country and, therefore, in the decisions rendered by these courts, even though the judges have been elected, have not been politically oriented, have not been politically tainted.

I am trying to work out some system that will be acceptable to everyone here and yet at the same time, still keeping our court system within a framework that is free from politics as much as is possible, a system that will still render or still permit the courts to render valid, decent, honorable decisions, and this is what I have come up with.

First of all, I think we ought to retain basically the same type of election system that we now have with two exceptions. The first exception being, that after we have elected a judge he will run every ten years but for his re-election, we will use a merit retention system. We have

already approved that for the local level and I am now proposing we do it on a statewide level. That the judges, once they are elected, will thereafter run for re-election solely on the basis of their past performance; that they would then go on to what we come to call a "yes or no" ballot. This keeps them out of politics, running solely and exclusively on their own background, on their own ability as they have proven it in their preceding term.

Secondly, I have gone on a little bit further and I have said that if the people of Pennsylvania want to have a panel system, then by referendum the people can vote in a panel system. I want to call your attention very closely to this. I have not tried to put anything in as a hooker. I have not tried to put anything in that would prevent the people from adopting such a panel system. I have required a five per cent number of electors in the general election to be able to call this referendum. This is no ten per cent or fifteen per cent. I am making this simple, requiring only five per cent of the people to bring in a panel system, should they so decide. Along with that, we have the continuing election of our statewide offices with the merit retention system of their re-election, if they run only on their own record and not against another political candidate, keeping our statewide judges out of politics. This is the only thing I am trying to accomplish by this amendment. I am trying to give us something that is not only acceptable and agreeable to all the delegates here, but something that is proper; something that is basically good and something that we need for a proper judicial system at the statewide level in Pennsylvania.

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera.

DELEGATE BUTERA. I have one question to ask of Delegate Goldman, Mr. President: what would be the effect of the Kauffman Amendment if the Goldman Amendment to the Stout Amendment were adopted?

DELEGATE GOLDMAN. I am sorry, what would be the effect of the Kauffman Amendment? What is the Kauffman Amendment?

DELEGATE BUTERA. That is gubernatorial appointments with advice and consent of the Senate.

DELEGATE GOLDMAN. That is out, completely. We have no gubernatorial appointments with the advice and consent of the Senate. The only time we will have a gubernatorial appointment is if the people should come up by referendum, put in a judicial qualifications panel, in which event, from that panel, the governor would select one of those persons so designated.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook. For what purpose does the gentleman rise?

DELEGATE HOOK. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE HOOK. I direct this to Mr. Comisky. Can this now be done without a motion to reconsider the Kauffman Amendment?

PRESIDENT BRODERICK. Apparently the answer is that this is an entirely new proposal and can be done without reconsidering the Kauffman Amendment.

The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. May I ask Delegate Goldman a question?

DELEGATE GOLDMAN. Yes.

DELEGATE SCRANTON. On the second page here, where you have that long piece of what is new about your amendment, the very last sentence on the first paragraph says: "The question shall not be placed upon the ballot in a judicial district at more than one election during any five-year period." Now you intend this, as I understand it, to be a referendum, an option of the voters statewide, and not in a judicial district.

DELEGATE GOLDMAN. Yes.

The words "judicial district" should have been eliminated.

DELEGATE SCRANTON. You are not trying to put the option back in locally?

DELEGATE GOLDMAN. No, sir.

DELEGATE SCRANTON. Then we have to take this out.

DELEGATE GOLDMAN. This was done quickly and I am sure Style and Drafting will have to rearrange this to really set forth its accurate and true intent.

A question has been asked of me from the floor, if I may answer it.

PRESIDENT BRODERICK. I do not know who it was.

I will now recognize Delegate Michener who wants to be heard.

DELEGATE MICHENER. In the lines right below the big insert on the second page it says, "Amend page 1 of the amendments by inserting between lines 22 and 23 . . ." Inserting what?

DELEGATE GOLDMAN. That is a recopy, exactly verbatim, of the original Stout Amendment. However, that would have read, it should read again at the bottom of my page 2.

DELEGATE MICHENER. I simply cannot make this out, Mr. President. Mr. Goldman says that in the big insert two terribly important words are in there by accident and now the big problem of the inserting of something between lines 22 and 23 is left blank. I suppose we are supposed to be wizards to know these things. I certainly do not know what he is talking about.

DELEGATE GOLDMAN. The parliamentarian has adequately answered that for Delegate Michener. For the benefit of the others who may not have heard the parliamentarian, his comments would be that at the end of the printed portion, where it should show the "State Judicial Qualifications Commission be established, then the Governor shall appoint a person from a . . ." and then we go back to the Stout Amendment, ". . . list of persons qualified for the office submitted to him by a State Judicial Qualifications Commission," and then continue on with the original Stout Amendment.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom. For what purpose does the gentleman rise?

DELEGATE BLOOM. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BLOOM. I cannot understand, from my own knowledge of the English language—I understood Mr. Comisky to say that this wiped out the Kauffman and Stout Amendments, that this is an entirely different

thing and it does not amend either one. It wipes them out. How can you amend something that wipes it out? This is an entirely new proposal. I am asking the Chair to dismiss it because it is not an amendment. It wipes out the entire proposals and you cannot amend anything that you wipe out in plain English.

PRESIDENT BRODERICK. Delegate Bloom, the Chair and counsel have gone over this very carefully and it was the decision of the Chair that we should have an amendment to the amendment, and that is what we are considering now. This does involve problems as to previous amendments that we have accepted, such as the Kauffman Amendment and other amendments.

DELEGATE BLOOM. Well, would you ask Mr. Comisky if he ever heard of an amendment that wiped out the original proposal and the amendment and wiped them completely out and put in a new proposal? I never heard of such a thing.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I would like to ask the proposer of the amendment exactly what provisions it makes for the appointment of judges in case of death or resignation.

DELEGATE GOLDMAN. It would be exactly the same as we are now providing for it at the local level. Should the event occur during the time the Senate were in session, the governor would then appoint someone but that person would have to run. It would be a short interim appointment exactly the same as it is on the local level.

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. I wonder if Delegate Goldman would allow himself to be interrogated?

PRESIDENT BRODERICK. I am sure he would, proceed.

DELEGATE CASEY. Delegate Goldman, I think I share the view of many of this body at this moment. We are hardput to understand precisely the effect of your amendment. Would you just please explain, in four or five sentences, what your amendment does and does not do in terms of the Stout Amendment and the Kauffman Amendment?

DELEGATE GOLDMAN. We will elect judges; that is No. 1.

DELEGATE CASEY. Statewide?

DELEGATE GOLDMAN. This amendment relates only to statewide offices.

DELEGATE CASEY. To what extent will that be subject to referendum?

DELEGATE GOLDMAN. That will be subject to referendum if five per cent of the voters in the Commonwealth, decides to have a panel selection of judges, after the five per cent is put on the ballot, if the people so approve it.

DELEGATE CASEY. Well, then, if I understand your amendment correctly, if your amendment to the Stout Amendment is adopted, all statewide judges will continue to be elected as they are now. Is that correct?

DELEGATE GOLDMAN. That is correct, with the exception that they will be retained by the merit retention system.

DELEGATE CASEY. And the only change that would be made is if a statewide referendum election was had for such a change and installed the judicial qualifications panel. Is that correct?

DELEGATE GOLDMAN. That is correct.

PRESIDENT BRODERICK. The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I have a problem. I am a member of that self same Style and Drafting Committee, which is supposed to perform all these miracles, and I spent, I think, somewhere between five and seven hours last night with the counsel to the Style and Drafting Committee and counsel to the Judiciary Committee trying to simply put together the effect of the amendments that there are there now. That being the case, I took a very good look at this amendment, and I have all kinds of problems with it, which, perhaps, if the sponsor of this resolution would be good enough to stand for interrogation, I may or may not be able to resolve.

PRESIDENT BRODERICK. I am sure he will stand for interrogation. Proceed with your questions.

DELEGATE O'DONNELL. Mr. President, if I understand this correctly, page 1 of your amendment, the paper identified as "RLC AO 2/26/68," simply establishes statewide election machinery. Is that correct?

DELEGATE GOLDMAN. No. It does not establish statewide election machinery at all. It merely provides for the continuing election of judges, with the addition that they are retained by the merit system.

DELEGATE O'DONNELL. Let me, perhaps, rephrase the question. Page 1 of your amendment as I understand it, simply says, that all statewide judges shall be elected. Is this not correct?

DELEGATE GOLDMAN. Yes.

DELEGATE O'DONNELL. Now, when I go over to page 2, the first thing that confronts me on page 2 is a comment that says "Amend page 1 of the amendments," plural. I take it you mean of the Stout Amendment, singular, do you?

DELEGATE GOLDMAN. Delegate O'Donnell, that was copied very much from what your original amendment was going to have been in relation to the continuing election of the judges.

DELEGATE O'DONNELL. I am not sure that your answer is germane to my question.

DELEGATE GOLDMAN. Yes, it does relate to the Stout Amendment.

DELEGATE O'DONNELL. So if I strike lines 1 to 4 in the Stout Amendment, I have then stricken the line that begins "Amend Section 1," the line that begins with "and inserting," the line that begins "provided however," and the line that begins "with the advice and consent." Am I correct?

DELEGATE GOLDMAN. That is correct.

DELEGATE O'DONNELL. Now, if I strike all those, and in addition to that in the fifth line have stricken, according to the second comment in your proposal, the words "Governor appoints a person from a"

DELEGATE GOLDMAN. Yes.

DELEGATE O'DONNELL. Then the only thing left in the Stout Amendment is the comment that goes on "from them this a list of persons—" and so forth.

DELEGATE GOLDMAN. That is correct.

DELEGATE O'DONNELL. I have stricken it down to "Governor appoints a person from a," and then I return

to the proposal, Printer's No. 26 and it says "Amend page 6 by inserting between lines 12 and 13"—

DELEGATE GOLDMAN. I do not know where you are reading now, Delegate O'Donnell.

DELEGATE O'DONNELL. Well, after I have stricken the words—the first four lines of the Stout Amendment, and I have stricken the words that begin in the fifth line, to wit "Governor appoints a person from a," and I am inserting—what do I insert?

DELEGATE GOLDMAN. "List of persons qualified for the office submitted." You are inserting those words back again from the Stout Amendment.

DELEGATE O'DONNELL. Where do I put that?—

DELEGATE GOLDMAN. Those words beginning with "List," you put it right after where it says on my amendment "a person from a." Then the word "List" comes in.

DELEGATE O'DONNELL. You say I do that on page 6, line 11 by removing the period after "Senate." Of course, my problem is that the word "Senate" does not appear on line 11 at all, not on Printer's No. 26 it does not.

DELEGATE GOLDMAN. It does say it on Printer's No. 23. I do not know which printer's number you are looking at on No. 7.

DELEGATE O'DONNELL. I am on Printer's No. 23. I take it that the Stout Amendment refers to Printer's No. 23?

DELEGATE GOLDMAN. Yes.

DELEGATE O'DONNELL. And your amendment, however, addresses itself to Printer's No. 26?

DELEGATE GOLDMAN. We were up to No. 26 already. They intend to correlate themselves one to the other.

DELEGATE O'DONNELL. So, you would then strike after the word "Senate"—in Printer's No. 23—"with the advice and consent of two-thirds of the Senate a list of persons qualified for the office submitted to him by a State Judicial Qualifications Commission."

DELEGATE GOLDMAN. Would you tell me what page you are on? Are you on Printer's No. 23?

DELEGATE O'DONNELL. Yes, sir. You have now told me, I believe, that you intended in your reference to the Stout Amendment to return to Printer's No. 23, leaving Printer's No. 26, and you wish me to go to page 6, line 11, and you wish me to strike after the word "Senate" the period, and add the words "a list of persons qualified for the office submitted to him" and so forth; which means it would read "with the advice and consent of two-thirds of the Senate, a list of persons qualified for the office submitted—"

DELEGATE GOLDMAN. That is not correct at all, Delegate O'Donnell. That would not make sense.

DELEGATE O'DONNELL. I agree with you.

DELEGATE GOLDMAN. The intent, Delegate O'Donnell, as I believe has been stated before, is to take away the two-thirds concurrence of the Senate, to eliminate that completely.

DELEGATE O'DONNELL. Well, Mr. President, I cannot vote on this intelligently. I cannot put all these together to be perfectly frank with you.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey. For what purpose does the gentleman rise?

DELEGATE CASEY. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE CASEY. If the Goldman Amendment were withdrawn at this moment and a vote were taken on the Stout Amendment, and if the Stout Amendment were adopted by the Convention, would not the Goldman Amendment then be subject to being offered separately as a separate amendment without the necessity of reconsidering anything?

PRESIDENT BRODERICK. Yes. It is my understanding that it would, and I want the delegates to know that we had this discussion with Delegate Goldman and he had the choice of offering it as an independent amendment or offering it as an amendment to the Stout Amendment. It does make it difficult to amend the Stout Amendment, because there is so little left in the Stout Amendment, but this has been the ruling of the Chair consistently, that you can amend an amendment as long as you leave some of the amendment in.

DELEGATE CASEY. Mr. President, if I can make a suggestion very respectfully to Delegate Goldman, I have no desire Delegate Goldman to in any way inhibit your right to offer any amendment before this body, but I would suggest to you, sir, that interrogation on the part of Delegate O'Donnell, has demonstrated to my satisfaction, is that what began as a very clear-cut issue on the Stout Amendment, which was debated in very clear-cut terms, has now become very blurred, and I would not want to see this extremely important issue become blurred or confused by reason of the imposition on the present language of your amendment.

Would the delegate mind withdrawing his amendment at this time and submit it separately, and let us vote separately on the two amendments?

DELEGATE GOLDMAN. As the President mentioned I had the option before and I felt it best to continue with the amendment as an amendment to the Stout Amendment. The reason for that is if we did pass the Stout Amendment, we would have tremendous difficulty trying to get in this particular language. That would not completely obviate or negate anything we have done with the Stout Amendment. I was trying to keep it in so that we are dealing with both issues at the same time and saying exactly what we intend to say, rather than saying it piece-meal to begin with and then putting in another amendment which would further be trying to piece it. I think if we spend a few minutes to discuss it, it would become very clear to everyone here who is interested in having it become clear. I cannot see any difficulty, that is why I am taking so much time to explain on the record exactly what my intentions are exactly, and what I hope to have accomplished by this amendment.

DELEGATE CASEY. I would just suggest to the delegate that both the Stout Amendment and his amendment, as far as I am concerned, will be considered in a way that will be clearer and in a way which would be more conducive to ruling on both of them on their merits if they are considered separately, and I would respectfully request and ask you if he would withdraw it, and if he would submit it separately so we can get a clear-cut decision on both the Stout Amendment and his amendment. In the absence of that, I would have to vote against his amendment, because I am not clear as to what it does, and

I think it would just make a very difficult situation worse.

DELEGATE GOLDMAN. Mr. President, may I suggest that I do not intend to withdraw the amendment. I would, however, be more than willing to stand for interrogation, not only from Delegate Casey, but from anyone to answer any questions that might come up. I think it is necessary that we attack the problems immediately as they are arising. I agree that this is a basic problem we are attacking. Let us not deviate from that problem. Let us keep our attention focused sharply on it, and I will stand for interrogation.

DELEGATE CASEY. Mr. President, I think the interrogation as it has already demonstrated, can have no meetings of the minds as to what the effect of the Goldman amendment will be.

GOLDMAN AMENDMENT LAID ON TABLE

DELEGATE CASEY. Mr. President, I move that the Goldman amendment be laid on the table.

DELEGATE MICHENER. I second that motion.

PRESIDENT BRODERICK. I have a motion to table the Goldman Amendment by Delegate Casey and seconded by Delegate Michener.

Let me restate the motion.

The motion is to table the Goldman Amendment to the Stout Amendment.

The motion was made by Delegate Casey and seconded by Delegate Michener. I understand the motion is not debatable.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. Does this motion then have the effect of tabling the Stout Amendment itself?

PRESIDENT BRODERICK. I am advised by the Parliamentarian that we can have a motion to table this amendment to the amendment and it will not affect the Stout Amendment, and that is pursuant to our own rules on page 21 which say a motion to lay an amendment on the table, if adopted, does not carry with it a proposal or resolution or other matter being amended. The Chair so rules pursuant to that rule.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Mattioni. For what purpose does the gentleman rise?

DELEGATE MATTIONI. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MATTIONI. On page 21, I refer you to the rule, at the top of the table, where it says, "Lay On Table," and it seems to me that it says: "A motion to lay on the table is not debatable, cannot be amended and requires a majority vote of the delegates present. Any motion to lay on the table, if adopted, carries with it the main question and everything that adheres to it;"—

PRESIDENT BRODERICK. I am advised by our Parliamentarian that you have to complete reading the paragraph, and our Parliamentarian still states that this does not affect the Stout Amendment.

DELEGATE MICHENER. I think we should ask Delegate Mattioni to read the part that follows after the semicolon.

We were usually taught in writing that usually the meat of the thing follows the semi-colon. It says: "provided however, that a motion to lay an amendment on the table, if adopted, does not carry with it a proposal or resolution or other matter being amended."

PRESIDENT BRODERICK. That is the ruling of the Chair based on the advice of the Parliamentarian and our own rules.

On the motion,

Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—78

Amsterdam	Fawcett	Lee, L.	Scarlett
Baldus	Feather	Leinbach	Scott
Barry	Filson	Leonard	Scranton
Benedict	Forster	Levin	Shapiro
Benfield	Fortney	McGeary	Sharp
Bloom	Gabreski	McGlynn	Shettig
Broderick	Gray	Michael	Shively
Buck	Hannum	Michener	Sprogell
Bunting	Harding	Miller, R.	Stout
Burkholder	Heyburn	Moorhead	Strickler
Butera	Himes	Morton	Swope
Camardella	Hook	Murray	Tate
Caron	Horne	Nelson	Thornburgh
Casey	Jirolanio	O'Donnell	Tomascik
Clark	Johnson	Pelletier	Warman
Clinger	Kauffman	Popil	Welsh
Cosetti	Kelly	Rappaport	Whittum
Cunningham	King	Rea	Wilcox
Curran	Laputka	Roberts	Woodside
Dailey	Leach		

NAYS—73

Aberman	Devlin	Kline	Reynolds
Allison	Erwin	Krill	Richter
Aurentz	Fay	Lee, K.	Rovner
Bagenstose	Fleming	Mangery	Ruth
Baldrige	Fohl	Markley	Sahli
Baldwin	Gerber	Mattioni	Scales
Banes	Goldman	Meyer	Sebastian
Barron	Goldstein	Miller, D.	Shoemaker
Bashoff	Gouger	More	Shrager
Braham	Griffith	Orban	Silverman
Brennan	Hatter	Orbin	Solomon
Brown	Henderson	Pasquerilla	Stroup
Cain	Hocker	Pechan	Thomson
Caputo	Hostetler	Pott	Tully
Conley	Huggins	Powell	Van Sant
Corey	Irvis	Prendergast	Waldron
Cortese	Keller, J.	Quiles	Westerberg
Croop	Keller, M.	Redick	Wilmarth
Desmond			

NOT VOTING—12

Donaldson	Fagan	Lane	Otto
Donolow	Fineman	Manderino	Percey
Dumbauld	Gehrlein	Musselman	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. To change my vote from "nay" to "aye" since the vote has not been recorded and announced. Under the rules I am allowed to change.

PRESIDENT BRODERICK. You have a right to do that. From "nay" to "aye."

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. Mr. President, is it now in order to move the question on the Stout amendment?

PRESIDENT BRODERICK. It is.

MOTION TO CLOSE DEBATE

DELEGATE O'DONNELL. Mr. President, in that event, this Convention having now at this moment an opportunity to go from a good Convention to a great Convention, I move the Stout Amendment and ask for its passage.

PRESIDENT BRODERICK. We have a motion that has been made by Delegate O'Donnell.

DELEGATE HOOK. I will second it, Mr. President.

PRESIDENT BRODERICK. The motion has been seconded by Delegate Hook, that we close debate and vote on the pending question and the pending question is, will the Convention agree to the Stout Amendment?

PRESIDENT BRODERICK. This is a motion to close debate and vote on the pending question and I just stated what the question was before the Convention.

Now you are voting on the motion to close debate.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman. For what purpose does the gentleman rise?

DELEGATE ABERMAN. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE ABERMAN. I have deferred entry of an amendment on the Stout Amendment because I have waited to see the resolution of the Goldman Amendment. This amendment has been drawn and sitting on the desk, ready for distribution for approximately an hour and a half prior to Delegate Goldman's distribution. Since this amendment bears directly on the Stout Amendment, I would ask please to introduce the amendment at this time.

PRESIDENT BRODERICK. I am advised that since we have a motion before the Convention to close debate, that motion was made and seconded, we have to vote on the motion. We now unlock the voting machine and vote on the motion to close debate and vote on the pending question. All those voting "aye" vote in favor of the motion to close debate. All those voting "nay" vote to continue debate.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—75

Amsterdam	Forster	Krill	Sahli
Bagenstose	Fortney	Laputka	Scarlett
Benedict	Gabreski	Leach	Scott
Benfield	Gouger	Lee, K.	Scranton
Bloom	Gray	Lee, L.	Sharp
Braham	Griffith	Lainbach	Shively
Broderick	Hannum	Leonard	Stout
Buck	Harding	McGeary	Sprogell
Bunting	Henderson	Michael	Strickler
Burkholder	Heyburn	Michener	Swope
Camardella	Himes	Miller, R.	Tate
Caron	Hook	Moorhead	Thomson
Casey	Horne	Morton	Thornburgh
Clark	Huggins	Murray	Tomaseik
Clinger	Johnson	Nelson	Warman
Cosetti	Kauffman	O'Donnell	Welsh
Dailey	Keller, J.	Pelletier	Whittum
Desmond	Kelly	Rea	Wilcox
Feather	King	Roberts	

NAYS—75

Aberman	Curran	Levin	Reynolds
Allison	Cunningham	Mangery	Richter
Aurentz	Devlin	Markley	Rovner
Baldrige	Erwin	Mattioni	Ruth
Baldus	Fawcett	McGlynn	Scales
Baldwin	Fay	Meyer	Sebastian
Banes	Filson	Miller, D.	Shapiro
Barron	Fleming	More	Shettig
Barry	Fohl	Orban	Shoemaker
Bashoff	Gerber	Orbin	Shrager
Brennan	Goldman	Pasquerilla	Silverman
Brown	Goldstein	Pechan	Solomon
Butera	Hatter	Popil	Stroup
Cain	Hocker	Pott	Tully
Caputo	Hostetler	Powell	Van Sant
Conley	Irvis	Prendergast	Waldron
Corey	Jirolanio	Quiles	Westerberg
Cortese	Keller, M.	Rappaport	Wilmarth
Croop	Kline	Redick	

NOT VOTING—13

Donaldson	Fineman	Manderino	Percey
Donolow	Gehrlein	Musselman	Woodring
Dumbauld	Lane	Otto	Woodside
Fagan			

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

ABERMAN AMENDMENT TO COMMITTEE PROPOSAL No. 7

On the question recurring,

Will the Convention agree to the amendment being offered by Delegate Stout to Committee Proposal No. 7?

DELEGATE ABERMAN offered the following amendment to the amendment offered by Delegate Stout which was read by the clerk:

Amend page 1 of the amendments by inserting a period after "Commission" in line 7

Amend page 1 of the amendments by striking out "composed of four non-lawyer electors appointed by" in line 7, all of lines 8 to 22, and inserting: Such State Judicial Qualifications Commission shall be established by the General Assembly by law.

Amend page 1 of the amendments by striking out all of lines 23 to 34 and inserting:

Amend Schedule (Sec. 21), page 34, lines 17 to 27, by striking out all of said lines

Amend Schedule (Sec. 22), page 34, line 28, by striking out "22" and inserting: 21

Amend Schedule (Sec. 23), page 35, line 11, by striking out "23" and inserting: 22

Amend Schedule (Sec. 24), page 35, line 23, by striking out "24" and inserting: 23

Amend Schedule (Sec. 25), page 35, line 29, by striking out "25" and inserting: 24

Amend Schedule (Sec. 26), page 36, line 6, by striking out "26" and inserting: 25

On the question,

Will the Convention agree to the amendment to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, I have sat for many weeks and bore the brunt of many comments asking me when I was going to stand and when I was going to talk. I think because of the performance in Local Government many expected me to talk. But I have listened long and hard about the Judiciary Article because I came to this Convention with mixed feelings. I came to this Convention as an elected delegate from a district that encompasses the widest possible space between economic levels in the City of Philadelphia; probably encompasses the widest spectrum of political opinion in the City of Philadelphia. I have listened long and hard to many of the arguments that have been advanced and I have listened to the arguments in the name of reform and watched the many reform proposals that have been adopted by us—the tenure selection, the qualifications of the judges, and their mandatory retirement, the uniform administration of justice in the Commonwealth, and the fact that every judge is now responsible and responsive. I thought these were very great advances and indicative of what could be done. Over the weekend, as we are well aware, I was entreated to make another advance in the name of reform. I must confess when I heard this great change in the name of reform I asked myself a question, and I still have yet to satisfy myself of the answer, and that is, are we qualified to define reform for the people of the State of Pennsylvania?

I am not sure as an individual delegate what reform is, when it comes to the question of the appellate courts. I share with my dear friend, Frank Fay, the unanswered question, what is wrong with the system that is presently in existence?

I have heard innumerable times what is wrong with the magistrates' courts of Philadelphia, and everybody is quite sure they are filled with what I have been led to believe are dishonest, incompetent and illiterate men. I have never stood and said anything on that point because it seemed to be universally held opinion, which unfortunately I do not share. But when it came to the appellate courts and the judges therein, I have waited very long and very patiently for someone to tell me how the people are going to be better served by this reform plan. I listened to the distinguished representative from Pittsburgh, Delegate Irvis, articulate a point of view that I hold. I do not think I could articulate it any better or any more competently than he just expressed it today, and that is, that the people—of whom my parents were probably one of many millions—came to the United States to escape a tyranny that drove them from their homes and prevented them from holding real estate and forced them to deal in money because they could not own real estate. The only thing they could own was that which they could grab and run from their house before the advancing hordes of people who were driving them from country to country.

I have extereme difficulty with accepting a point of view that says to me that the people now must give up a right. So I looked at the Stout Amendment and I thought long and hard about it and I said, I am convinced in my own mind if the people want this, let them adopt it. I cannot speak with surety that the judicial qualifications commission is a good idea. I do not think we have a right here to say that it is a good idea. All I have simply done is to provide for the alternative, that there will be an appointment with two-thirds consent of the Senate, or that there will be such a judicial qualifications commission as may be established by the General Assembly. Now why did I do it? I did it because it was such a good idea that the General Assembly, which respresents the people, should create the judicial qualifications. I am unsatisfied with the detail that presently exists in this plan. I do not think that a telegram delivered to my house at 7:30 on a Sunday morning—which did not endear me too much to the people that sent it—is enough to sway my mind to bring something to bear, which I think deserves a vote from the people of the Commonwealth. I would ask you to think long and hard about what you are doing. If this idea represents a reform in your mind, ask yourself the next question, if it is a reform, do the people that I represent, are they fully and adequately aware of what we are giving them in the Stout Amendment and do they in fact want it? If you feel you are adequately prepared to answer the latter question, well, then you can vote for the Stout Amendment and vote against this proposed amendment. But I am not satisfied. I am not satisfied that what has come before us today is adequately thought out, represents the best possible interest for all of the people of the Commonwealth.

Therefore, Mr. President I have prepared this amendment to allow myself the satisfaction of testing my point of view. If you disagree with it, I ask you to vote one way or the other, but at least test yourself on the dilemma that I have found myself throughout the entire discussion in Proposal No. 7.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I had the privilege of addressing this floor earlier and I think that my opinions of any other method besides that of electing judges are well done. I too had the same experience as Delegate Aberman did of being stopped by people in my own neighborhood and being asked, "Say, what are you fellows doing up there and why aren't you in favor of reform?" I discussed earlier what my concept of that word means. I am troubled by this whole idea of mandating various methods in our Constitution. I rise to support this amendment and it has not yet been seconded, I would second the amendment.

If the panel idea is a good one, and I personally am very skeptical about it, let the legislature study this matter and study it at great length. We had I think three days to think about it or perhaps three months. The present method of selecting judges has been in effect since the 1838 Constitution was amended in 1850. The reform movement in 1850 was to provide for elected judges. It would appear that the reform movement of 1968 was to go back to the selected judges. If that is what the people want,

so be it, so therefore I would urge support of this amendment.

Let it be provided by law as the legislature shall do it. We were very much down on the Legislature the first couple of weeks, but since being here, maybe we do not have the typical view. We have had the privilege of being with the leadership of the Legislature and they have been a great help to us. I think they can come out with a proper plan and I urge support of the Aberman Amendment.

DELEGATE O'DONNELL. Would the sponsor of this amendment consent to be interrogated, Mr. President?

PRESIDENT BRODERICK. I am sure he would. Would you please stand for interrogation?

DELEGATE O'DONNELL. I think I understand this one perfectly. Delegate Aberman, as I understand, this does not like the Goldman proposal, install or admit the election of judges?

DELEGATE ABERMAN. That is correct. I am willing, although I said before I am in favor of election, to live with the appointment. I am simply providing that the method for creation of the commission should be done by the General Assembly and not by this Constitutional Convention.

DELEGATE O'DONNELL. Your proposal contemplates that appointment of statewide judges shall continue to be by the governor with the consent of two-thirds of the Senate, until and unless the State Legislature would appoint a judicial qualifications commission of its own creation, is that correct?

DELEGATE ABERMAN. Yes, I believe the effect of this language is to mandate that the General Assembly shall act.

DELEGATE O'DONNELL. What happens if they do not act?

DELEGATE ABERMAN. I do not know whether there is a right of an individual to force the General Assembly ever to act. We have made that assumption throughout the Local Government article that the General Assembly will act when we say they should act.

DELEGATE O'DONNELL. A final question. One of the plans which a majority of the House and a majority of the Senate could carry would be to install its own majority officers as the judicial qualifications commission, could it not?

DELEGATE ABERMAN. The Legislature could be competent to do anything it would deem to do in its wisdom. My reply to you would be that they would then be responsible to the voters who elected them. The people who sent us telegrams over the weekend, feel they want to bring their errs to us; that the General Assembly would act on such an atrocious matter, let them do it then. I do not think it is our province to do it.

DELEGATE O'DONNELL. In other words, the only change between your proposal and the Stout proposal, where the Stout proposal insures that non-lawyers have the majority and further insures that these be appointed by staggered terms of governors, and assures that certain appointments be made by the Supreme Court and appointment by the Superior Court; you take all of that machinery away and say the judicial qualifications commission shall be composed of anybody at all that the Legislature might put into the job, is that correct?

DELEGATE ABERMAN. I would not state it quite that way, Mr. President. I would say the alternatives that are available to the General Assembly are any one of innumerable alternatives, one of which might be the one you just mentioned.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. It seems to me Delegate Aberman did not correctly answer Delegate O'Donnell's questions. He provided that there will be a commission. In other words, the commission is mandated and in response to his question, what happens if the General Assembly does not act? Is it not provided, the schedule will go into effect on January 1, 1969 and therefore, the General Assembly does have to act?

DELEGATE ABERMAN. It was my assumption that they would act. If the answer is that they must act, I am perfectly satisfied with that answer. I am not aware of the scheduled provision on this particular qualifications commission. I will accept your statement that they must act under the existing schedule.

DELEGATE BARRY. In other words, you do mandate that there shall be such a commission but the makeup of it, you have not designated, but you do mandate that they shall act in this article.

DELEGATE ABERMAN. That is correct.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Braham.

DELEGATE BRAHAM. Mr. President, it seems to me, in view of all the talk about reformers and the like, that it is well, at this time, just to state the basis of facts upon which the proponents of this Stout Amendment appeal. The basis is that it has been found in experience that the political system of selecting judges cannot be depended upon to get the wisest and best men we have for judges. As I begin what I have to say on this subject, I want to quote some wise words of Oliver Wendell Holmes, the late Justice of the Supreme Court of the United States, which are well known to all lawyers. He said: "The life of the law has not been logic. It has been experience."

Therefore, as I heard all of these impatient statements about doing away with the rights of man and our sacred rights and interfering with the sacred fabric of our government, I think about Justice Holmes: "The life of the law has not been logic but it has been experience." Now on the side of logic are some of the delegates who are willing to admit that they have come representing aggregations of political power prepared and determined to defend the political system of appointment of judges. It is, of course, obvious that judges make very valuable pawns in the game of politics. Sometimes the judge may determine the entire political question. Remember also that unchecked political power can always find judges to do its will. Witness, bloody Jeffries in England, witness the judges appointed by the Hitler regime in Germany. To choose a handy American example, the judges in Missouri during the reign of the Prendergast regime. This experience is most valuable at this time. It was not devised in Missouri but by the great research institutions of the law in this country, which are comparable to the research people in business or science. In their desperation, the good people of Missouri laid hope upon this plan already prepared for them. They allowed their judges to be recommended to the governor in the first instance by a panel of

distinguished citizens. They required the judges to serve a trial term and then accepted or rejected the judges on the basis of their performance.

It was the political powers who prevented the general application of the Missouri plan in all counties of the State initially. It is the political power in the Legislature which has beaten down every attempt to extend that system statewide. This will finally come to a vote over the objections of the political authorities this year. In the meantime, the people of Missouri have steadfastly refused to go back to the old traditional system of electing judges. Three or four referendums to destroy the system have been defeated. The merit system in Missouri has continued for the last twenty-five years. Fifteen states now employ the Missouri plan in whole or in part. In Iowa and in Colorado recently the bench, the bar and the public united in the effort. In Illinois, the Penn plan failed upon first attempt but the women's organizations—I heard a good bit in this country of free speech, I heard a good bit about maligning women for asserting their views about politics. Since when have too many people become interested in politics? Since when have too many people become too deeply involved in politics? I would say to the gentlemen of the press that I am ashamed to have that come from a lawyer. It is unworthy of us lawyers.

In Oklahoma, this is a significant case. In Oklahoma, the people had suffered the deep disgrace of seeing three of the justices of the highest court of their state driven from office indicted and convicted of selling justice for money. In those circumstances, the people turned from the old system of electing judges and appointing judges to the modern merit system of electing judges.

I want to add in conclusion on that point that no state, ever having adopted it, has gone back on it. Now all this talk that we have heard here against this simple idea is in the face of the known experience. I plead for a fair consideration of the experience on the subject. In some departments of our new Constitution, the Local Government and Finance for example, the delegates have been willing to listen to experts. In others, they have not. Arguments for a new and modern judicial system, based upon the experience, have been met by appeals to logic, to supposed patriotism and sometimes by smears. In this circumstance, I ask you to consider the thing that Benjamin Franklin recommended in the great Convention. He recommended that delegates resort not to arguments but to an examination of their collective knowledge and a comparison of their respective views.

This is all we ask today. Examine the results of experience on this very subject. We talk about the Supreme Court of the United States. The Supreme Court of the United States was doing very badly in many of its appointments until bolstered by many types of these commissions and committees. Give us this application of the merit system, watered down even though it is by the variety of past votes and confused somewhat by these amendments, we will need the merit plan in our project this fall.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Casey.

DELEGATE CASEY. I intend to vote against this amendment. I think it will effectively kill the principle of the Stout Amendment. I would just like to ask one question in conclusion. What is the position of the Judiciary Committee on this amendment? Are they for it or against it?

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, naturally we cannot speak on behalf of the entire Judiciary Committee, but it is quite clear from what has happened as a result of our report to this body that the judicial panel, the way it was originally set up in the Stout Amendment, is much closer to what we recommended than the panel which is set forth in the amendment which is before us at this time. Therefore, I would recommend that we vote down this amendment and vote for the Stout Amendment.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, over the months of this Convention I have come to admire and respect the thinking processes of some of the young men who have come to us and who have worked so devotedly and with so much dedication to improve our status and make their contribution to this Constitution. Among those are many who are of the opposite political faith which I have the privilege to represent. I say that one is Delegate Aberman. I know he has given deep thoughts to this matter. Therefore, I think, perhaps it has merit. But for my own clarification and my thinking processes on the amendment, and perhaps with some contribution to my fellow delegates, I desire to ask just a couple of questions.

If this amendment is adopted, as I understand it, the Governor would appoint statewide judges by and with the consent of two-thirds of the Senate, is that correct?

DELEGATE ABERMAN. That is correct.

DELEGATE STROUP. Then, second, there is a moral obligation in this amendment imposed upon the General Assembly, if I read this correctly, to set up a state judicial qualifications commission, is that correct?

DELEGATE ABERMAN. That is correct.

DELEGATE STROUP. Such moral obligation would be a matter which the General Assembly must take very much to heart and would try, with all effort, I should imagine, to adhere to. Would that be a correct statement of the gentleman's thinking?

DELEGATE ABERMAN. I would think it is even more than a moral obligation, but I think that the mandated language makes it more than moral, but I will take your word "moral." That is correct.

DELEGATE STROUP. Mr. President, I think we would consider, in the General Assembly, that it is a moral obligation. I do not know of legal enforcement of it because I think there has been, in Constitutions heretofore—the Constitution of 1874—Constitutional Articles which were not carried out. However, that would be a matter which the General Assembly would have to take into its own heart and soul and to try to comply with the Article stated in the Constitution.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Roberts.

DELEGATE ROBERTS. I move the question or the amendment before us with the provision that Delegate Aberman be given an opportunity to make closing remarks.

DELEGATE WOODRING. Seconded.

PRESIDENT BRODERICK. Moved by Delegate Roberts and seconded by Delegate Woodring that we close debate and vote on the pending question. The pending question before us is the Aberman Amendment to the Stout Amendment with the proviso that Delegate Aberman be given a closing.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—130

Allison	Fay	Lee, L.	Sahli
Amsterdam	Feather	Leinbach	Scales
Aurentz	Fleming	Leonard	Scarlett
Bagenstose	Fohl	Levin	Scott
Baldrige	Forster	Mangery	Scranton
Baldus	Fortney	Markley	Sebastian
Baldwin	Gabreski	McGeary	Shapiro
Barry	Gerber	McGlynn	Sharp
Bashoff	Goldman	Michael	Shettig
Benedict	Gouger	Michener	Shively
Benfield	Gray	Miller, D.	Shoemaker
Bloom	Griffith	Miller, R.	Shrager
Broderick	Hannum	Moorhead	Silverman
Buck	Harding	Morton	Solomon
Bunting	Hatter	Murray	Stout
Burkholder	Henderson	Nelson	Strickler
Butera	Heyburn	O'Donnell	Stroup
Cain	Himes	Orban	Swope
Camardella	Hook	Orbin	Tate
Caputo	Horne	Pasquerilla	Thomson
Caron	Hostetler	Pechan	Thornburgh
Casey	Huggins	Pelletier	Tomascik
Clark	Irvis	Popil	Tully
Clinger	Johnson	Pott	Van Sant
Conley	Kauffman	Powell	Waldron
Corey	Keller, J.	Prendergast	Warman
Cosetti	Kelly	Rappaport	Welsh
Croop	King	Rea	Westerberg
Cunningham	Kline	Redick	Whittum
Curran	Krill	Richter	Wilcox
Dailey	Laputka	Roberts	Wilmarth
Desmond	Leach	Ruth	Woodring
Fawcett	Lee, K.		

NAYS—20

Banes	Cortese	Hocker	More
Barron	Devlin	Jirolanio	Quiles
Braham	Erwin	Keller, M.	Reynolds
Brennan	Filson	Mattioni	Sprogell
Brown	Goldstein	Meyer	Woodside

NOT VOTING—13

Aberman	Fagan	Lane	Otto
Donaldson	Fineman	Manderino	Percey
Donolow	Gehrlein	Musselman	Rovner
Dumbauld			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, my closing will be very short because I think I adequately expressed the point of view that I feel this amendment represents. The simple question really is, should not the General Assembly, which in my mind is the elected representative of the people of the Commonwealth of Pennsylvania, formulate a panel which, when constituted and adopted by the governor in the alternative, set the social, economic and legal policies that govern this Commonwealth?

I am not old enough to remember in the latter part of the 18th Century but all of us that are lawyers who read these cases and who look at the domination of the judiciary throughout this Commonwealth must, long and hard, think about this particular problem. You must be aware of what the domination of the Commonwealth could be or could not be under a Supreme or Superior Court. It is this point that I believe the people have a right to speak to and, therefore, this amendment simply says there shall be a commission, but the format of that commission and how it should be constituted and what it needs as an alternative to the appointment with two-thirds of the people should be available for the people to bring to bear upon the General Assembly, their pressures and their principles.

I, therefore, ask you to adopt this amendment so as to permit this very important question to be dealt with under the moral obligations put upon by Senator Stroup, but I think it is more than a moral obligation. I think we owe the moral obligation also.

PRESIDENT BRODERICK. Now we are ready for the question.

The question recurs,
Will the Convention agree to the amendment to the Stout amendment offered by Delegate Aberman?

The roll was recorded as follows:

YEAS—81

Aberman	Devlin	Keller, M.	Redick
Allison	Erwin	King	Reynolds
Aurentz	Fawcett	Kline	Richter
Bagenstose	Filson	Lee, K.	Rovner
Baldrige	Fleming	Mangery	Scales
Baldwin	Fohl	Markley	Sebastian
Banes	Gerber	Mattioni	Shapiro
Barron	Goldman	McGlynn	Sharp
Benedict	Goldstein	Meyer	Shoemaker
Benfield	Griffith	Miller, D.	Shrager
Brennan	Hatter	More	Silverman
Brown	Henderson	Murray	Solomon
Butera	Heyburn	Orban	Stroup
Cain	Hocker	Pechan	Thomson
Caputo	Horne	Popil	Tully
Corey	Hostetler	Pott	Van Sant
Cortese	Irvis	Powell	Waldron
Croop	Jirolanio	Prendergast	Warman
Curran	Kauffman	Quiles	Westerberg
Dailey	Keller, J.	Rappaport	Wilmarth
Desmond			

NAYS—71

Amsterdam	Fay	Leinbach	Scarlett
Baldus	Feather	Leonard	Scott
Barry	Forster	Levin	Scranton
Bashoff	Fortney	McGeary	Shettig
Bloom	Gabreski	Michael	Shively
Braham	Gouger	Michener	Sprogell
Broderick	Gray	Miller, R.	Stout
Buck	Hannum	Moorhead	Strickler
Bunting	Harding	Morton	Swope
Burkholder	Himes	Nelson	Tate
Camardella	Hook	O'Donnell	Thornburgh
Caron	Huggins	Orbin	Tomascik
Casey	Johnson	Pasquerilla	Welsh
Clark	Kelly	Pelletier	Whittum
Clinger	Krill	Rea	Wilcox
Conley	Laputka	Roberts	Woodring
Cosetti	Leach	Ruth	Woodside
Cunningham	Lee, L.	Sahli	

NOT VOTING—11

Donaldson	Fagan	Lane	Otto
Donolow	Fineman	Manderino	Percey
Dumbauld	Gehrlein	Musselman	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Stout. For what purpose does the gentleman rise?

DELEGATE STOUT. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE STOUT. Mr. President, just actually what is the present status of my original amendment.

PRESIDENT BRODERICK. The status is that your amendment has been amended by the Aberman Amendment, which the Convention just adopted as an amendment to your amendment.

The question before the Convention is now on the adoption of the Stout Amendment as amended.

DELEGATE STOUT. How does it now read?

PRESIDENT BRODERICK. I would be glad to have Delegate Aberman, who amended it, read his amendment to the Stout amendment, if he will, please.

DELEGATE ABERMAN. The Stout Amendment starting from the beginning then says and inserting "provided, however, that such an appointment shall not require the advice and consent of the Senate in the event the Governor appoints a person from a list of persons qualified for the office submitted to him by a state judicial qualifications commission. Such state judicial qualifications commission shall be established by the General Assembly by law."

PRESIDENT BRODERICK. The Chair recognizes Delegate Stout.

DELEGATE STOUT. Would you consider a five minute recess?

PRESIDENT BRODERICK. That is going to be up to the body. Does anyone have an objection to a five-minute recess as requested by Delegate Stout?

PRESIDENT BRODERICK. We seem to be hearing objections, Delegate Stout, to a request for recess.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, on the question, the previous question that was moved before, I would have liked to talk on that point, but since it has now been adopted, it is still a part of this.

There is in the Constitution undoubtedly certain provisions which are self executing. There are also in the Constitution, and there were in the Constitution of 1874, and there is in our Constitution certain things which are not self executing, and those things which are not self executing cannot be enforced as a general rule. There is practically no exception to that. Possibly the only one is the exception that was made in the case of the Apportionment which was forced upon us, not by our own law, but by the law of the Federal Government, and by the opinion of the Supreme Court of the United States as to the application of the Federal Constitution.

Now, there is not any question about it, the amendment that was put in here, is not a self-executing provision, and there is nothing in the world that can be done to ever make it a self-executing provision.

In the Senate each one of the Senators can satisfy himself because he says, "I want to do it this way," and each member of the House can satisfy himself by saying, "I want to do it this way," and the Governor can satisfy himself by saying, "I wanted to do it different from the way the House and Senate did it." There is no question about it, there is no means of enforcing this. We should have known that before we voted, where it was suggested that there was a means to enforce it, because there is none, and there are a great number of provisions in the Constitution of 1874, and there are a great number of provisions in our own proposals that are not self-executing, and this certainly is one. If anybody thinks that they can enforce this by compelling the Senate and House to vote one way or the other, or adopt something on this, they are absolutely wrong.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. May I ask counsel a question?

PRESIDENT BRODERICK. Certainly.

DELEGATE BARRY. If there is a provision in the schedule that the judicial qualifications commission shall come into effect on January 1, 1969, would that be a self-executing provision?

PRESIDENT BRODERICK. I am going to have counsel discuss it with you, and you can answer—

DELEGATE BARRY. I do not want it to be discussed with me.

PRESIDENT BRODERICK. You can give the answer to the body.

DELEGATE BARRY. All right.

PRESIDENT BRODERICK. We must give counsel an opportunity to answer.

The Chair now recognizes Delegate Barry.

DELEGATE BARRY. Apparently the answer is "no," Mr. Chairman.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam. For what purpose does the gentleman rise?

DELEGATE AMSTERDAM. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE AMSTERDAM. I am not at all clear as to the colloquy that took place just a little while ago. I wonder whether we might not have some clarification. Perhaps if I could ask Judge Woodside a question or two, it might help.

PRESIDENT BRODERICK. I am sure Judge Woodside will stand for interrogation. You may proceed with your questions.

DELEGATE AMSTERDAM. Mr. President, I assume that if there were put into the schedule a provision that a qualifications commission made up in a particular way was to be effective by January 1, 1969, unless the Legislature set up a different way of setting up the qualifications commission, that provision would be self-executing and effective unless the Legislature itself set up a different type of qualification commission. Is that correct, sir?

DELEGATE WOODSIDE. That is correct, assuming that in the schedule there would be sufficient detail that it would automatically become effective and operative without any action on the part of the Legislature, and it would state that it would become operative on such and such a date if the Legislature had not acted otherwise. That would be the self-executing proposition.

DELEGATE AMSTERDAM. Mr. President, that was my understanding. I should like to amend the schedule to provide for that in order to make effective what I believe was intended by this body in approving the Aberman Amendment.

PRESIDENT BRODERICK. Now, I suggest to this body that we should be at ease until we discuss the amendment that Delegate Amsterdam wishes to make.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. I think, Mr. President, if I may have the attention of the delegates for a moment on consideration of our vote on the Aberman Amendment, I would like to point out this factor to my fellow delegates:

With the action of this Convention and with the conclusion of the statewide qualifications commission made a part thereof, with the burden imposed upon the General Assembly, there is little question whatsoever, but this will be an issue in an election.

You understand me, I hope. There will be those who will be driving for it and then the referendum will be expressed to their elected representatives on this particular issue.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Forster.

DELEGATE FORSTER. Mr. President, I take it, it is a matter of clarification that Delegate Amsterdam's comment of intention to offer an amendment to the schedule would have to be considered after the Stout Amendment as amended is voted upon, because it would have no meaning unless that passed.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. I quite agree with that last statement, and it would seem to me to save a lot of time if we were to vote upon the Stout Amendment at this time as amended, and then if it passes, I would be glad to offer at that time the necessary amendment to the schedule.

PRESIDENT BRODERICK. I have been advised that you can do it the way you suggested or you could offer it as an amendment to the amendment, which I thought you were doing. Then are we ready for the question?

The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. I wonder if Judge Woodside would consent to be interrogated, because I think that there are a lot of people very puzzled by this?

PRESIDENT BRODERICK. I am sure he would, so you may proceed with your questions.

DELEGATE O'DONNELL. Mr. President, the effect of the situation we now have, as last carried by this body, and I do not refer to the Aberman Amendment nor to the Stout Amendment, would make a gubernatorial appointment subject to the advice and consent of two-thirds of the Senate. Is that correct?

DELEGATE WOODSIDE. That is what I understand the proposal to be at this time.

DELEGATE O'DONNELL. Even though the initial members of the judicial qualifications commission were put into motion or appointed by the schedule, the Legislature would, under this Aberman Amendment, have the authority not only to amend the schedule but to change the entire basis of the selection and it would be a selection of its own choice. Is that correct?

DELEGATE WOODSIDE. You say the Legislature would?

DELEGATE O'DONNELL. Yes. The Aberman proposal says that, as I understand it, that the Commission shall be selected in such a way as the General Assembly shall determine.

DELEGATE WOODSIDE. Well, as I understood it, and I have not been able to read all of this exceedingly carefully, the Legislature would be asked to provide for the commission. I do not think they can change the whole system around, but they would be asked to set up a commission. If they did not set up a commission, then, of course, the only remaining thing in the Constitution would be the appointment by two-thirds of the Senate. If they did set up the commission, they could set up the type of commission that they wanted to set up. That could vary in any way that the General Assembly would see fit to to have it vary.

DELEGATE O'DONNELL. In other words, it would make it subject, however, to a method of selection of the panel other than its initial members, which would presumably be controlled by the schedule according to the way that it should determine, is this not correct?

DELEGATE WOODSIDE. If the schedule set up a method. Of course, here again we are talking about language that we do not have before us, and it would be very difficult for me to say with specificity what would be the effect of the language which we do not have before us. The language could limit the Assembly to the form of the commission. Again, it could go further and set forth a whole new method of picking through a panel. So, again, I do not know what would be proposed in that.

DELEGATE O'DONNELL. Then, my final question to the delegate is, if the schedule change contemplated by Delegate Amsterdam were defeated, then there would be no judicial qualifications commission in effect whatever. Is this correct?

DELEGATE WOODSIDE. That would be correct.

DELEGATE SHAPIRO. May I ask Delegate Woodside a question?

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro. I am sure he will stand for interrogation.

DELEGATE SHAPIRO. Is it not true that the same thing you have said with respect to the Aberman Amendment is also true with respect to community courts and with respect to commonwealth courts, that these provisions are not self-executing, that we must depend on the Legislature to implement them?

DELEGATE WOODSIDE. Those provisions are not self-executing and I think the Legislature is more likely to execute those than they are the others, for very obvious reasons, but they are not self-executing. I am not sure about the community courts, I am sure about the Commonwealth Court.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Casey.

DELEGATE CASEY. Will Delegate Aberman answer one question?

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE CASEY. Mr. President, when this amend-

ment says "such state judicial qualifications commission shall be established by the General Assembly by law," I take that to mean that the General Assembly, from one session to another, could change the composition of the commission, could it not?

DELEGATE ABERMAN. That is correct.

DELEGATE CASEY. It could, for example, make all members of the commission members of the dominant political party of the administration that happens to have control of the assembly at that time, is that right?

DELEGATE ABERMAN. As I answered the question of Delegate O'Donnell, we could suppose probably the most horrendous set of examples. We could spend the rest of the night, as a matter of fact, doing it.

DELEGATE CASEY. Would you mind just answering my question?

DELEGATE ABERMAN. Well, the answer to the question, yes, they can do any one of innumerable things, one of which is this.

DELEGATE CASEY. The answer is yes. So that there would be no way of knowing, as we sit here this evening, as to what shape or form or composition the qualifications panel would assume from one legislative session to the next, is that correct?

DELEGATE ABERMAN. If we are now engaging in a debate upon a motion that has carried, Mr. President, I wonder whether the delegate's interrogation is in order.

My response to it will not be governed by that point, but I simply raise it.

PRESIDENT BRODERICK. I just want to inform Delegate Aberman that your amendment is now a part of the amendment, and is before the Convention at this time, so I would say that the questions are in order, but you do not have to stand for interrogation.

DELEGATE ABERMAN. I will stand for interrogation. I just wanted to make sure of the position of this interrogation.

DELEGATE CASEY. I just want to know what we are voting on, that is all.

DELEGATE ABERMAN. In answer to the question, let me go a little beyond the simple examples and simply deal with the problem. The problem is, as I sponsored an amendment, I felt that the General Assembly is the responsible animal to handle this machinery. I therefore said that the Constitution should not contain in it provisions of details relating to the constitution of this committee, because I do not think it is the proper constitutional issue. Therefore I deleted that portion of the schedule which related to the composition and I created a simple statement that the General Assembly by law shall do it. I am not prepared to condemn or conceive of any possible way by which the General Assembly can deviate from this motion. I simply say that this type of a procedure will bring to bear on the General Assembly the same types of pressures for reform that we have just finished discussing, and in my mind this is the best solution and the most satisfactory one.

DELEGATE CASEY. I will restate the question, Delegate Aberman. It is a fact, is it not, that the General Assembly, under your amendment, can change the composition of the panel, the number on the panel, the political complexion of the panel, the qualifications for members of the panel, from one legislative session to another ad infinitum? Is that not right?

Would the delegate mind answering the question?

DELEGATE ABERMAN. Mr. President, I would simply say that the answer is yes.

PRESIDENT BRODERICK. Does anyone else wish to be recognized?

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. I would like to ask one question of Delegate Aberman if he would stand for interrogation once more.

PRESIDENT BRODERICK. I am sure he will. Proceed with your question.

DELEGATE SWOPE. Under the provisions of your amendment to the amendment, and if the Legislature created a panel, would it be confined to any number of candidates it would submit to the governor?

DELEGATE ABERMAN. It would not, sir.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I want to make a couple of comments and then I would like to ask a question of the Chair and of the legal counsel. I wish everybody would listen to the answer to the question. I think it is very important. We have practically decided basically on everything in this judicial article except the way we are going to select judges to the appellate courts. As I view the thinking of the Convention, we are split into three camps, but basically two camps; some who prefer the statewide election of these judges as we now have and others who prefer a judicial panel. Because we cannot really agree on either, we have sort of come up with a compromise form that presents appointment and sometimes judicial panels, and no one really knows what is happening. I wonder if there might be some wisdom if we pause for a few minutes and let some of the experts go back to work and consider the possibility of separating this question entirely when we submit it to the people.

DELEGATE LAPUTKA. If Delegate Kline will make that in the form of a motion I will second it.

DELEGATE KLINE. I am one who wants to keep the status quo in the election of judges, but I would be willing to put on the ballot, apart from everything else, a clear-cut judicial panel question for the people to vote yes or no; and if they vote for it, they will get the judicial panel, and if they do not they will keep the election of judges. Now can that question alone be separated and stand alone on the ballot?

PRESIDENT BRODERICK. Delegate Kline, I am going to have counsel confer with you and you can announce the answer. I would like to see counsel for the Convention as well as counsel for the Judiciary Committee, and give them an opportunity to discuss the facts.

The Chair now recognizes Delegate Laputka.

DELEGATE LAPUTKA. I, like Delegate Kline, am very concerned about where we are going. It appears to me that we are now going from bad to worse. It appears to me that we have now got a situation whereby, instead of having a confirmation of two-thirds of the Senate, we now set the position where the Senate by majority vote can rule how the state judges are going to be chosen.

I suggest that we take time out, that we recess, think this thing over, and discuss it a little bit before we come back to vote on it.

COMMITTEE REPORT

COMMITTEE ON STYLE AND DRAFTING ON PROPOSAL No. 4

PRESIDENT BRODERICK. Is it the feeling of the body that they would like to have a recess for dinner now and come back later? While we are thinking that over, the Chair would like to recognize Chairman Pelletier of the Style and Drafting Committee or Chairman Johnson, whichever one. They are going to report, I believe, on Proposal No. 4.

DELEGATE JOHNSON. Mr. President, I stand in place and present our report for third consideration on Proposal No. 4.

COMMITTEE ON STYLE AND DRAFTING

519 North Office Building
Harrisburg, Pennsylvania 17106

February 26, 1968

To the Honorable,
The Delegates Assembled,
1967-1968 Pennsylvania Constitutional Convention

Re: Audit and Budget Procedures

Mesdames and Sirs:

We submit herewith our Report on Committee Proposal Four respecting audit control of public funds, the Governor's budgets and financial plan, and appropriations.

As we have noted previously, the Committee on Style and Drafting, to insure harmonious usage in style and manner of expression throughout the proposed Article Eight, held this proposal until the Committee had completed its consideration of Proposals Three and Five. Similarly, the Committee, in consultation with one of the Co-Chairmen of the Committee on Arrangement, Submission and Address to the People, has renumbered the sections amended by this proposal to insure a logical numerical pattern in accordance with the view of the Convention expressed Friday last during third consideration of Proposal Three.

The Committee once again acknowledges the cooperative spirit and willing attention to detail of the substantive committee as this Committee sought to discharge its duty of examination and editing under Rule 22. We are pleased to note that the changes in style and manner of expression have met with the agreement of the substantive committee.

Significant Changes in Drafting

1. In Section 10, the description "body" was deleted and a more encompassing noun "entity" inserted.

2. The statement with respect to the officer responsible for the pre-transaction and post-transaction audit has been restated to make clear the sense of the Convention that the officer who initially oversees financial transactions cannot be the officer held responsible for the ultimate verification of those transactions.

3. Section 12 has been rearranged to eliminate unnecessary duplication and to more precisely describe the Governor's responsibilities in the preparation of a budget and financial plan. Similarly, in Section 13 precision of expression was sought by minor changes in style.

4. Section 12 (b) has been reworded to insure that the intention of the Convention to bring all capital expenditures within the scope of the capital budget is realized.

Respectfully submitted,

COMMITTEE ON STYLE AND DRAFTING
By: ROY H. JOHNSON
LAWRENCE L. PELLETIER

ANF:WPH:met

PRESIDENT BRODERICK. Thank you. It will be accepted by the Chair. It will be printed and placed on the calendar.

COMMITTEE MEETINGS

DELEGATE JOHNSON. The Committee on Style and Drafting would like to have the Chairman of the Committee on Taxation and State Finance and co-chairman meet after we recess in our workroom on the second floor.

RECESS

PRESIDENT BRODERICK. Is there any objection to a recess for dinner, about one and one-half hours, and then coming back?

The Chair hears none, and the Convention is now in recess until 8 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

COMMITTEE MEETING

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, based on the thought that we might split the question on the judiciary on the ballot, several persons have been at work developing a form that this might take. We are now down to two basic approaches. Rather than get into the details of either, I have agreed with the presiding officer, the president, who differs slightly from my approach, in that we might both present the respective approaches to the Judiciary Committee and get their reaction to it. I think it would be a more orderly way of doing it, Mr. President, and would not in any way preclude the full Convention utimately considering both proposals.

I, therefore, request we stand in recess and call an immediate meeting of the Committee on Judiciary to consider this question.

PRESIDENT BRODERICK. I might add, I have talked to the Chairman of the Judiciary Committee and I now recognize Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the entire Judiciary Committee, if it is the will of this body that we handle it as Senator Kline has indicated, will meet at this time in the Senate Caucus Room on the first floor.

We hope to report back here within the hour.

MOTION TO RECONSIDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, during the dinner hour I discovered a mistake that I made today and I would like to move for reconsideration of the Aberman Amendment. Many of the false impressions I had of the amendment were brought to light. I was under the false impression like many of our delegates, that the panel created by the Legislature, would be a long term, permanent type thing which would solve the problems for future appointments to the judicial bench. I now find this is a temporary type set-up. It could be changed from death or vacancy every time it exists. It is not the type of thing I want to be recorded as voting "yea" on and therefore sir, I would like to move for immediate reconsideration of the Aberman Amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, before a second to that amendment is forthcoming, if it is possible to work out a slightly different approach, none of us may have to consider again the amendment of Delegate Aberman or Delegate Stout, and I would suggest that the Convention rather than engage in a rather difficult and bitter debate on something that it might otherwise solve, would await the meeting of the Judiciary Committee.

I am perfectly willing to stay here and debate the Aberman Amendment again. We cannot indulge in the luxury of time any longer. Our deadline is pressing and I think with a minimum amount of time, we can come out of the Judiciary Committee with a sound proposal.

PRESIDENT BRODERICK. Do you have any objection to holding your motion until the Committee returns, Delegate Murray?

DELEGATE MURRAY. In reply to Senator Kline, is it not true if the Aberman Amendment should be reversed, that would solve a lot of their problems?

DELEGATE KLINE. Not necessarily, Mr. President. I do not want to quarrel over this. I only suggested and I think it would be a sensible approach.

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. Mr. President, I think it might be helpful to this body if Senator Kline would suggest the nature of the two areas that he wishes to discuss with the Judiciary Committee. If he does not wish to do that, I would think the very least he could do is include Chairman Nelson and Chairman Gray of the Committee on Arrangement, Submission and Address to the People, to that meeting.

PRESIDENT BRODERICK. I think he will be happy to include them as invitees to that meeting. Is that right, Senator Kline?

DELEGATE KLINE. I would not object to the Convention convening as a Committee of the whole, if that be the will of the Convention to discuss this matter. I do think that it would be more sensible if we approached it in this way. I do agree it is a good idea that those who are involved, both in Style and Drafting and also in the presentation to the people be included at that brief meeting.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fawcett.

DELEGATE FAWCETT. Mr. President, would I be out of order to make a motion that we accept Delegate Kline's proposal to recess? I think that we have debated this thing to death, probably killed it and perhaps the Judiciary is willing now to compromise and come up with a proposal we could all accept.

PRESIDENT BRODERICK. Delegate Fawcett, frankly I had assumed there was not any objection to Delegate Kline's proposal. If there is, we can certainly put it in the form of a motion. I do not know what is on the minds of the other delegates that I have not called upon yet, so if you will permit me to recognize them, we may have to go to a motion.

DELEGATE KLINE. I move this Convention resolve itself into a committee on the whole for the purpose of considering the question of statewide appellate courts and their selection in the future.

PRESIDENT BRODERICK. I have been appraised by our Parliamentarian, that we have no provision for a committee on the whole meeting under our rules. I do think in line with Delegate Kline's suggestion, I think we could make more progress if this matter could be discussed with the Judiciary Committee and then come back. We would set a certain time. Let me recognize the other delegates and see what they have on their minds.

The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, this is a very serious problem which is so controversial now and has been all week. There are those in this Convention who favor the election of the statewide delegates. There are those who have indicated that they favor appointments by two-thirds consent of the Senate. There are those who favor the commission method of making this selection. Anyone of these that does carry, carries by just a few votes. It is, therefore, indicative and essential that we get more unanimity of consideration in this Convention if we are to send the proposal to the polls. I, therefore, heartily support my colleague, Delegate Kline's suggestion and I suggest that we take a recess and refer this matter not only to the Judiciary Committee but to Style and Drafting to see what they can come up with and see if we can reach more unanimity in consideration of passing this controversial problem.

DELEGATE CARON. The only question I have is whether or not it is not still more practical to have the committee meeting as a whole. I and the non-members of the Judiciary Committee are supposed to make a decision once more and we will not have the benefit of the discussion that will go on for the next half or three-quarters of an hour.

PRESIDENT BRODERICK. The Chair recognizes Delegate Leach.

DELEGATE LEACH. As one of the laymen in the group having listened for these many weeks to the situation, if we could be assured within the hour that the Judiciary Committee will come back to this floor with unanimity of opinion, it would seem to me it would be well worthwhile. Otherwise, I would have to go along with the delegate that discussed the situation, Delegate Caron. Unanimity of opinion would solve our problem.

RECESS

PRESIDENT BRODERICK. Since there is no objection to a recess, we do now recess for a period of one hour to permit the Judiciary Committee to discuss a problem.

The Chair hearing no objection, the Convention is now at recess until 10 o'clock p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

STATEMENT BY DELEGATE KLINE

PRESIDENT BRODERICK. The Chair will now recognize Delegate Kline, who will make a report.

DELEGATE KLINE. Mr. President, this is not a report from the Judiciary Committee. In a few minutes, when I am finished, Chairman Scranton will generally report to you on the thinking of the Judiciary Committee. I merely want to make a statement of what motivated my suggestion for compromise and what the attitude of the committee was. I hope it is as close to accurate as I can possibly make it. I felt that when I made the suggestion before we broke for dinner, that this very touchy issue was bogging down the whole judicial article and our whole progress towards a sensible approach and conclusion to the Convention, and ask that we might have a break to consider some possible compromise. During the break for dinner, two basic plans evolved as to what we might do with this knotty question. Please understand that when I discussed these two suggested compromises, neither suggests that we abandon what we presently have before the Convention because we already have before us here a plan whereby the judges on the Superior Court and Supreme Court can be appointed by the Governor with the advice and consent of two-thirds of the Senate, and we have also the immediate question of the Stout Amendment, which was amended by the Aberman Amendment. None of us wants to wipe out that question which is before us.

I had suggested the possibility of separating this whole matter from the rest of the Judicial Article and going to the people at the April Primary and ask them a question which would take this basic form: Which do you prefer in the selection of justices and judges to serve on the Supreme, Superior and Commonwealth Courts? A or B? A, being the election method or basically the status quo which the gubernatorial appointment of vacancies with two-thirds of the Senate, or B, the appointment of judges and justices by the governor from a judicial panel without the advice and consent of the Senate.

I wish to report that I have lost many times in my life but this is the first time I ever lost unanimously. No one on the committee thought that was a good approach. Incidentally, from what has come out of the Judicial Committee so far, I am almost convinced that maybe that is a good approach.

Seriously, there was an alternative suggestion to compromise which, in effect, would write the article to include the election of judges, the status quo now, with the gubernatorial appointments and vacancies, with the advice and consent of two-thirds of the Senate as embodied by Delegate Barron, and specified in the Convention another election in the Primary of 1969 to decide further the question of judicial panel.

Of the two compromise plans, the second one was felt, as I understood the wishes of the Committee, to be the better of the two, with very strong feeling that we should first resolve the question before the Convention now of whether we want what we have. It was suggested by the majority of those present, that we, understanding that those two compromises stand in the wing, we immediately address ourselves to the present question; that is, the Stout Amendment as amended by Delegate Aberman.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Scranton of the Judiciary.

DELEGATE SCRANTON. Delegate Kline is a very modest man. He came to the Judiciary Committee greatly enlarged, incidentally. We had many other people there, but the voting was done only by the Judiciary Committee members. I think it is fair to say almost everyone felt the suggestion that he made was a helpful one because all of us are aware that this has become a very difficult nut to crack in this Convention and because there seemed to be three different thoughts on the part of members of the Convention: Those who want elections of statewide judges; Those who want appointment by the Governor with two-thirds of the Senate confirming same; and those who would like the panel method where the governor appoints. Now it is very hard to reconcile all those ideas. We have not succeeded in doing it once again.

We, first of all, as he said, took up the suggestion that he had made in comparison to another version of it. Unanimously, agreed that the second version was preferable; namely, that we adopt as a Convention the election method statewide and have in the adoption of that method a provision that a plebiscite be taken in the Primary Election in 1969 on whether the people wanted the panel method or the selection of statewide judges. This, because it would be determined for all time in one election. Secondly, because it would give them one year to understand what the panel method is all about. Most of us have been dealing with it for three months and are now quite conversant with it. People are not. Third, perhaps most important, the thinking was that if we put this question on the April 23rd ballot, it would cause very great confusion among the public in relationship to the other questions which we have already passed upon or will pass upon and that have been determined by the Convention and must now be approved by the people. We thought the less they were confused on those major items, by some additional item, the better off this particular election would be.

It was then suggested—by me, frankly, and I am presenting it to you—after a great deal of discussion by various members of the Committee to the fact that we now have on the floor of the Convention the fact that it has approved, as of the Kauffman Amendment, the appointment by the governor with two-thirds consent of the Senate and a substitute, therefore, in the Stout Amendment and in the Aberman Amendment to the Stout Amendment. It was suggested by me with the idea in mind that it might be fair to all of these groups, those who want elections, those who want appointments with two-thirds consent of the Senate, those who want the panel method, that the Convention, as a whole, now vote on the motion that was made by Delegate Murray to reconsider the Aberman

Amendment, because there seemed to be a great deal of feeling over the dinner hour that a lot of people wanted to do this and if it was reconsidered and turned down we could then vote on the Stout Amendment, which we have not yet done, and which would give the people who believe in that one an opportunity to vote. Whether the Stout Amendment was approved or was not approved, that we then vote on the version that I just outlined to you, Senator Kline's suggestion, which would then give the opportunity for the Convention to decide they wanted elections as of now or a year from now, if people want an opportunity to change their mind and have the panel method.

The theory was that with these three votes we would give everybody who felt any of these different ways an opportunity to assert their thinking. The Convention would then finally determine which one we were going to adopt immediately on the floor. The one that is so far approved by the Convention is the Kauffman Amendment, which is the one in being at the moment, that we would give the appointment by the governor with confirmation of two-thirds of the Senate. We would then vote to reconsider the Aberman Amendment; if that was reconsidered and turned down, we would then vote on the Stout Amendment. Whether that was approved or not approved, we would then vote on the renewed version of Senator Kline's suggestion.

MOTION TO RECONSIDER ABERMAN AMENDMENT

PRESIDENT BRODERICK. The Chair now recognizes Delegate Horne.

DELEGATE HORNE. Mr. President, I voted "yea" on the Aberman Amendment, and I vote now that we move this Convention to reconsider that amendment.

PRESIDENT BRODERICK. We have a motion on the floor to reconsider the vote by which the Aberman Amendment was adopted, and that motion is made by Delegate Horne, and as I understand you voted in the affirmative, on the prevailing side.

DELEGATE SHARP. I second that motion, and I likewise voted on the prevailing side.

PRESIDENT BRODERICK. Delegate Sharp, you voted likewise, on the prevailing side. Let me please ask the Clerk if he will check the voting machine to determine that both delegates voted on the prevailing side.

I am next going to recognize Delegate Jirolanio as soon as we have checked the voting.

I understand that Delegate Horne voted on the prevailing side and Delegate Sharp voted on the prevailing side.

We do have a motion on the floor, and the motion is to reconsider the vote by which the Aberman Amendment to the Stout Amendment was adopted.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. Do I understand this to have taken place. There was a Stout Amendment.

PRESIDENT BRODERICK. That is correct.

DELEGATE JIROLANIO. Then there was an Aberman Amendment.

PRESIDENT BRODERICK. To the Stout Amendment.

DELEGATE JIROLANIO. Now, then, the Aberman Amendment passed onto the Stout Amendment.

Is that not so?

PRESIDENT BRODERICK. That is correct.

DELEGATE JIROLANIO. Is it not a fact that the Stout Amendment today contains the Aberman Amendment.

PRESIDENT BRODERICK. No. I understand from our Parliamentarian that the Stout Amendment has not been voted on, and this has not been agreed to. We have only voted on the amendment to the Stout Amendment, and I understand from the Parliamentarian that that is subject to a motion of reconsideration at this time.

DELEGATE JIROLANIO. May I further my parliamentary inquiry?

PRESIDENT BRODERICK. Yes.

DELEGATE JIROLANIO. Since the Stout Amendment was not voted on, the Stout Amendment has incorporated into it the Aberman Amendment. Is that not so?

PRESIDENT BRODERICK. As of this moment it has, yes. That is what they want to reconsider.

DELEGATE JIROLANIO. Just a moment. I do not think that the Aberman Amendment itself is any longer the Aberman Amendment. It is now part of the Stout Amendment and they are both combined into one, because we agreed upon the amendment to be a part of the Stout Amendment.

PRESIDENT BRODERICK. Delegate Jirolanio, according to the Parliamentarian's statement here, I still would rule that we can have a motion at this time to reconsider the vote by which the Aberman Amendment was adopted. Are we ready for the question? Apparently we are. We will unlock the voting machine.

The question on the motion is, will the Convention reconsider the vote by which the Aberman Amendment was adopted?

All those voting "yea" will vote in favor of the motion to reconsider. Those voting "nay" will vote against the motion to reconsider.

On the question,

Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—75

Amsterdam	Forster	Leinbach	Scott
Baldus	Fortney	McGeary	Scranton
Bashoff	Gabreski	McGlynn	Sharp
Bloom	Gehrlein	Michael	Shively
Braham	Gouger	Michener	Shrager
Broderick	Gray	Miller, R.	Sprogell
Buck	Hannum	Moorhead	Stout
Bunting	Harding	Morton	Strickler
Burkholder	Heyburn	Nelson	Stroup
Butera	Himes	O'Donnell	Swope
Caron	Hook	Pasquerilla	Tate
Casey	Horne	Pechan	Thornburgh
Clark	Hostetler	Pelletier	Tomascik
Clinger	Johnson	Popil	Welsh
Conley	Kauffman	Rappaport	Whittum
Cosetti	Keller, M.	Rea	Wilcox
Dailey	Krill	Roberts	Woodring
Feather	Laputka	Sahli	Woodside
Filson	Lee, L.	Scarlett	

NAYS—69

Aberman	Curran	Kelly	Redick
Allison	Croop	King	Reynolds

Aurentz	Desmond	Kline	Richter
Bagenstose	Devlin	Leach	Rovner
Baldrige	Erwin	Leonard	Ruth
Baldwin	Fawcett	Levin	Scales
Banes	Fay	Mangery	Sebastian
Barron	Fleming	Markley	Shapiro
Barry	Fohl	Mattioni	Shettig
Benedict	Gerber	Meyer	Shoemaker
Benfield	Goldman	Miller, D.	Silverman
Brennan	Goldstein	More	Thomson
Brown	Griffith	Orban	Tully
Cain	Hocker	Orbin	Van Sant
Caputo	Irvis	Pott	Waldron
Corey	Jirolanio	Powell	Warman
Cortese	Keller, J.	Prendergast	Westerberg
Cunningham			

NOT VOTING—19

Camardella	Fineman	Lee, K.	Percey
Donaldson	Hatter	Manderino	Quiles
Donolow	Henderson	Murray	Solomon
Dumbauld	Huggins	Musselman	Wilmarth
Fagan	Lane	Otto	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. Now, the question recurs on the adoption of the Aberman Amendment to the Stout Amendment.

Do we want discussion?

The Chair now wishes to recognize Delegate Shoemaker.

DELEGATE SHOEMAKER. Mr. President, I am a little bit confused by the necessity of backing up and reconsidering and rewiping out this amendment. Apparently, it is the committee's suggestion that we do that before we can proceed. We have to wipe out what we have already done by a ten-vote margain. I would like to ask Governor Scranton if he would answer me please, why it was necessary before we vote to wipe out this Aberman Amendment? Why is it necessary to wipe it out? Why can we not just go ahead and vote on the Stout Amendment as it was amended, and then take the steps to be outlined?

DELEGATE SCRANTON. First of all, may I make it very clear that the Committee made no such recommendation, and I made that very clear earlier. I said openly that this was my suggestion as to the method of procedure so that all the various groups who were interested here would have an opportunity to assert their own thinking. I did not personally suggest for example, that we reconsider the Aberman Amendment. This came up at the Committee meeting by both people who were on the Committee and people who were not on the Committee saying that the motion had been placed on the floor by Delegate Murray, and there had been a great deal of consideration over the dinner hour, and, therefore, the suggestion was that if the Convention so wished to do, they ought to have this opportunity.

The Committee is not making a recommendation as to how you vote on anything. All we are suggesting is that everybody be given an opportunity to assert their three-way thinking here, and we thought that this was the best way to do it, and I think it will be. I think you should vote on this amendment now, and if you vote on the Stout Amendment, and if you vote on the Kline suggestion, every person, every group will have an opportunity to assert themselves.

DELEGATE SHOEMAKER. Then, as I understand you, Governor Scranton, it is not necessary to vote one way or the other for anyone to have an opportunity to express their line of thought or opinion.

DELEGATE SCRANTON. That is right.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. I have a motion by Delegate Hook that we close the debate and move the pending question. It has been seconded by Delegate Thornburgh, and now we have a parliamentary inquiry before we vote.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman. For what purpose does the gentleman rise?

DELEGATE GOLDMAN. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GOLDMAN. Mr. President, would we not be able to accomplish what Delegate Scranton is saying if the Stout Amendment were just withdrawn, put in the Committee proposal of their compromise, and vote on that and proceed? I think we have all discussed these issues an awfully long time. I am just asking as a parliamentary procedure.

PRESIDENT BRODERICK. You are asking the Chair a question that cannot be answered, contrary to the motion we have on the floor; and the motion we have on the floor is pursuant to the motion to reconsider. The question before us is on the Aberman Amendment. We now have a motion to close debate and to vote on the pending question, so, therefore, I am going to unlock the voting machine.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—132

Allison	Desmond	Kline	Redick
Amsterdam	Devlin	Krill	Reynolds
Aurentz	Erwin	Laputka	Richter
Bagenstose	Fawcett	Leach	Roberts
Baldus	Fay	Lee, K.	Rovner
Baldwin	Feather	Lee, L.	Sahli
Barry	Filson	Leinbach	Scales
Bashoff	Fohl	Leonard	Scarlett
Benedict	Forster	Levin	Scott
Benfield	Fortney	Mangery	Scranton
Bloom	Gabreski	Markley	Sebastian
Braham	Gehrlein	McGeary	Shapiro
Brennan	Gerber	McGlynn	Sharp
Broderick	Goldman	Meyer	Shively
Brown	Goldstein	Michael	Shrager
Buck	Gouger	Michener	Silverman
Bunting	Gray	Miller, D.	Sprogell
Burkholder	Griffith	Miller, R.	Stout
Butera	Hannum	Moorhead	Strickler
Cain	Harding	More	Swope
Caputo	Heyburn	Morton	Tate
Caron	Himes	Murray	Thornburgh
Casey	Hook	Nelson	Tomascik
Clark	Horne	O'Donnell	Tully
Clinger	Hostetler	Orban	Van Sant
Conley	Huggins	Orbin	Waldron
Corey	Irvis	Pasquerilla	Warman
Cortese	Jirolanio	Pechan	Welsh
Cosetti	Johnson	Pelletier	Westerberg
Croop	Kauffman	Popil	Whittum
Cunningham	Keller, J.	Pott	Wilcox
Curran	Kelly	Powell	Woodring
Dailey	King	Rea	Woodside

NAYS—14

Aberman	Hocker	Rappaport	Shoemaker
Baldrige	Keller, M.	Ruth	Stroup
Banes	Mattioni	Shettig	Thomson
Barron	Prendergast		

NOT VOTING—17

Camardella	Fineman	Lane	Percey
Donaldson	Fleming	Manderino	Quiles
Donolow	Hatter	Musselman	Solomon
Dumbauld	Henderson	Otto	Wilmarth
Fagan			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—64

Aberman	Croop	Keller, M.	Reynolds
Allison	Cunningham	King	Richter
Aurentz	Curran	Leach	Rovner
Baldrige	Desmond	Lee, K.	Ruth
Baldwin	Devlin	Leonard	Scales
Bagenstose	Erwin	Mangery	Sebastian
Banes	Fawcett	Markley	Shapiro
Benedict	Fleming	Mattioni	Shettig
Benfield	Fohl	Meyer	Shoemaker
Brennan	Goldman	Miller, D.	Silverman
Brown	Goldstein	More	Solomon
Butera	Griffith	Powell	Thomson
Cain	Hocker	Prendergast	Tully
Caputo	Hostetler	Pott	Van Sant
Corey	Irvis	Rappaport	Warman
Cortese	Jirolanio	Redick	Westerberg

NAYS—84

Amsterdam	Forster	Lee, L.	Sahli
Baldus	Fortney	Leinbach	Scarlett
Barron	Gabreski	Levin	Scott
Barry	Gehrlein	McGeary	Scranton
Bashoff	Gerber	McGlynn	Sharp
Bloom	Gouger	Michael	Shively
Braham	Gray	Michener	Shrager
Broderick	Hannum	Miller, R.	Sprogell
Buck	Harding	Moorhead	Stout
Bunting	Heyburn	Morton	Strickler
Burkholder	Himes	Murray	Stroup
Caron	Hook	Nelson	Swope
Casey	Horne	O'Donnell	Tate
Clark	Huggins	Orban	Thornburgh
Clinger	Johnson	Orbin	Tomascik
Conley	Kauffman	Pasquerilla	Waldron
Cosetti	Keller, J.	Pechan	Welsh
Dailey	Kelly	Pelletier	Whitfum
Fay	Kline	Popil	Wilcox
Feather	Krill	Rea	Woodring
Filson	Laputka	Roberts	Woodside

NOT VOTING—15

Camardella	Fagan	Lane	Percey
Donaldson	Fineman	Manderino	Quiles
Donolow	Hatter	Musselman	Wilmarth
Dumbauld	Henderson	Otto	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

The question recurs,
Will the Convention agree to the Stout Amendment?

MOTION TO CLOSE DEBATE

DELEGATE STROUP. Mr. President, now I think we are moving much too fast.

PRESIDENT BRODERICK. Delegate Stroup, we have a motion on the floor and the motion was carried by a large margin, that we close debate and move the question. So this body was mandated that we now vote on the question and the question is, will the Convention agree to the Stout Amendment.

The Chair recognizes Delegate Prendergast.

DELEGATE PRENDERGAST. I would ask you what a large margin is?

PRESIDENT BRODERICK. I can only say I thought it was large. Let us look at it. The vote was 135 to 11.

DELEGATE PRENDERGAST. That is pretty large.

PRESIDENT BRODERICK. That is one thing about my friend Delegate Prendergast, he will admit what a large margin is. The question before the Convention is, will the Convention agree to the Stout Amendment? We will unlock the voting machine and those voting "yea" will vote for the Stout Amendment; those voting "nay" will vote to reject the Stout Amendment.

DELEGATE TATE. Mr. President, may I ask for a verification before the vote is announced, please.

PRESIDENT BRODERICK. I am asking the Parliamentarian to check the rules on verification before we announce the vote.

PRESIDENT BRODERICK. It requires the request of two delegates. The request has been made by Delegate Tate and Delegate Hook, so we therefore are going to ask for verification.

I first ask the clerk to read the affirmative roll. This is the affirmative roll. The clerk will now read the affirmative roll and all those voting yea, please let us have the attention of the delegates.

The CLERK:

Miller.	Filson.
Fortney.	Levin.
Whittum.	Hook.
Clinger.	Horne.
Shively.	Scott.
Laputka.	Sprogell.
Gabreski.	Roberts.
Michael.	Swope.
Krill.	Sahli.
Murray.	Lee, L.
Welsh.	Pasquerilla.
Lee, K. B.	Caron.
Bloom.	Feather.
Wilcox.	Baldus.
Cosetti.	Buck.
Harding.	Barron.
Morton.	Tate.
Sharp.	Nelson.
Clark.	Kauffman.
Scranton.	Bunting.
Hannum.	Scarlett.
Tomascik.	Johnson.
Gray.	Stroup.
Waldron.	Leinbach.
Braham.	Burkholder.
Forster.	Casey.
Moorhead.	Thornburgh.
Gehrlein.	Stout.
Popil.	McGeary.
Rea.	Woodside.
Shrager.	Huggins.
Kelly.	O'Donnell.
Michener.	Strickler.
Amsterdam.	Pelletier.
Himes.	Broderick.
Woodring.	

PRESIDENT BRODERICK. Are there any corrections in the affirmative vote?

The Chair recognizes Delegate Bunting.

DELEGATE BUNTING. I voted "aye" in favor of the Stout Amendment and I did not hear my name called by the clerk.

PRESIDENT BRODERICK. We will check that, Delegate Bunting.

You are recorded as having voted "aye." Apparently it was a mistake in the reading of the roll.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes. For what purpose does the gentleman rise?

DELEGATE BANES. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BANES. I respectfully suggest the rules do not provide for a verification of the roll call when it is taken by the electronic equipment. The rule in the last sentence states after the comma on page 17 after the word "or," "upon demand of two delegates before the result of a vote has been declared, the yeas and nays shall be taken by the electric roll call system." The only time verification may be called for is if there has not been an electric roll call vote.

PRESIDENT BRODERICK. Delegate Banes, the Parliamentarian has called my attention to the top of page 17 which states, "Upon completion of a roll call and before the result is announced, if there appears to be need for verification, the President may direct the Secretary to verify it, or five Delegates may demand a verification."

The Chair did say two and in that respect, the Chair did make a mistake at that time. It would require five under these rules.

DELEGATE BANES. I will withdraw my question. Proceed with the "nays."

PRESIDENT BRODERICK. The clerk will proceed. Are there any corrections in connection with the affirmative roll? The Chair hears none.

The Chair recognizes Delegate Fleming.

DELEGATE FLEMING. Rules call for this, that the affirmative roll vote be announced at this moment.

PRESIDENT BRODERICK. I understand from the Parliamentarian, we cannot do that until we have verified both votes and I just want to state, that unless there are further corrections, the affirmative roll will stand as read.

Now, please verify the negative roll.

The CLERK:

Brennan.
Aurentz.
More.
Sebastian.
Keller, M.
Benfield.
Aberman.
Tully.
King.
Desmond.
Shoemaker.
Croop.
Prendergast.
Cortese.
Meyer.
Warman.
Gouger.
Rappaport.
Griffith.
Shettig.
Cunningham.
Kline.
Curran.
Devlin.
Westerberg.
Conley.
Goldman.
Redick.
Powell.
Bagenstose.
Corey.
Goldstein.
Benedict.
Barry.
Pott.
Gerber.
Miller, D.
Shapiro.
Van Sant.
Brown.
Bashoff.
Allison.
Dailey.
Silverman.
Hocker.
Ruth.
Baldwin.
Pechan.
Baldrige.
Thomson.
Fawcett.
Scales.
Mattioni.
Fleming.
Reynolds.
Caputo.
Richter.
Fay.
Fohl.
Leonard.
Solomon.
Orbin.
Jirolanio.
McGlynn.
Rovner.
Banes.
Heyburn.
Keller, J.
Erwin.
Butera.
Orban.
Irvis.
Cain.
Markley.
Hostetler.
Mangery.

PRESIDENT BRODERICK. Are there any corrections to the negative roll call?

The Chair recognizes Delegate Murray.

DELEGATE MURRAY. I would like to know why Delegate Quiles of Philadelphia was in his seat and did not vote?

PRESIDENT BRODERICK. Do you have a vote for Delegate Quiles?

DELEGATE MURRAY. Under the rules, if a man is sitting in his chair, he must explain if he does not vote.

PRESIDENT BRODERICK. The Chair recognizes Delegate Prendergast.

DELEGATE PRENDERGAST. Delegate Quiles was not in his seat and did not vote, for the information of Delegate Murray from Philadelphia.

DELEGATE MURRAY. Will Delegate Quiles state that?

DELEGATE PRENDERGAST. I think Delegate Murray is out of order, because I am sure the roll call will record the fact that Delegate Quiles was not in his seat and was recorded as not voting or in the negative, whichever the roll call indicates.

PRESIDENT BRODERICK. The roll indicates Delegate Quiles did not vote.

DELEGATE PRENDERGAST. That is correct, for the information of Delegate Murray.

DELEGATE MURRAY. Is the roll official yet or is it still being challenged? I do not recall the Chair announcing the count.

PRESIDENT BRODERICK. We have not announced a count because a question has been stated from the floor whether Delegate Quiles was in his seat and did not vote. That is a question of fact. That can be determined by the body.

DELEGATE MURRAY. Will you ask Delegate Quiles why he did not vote?

PRESIDENT BRODERICK. The Chair recognizes Delegate Quiles.

(Whereupon, Delegate Quiles answered in Spanish.)

(Delegate Murray replies in Spanish.)

PRESIDENT BRODERICK. I just want you to know our rule book does not cover that situation.

DELEGATE MURRAY. Mr. President, I still do not understand the vote.

DELEGATE KLINE. I suggest the rules clearly cover this situation. The delegate if he did not cast his vote and was in his seat, cannot now be recorded. His vote will go down in the negative.

DELEGATE MURRAY. He must explain his vote.

DELEGATE PRENDERGAST. This delegate was not in his seat and he did not vote.

PRESIDENT BRODERICK. Let me ask the question. The question was raised by Delegate Murray. Are you satisfied with the explanation of Delegate Prendergast, that he was not in his seat?

DELEGATE MURRAY. Sir, I would like to hear it from Delegate Quiles and I might be satisfied.

DELEGATE QUILES. Mr. President. I was making a telephone call so I was not present.

PRESIDENT BRODERICK. The delegate says he was not present in his seat. Let me ask one question. The negative roll has now been read. Are there any corrections? If not, it stands verified.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—135

Allison	Devlin	Leach	Roberts
Amsterdam	Erwin	Lee, K.	Rovner
Aurentz	Fawcett	Lee, L.	Ruth
Bagenstose	Fay	Leinbach	Sahli
Baldrige	Feather	Leonard	Scales
Baldus	Filson	Levin	Scarlett
Baldwin	Fohl	Mangery	Scott
Barry	Forster	Markley	Scranton
Bashoff	Fortney	McGeary	Sebastian
Benedict	Gabreski	McGlynn	Shapiro
Benfield	Gehrlein	Meyer	Sharp
Braham	Gerber	Michael	Shettig
Brennan	Goldstein	Michener	Shively
Broderick	Gouger	Miller, D.	Shrager
Brown	Gray	Miller, R.	Silverman
Buck	Griffith	Moorhead	Sprogell
Bunting	Hannum	More	Stout
Burkholder	Harding	Morton	Strickler
Butera	Heyburn	Murray	Stroup
Cain	Himes	Nelson	Swope
Caputo	Hook	O'Donnell	Tate
Caron	Horne	Orban	Thomson
Casey	Hostetler	Orbin	Thornburgh
Clark	Huggins	Pasquerilla	Tomascik
Clinger	Irvis	Pechan	Van Sant
Conley	Jirolanio	Pelletier	Waldron
Corey	Johnson	Popil	Warman
Cortese	Kauffman	Powell	Welsh
Cosetti	Keller, J.	Pott	Westerberg
Croop	Kelly	Rappaport	Whittum
Cunningham	King	Rea	Wilcox
Curran	Kline	Redick	Woodring
Dailey	Krill	Reynolds	Woodside
Desmond	Laputka	Richter	

NAYS—11

Aberman	Bloom	Keller, M.	Shoemaker
Banes	Goldman	Mattioni	Tully
Barron	Hocker	Prendergast	

NOT VOTING—17

Camardella	Fineman	Lane	Percey
Donaldson	Fleming	Manderino	Quiles
Donolow	Hatter	Musselman	Solomon
Dumbauld	Henderson	Otto	Wilmarth
Fagan			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question,
Will the Convention agree to the Stout amendment?

The roll was recorded as follows:

YEAS—71

Amsterdam	Gabreski	McGeary	Sharp
Baldus	Gehrlein	Michael	Shively
Barron	Gray	Michener	Shrager
Bloom	Hannum	Miller, R.	Sprogell
Braham	Harding	Moorhead	Stout
Broderick	Himes	Morton	Strickler
Buck	Hook	Murray	Stroup
Bunting	Horne	Nelson	Swope
Burkholder	Huggins	O'Donnell	Tate
Caron	Johnson	Pasquerilla	Thornburgh
Casey	Kauffman	Pelletier	Tomascik
Clark	Kelly	Popil	Waldron
Clinger	Krill	Rea	Welsh
Cosetti	Laputka	Roberts	Whittum
Feather	Lee, K.	Sahli	Wilcox
Filson	Lee, L.	Scarlett	Woodring
Forster	Leinbach	Scott	Woodside
Fortney	Levin	Scranton	

NAYS—76

Aberman	Croop	Irvis	Prendergast
Allison	Cunningham	Jirolanio	Rappaport
Aurentz	Curran	Keller, J.	Redick
Bagenstose	Dailey	Keller, M.	Reynolds
Baldrige	Desmond	King	Richter
Baldwin	Devlin	Kline	Rovner
Banes	Erwin	Leonard	Ruth
Barry	Fawcett	Mangery	Scales
Bashoff	Fay	Markley	Sebastian
Benedict	Fleming	Mattioni	Shapiro
Benfield	Fohl	McGlynn	Shettig
Brennan	Gerber	Meyer	Shoemaker
Brown	Goldman	Miller, D.	Silverman
Butera	Goldstein	More	Solomon
Cain	Gouger	Orban	Thomson
Caputo	Griffith	Orbin	Tully
Conley	Heyburn	Pechan	Van Sant
Corey	Hocker	Pott	Warman
Cortese	Hostetler	Powell	Westerberg

NOT VOTING—16

Camardella	Fagan	Lane	Otto
Donaldson	Fineman	Leach	Percey
Donolow	Hatter	Manderino	Quiles
Dumbauld	Henderson	Musselman	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

MOTION TO RECOMMIT

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, to be faithful to the report that I made after my meeting with the committee on the Judiciary, I now want to make a motion and explain to you precisely what is involved. We now have agreed to this point on the selection of judges to the Supreme Court, Superior Court and Commonwealth Court by gubernatorial appointment with two-thirds Senate confirmation.

I am going to move and will move that this specific section be recommitted to the committee on Judiciary with specific instructions that it write the article to provide for the election on a partisan basis of statewide judges with the Governor to fill vacancies with two-thirds consent of the Senate, largely as it exists today, and that the pro-

posal contain provisions for a clear election in the Primary of 1969 on a judicial qualifications commission, as a referendum on that clear question in the Primary of 1969.

AMSTERDAM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on second consideration?

DELEGATE AMSTERDAM offered the following amendment which was read by the clerk:

Section II:

1. Delete page 5, Lines 19-23 inclusive, starting with "(a)".

2. Insert—"(a) Justices, judges and justices of the peace shall be elected at municipal elections by qualified electors of the Commonwealth or respective districts over which they are to preside, as the case may be."

3. Delete—page 5—Lines 24-30 inclusive.
page 6—Lines 1-17 inclusive.

4. Insert—"(b) Any vacancy happening by death, resignation or otherwise in the office of justice, judge or justice of the peace, shall be filled by appointment by the Governor to continue till the first Monday of January next succeeding the first municipal election, which shall occur ten or more months after the happening of such vacancy." If the vacancy occurs during the session of the Senate such appointment shall be by the advice and consent of two-thirds of the Senate. If the vacancy occurs during sine die adjournment of the Senate such appointment shall not require the advice and consent of the Senate.

5. Insert—"(c) At the Primary Election in 1969 the qualified electors of the Commonwealth may by majority vote of those voting on the question elect to have judges of State-wide Courts, the Supreme, the Superior, the Commonwealth Courts and such other State-wide Courts as shall be provided by law, appointed as provided for in Section 12.

If a majority vote is in favor of this method, then whenever any vacancy occurs thereafter for any reason in the office of justice or judge of any State-wide Court, the Governor shall fill the vacancy by appointment from a list of persons qualified for the offices submitted, to him by the State Judicial Qualifications Commission provided for in Section 12. Such appointment shall not require the consent of the Senate."

6. Insert Section 12. Judicial Qualifications Commissions.—(a) There shall be a State Judicial Qualifications Commission for courts of Statewide jurisdiction composed of four non-lawyer electors appointed by the Governor and three non-judge members of the bar of the Supreme Court appointed by the Supreme Court. The members of the commission shall serve for terms of seven years, staggered so that one member shall be selected each year, and no more than four of the members of the commission shall be members of the same political party. The commission shall consider all names submitted to it and recommend to the Governor not less than ten nor more than twenty of those qualified for each vacancy to be filled.

(b) During the term for which he has been appointed, no member of any commission shall hold any office in a political party or political organization nor shall he hold any public office or appointment for which he receives any compensation.

(c) Vacancies in any Judicial Qualifications Commission shall be filled for the balance of the term by the appointing authority.

7. Section 12. Page 7-Line 8. After "Governor," add: "under Section 11(c)."

Page 7—Lines 13-17—"(c)"—Delete.

Page 7—Line 19—Change "11(a)" to "11(c)".

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. May we have a recess for about ten minutes so we can look at this amendment? It is very difficult to know what they are doing here.

PRESIDENT BRODERICK. I have no objection. Delegate Jirolanio has asked for a ten minute recess. Is there any objection to that? All right, I understand that there is no objection provided it is limited to ten minutes, so at exactly thirteen minutes of eleven we will go back into session.

AFTER RECESS

PRESIDENT BRODERICK. The time for recess having expired the Convention will come to order.

The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the amendment which has been distributed to all the delegates conforms to the suggestion made by Senator Kline and Governor Scranton. It provides for the election of all judges, justices of the peace, and, of course, justices of the Supreme Court. In the case of the statewide courts, it also provides that in the Primary Election of 1969, the electors of the Commonwealth may, by a majority vote, decide to use the panel system and a state judicial qualifications commission for state-wide justices and judges. This means there will be a year for the electorate to be indoctrinated as we have been these past three months with all of the good reasons for doing all the things we want them to do, whether it be to use the panel or not use the panel or to use election or not use elections in the case of statewide courts. This mandates an election one year from the date that the Constitutional changes are approved, as we hope they will be on April 23rd of this year, and in the Primary of 1969 there will be a vote taken to determine whether the majority of those in the Commonwealth prefer to have their judges appointed by the governor with the help of a qualifications commission.

The regular provisions we have seen in many of the amendments to date require for each vacancy no less than ten and no more than twenty names to be given to the governor, the permission for the qualifications commission to be made up of four non-lawyer electors appointed by the governor and three non-judge members of the bar of the Supreme Court appointed by the Supreme Court. We have continued the requirement that they shall serve for terms of seven years staggered so that one member shall be selected in each year and so on.

I might point out, however, that we included, in error, a proviso in the handwritten material at the bottom of the sheet, which is the so-called Barron Amendment. We have provided that vacancies occurring during the session of the Senate shall be filled by the governor with the advice and consent of two-thirds of the Senate, which is quite correct in all cases except in the case of justices of the peace. We had decided by a vote several days ago that appointments by the governor of justices of the peace should be made with a majority of the Senate concurring and through an inadvertency, because of the way the language was set up, that was changed by the material which has been handed out. However, I suggest that if we insert after the word "Senate" in the fourth line of the written material at the bottom of the sheet the words "except in the case of justices of the peace, which shall be by the majority of the Senate," we will have continued to do what we had agreed to do several days ago. I believe, Mr. Chairman, that this is the change that was discussed at some length by the Governor and by Senator Kline.

If there are any questions, I shall be glad to answer them.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. I would like to interrogate Governor Scranton, if I may, as co-chairman of the Judiciary Committee.

PRESIDENT BRODERICK. I am sure that he will stand for interrogation.

DELEGATE KAUFFMAN. Mr. President, was the amendment that is now before the House approved and recommended by the Judiciary Committee?

DELEGATE SCRANTON. No. I think I can answer it this way. The way this came before this body was, as the delegate will remember, that Senator Kline came up with a suggestion that something like it be considered by the body as a compromise for all the various positions that we are taking. Then we went and had the Judiciary Committee meeting, and, as an alternative to precisely what he suggested, the Committee thought this would be a better suggestion but they did not approve vis-a-vis any other type of method of selection.

DELEGATE KAUFFMAN. In other words, this is not recommended over the method of selection of appointment by the governor with consent of two-thirds of the Senate.

DELEGATE SCRANTON. No, there was no vis-a-vis any other type of method of selection, Mr. President.

DELEGATE KAUFFMAN. Is there any method in their proposed amendment for those who would like to have appointment by the governor with two-thirds of the consent of the Senate to express that opinion?

DELEGATE SCRANTON. No. There is no opportunity for the people who believe that the governor should appoint the statewide judges with confirmation of two-thirds of the Senate. The only way they can get that now is by turning this amendment down, which would keep the provision in the Constitution that you put in with your amendment, which is the one that presently is there.

DELEGATE KAUFFMAN. Mr. President, this morning I made a motion to take off the table what I considered to be a palatable compromise and what I thought would help this Convention demonstrate to the people of the Commonwealth that we both deserve and want their support. I respectfully submit to you, if you pass the amendment that is now before you, you will be condemning this Convention, you will be insuring the defeat of the Judicial Article at the polls. We will be shirking our duty completely to maintain the status quo of election of statewide judges. There were a lot of very legitimate arguments presented both in the Judiciary sub-Committee where I was co-chairman on selection of judges, the Standing Committee and on the floor of this Convention for election of judges in a local judicial district. There are no really valid arguments why we should have election of judges statewide. There are many arguments which I would not repeat why we should not. I could tell you that it was virtually unanimous—at the very least, it was tremendously overwhelming, both in the sub-Committee and in the Standing Committee, at the time the Judiciary Committee was meeting that we did not want election of judges statewide. We considered that that was not good for the Commonwealth. We wanted appointmet of judges statewide. The only question was how will they be appointed.

I submit to you, that the one plan that we have left for appointment of judges statewide is appointment by the governor with two-thirds consent of the Senate, which insures minority representation and places responsibility where it belongs. It gives the governor the opportunity to do just what Governor Scranton did when he was one of the finest governors we ever had; appoint his own commission. He has appointed excellent judges and he did it under a plan set up by him voluntarily, not mandated by Constitutional provision, and I tell you that if we go to the people and tell them that we have decided to maintain the status quo, to maintain election of judges, that we have rejected the Federal system, that we rejected the system used in New Jersey and Hawaii, the system recommended by the National League of Municipalities in its model state constitution, we rejected a system that gives the governor the right voluntarily to set up the very panel that so many of us here have been fighting for, then I think that the people rightfully would reject so much good that we have done. We have done a tremendous amount of good in this Judicial Article. It makes my blood boil when I read the writings of people who say we have not done anything. We have done a tremendous amount of good. Please do not ruin it now. Let us go to the people and let us show them that we will accept the responsibility that we definitely have and not go to them and let them make elections as to whether or not we are going to have election of judges or some other method. That is what we were sent here to do, not to turn around and give the question back to them. They asked us, they elected us to come here and make that very decision. If we refuse to make that decision, then we do not deserve their support. Please let us defeat this amendment.

MOTION TO SUSPEND RULES

PRESIDENT BRODERICK. The Chair now recognizes Delegate Butera.

DELEGATE BUTERA. Mr. President, I tried this once before and I think my timing is better this time. I would like to make a motion in two parts. I would like to make a motion that this Convention suspend its rules first in

moving this Proposal No. 7 to third reading, thus saving a day, and secondly, that we suspend our rules within this motion to permit amendments to be offered on third reading so as not to prevent anyone who has an amendment to offer it tomorrow.

I think the issues are much too great to decide at 11:00 o'clock at night, particularly when this day is almost over.

McGLYNN AMENDMENT TO COMMITTEE PROPOSAL No. 7

On the question recurring,

Will the Convention agree to the amendment being offered by Delegate Amsterdam to Committee Proposal No. 7?

DELEGATE McGLYNN offered the following amendment to the amendment offered by Delegate Amsterdam which was read by the clerk:

Amend Sec. 1, page 7, by inserting between lines 2 and 3: Section 12. Judicial Nominating Commission.—(a) There shall be a Statewide Judicial Nominating Commission for courts of Statewide jurisdiction. The commission shall consist of one judge of a court of common pleas who shall be elected by the judges of the courts of common pleas; three members of the bar who shall be elected by the members of the bar and three deans from law schools located within the Commonwealth, who shall be selected in alphabetical order according to the name of the law school.

(b) With the exception of the first selected deans, the members of the commission shall serve for a term of three years. Of the deans selected following the effective date of this section, the dean from the law school highest in alphabetical order shall be selected for a term of one year, the next in order for a term of two years and the following one for a term of three years. Thereafter the appointment shall be for a three-year term. Vacancies in the membership with reference to the judge and the members of the bar shall be filled for the balance of the term by the same persons who elected the member whose place has become vacant. Vacancies in the membership with reference to the deans shall be filled for the balance of the term from the same law school. The members of the commission shall elect one member to serve as chairman for a term of one year, but no person shall serve as chairman for more than three years in succession. The commission shall act only with the concurrence of a majority of all its members.

(c) During the terms of office for which members of the Judicial Nominating Commissions have been chosen, they shall not hold any office in a political party or organization, nor except for the members who are judges, shall they hold any public office or appointment for which they receive salary or other compensation. They shall not be compensated for service on the commission, but shall be reimbursed for travel and other expenses necessarily incurred in the discharge of their official duties.

Amend Sec. 1 (Sec. 12), page 7, line 3, by striking out "12." and inserting: 13.

Amend Sec. 1 (Sec. 13), page 8, line 15, by striking out "13." and inserting: 14.

Amend Sec. 1 (Sec. 14), page 9, line 1, by striking out "14." and inserting: 15.

Amend Sec. 1 (Sec. 15), page 9, line 23, by striking out "15." and inserting: 16.

Amend Sec. 1 (Sec. 16), page 12, line 22, by striking out "16." and inserting: 17.

Amend Sec. 1 (Sec. 17), page 13, line 19, by striking out "17." and inserting: 18.

On the question,

Will the Convention agree to the amendment to the amendment?

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera. For what purpose does the gentleman rise?

DELEGATE BUTERA. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BUTERA. Does my motion require a second? Is that why you have not acted upon it?

PRESIDENT BRODERICK. Yes, it does.

According to the Parliamentarian it needs 109 votes.

Delegate Butera made a motion to suspend the rules and move this proposal to third reading and permit amendments on third reading, I take it, amendments without the consent of the body as is generally required on third reading.

DELEGATE BUTERA. Mr. President, that is why I made the motion in two parts, so we would not have to do it again tomorrow and thus possibly deny an individual, such as the amendment which is before us, to offer that amendment.

PRESIDENT BRODERICK. I want to say we have a problem with your motion, and I just want to further point out to you that if we were ready to go over to third consideration, you know, it goes to Style and Drafting, and this motion should go to Style and Drafting, and if you bring it out and it is amended, then it goes back again.

I want to point out one additional thing to Delegate Butera before we act on his motion; that the Chair with the Parliamentarian has been considering procedures to expedite the handling of these matters, and under the procedures that we have been considering, we could have at least two calendars a day. Frankly, as soon as we finish amending this Judiciary Article on second consideration, we are going to have it printed and get it back as soon as possible.

DELEGATE BUTERA. The motion speaks for itself. This body with 109 votes could do whatever it wants to do.

PRESIDENT BRODERICK. There is no problem about that. I just wanted to say to you that we have a problem of it going into Style and Drafting.

DELEGATE BUTERA. Mr. President, a further point of parliamentary inquiry. If you are suggesting to me that, perhaps, we should bypass Style and Drafting for the purpose of expediting this procedure—

PRESIDENT BRODERICK. No. I have not made that suggestion.

DELEGATE BUTERA. If I were to make that suggestion, would I then have to have a three-part motion?

DELEGATE PRENDERGAST. Mr. President, Delegate Butera has suggested that we suspend the rules and move this proposal to third reading; that we further suspend the rules to accept amendments on third reading. Well, our

rules already provide that amendments may be accepted on third reading with a majority vote of delegates that are present.

PRESIDENT BRODERICK. That is correct.

DELEGATE PRENDERGAST. The second part of his amendment is out of order because the rules already provide for it. Is this correct?

PRESIDENT BRODERICK. I assume that what Delegate Butera was saying was that on third reading it was his motion that we can accept the amendments without consent, and I asked him that question. I am not sure, he will have to tell us.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti. For what purpose does the gentleman rise?

DELEGATE COSETTI. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE COSETTI. Mr. President, the first part is out of order, too, because we have not effectively amended this proposal yet, and if we do not, it will go to third consideration without any suspension of the rules. I do not see how we could suspend the rules. We have not done anything to change its status yet.

PRESIDENT BRODERICK. I agree with Delegate Cosetti, also.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup. For what purpose does the gentleman rise?

DELEGATE STROUP. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE STROUP. Did Delegate Butera withdraw his motion?

PRESIDENT BRODERICK. I think the Parliamentarian ruled that the motion at this time was out of order.

DELEGATE STROUP. Thank you, Mr. President. I just wanted to hear that statement made.

MOTION TO ADJOURN

PRESIDENT BRODERICK. The Chair recognizes Delegate Burkholder.

DELEGATE BURKHOLDER. I move that we adjourn. It is too late to consider any of these amendments, and I am too sleepy and tired, and I do not intend to stay here any more.

PRESIDENT BRODERICK. We have a motion to adjourn. Is that seconded?

DELEGATE MURRAY. It has been seconded.

PRESIDENT BRODERICK. We have a motion to adjourn by Delegate Burkholder and it was seconded by Delegate Murray that we adjourn until 9:00 o'clock tomorrow morning.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—39

Allison	Casey	Kauffman	Pechan
Amsterdam	Clinger	King	Rappaport
Baldrige	Desmond	Krill	Redick
Barry	Forster	Leinbach	Solomon
Bloom	Fortney	Levin	Spaeth
Braham	Griffith	Markley	Stout
Broderick	Hannum	Miller, R.	Thomson
Burkholder	Himes	Murray	Tomasetk
Butera	Hocker	O'Donnell	Van Sant
Caron	Horne	Orban	

NAYS—91

Aurentz	Feather	Mattioni	Sahli
Baldwin	Filson	McGeary	Scales
Banes	Fleming	McGlynn	Scarlett
Barron	Fohl	Meyer	Scott
Bashoff	Gabreski	Michener	Scranton
Benedict	Gehrlein	Miller, D.	Sebastian
Benfield	Gerber	Moorhead	Sharp
Brennan	Goldman	More	Shettig
Brown	Goldstein	Morton	Shively
Cain	Gouger	Nelson	Shoemaker
Caputo	Heyburn	Orbin	Silverman
Clark	Hook	Pasquerilla	Strickler
Conley	Hostetler	Popii	Stroup
Corey	Huggins	Pott	Swope
Cortese	Irvis	Powell	Tate
Cosetti	Jirolanio	Prendergast	Waldron
Croop	Keller, J.	Quiles	Warman
Cunningham	Kelly	Rea	Welsh
Dailey	Kline	Reynolds	Westerberg
Devlin	Laputka	Richter	Whittum
Erwin	Leach	Roberts	Wilcox
Fawcett	Lee, L.	Rovner	Woodside
Fay	Mangery	Ruth	

NOT VOTING—33

Aberman	Dumbauld	Keller, M.	Pelletier
Bagenstose	Fagan	Lane	Percey
Baldus	Fineman	Lee, K.	Shapiro
Buck	Gray	Leonard	Shrager
Bunting	Harding	Manderino	Thornburgh
Camardella	Hatter	Michael	Tully
Curran	Henderson	Musselman	Wilmarth
Donaldson	Johnson	Otto	Woodring
Donolow			

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate McGlynn.

DELEGATE McGLYNN. Mr. President, this amendment to the amendment provides for a change in the makeup of the judicial nominating commission. It would consist of a judge of the common pleas court elected by the judges of the common pleas court. It would consist of three lawyers elected by the membership of the Pennsylvania Bar Association. It would consist of three members of the academic world, specifically deans of law schools who would serve for three years, after three years, in alphabetical order. I submit, Mr. President, that a judge on the nominating commission would be desirable since his job is to pick judges; three lawyers, if they are qualified, to determine which among lawyers should be nominated; the three deans of law schools because they would be sufficiently removed from politics to give objective views to the candidates.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I believe that this is now the eighth day we have been on this Judiciary Article and I do not know how many times this Convention, in different ways, has voted down a judicial nominating commission. Now it seems to me that all we

are doing is going around the mulberry bush looking for different ways and for various ways to do the same thing. I think it is entirely out of order. I think we have got to stop playing lawyers at this Convention and stop looking for ways to do the same thing over and over again. I move you the previous question on this amendment.

PRESIDENT BRODERICK. It has been moved by Delegate Pasquerilla and seconded by Delegate Westerberg that we close debate on this McGlynn Amendment and that we vote on the McGlynn Amendment.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—131

Aberman	Dailey	Laputka	Richter
Allison	Desmond	Leach	Roberts
Amsterdam	Devlin	Lee, K.	Rovner
Aurentz	Erwin	Lee, L.	Ruth
Bagenstose	Fawcett	Leinbach	Sahli
Baldrige	Fay	Leonard	Scales
Baldus	Feather	Levin	Scarlett
Baldwin	Filson	Mangery	Scott
Banes	Fleming	Markley	Scranton
Barry	Fohl	McGeary	Sebastian
Bashoff	Fortney	Meyer	Sharp
Benedict	Gabreski	Michael	Shettig
Benfield	Gehrlein	Michener	Shively
Braham	Gerber	Miller, D.	Shoemaker
Brennan	Goldman	Miller, R.	Solomon
Broderick	Goldstein	Moorhead	Sprogell
Brown	Gouger	More	Stout
Buck	Griffith	Morton	Strickler
Bunting	Hannum	Murray	Stroup
Butera	Heyburn	Nelson	Swope
Cain	Himes	O'Donnell	Thomson
Caputo	Horne	Orban	Tomascik
Caron	Hostetler	Orbin	Tully
Casey	Huggins	Pasquerilla	Van Sant
Clark	Irvis	Pechan	Waldron
Clinger	Jirolanio	Pelletier	Warman
Conley	Kauffman	Popil	Welsh
Corey	Keller, J.	Pott	Westerberg
Cortese	Keller, M.	Powell	Whittum
Cosetti	Kelly	Prendergast	Wilcox
Croop	King	Quiles	Woodring
Cunningham	Kline	Rea	Woodside
Curran	Krill	Reynolds	

NAYS—14

Barron	Hook	Redick	Silverman
Bloom	Mattioni	Shapiro	Tate
Forster	McGlynn	Shrager	Thornburgh
Hocker	Rappaport		

NOT VOTING—18

Burkholder	Fagan	Henderson	Musselman
Camardella	Fineman	Johnson	Otto
Donaldson	Gray	Lane	Percey
Donolow	Harding	Manderino	Wilmarth
Dumbauld	Hatter		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

The question recurs,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—7

Clinger	Mattioni	Shrager	Thornburgh
Hook	McGlynn	Tate	

NAYS—136

Aberman	Dailey	Krill	Reynolds
Allison	Desmond	Laputka	Richter
Amsterdam	Devlin	Leach	Roberts
Aurentz	Erwin	Lee, K.	Rovner
Bagenstose	Fawcett	Lee, L.	Ruth
Baldrige	Fay	Leinbach	Sahli
Baldus	Feather	Leonard	Scales
Baldwin	Filson	Levin	Scarlett
Banes	Fleming	Mangery	Scott
Barron	Fohl	Markley	Scranton
Barry	Forster	Meyer	Sebastian
Bashoff	Fortney	McGeary	Shapiro
Benedict	Gabreski	Michael	Sharp
Benfield	Gehrlein	Miller, D.	Shettig
Bloom	Gerber	Miller, R.	Shively
Braham	Goldman	Moorhead	Shoemaker
Brennan	Goldstein	More	Silverman
Broderick	Gouger	Morton	Sprogell
Brown	Griffith	Murray	Stout
Buck	Hannum	Nelson	Strickler
Bunting	Heyburn	Orban	Stroup
Butera	Himes	Orbin	Swope
Cain	Hocker	O'Donnell	Thomson
Caputo	Horne	Pasquerilla	Tomascik
Caron	Hostetler	Pechan	Tully
Casey	Huggins	Pelletier	Van Sant
Clark	Irvis	Popil	Waldron
Conley	Jirolanio	Pott	Warman
Corey	Kauffman	Powell	Welsh
Cortese	Keller, J.	Prendergast	Westerberg
Cosetti	Keller, M.	Quiles	Whittum
Croop	Kelly	Rappaport	Wilcox
Cunningham	King	Rea	Woodring
Curran	Kline	Redick	Woodside

NOT VOTING—20

Burkholder	Fagan	Henderson	Musselman
Camardella	Fineman	Johnson	Otto
Donaldson	Gray	Lane	Percey
Donolow	Harding	Manderino	Solomon
Dumbauld	Hatter	Michener	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

SHAPIRO AMENDMENT TO COMMITTEE PROPOSAL No. 7

On the question recurring,
Will the Convention agree to the amendment being offered by Delegate Amsterdam to Committee Proposal No. 7?

DELEGATE SHAPIRO offered the following amendment to the amendment offered by Delegate Amsterdam which was read by the clerk:

Amend page 1 of the amendment by striking out lines 1 to 11 and the written material relative thereto appearing at the bottom of page 1

Amend page 1 of the amendment by striking out "5. Insert "(c)" on line 12 and inserting: Page 7—between lines 2 and 3 (f)

On the question,
Will the Convention agree to the amendment to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. Chairman, Article 7 as it presently reads provides for the selection of statewide judges by appointment by the governor with the advice and consent of two-thirds of the Senate. Delegate Amsterdam has offered an amendment, the purpose of which is principally to provide the voters with a referendum in 1969, I believe, which will allow the voters to adopt a nominating panel for selection of statewide judges. How-

ever, his amendment would delete the provisions for appointment of judges in the interim by the governor with the advice and consent of the Senate and substitute therefor an elective method for selection of such judges. This elective method would be in force not only between now and the time of the referendum, but if the referendum for a judicial nominating commission were not adopted by the electorate in 1969, the method that would then continue in effect would be the elective partisan election method.

My amendment would strike the first eleven lines of the Amsterdam Amendment and thereby I hope to retain the appointive method, first of all, until the 1969 Primary, and thereafter, if in the 1969 Primary the electorate did not support the judicial nominating commission. In other words, if my amendment is adopted the voters will get a crack in 1969 at a referendum, have an opportunity to adopt a judicial nominating panel by referendum in 1969, and if it fails we will have the appointive method which is now in Article 7 remain in effect thereafter.

On the question,
Will the Convention agree to the motion?
It was agreed to.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I rise in opposition to the amendment to the amendment offered by Delegate Shapiro. The elective system has been in effect now for well over a century in this Commonwealth and the people are well aware of their rights in the system. What we are really going to say to them I hope is whether or not they wish it changed, but what Delegate Shapiro would have us do is change it first and then ask the people whether they want to change back. I suggest that will only confuse the issue further, that it has already been confused in the minds of the public and that a simpler approach is the approach of the Amsterdam Amendment.

Mr. President, I move the previous question.

PRESIDENT BRODERICK. It has been moved by Delegate Irvis and seconded by Delegate Jirolanio that we close debate on the Shapiro Amendment to the amendment and that we vote on the matter.

On the question,
Will the Convention agree to the amendment to the amendment?

The roll was recorded as follows:

YEAS—40

Amsterdam	Curran	Michael	Silverman
Baldus	Fortney	Michener	Sprogell
Baldwin	Gabreski	Morton	Stout
Bloom	Hannum	O'Donnell	Tate
Broderick	Himes	Pelletier	Thornburgh
Buck	Hook	Sahli	Tomascik
Bunting	Huggins	Scott	Welsh
Butera	Kauffman	Scranton	Whittum
Clinger	Lee, L.	Shapiro	Wilcox
Cosetti	McGeary	Shrager	Woodring

NAYS—99

Aberman	Fawcett	Laputka	Rappaport
Allison	Fay	Leach	Rea
Aurentz	Feather	Lee, K.	Redick
Baldrige	Filson	Leinbach	Richter
Banes	Fleming	Levin	Roberts
Barron	Fohl	Mangery	Rovner
Barry	Forster	Markley	Ruth
Bashoff	Gehrlein	Mattioni	Scales
Benedict	Gerber	McGlynn	Scarlett
Benfield	Goldman	Meyer	Sebastian
Braham	Goldstein	Miller, D.	Sharp
Brennan	Gouger	Miller, R.	Shettig
Brown	Griffith	Moorhead	Shively
Cain	Heyburn	More	Shoemaker
Caputo	Hocker	Murray	Strickler
Caron	Horne	Nelson	Stroup
Casey	Hostetler	Orban	Swope
Clark	Irvis	Orbin	Thomson
Conley	Jirolanio	Pasquerilla	Tully
Corey	Keller, J.	Pechan	Van Sant
Croop	Keller, M.	Popil	Waldron
Cunningham	Kelly	Pott	Warman
Dailey	King	Powell	Westerberg
Desmond	Kline	Prendergast	Woodside
Erwin	Krill	Quiles	

NOT VOTING—24

Bagenstose	Donolow	Hatter	Musselman
Burkholder	Dumbauld	Henderson	Otto
Camardella	Fagan	Johnson	Percey
Cortese	Fineman	Lane	Reynolds
Devlin	Gray	Leonard	Solomon
Donaldson	Harding	Manderino	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

The question recurs,
Will the Convention agree to the Amsterdam Amendment?

DELEGATE IRVIS. Mr. President, may I now interrogate Delegate Amsterdam briefly?

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE AMSTERDAM. Yes, sir.

DELEGATE IRVIS. Mr. President, I have a technical question only on the amendment. I note on the amendment sheet offered to me, there is a Section 12 listed as judicial qualifications commission. In my printed copy of Proposal No. 7, Printer's No. 26, Section 12 on page 7 is headed "Tenure of Justices, Judges, and Justices of the Peace." I think we have discovered where the error is. Whoever drafted this I think was referring to the clean copy which was unlined and was not a printer's number, but this amendment referring to Printer's No. 26, does not tell me where Section 12 headed "Judicial Qualifications Commission" should be inserted.

DELEGATE AMSTERDAM. This is a new Section 12, Mr. President.

DELEGATE IRVIS. Then, the present Section 12 should be stricken and changed to Section 13, is that correct?

DELEGATE AMSTERDAM. It will become Section 13, that is correct, Mr. President.

DELEGATE IRVIS. As long as that is in the record for Style and Drafting, I wanted to point that out so there will be no confusion.

DELEGATE AMSTERDAM. That is correct.

DELEGATE IRVIS. May I address myself to the amendment?

PRESIDENT BRODERICK. Proceed.

DELEGATE IRVIS. I quite recognize how late the hour is and I quite recognize how fatigued many of us must be, but we have now decided by the vote on the motion to adjourn that we want to finish this business tonight and I think we should.

I have stated over and over again my position on the election versus the appointment of statewide judges and I shall not reiterate. I do here rise in strong support of Delegate Amterdam's Amendment to Proposal No. 7.

I believe it combines the best features of many of the proposals we have already had. It does keep the elective system until such time as the voters of the Commonwealth shall speak, and they will speak at the Primary Election of 1969. They will then tell all of us, individually and in groups, what they feel about the selection versus the election method of getting appellate judges and justices on the bench. I think this is the fairest method of doing this. It is not the method which I would have followed had I had my own way, but I have said over and over again, that we must go with the people and this way gives the people an opportunity to tell us how they will go, and I strongly urge your support for the Amsterdam Amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I have been on my feet for the last 45 minutes trying to get the eye of the President to interrogate on this particular amendment for some clarification myself and maybe for others.

I think the old adage that haste makes waste is well proven here tonight. I do want to thank those who asked for a recess on the Amsterdam Amendment which gave me an opportunity to get my feet on the ground and understand it. I have a few questions, and I shall be brief, to direct to Delegate Amsterdam.

PRESIDENT BRODERICK. You may proceed. I am sure he will answer your questions.

DELEGATE AMSTERDAM. I will be glad to try, Mr. President.

DELEGATE STROUP. I will not be surprised. I direct attention to the Commonwealth part which I have been concerned with. We have created a new Section 4, the number of the judges in the jurisdiction by law. This I take it is done by an act of the General Assembly?

DELEGATE AMSTERDAM. That is correct.

DELEGATE STROUP. Then, we go to page 14 and there we did amend and I think you will recall we set up the time limit as of January 1, 1970 when this should be accomplished, am I correct?

DELEGATE AMSTERDAM. That is correct, sir.

DELEGATE STROUP. If our electorate, in accordance with the amendment in the Primary Election in 1969, should go to the commission system, then the Commonwealth composition, the members would be appointed through that system through the commission and by the governor, is that correct?

DELEGATE AMSTERDAM. That is correct.

DELEGATE STROUP. And the partisan or political complexion of that court would then be determined by that commission and by the governor?

DELEGATE AMSTERDAM. The membership of the court would be, that is correct.

DELEGATE STROUP. If the electorate should defeat the commission proposal in the Primary of 1969, then I take it the complexion of the court will rest with the General Assembly, am I correct?

DELEGATE AMSTERDAM. That is correct.

DELEGATE STROUP. I thank the Delegate, for his response.

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. I have one question that I would like to direct to Delegate Amsterdam.

PRESIDENT BRODERICK. You may proceed.

DELEGATE FORSTER. Not being a lawyer and being more than a little confused, does this amendment do anything to the retention plan of judges elected after one term?

DELEGATE AMSTERDAM. It does not.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. I move the question.

PRESIDENT BRODERICK. The question is moved by Delegate Solomon and seconded by Delegate Miller, that we close debate and vote on the Amsterdam Amendment and unlock the machine. All those in favor on that motion vote yea. Those opposed, vote nay.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—103

Aberman	Cunningham	Laputka	Rea
Alfison	Dailey	Lee, K.	Reynolds
Amsterdam	Devlin	Leinbach	Roberts
Aurentz	Erwin	Leonard	Rovner
Bagenstose	Fay	Leach	Sahli
Baldrige	Filson	Levin	Scales
Baldwin	Forster	Mangery	Scarlett
Barron	Fortney	Markley	Sebastian
Barry	Gabreski	Mattioni	Shapiro
Bashoff	Gebrlein	McGeary	Sharp
Benedict	Gerber	Meyer	Shettig
Benfield	Goldman	Michael	Shively
Braham	Goldstein	Miller, D.	Shrager
Brennan	Gouger	Miller, R.	Silverman
Broderick	Griffith	Moorhead	Solomon
Brown	Heyburn	More	Sprogell
Buck	Himes	Murray	Strickler
Cain	Hook	Nelson	Stroup
Caputo	Horne	Orbin	Swope
Caron	Hostetler	Pasquerilla	Thomson
Casey	Huggins	Pechan	Tomascik
Clark	Irvis	Popil	Tully
Conley	Jirolanio	Pott	Van Sant
Corey	Kelly	Powell	Waldron
Cortese	King	Prendergast	Warman
Croop	Krill	Quiles	

NAYS—40

Baldus	Fohl	Morton	Shoemaker
Banes	Hannum	O'Donnell	Stout
Bloom	Hocker	Orban	Tate
Bunting	Kauffman	Pelletier	Thornburgh
Butera	Keller, J.	Rappaport	Welsh
Clinger	Keller, M.	Redick	Westerberg
Curran	Kline	Richter	Whittum
Desmond	Lee, L.	Ruth	Wilcox
Feather	McGlynn	Scott	Woodring
Fleming	Michener	Scranton	Woodside

NOT VOTING—20

Burkholder	Dumbauld	Hatter	Manderino
Camardella	Fagan	Harding	Musselman
Cosetti	Fawcett	Henderson	Otto
Donaldson	Fineman	Johnson	Percey
Donolow	Gray	Lane	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Amsterdam?

The roll was recorded as follows:

YEAS—108

Aberman	Devlin	Leach	Redick
Allison	Erwin	Lee, K.	Reynolds
Amsterdam	Fay	Leinbach	Richter
Aurentz	Filson	Leonard	Rovner
Bagenstose	Fleming	Levin	Ruth
Baldus	Fohl	Mangery	Sahli
Baldwin	Fortney	Markley	Scales
Barron	Gabreski	Mattioni	Scarlett
Barry	Gehrlein	Meyer	Sebastian
Bashoff	Gerber	Michael	Sharp
Benedict	Goldman	Miller, D.	Shively
Benfield	Goldstein	Miller, R.	Shoemaker
Braham	Gouger	Moorhead	Shrager
Brennan	Griffith	More	Silverman
Brown	Heyburn	Murray	Solomon
Buck	Hocker	Orban	Sprogell
Cain	Horne	Orbin	Strickler
Caputo	Hostetler	Pasquerilla	Stroup
Caron	Huggins	Pechan	Swope
Casey	Irvis	Pelletier	Tate
Clark	Jirolanio	Popil	Thomson
Conley	Keller, J.	Pott	Thornburgh
Cortese	Keller, M.	Powell	Tully
Cosetti	Kelly	Prendergast	Van Sant
Croop	King	Quiles	Waldron
Cunningham	Kline	Rappaport	Westerberg
Dailey	Laputka	Rea	Woodside

NAYS—37

Baldrige	Fawcett	McGeary	Shapiro
Banes	Feather	McGlynn	Shettig
Bloom	Forster	Michener	Stout
Broderick	Hannum	Morton	Tomascik
Bunting	Himes	Nelson	Warman
Butera	Hook	O'Donnell	Welsh
Clinger	Kauffman	Roberts	Whittum
Corey	Krill	Scott	Wilcox
Curran	Lee, L.	Scranton	Woodring
Desmond			

NOT VOTING—18

Burkholder	Fagan	Henderson	Musselman
Camardella	Fineman	Johnson	Otto
Donaldson	Gray	Lane	Percey
Donolow	Harding	Manderino	Wilmarth
Dumbauld	Hatter		

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION TO ADJOURN

PRESIDENT BRODERICK. It has been moved by Delegate Solomon and seconded by Delegate Murray that we adjourn until tomorrow morning at 9:00 a.m. We will unlock the voting machine and vote on the adjournment. There seems to be a difference of opinion. All those in favor of adjournment vote yea. Those opposed to adjourning now will vote nay. Have all the delegates present voted? Apparently they have so let us lock the machine and record the vote.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—41

Aberman	Filson	Leinbach	Redick
Amsterdam	Fleming	Levin	Roberts
Aurentz	Forster	Markley	Shrager
Baldus	Fortney	Miller, D.	Silverman
Barry	Goldman	Murray	Solomon
Bloom	Griffith	O'Donnell	Stout
Broderick	Hannum	Pechan	Tomascik
Casey	King	Pelletier	Van Sant
Clinger	Krill	Popil	Waldron
Desmond	Laputka	Pott	Woodring
Fay			

NAYS—101

Allison	Erwin	Leonard	Sahli
Bagenstose	Fawcett	Mangery	Scales
Baldrige	Feather	Mattioni	Scarlett
Baldwin	Fohl	McGeary	Scott
Banes	Gabreski	McGlynn	Scranton
Barron	Gehrlein	Meyer	Sebastian
Bashoff	Gerber	Michael	Shapiro
Benedict	Goldstein	Michener	Sharp
Benfield	Gouger	Miller, R.	Shettig
Braham	Heyburn	Moorhead	Shively
Brennan	Himes	More	Shoemaker
Brown	Hocker	Morton	Sprogell
Buck	Hook	Nelson	Strickler
Bunting	Horne	Orban	Stroup
Cain	Hostetler	Orbin	Swope
Caputo	Huggins	Pasquerilla	Tate
Caron	Irvis	Powell	Thomson
Clark	Kauffman	Prendergast	Thornburgh
Conley	Keller, J.	Quiles	Tully
Corey	Keller, M.	Rappaport	Warman
Cortese	Kelly	Rea	Welsh
Cosetti	Kline	Reynolds	Westerberg
Croop	Leach	Richter	Whittum
Cunningham	Lee, K.	Rovner	Wilcox
Dailey	Lee, L.	Ruth	Woodside
Devlin			

NOT VOTING—21

Burkholder	Dumbauld	Hatter	Manderino
Butera	Fagan	Henderson	Musselman
Camardella	Fineman	Jirolanio	Otto
Curran	Gray	Johnson	Percey
Donaldson	Harding	Lane	Wilmarth
Donolow			

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

WEDDING ANNIVERSARY RECOGNIZED

DELEGATE IRVIS. Mr. President, before you take up the Casey Amendment, we have a duty to perform to one of our delegate members. He has been married as of this date for 24 years. He promised his wife he would be back home at 7:30 this evening to celebrate their anniversary. She does not believe he is really staying this long on the floor of the Convention and I suggest we put it into the record for Delegate Caron, who sits here behind me, that he is actually physically present and is doing business and not monkey business on his 24th wedding anniversary.

CASEY AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE CASEY offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 1), page 1, line 11, by removing the comma after "peace" and inserting: and

Amend Sec. 1 (Sec. 1), page 1, line 11, by striking out "and traffic courts" and inserting: court

Amend Sec. 1 (Sec. 7), page 2, line 29, by striking out "and Traffic Court"

Amend Sec. 1 (Sec. 7), page 4, lines 3 and 4, by striking out "and a traffic court"

Amend Sec. 1 (Sec. 7), page 4, lines 4 and 5, by striking out "of both"

Amend Sec. 1 (Sec. 10), page 5, lines 1 and 2, by striking out "except the judges of the traffic court in Philadelphia"

Amend Sec. 1 (Sec. 10), page 5, lines 12 and 13, by striking out "and judges of the traffic court in Philadelphia"

Amend Sec. 1 (Sec. 11), page 6, lines 22 to 24, by striking out "except that the" in line 22, all of line 23, and "shall be appointed by the Governor" in line 24.

Amend Sec. 1 (Sec. 12), page 8, line 12, by striking out "court and traffic"

Amend Schedule (Sec. 9), page 16, line 19, by striking out "and traffic court"

Amend Schedule (Sec. 14), page 21, line 6, by striking out "Twenty-two of the" and inserting: The

Amend Schedule (Sec. 14), page 21, lines 5 and 6, by striking out ", as designated by the Governor,"

Amend Schedule (Sec. 14), page 21, lines 7 to 9, by striking out "and" in line 7, all of line 8, and "shall become judges of the traffic court" in line 9

Amend Schedule (Sec. 14), page 22, lines 15 to 22, by striking out all of said lines

Amend Schedule (Sec. 14), page 22, line 23, by striking out "(j)" and inserting: (i)

Amend Schedule (Sec. 14), page 22, line 26, by striking out "(k)" and inserting: (j)

Amend Schedule (Sec. 14), page 22, line 29, by striking out "(l)" and inserting: (k)

Amend Schedule (Sec. 14), page 23, line 2, by striking out "(m)" and inserting: (l)

Amend Schedule (Sec. 14), page 23, line 4, by striking out "(n)" and inserting: (m)

Amend Schedule (Sec. 14), page 23, line 6, by striking out "and to the traffic court"

Amend Schedule (Sec. 14), page 23, line 17, by striking out "and traffic court"

Amend Schedule (Sec. 14), page 23, line 18, by striking out "(o)" and inserting: (n)

Amend Schedule (Sec. 14), page 23, line 21, by striking out "(p)" and inserting: (o)

Amend Schedule (Sec. 14), page 24, line 4, by striking out "(q)" and inserting: (p)

Amend Schedule (Sec. 14), page 24, lines 8 and 9, by striking out ", except those under the motor vehicle laws"

Amend Schedule (Sec. 14), page 25, lines 11 and 12, by striking out both of said lines

Amend Schedule (Sec. 14), page 25, line 13, by striking out "(s)" and inserting: (q)

Amend Schedule (Sec. 14), page 25, line 19, by striking out "(t)" and inserting: (r)

Amend Schedule (Sec. 14), page 25, line 21, by striking out "(u)" and inserting: (s)

Amend Schedule (Sec. 14), page 25, lines 24 and 25, by striking out "and to be elected to and serve for one additional term, but not thereafter"

Amend Schedule (Sec. 14), page 25, line 26, by striking out "(v)" and inserting: (t)

Amend Schedule (Sec. 14), page 26, line 3, by striking out "(w)" and inserting: (u)

Amend Schedule (Sec. 14), page 26, line 8, by striking out "(x)" and inserting: (v)

Amend Schedule (Sec. 14), page 26, line 13, by striking out "(y)" and inserting: (w)

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President and members of this Convention, this amendment which is now on your desks is, in my opinion, an extremely important one and one which I would ask the body to consider most carefully. It is a controversial one. It is one which will require some time to explain and consider and debate. I would prefer very much, Mr. President, since the proposal has already been amended and will, therefore, in the morning, be on second consideration as amended, is that correct?

PRESIDENT BRODERICK. That is right.

MOTION TO ADJOURN

DELEGATE CASEY. I would prefer, subject to the wishes of the Convention we might now adjourn subject only to taking up this amendment the first thing in the morning, which will give the delegates some opportunity to read it and consider it and will give the Committee on Style and Drafting, I should think, the same amount of time to deal with the judiciary proposal as it will have if we consider this amendment tonight, so that I would now make the motion at this time, Mr. President.

PRESIDENT BRODERICK. Delegate Casey, I just want you to know that there are other amendments here and part of your motion to adjourn is perfectly all right but we do have other amendments to consider. My only point is that if you are just making a motion to adjourn, that we take these other amendments up in the morning but—is your motion to cut off these other amendments?

DELEGATE CASEY. No.

PRESIDENT BRODERICK. Then I misunderstood you. So you are making a motion to adjourn. I am sorry, I misunderstood you.

DELEGATE CASEY. My motion was made with the understanding, Mr. President, that mine was the only amendment that was left.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom. For what purpose does the gentleman rise?

DELEGATE BLOOM. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BLOOM. I want to say that if you keep on and wear us old folks out, I say that you are going to have to give us nine hours before you start tomorrow morning's session so that I can sleep and have some breakfast. I am saying that as a warning because I do not believe that I was voted to come down here to commit suicide for any convention or anybody.

PRESIDENT BRODERICK. No. We have other amendments.

The Chair now recognizes Delegate Caron.

DELEGATE CARON. With all due respect to the gentleman, have we not been through the substance of this particular amendment before? I think it is a poor time. I know the Chair has been overly fair in the past on considering amendments for the second time and not requiring

a vote to reconsider, but it seems like the Chair should tighten up a bit at this point. I think we have been through the substance of this amendment before.

PRESIDENT BRODERICK. I will take your advice to get tight but I want you to know that the Chair very carefully went over with counsel and the Parliamentarian the Casey Amendment and this body has not considered this amendment or a similar amendment before, so I can only say, from a parliamentary standpoint, that the gentleman has the right to present his amendment.

Now I recognize Delegate Hook.

DELEGATE HOOK. No offense, Mr. President, to Delegate Casey, but I believe that a motion to adjourn is out of order until other business is taken up before this Convention and voted upon.

DELEGATE CASEY. I am perfectly willing to withdraw it and abide by the wishes of this Convention.

PRESIDENT BRODERICK. The Parliamentarian indicates we have taken up his amendment and the Parliamentarian has indicated that the motion, if he wants to make it to adjourn, is in order. That is what the Parliamentarian has just ruled.

If you want to renew your motion, we can proceed to vote on it or you can pursue your amendment.

DELEGATE CASEY. I so move that we adjourn.

PRESIDENT BRODERICK. You move we adjourn until 9:00 tomorrow morning. Is it seconded?

DELEGATE BAGENSTOSE. I second it.

PRESIDENT BRODERICK. Seconded by Delegate Bagenstose.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman. For what purpose does the gentleman rise?

DELEGATE ABERMAN. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE ABERMAN. If we adjourn tonight, having completed all business, on what day are we for referral to Style and Drafting? Are we on yesterday?

PRESIDENT BRODERICK. No. The Chair will rule you are still on today.

DELEGATE ABERMAN. No. Today is yesterday or else we carry over until Wednesday?

PRESIDENT BRODERICK. We are still on today. Our day ends when we adjourn, according to the Parliamentarian, and the Chair agrees.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—61

Allison	Conley	King	Redick
Amsterdam	Cosetti	Kline	Roberts
Aurentz	Fay	Laputka	Sharp
Bagenstose	Filson	Leinbach	Shively
Baldus	Fleming	Markley	Shrager
Barry	Forster	McGeary	Silverman
Bashoff	Fortney	Michener	Solomon
Bloom	Gabreski	Miller, D.	Sprogell
Braham	Gehrlein	Murray	Stout
Broderick	Goldman	O'Donnell	Strickler
Buck	Heyburn	Pechan	Swope
Bunting	Hocker	Pelletier	Tomascik
Cain	Horne	Popil	Van Sant
Caron	Huggins	Pott	Welsh
Casey	Himes	Rea	Woodring
Clinger			

NAYS—83

Aberman	Fawcett	Mangery	Sahli
Baldrige	Feather	Mattioni	Scales
Baldwin	Fohl	Meyer	Scarlett
Banes	Gerber	McGlynn	Scott
Barron	Goldstein	Michael	Scranton
Benedict	Gouger	Miller, R.	Sebastian
Benfield	Griffith	Moorhead	Shapiro
Brennan	Hannum	More	Shettig
Brown	Hook	Morton	Shoemaker
Butera	Hostetler	Nelson	Stroup
Caputo	Irvis	Orban	Tate
Clark	Jirolanio	Orbin	Thomson
Corey	Kauffman	Pasquerilla	Thornburgh
Cortese	Keller, J.	Powell	Tully
Croop	Kelly	Prendergast	Waldron
Cunningham	Krill	Quiles	Warman
Curran	Leach	Rappaport	Westerberg
Dailey	Lee, K.	Reynolds	Whittum
Desmond	Lee, L.	Richter	Wilcox
Devlin	Leonard	Rovner	Woodside
Erwin	Levin	Ruth	

NOT VOTING—19

Burkholder	Fagan	Henderson	Musselman
Camarcella	Fineman	Johnson	Otto
Donaldson	Gray	Keller, M.	Percey
Donolow	Harding	Lane	Wilmarth
Dumbauld	Hatter	Manderino	

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

POINT OF ORDER

PRESIDENT BRODERICK. The Chair recognizes Delegate Kline. For what purpose does the gentleman rise?

DELEGATE KLINE. I rise to a point of order.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KLINE. Would the Chair please advise the delegates after we finish with the amendments to the judicial articles, what other important business, if any, he wants to conclude in this Convention today?

PRESIDENT BRODERICK. Let me say, Delegate Kline, that we have on our calendar Proposal No. 4, on third consideration, but I see no necessity to take it up tonight. If you are asking the Chair what business we would like to conclude, I think you should ask our fellow delegates who have voted down the motion to adjourn about three times. But I can tell you this: We do have two or three amendments left to the judiciary proposal for consideration and if it is the feeling of the delegates that they want to complete the amendments that we have to the judiciary proposal, we would then have the judiciary article, of course, printed in its amended form and it would be on your desks in the morning.

DELEGATE SCRANTON. Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. May I just make one comment? We have after Delegate Casey's amendment only two other amendments, one of which may not be put in if certain things happen to the Casey Amendment. Delegate Casey is abolishing the traffic court in Philadelphia. The other two amendments that are left are comparatively just as simple. If you will just listen briefly to the delegate who is sponsoring it, I think you could do this job, if you just will not keep interrupting with a lot of parliamentary inquiries.

PRESIDENT BRODERICK. Thank you, Delegate Scranton.

The Chair now recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I realize the lateness of the hour and I will try to keep this as brief as possible.

Last Friday I stood on this floor and urged the Convention to consider carefully every line of the judiciary proposal. I tried to do this myself over the weekend, and I tried to reflect on the words which had been spoken on this floor concerning this proposal, and I reflected, too, on what had been said earlier in this convention regarding the judicial system in Philadelphia. I rise at this time to offer very seriously for the consideration of the delegates an amendment which would make a significant change in the proposal as it left the Judiciary Committee. We have been told time and time again that we have in Proposal No. 7 a unified judicial system, but I have read this proposal over and over again, and it is complex, it is interrelated, and I keep coming back to the basic point that somehow the proposal carves out a special niche, if you will, for the traffic court in the City of Philadelphia. It has separate treatment in the following respects, if I read it correctly: The proposal says in its present form that the judges of the traffic court need not be lawyers. It says that six of the present magistrates in the City of Philadelphia will be the judges in this traffic court. It further states that they will be eligible for re-election under the merit plan, that is, the yes or no vote, and unlike the treatment of municipal court judges who will be composed of the remaining twenty-two magistrates in Philadelphia, and who will get the completion of their present terms and one additional term, the judges of the traffic court, if I read the proposal correctly, are subject to no such limitation. So, you have the result, as I read Proposal No. 7, that we are carving out a separate island within the judicial system of Philadelphia where judges of the traffic court will be made up of magistrates now sitting in Philadelphia, who may never become lawyers and who are not subject to any cut-off in terms of their tenure. I offer this amendment so that the Convention squarely understands, as I do, that this is the effect of the proposal, and I suggest to you that we should look very carefully at the traffic court in Philadelphia to decide whether or not this Convention wants to accord this special preferential treatment to this court. I have done as much research as time would permit on this subject, and I would remind the delegates that we did not know until last Friday what the final form of this proposal would be, but in the intervening time I have done such research as time permits, and I must confess that nowhere do I find in any of the literature on this subject, in the numerous studies that have been made of this subject, any justification for this treatment.

As a matter of fact, everything that I have read is to the contrary. For example, in 1962 a book was written by a gentleman by the name of Sidney Schulman called "Toward Judicial Reform in Pennsylvania." It was a study in court reorganization and is the first modern comprehensive survey of courthouse government at the lower judicial level in this State. This, gentlemen, was extremely uncomplimentary with regard to the minor judiciary system in Philadelphia. He points out that Philadelphia, for example, is the only major city in the country which has not replaced untrained lay judges with lawyer judges. He points out that the 1958 Bureau of Municipal Research Report on the magistrate court in Philadelphia discloses, of the five cities with one million or more population, Philadelphia is the only one that retains the lay judge in its judicial structure. New York, Chicago, Detroit, and Los Angeles have made this replacement with trained judges more than a quarter of a century ago.

Then we move to the year 1964 when the then Attorney General Walter Alessandroni appointed Arlan Specter to make an investigation of the magisterial system in the City of Philadelphia, and Mr. Specter submitted a 515-page report which documented the existence of widespread corruption in the magisterial system in the City of Philadelphia, which he said required tearing out the current system by its roots and replacing it with a new court structure. He said that we were faced with facts of incompetency, indifference, and outright corruption, and he felt that it was imperative that the magisterial system be abolished.

Proposal No. 7, as I read it, does nothing of the kind for the six magistrates in Philadelphia who will be welded into the traffic court, and the other gentlemen that are now serving on the magisterial system in Philadelphia are, by and large, the same individuals who were serving there when this Specter investigation was made. In the Specter report he has a separate section, a separate chapter on the traffic court. His investigation disclosed substantial deficiencies in the enforcement of the motor vehicle laws by this court. There are some very interesting statistics in that report. As the delegate body I am sure knows, notices of violations must be reported to the Bureau of Traffic Safety of the Commonwealth. It is pointed out in the Specter report that of 1,000 cases selected between June of 1962 and January of 1964, no notice was received by the Bureau of Traffic Safety in 69.2% of the cases. Further he states that, according to Police Commissioner Leary of the City of Philadelphia, in 1964, 1,110,685 summonses were issued by this Court. Five hundred and fifty-six thousand were listed for hearings, and of that total 163,000 were heard and 146,000 of these were discharged, with fines being imposed in 10,000, and 5,700 being continued. Thus, out of 157,000 cases the conviction rate was 6.9%

Going on into the more recent history, the Philadelphia Inquirer on the 21st of February, 1968, had the following to say about Committee Proposal No. 7 as it relates to the matter under discussion: "The Convention has rejected this reform"—they are talking about the merit selection—"in large measure, and has decided to hold on to the system of elective judges in most courts." At the same time, the Convention has made a concession to politicians by setting up a separate traffic court which will be manned by six persons who do not need to be lawyers. They will simply be required to complete a course in training and on duties of their office. A haven is thus secured for some of the magistrates. The others will be able to sit on a new municipal court without any bothersome rules prescribing that they be learned in the law for the duration of their present terms, and another six-year term.

The magistrates and politicians, generally, can find much to applaud in the Convention's performance, but what of the public. It will take more than a 60-page booklet and $250,000 worth of press releases to convince many voters that they have not been sold down the river on judicial reform.

At this time, Mr. President, I will save the rest of my time for closing.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. I would like to interrogate Delegate Casey.

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE KAUFFMAN. Delegate Casey suggested that Philadelphia has been treated differently in this regard than the rest of the Commonwealth. Is the jurisdiction of the traffic court any more than the jurisdiction of the justices of the peace throughout the rest of the Commonwealth?

DELEGATE CASEY. Does the delegate mean in terms of the types of cases they can consider?

DELEGATE KAUFFMAN. Yes, Mr. President.

DELEGATE CASEY. I think the jurisdiction of the traffic court is more limited than the jurisdiction of the justices of the peace because their jurisdiction as I understand the proposal, is limited to summary offenses under the motor vehicle laws.

DELEGATE KAUFFMAN. All right, then, they are not handling cases of any more serious nature at least than the justices of the peace throughout the rest of the Commonwealth, is that correct?

DELEGATE CASEY. I think that would be correct, Mr. President.

DELEGATE KAUFFMAN. Is it also correct that the members of the traffic court will have to undergo a training program and pass an examination just as the justices of the peace throughout the rest of the Commonwealth have to do?

DELEGATE CASEY. That is correct, Mr. President.

DELEGATE KAUFFMAN. Is it also correct that there is an option provided for the people of Philadelphia by referendum to vote for a community court system just as they are in the rest of the Commonwealth?

DELEGATE CASEY. Mr. President, I would answer that question in the affirmative subject to this qualification. I am not convinced from my reading of Proposal No. 7 in its present form that a referendum such as the gentleman refers to would accomplish the installation of a community court manned by trained judges in lieu of the municipal court and traffic court. I believe that was the intention of the Shapiro Amendment but I am not satisfied in my own mind, after having read the proposal very carefully, that this objective has been accomplished.

MOTION TO CLOSE DEBATE

DELEGATE KAUFFMAN. Mr. President, since that is exactly the way I read the Shapiro Amendment and because of the other answers I have received to my question from Delegate Casey, I urge that this proposed amendment be defeated and move the question after Governor Scranton has had a chance to speak. And also subject to Delegate Casey's right to close.

PRESIDENT BRODERICK. Yes. I want to say, Delegate Casey, that you have just about a half a minute or so left on your time to close.

Now, there was a motion you made, is that right, Delegate Kauffman?

DELEGATE KAUFFMAN. I move the question after Governor Scranton has had an opportunity to speak.

PRESIDENT BRODERICK. The motion has been seconded by Delegate Keller, so we have a motion on the floor. I think we should vote on the motion, because then we can hear from Delegate Scranton and Delegate Casey in his closing.

On the question,

Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—96

Aberman	Erwin	Lee, L.	Redick
Allison	Fawcett	Leinbach	Richter
Aurentz	Fay	Leonard	Roberts
Bagenstose	Feather	Levin	Rovner
Baldrige	Forster	Mangery	Ruth
Baldwin	Gerber	Markley	Sahli
Banes	Goldman	McGlynn	Scales
Barry	Gouger	Meyer	Scarlett
Benedict	Griffith	Michael	Scott
Benfield	Hannum	Miller, D.	Scranton
Braham	Heyburn	Miller, R.	Sebastian
Brennan	Himes	Moorhead	Shapiro
Broderick	Hostetler	More	Sharp
Butera	Huggins	Nelson	Shively
Caputo	Irvis	Orban	Shrager
Caron	Jirolanio	Orbin	Silverman
Clark	Kauffman	Pasquerilla	Solomon
Conley	Keller, J.	Pechan	Stroup
Corey	Kelly	Pelletier	Thomson
Croop	King	Pott	Van Sant
Cunningham	Kline	Powell	Waldron
Curran	Krill	Prendergast	Warman
Dailey	Leach	Quiles	Westerberg
Desmond	Lee, K.	Rea	Wilcox

NAYS—33

Baldus	Filson	McGeary	Stout
Barron	Fleming	Michener	Swope
Bashoff	Fohl	Morton	Tate
Bloom	Gabreski	Murray	Thornburgh
Buck	Gehrlein	O'Donnell	Tully
Bunting	Hocker	Popil	Welsh
Cain	Hook	Rappaport	Whittum
Casey	Mattioni	Shoemaker	Woodring
Cosetti			

NOT VOTING—34

Amsterdam	Dumbauld	Horne	Percey
Brown	Fagan	Johnson	Reynolds
Burkholder	Fineman	Keller, M.	Shettig
Camardella	Fortney	Lane	Sprogell
Clinger	Goldstein	Laputka	Strickler
Cortese	Gray	Manderino	Tomascik
Devlin	Harding	Musselman	Wilmarth
Donaldson	Hatter	Otto	Woodside
Donolow	Henderson		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE SCRANTON. What Delegate Kauffman says is correct. We do have a provision in here which allows for the justices of the peace and the judges of the traffic court to be members of the bar and the Supreme Court, or to complete a course of training, and we have the provision in the Shapiro Amendment which, if it does not now specifically say the community courts should have members learned in the law, certainly that is what is intended; certainly the Committee on Style and Drafting can take care of it. What I really wanted to add is simply this; the Committee did have considerable discussion on this matter and did take a vote and overwhelmingly ap-

proved the constitutionality of putting a constitutional court in known as the traffic court. Part of this was based on testimony we received from other jurisdictions on how workable this can be.

PRESIDENT BRODERICK. Now, for closing, Delegate Casey, you have about a half a minute left on your time.

DELEGATE CASEY. Mr. President, I would just conclude by reading from a letter sent to the co-chairman of the Judiciary Committee on February the 13th by the Committee of Seventy in Philadelphia, where they advocate what I am doing here tonight.

> "To permit any vestige of the magisterial system to remain would only result eventually in a return to the deplorable conditions which now exist in our minor court system. If this happens it will surely be said that the Constitutional Convention was a dismal failure in terms of magisterial reform in Philadelphia."

Mr. President, the chips are right up on the table now. I have heard a lot of discussion ever since I came to Harrisburg in 1962 about who was for and who was against judicial reform. This is the issue before us now and I urge everyone to vote in favor of this amendment.

On the question,
Will the Convention agree to the amendments being offered by Delegate Casey?

The roll was recorded as follows:

YEAS—52

Aberman	Caputo	Huggins	Popli
Allison	Caron	Irvis	Rappaport
Amsterdam	Casey	Kelly	Roberts
Aurentz	Cosetti	Kline	Ruth
Bagenstose	Fawcett	Mattioni	Sahli
Baldus	Feather	McGeary	Shapiro
Barry	Filson	McGlynn	Sharp
Bashoff	Gabreski	Michael	Silverman
Bloom	Gehrlein	Michener	Stout
Braham	Gerber	Moorhead	Swope
Brown	Gouger	Murray	Tate
Buck	Hook	O'Donnell	Thornburgh
Bunting	Hostetler	Pelletier	Welsh

NAYS—83

Baldrige	Fleming	Levin	Rovner
Baldwin	Fohl	Mangery	Scales
Banes	Forster	Markley	Scarlett
Barron	Goldman	Meyer	Scott
Benedict	Goldstein	Miller, D.	Scranton
Benfield	Griffith	Miller, R.	Sebastian
Brennan	Hannum	More	Shively
Broderick	Heyburn	Morton	Shoemaker
Butera	Himes	Nelson	Solomon
Cain	Hocker	Orban	Stroup
Conley	Jirolanio	Orbin	Thomson
Corey	Kauffman	Pasquerilla	Tully
Cortese	Keller, J.	Pechan	Van Sant
Croop	Keller, M.	Pott	Waldron
Cunningham	King	Powell	Warman
Curran	Krill	Prendergast	Westerberg
Dailey	Leach	Quiles	Whittum
Desmond	Lee, K.	Rea	Wilcox
Devlin	Lee, L.	Redick	Woodring
Erwin	Leinbach	Reynolds	Woodside
Fay	Leonard	Richter	

NOT VOTING—28

Burkholder	Fagan	Horne	Percey
Camardella	Fineman	Johnson	Shettig
Clark	Fortney	Lane	Strager
Clinger	Gray	Laputka	Sprogell
Donaldson	Harding	Manderino	Strickler
Donolow	Hatter	Musselman	Tomascik
Dumbauld	Henderson	Otto	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

JIROLANIO AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE JIROLANIO offered the following amendment which was read by the clerk:

Amend Schedule (Sec. 14), page 24, lines 10 to 23 by striking out all of said lines
Amend Schedule (Sec. 14), page 24, line 24 by striking out "(4)" and inserting: (3)
Amend Schedule (Sec. 14), page 24, line 26 by striking out "(5)" and inserting: (4)
Amend Schedule (Sec. 14), page 25, line 5 by striking out "(6)" and inserting: (5)

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I realize that the time is very late and I also realize that we have been voting no and knocking down all amendments. But I sincerely and earnestly ask each and everyone of you to take Committee Proposal No. 7, Printer's No. 26, and turn to page 24. What I am attempting to do is strike out on page 24, beginning with line 10 to line 25. This is what it says: "All criminal offenses for which no prison term may be imposed or which are punishable by a term of imprisonment of not more than two years, and indictable offenses under the motor vehicle code for which no prison term may be imposed or punishable by a term of imprisonment of not more than three years. In these cases the defendant shall have no right of trial by jury but he shall have the right of appeal for trial de novo to the trial division of the Court of Common Pleas."

And then listen to this: "Unless there are a sufficient number of judges who are members of the bar of the Supreme Court serving in the municipal court to handle such matters, the trial division of the court of common pleas shall have concurrent jurisdiction over the matter."

What this amendment does, it takes away from the people of Philadelphia the same right that everybody else in the Commonwealth of Pennsylvania has, those eleven million people. You are saying to the two million people in the City of Philadelphia: "You are third-class citizens, not even second-class citizens. You do not have trial by jury. You do not have the trial by jury up to the fact where a court could impose a sentence upon you of two years and an indictable offense up to three years, while all over the Commonwealth of Pennsylvania they do have." And then they have a little joker in there that you have a right of trial de novo, an appeal de novo in the court of common pleas. But it does not say that you shall have the right

of a trial by jury de novo. You just go to the court of common pleas on the same facts that you brought before the municipal court of the City of Philadelphia.

Now, I know the time is getting late but I wonder whether or not you just would not think over that particular area that I just pointed out to you. Last night I spent hours over this and I came to the conclusion that regardless of what time it would be, I could not stand here as a lawyer and see the people of Philadelphia being made third-class citizens and being deprived of certain rights which everybody else in the Commonwealth has.

Mind you, they then say: "Yes, when we do get judges." And I must hang my head in shame to realize now that the committee themselves, the Judiciary Committee, came to the realization that they did not have a sufficient number of judges. But when they do have the judges, then the two million people of Philadelphia shall be given the right which they are entitled to. They are being deprived of certain rights that the rest of the Commonwealth has, only because they do not have the judges now. I ask you, ladies and gentlemen and members of this Convention, if you think that is the kind of a thing that you should give to Philadelphia—I have been against Philadelphia many times on propositions that they wanted in the Senate. I have not voted for them all the time here. But I am certainly not going to take away the rights of the people of Philadelphia that the Constitution has. Oh, yes, you may say to me, under our Constitution the trial by jury shall be as heretofore but that only applies to certain laws and applies to common law trials, and does not apply to those matters that are made a crime by the General Assembly.

I say to you, members of this Convention, if you do nothing else for Philadelphia, preserve that right for the two million that you have and give them the same right of trial by jury as the rest of the Commonwealth.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I hate to disagree with Delegate Jirolanio, but this matter was discussed at some length with counsel and I believe, if I am correct, counsel's opinion was that on trial de novo the defendant would have a right to a jury trial. The purpose of the waiver or the non-jury trial is to expedite the cleaning up of minor claims, basically, for which no prison term will be imposed.

We have a similar system working now in Philadelphia that disposes of a great many cases right now and is a great asset to eliminating some of the backlog that would ordinarily build up.

If I am correct—and I believe that possibly that we should hear from counsel on this—it would be impossible and unconstitutional or beyond the scope of this Convention for us to take away from criminal defendants the right to trial by jury. I think the problem that Delegate Jirolanio is worried about, as I read it, does not exist. Trial de novo means trial de novo and the defendant may choose when he appeals to be tried by a jury.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. Mr. President, may I interrogate Delegate Jirolanio?

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE JIROLANIO. You may.

DELEGATE KAUFFMAN. Delegate Jirolanio, is it not true that under the language now contained in the schedule to which your amendment has reference provides that even on the first trial on these matters no judge will sit who is not a member of the bar?

DELEGATE JIROLANIO. That is right.

DELEGATE KAUFFMAN. So that anyone who is being tried for one of these cases will be tried even in the first instance by a member of the bar of the Supreme Court of Pennsylvania, is that right?

DELEGATE JIROLANIO. That is correct.

DELEGATE KAUFFMAN. Is it not true, Delegate Jirolanio, that trial de novo does give the right to the defendant the right to have a trial by jury?

DELEGATE JIROLANIO. Absolutely not, because you cannot read into the language what you think should be there. It merely says "a trial de novo" and a trial de novo, as I look at it in this particular case, would mean that the court of common pleas would merely review the same set of witnesses, listen to the same set of facts as was done in the municipal court. If that is so, I would disagree. If you would insert in there the words "trial by jury in the Court of Common Pleas," I would then sit down.

DELEGATE KAUFFMAN. If you were assured by counsel, Delegate Jirolanio, that the language in there does just that, would you be satisfied?

DELEGATE JIROLANIO. No, for this reason, because it also violates another part of the Constitution of Pennsylvania, the equal protection clause, because the equal protection clause does say it must be uniform and equal in the entire Commonwealth of Pennsylvania, and you would be depriving the people of Philadelphia from something that the rest of the Commonwealth could have.

DELEGATE KAUFFMAN. Is the statement that the language, "trial de novo," does not provide for trial by jury? Is it an opinion? Does he have any authority for that position?

DELEGATE JIROLANIO. Just a moment, I want to apologize because my learned assistant counsel, Delegate Barron, was trying to give me some good advice and unfortunately I could not hear your remarks. Would you be kind enough to repeat it?

DELEGATE KAUFFMAN. What I was asking was whether or not in the delegate's statement that the language, "trial de novo," does not provide for trial by jury as a matter of right, substantiated by any authority or is simply his opinion?

DELEGATE JIROLANIO. I would say it is both my opinion and substantiated by the work that I have done as a lawyer for about 34 years.

DELEGATE KAUFFMAN. And he feels that way regarding the language, "trial de novo," even if counsel of the Convention says it provides for trial by jury?

DELEGATE JIROLANIO. Counsel for the Convention is just another lawyer and they change their opinions day by day, morning and afternoon. May I say, Mr. President, that there is definitely, in line 15, the words to the effect the defendant shall have no right of trial by jury.

DELEGATE KAUFFMAN. Does not line 21 also provide for a trial de novo?

DELEGATE JIROLANIO. But we have gone over that and I have said that "de novo" does not mean trial by jury.

DELEGATE KAUFFMAN. I submit that it does, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I would like to direct a question to my good friend Senator Jirolanio.

PRESIDENT BRODERICK. I am sure he will permit that.

DELEGATE JIROLANIO. It is a pleasure to have the Majority Leader of the distinguished Senate interrogate me.

DELEGATE STROUP. Article 1, Section 6, after side bar conference back here in the rear provides, and I read it from the Constitution, "Trial by jury shall be as heretofore, and the right thereof shall remain inviolate." I, therefore, direct this question: Would the denial of the right to trial by jury as set forth in this proposal not be inconsistent with Article 1, Section 6 of our Constitution?

DELEGATE JIROLANIO. As I stated before, the term "Trial by jury" refers to certain crimes, and you can take away the trial by jury if those crimes were defined by the Legislature and they made them a crime. If you look at the provision in the Constitution which refers to trial by jury, it refers to those crimes that were recognized prior to the Constitution of 1873 and went into effect in 1874, the Common Law crimes that we had at that time.

DELEGATE STROUP. Mr. President, I am not satisfied with Delegate Jirolanio's response, and I would like to ask counsel for the Convention if we can get a response from him on it?

PRESIDENT BRODERICK. I will ask counsel for the Judiciary Committee as well as counsel for the Convention to convey their opinion to Chairman Amsterdam or Chairman Scranton, and they will report it.

The Chair recognizes Delegate Kline.

DELEGATE KLINE. Delegate Jirolanio, one of the problems you laywers make is that you do not realize that we do not understand this language, and I do not know what "de novo" means, and I think you ought to put it in clear, concise English language. Even the Catholic Church has abandoned Latin, and I think we ought to in this Constitution. If you say "de novo" means trial by jury, put it in English so we can understand it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Cortese.

DELEGATE CORTESE. Mr. President, I should like to interrogate Delegate Jirolanio.

PRESIDENT BRODERICK. I am sure he will be happy to be interrogated.

DELEGATE CORTESE. Do you have in your county, the disposal of cases by the method of arbitration?

DELEGATE JIROLANIO. Yes. Are you talking about civil cases?

DELEGATE CORTESE. I am talking about civil cases.

DELEGATE JIROLANIO. Yes.

DELEGATE CORTESE. What may an aggrieved litigant do if he loses his case at the arbitration level?

DELEGATE JIROLANIO. By reason of statute, he is given the right to appeal.

DELEGATE CORTESE. Do you happen to know which statute it is?

DELEGATE JIROLANIO. I do not have my books with me now, and I cannot tell you.

DELEGATE CORTESE. Mr. President, I should like to refresh the legalistic memory of Delegate Jirolanio.

PRESIDENT BRODERICK. The Chair hopes that will not take too long.

DELEGATE CORTESE. The Act of 1836. I may remind Delegate Jirolanio that in that Act there is specifically expressed these words, "The right of appeal for trial de novo." De novo is a Latin phrase which means from the beginning, and so when you take an appeal on a right to a de novo proceeding, you begin all over again, and a person in a civil case who feels aggrieved by the disposition of that case, may as a matter of course go into common pleas and there do one of two things. Either have his case disposed of by a waiver or by a jury trial. Does the delegate agree with that statement of the law?

DELEGATE JIROLANIO. It is not as simple as all that, and I am just a little country lawyer from Northampton County and not as smart as some of you gentlemen from the great City of Philadelphia. I am not familiar with the various methods you use. In my county, I do not think we have what you stated. We have appeal in civil cases, and I never heard of what you told me about the others.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. We have a motion now, and the motion was made by Delegate Cortese. The motion is, as I understand it, that we close the debate and move the question. Do we have a second for it? It is seconded by Delegate Desmond. Let us vote on the motion as it is before the Convention. We will unlock the voting machine. All those in favor of closing debate, vote "yea."

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—103

Aberman	Cunningham	Lee, L.	Richter
Allison	Dailey	Leinbach	Roberts
Amsterdam	Desmond	Leonard	Ruth
Aurentz	Devlin	Levin	Sahli
Bagenstose	Erwin	Mangery	Scarlett
Baldrige	Fawcett	McGeary	Scott
Banes	Fay	Meyer	Scranton
Barry	Feather	Michener	Sebastian
Bashoff	Forster	Miller, D.	Shapiro
Benedict	Fortney	Miller, R.	Sharp
Benfield	Goldman	Moorhead	Shettig
Bloom	Goldstein	More	Shively
Braham	Gouger	Morton	Silverman
Brennan	Griffith	Murray	Stout
Broderick	Hannum	Nelson	Stroup
Brown	Heyburn	Orbin	Swope
Buck	Himes	Pasquerilla	Tate
Cain	Hostetler	Pechan	Thomson
Caputo	Huggins	Pott	Thornburgh
Caron	Irvis	Powell	Van Sant
Casey	Jirolanio	Prendergast	Waldron
Clark	Kauffman	Quiles	Warman
Clinger	Keller, J.	Rappeport	Westerberg
Corey	Krill	Rea	Wilcox
Cortese	Leach	Redick	Woodring
Croop	Lee, K.	Reynolds	

NAYS—27

Baldus	Fleming	King	Popil
Baldwin	Gabreski	Kline	Scales
Barron	Gerber	Mattioni	Shoemaker
Bunting	Gehrlein	McGlynn	Shrager
Conley	Hocker	Michael	Tully
Cosetti	Hook	O'Donnell	Welsh
Filson	Kelly	Orban	

NOT VOTING—33

Burkholder	Fohl	Lane	Rovner

Butera	Gray	Laputka	Solomon
Camardella	Harding	Manderino	Sprogell
Curran	Hatter	Markley	Strickler
Donaldson	Henderson	Musselman	Tomascik
Donolow	Horne	Otto	Whittum
Dumbauld	Johnson	Pelletier	Wilmarth
Fagan	Keller, M.	Percey	Woodside
Fineman			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam. For what purpose does the gentleman rise?

DELEGATE AMSTERDAM. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE AMSTERDAM. The opinion of counsel that was mentioned earlier has not yet been received. That may become very pertinent. Does that mean we may reopen this at a later period, if the opinion indicates there is a need to do so?

PRESIDENT BRODERICK. Let me just say that I had assumed that counsel for the committee and the counsel for the Convention had given you that opinion.

MOTION TO LAY ON TABLE

DELEGATE JIROLANIO. Mr. President, I now move to table my amendment until tomorrow morning at 9:00, so we can get written opinion from counsel, because of counsel's opinion, and because of the importance of this matter to the people of Philadelphia.

PRESIDENT BRODERICK. I am advised by the Parliamentarian that the motion is out of order. I have to, at this time, announce the vote.

DELEGATE JIROLANIO. I am sorry. I apologize.

On the question,
Will the Convention agree to the motion?

PRESIDENT BRODERICK. I understand the motion to lay on the table takes precedence, and we have a motion on the floor to lay on the table. Is that correct? That is the motion of Delegate Jirolanio and seconded by Delegate Keller.

The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. The Convention has just voted to move the previous question. It occurs to me the only thing before the Convention is a vote on the amendment.

PRESIDENT BRODERICK. The Parliamentarian has ruled the motion to lay on the table takes precedence at this time, and I so rule. We will vote on the question of whether this gets laid on the table. We will now unlock the voting machine. We will proceed to vote. All those voting "yea" will vote to lay on the table. Those voting "nay" will vote against the motion. Has everyone had an opportunity to vote?

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—45

Baldius	Gabreski	King	Ruth
Baldwin	Gehrlein	Kline	Sahli
Banes	Gerber	Levin	Scales
Barron	Goldman	Mangery	Scarlett
Bashoff	Hocker	Mattioni	Scott
Caron	Hostetler	McGlynn	Shapiro
Casey	Huggins	O'Donnell	Shrager
Conley	Irvis	Orbin	Tate
Cosetti	Jirolanio	Pott	Thomson
Filson	Keller, J.	Redick	Van Sant
Fleming	Kelly	Richter	Waldron
Fohl			

NAYS—86

Aberman	Cunningham	Leinbach	Roberts
Allison	Dailey	Leonard	Rovner
Amsterdam	Desmond	McGeary	Scranton
Aurentz	Devlin	Meyer	Sebastian
Bagenstose	Erwin	Michener	Sharp
Baldrige	Fawcett	Miller, D.	Shettig
Barry	Fay	Miller, R.	Shively
Benedict	Feather	Moorhead	Shoemaker
Benfield	Forster	More	Silverman
Bloom	Fortney	Morton	Stout
Braham	Goldstein	Murray	Stroup
Brennan	Gouger	Nelson	Swope
Broderick	Griffith	Orban	Thornburgh
Brown	Hannum	Pasquerilla	Tully
Buck	Heyburn	Pechan	Warman
Bunting	Himes	Powell	Welsh
Cain	Hook	Prendergast	Westerberg
Caputo	Kauffman	Quiles	Whittum
Clark	Krill	Rappaport	Wilcox
Corey	Leach	Rea	Woodring
Cortese	Lee, K.	Reynolds	Woodside
Croop	Lee, L.		

NOT VOTING—32

Burkholder	Fagan	Keller, M.	Pelletier
Butera	Fineman	Lane	Percey
Camardella	Gray	Laputka	Popil
Clinger	Harding	Manderino	Solomon
Curran	Hatter	Markley	Sprogell
Donaldson	Henderson	Michael	Strickler
Donolow	Horne	Musselman	Tomascik
Dumbauld	Johnson	Otto	Wilmarth

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron. For what purpose does the gentleman rise?

DELEGATE BARRON. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BARRON. Do I understand that it is counsel's opinion that the words in line 15 of page 24 wherein it is said, "The defendant shall have no right of trial by jury," does not affect the opinion of counsel in this regard?

PRESIDENT BRODERICK. I think you should direct your question to Chairman Amsterdam.

The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. The point recurs that the only thing before the Convention is a vote on Delegate Jirolanio's motion.

PRESIDENT BRODERICK. I think you are absolutely correct, and you will have to get your information after we vote. We will unlock the voting machine.

DELEGATE JIROLANIO. May I have a last opportunity to talk on behalf of the Philadelphians?

PRESIDENT BRODERICK. No, you may not. In that motion to close, there was no reservation to give a closing to the proposal.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Jirolanio?

The roll was recorded as follows:

YEAS—51

Allison	Fay	Jirolanio	Rappaport
Baldus	Feather	Keller, J.	Redick
Baldwin	Filson	Kelly	Ruth
Banes	Fohl	King	Sahli
Barron	Fortney	Kline	Scales
Bashoff	Gabreski	Levin	Shapiro
Braham	Gehrlein	Mattioni	Shrager
Bunting	Gerber	McGlynn	Tate
Caputo	Goldman	O'Donnell	Tully
Casey	Hocker	Orban	Van Sant
Conley	Hostetler	Orbin	Waldron
Cosetti	Huggins	Popil	Welsh
Fawcett	Irvis	Pott	

NAYS—79

Aberman	Dailey	Meyer	Scott
Amsterdam	Desmond	Michener	Scranton
Aurentz	Devlin	Miller, D.	Sebastian
Bagenstose	Erwin	Miller, R.	Sharp
Baldrige	Forster	Moorhead	Shettig
Barry	Goldstein	More	Shively
Benedict	Gouger	Morton	Shoemaker
Benfield	Griffith	Murray	Silverman
Bloom	Hannum	Nelson	Stout
Brennan	Heyburn	Pasquerilla	Stroup
Broderick	Himes	Pechan	Swope
Brown	Hook	Powell	Thomson
Buck	Kauffman	Prendergast	Thornburgh
Caron	Krill	Quiles	Warman
Clark	Leach	Rea	Westerberg
Clinger	Lee, K.	Reynolds	Whittum
Corey	Lee, L.	Richter	Wilcox
Cortese	Leinbach	Roberts	Woodring
Croop	Leonard	Rovner	Woodside
Cunningham	Mangery	Scarlett	

NOT VOTING—33

Burkholder	Fineman	Keller, M.	Otto
Butera	Fleming	Lane	Pelletier
Cain	Gray	Laputka	Percey
Camardella	Harding	Manderino	Solomon
Curran	Hatter	Markley	Sprogell
Donaldson	Henderson	McGeary	Strickler
Donolow	Horne	Michael	Tomascik
Dumbauld	Johnson	Musselman	Wilmarth
Fagan			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MICHENER. Mr. President, I voted against the last amendment for a variety of reasons, but Senator Jirolanio did strike a responsive chord in my heart on some things he said, and I wonder if Style and Drafting is not the proper place to look at these words to see if something really needs to be cleared up. Do you agree to that, Delegate Jirolanio?

DELEGATE JIROLANIO. Absolutely.

DELEGATE MICHENER. I think we should give it a second thought.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis. For what purpose does the gentleman rise?

DELEGATE IRVIS. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE IRVIS. Are we ready to move this proposal now to third consideration, or would it require a suspension of the rules to do so?

PRESIDENT BRODERICK. No. We have to have, under the rules, it printed and looked at again in the morning. You would have to suspend the rules in other words.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis for the adjournment motion.

DELEGATE IRVIS. I move that this Convention do now adjourn until Tuesday, February 27, 1968, at 11:00 a.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Irvis and seconded by Delegate Caron that this Convention do now adjourn until Tuesday, February 27, 1968, at 11 a.m., e.s.t.

The motion was agreed to, and (at 12:55 a.m.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 Tuesday, February 27, 1968 Number 52

The Convention was called to order at 11 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

THE REVEREND WILLIAM F. McCLAIN of the First Presbyterian Church of State College offered the following prayer:

Bless the Lord, O my soul, and all that is within me, bless His holy name.

Almighty God, the enduring reality of all life, out of whom all just power derives, grant us to see in these necessary difficulties before us the opportunities for new achievements in constitutional government through which our people may be guided. Give us the wisdom to see that point at which we can find common agreement and which we can support in order that our basic law may express the full desires and needs of the people and receive their full support. Grant us each this day the spirit of wisdom and understanding, the spirit of counsel and might, the spirit of knowledge and of the fear of the Lord.

Make us of quick understanding and give us a good sense of humor for Christ's sake. Amen.

PLEDGE OF ALLEGIANCE

The Convention joined together in the Pledge of Allegiance, led by Delegate Redick.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. There are no Journals to be approved this morning.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes the Secretary, Delegate Michener.

DELEGATE MICHENER. Mr. President, I want to submit the following requests for leaves of absence:

The delegate from the 48th District, BYRON K. HORNE, for February 27, 1968 to attend an education meeting;

The delegate from the 32nd District, LOUIS L. MANDERINO, for February 27, 1968.

PRESIDENT BRODERICK. Thank you, Secretary Michener.

Is there any objection to the leaves of absence?

The Chair hears none, and the leaves are granted.

DELEGATE MICHENER. I had a rather pleasant request this morning from one of our lady delegates. She wanted to retire permanently from this Convention, from the point of view that her work was done, and her name is Mrs. Pandora. I told her she could go if she would take her luggage with her and I last saw her heading for Richmond, Virginia. They are going to have a Convention down there one of these days.

DELEGATE FAWCETT. Since a dissident member of the female group has left, I suggest that the rest of the women take charge.

CONGRATULATIONS EXTENDED TO DELEGATE

DELEGATE ABERMAN. Yesterday we protected the record so Delegate Caron would not be subject to representation by his wife's counsel. We owe it to another delegate here who is celebrating his 19th wedding anniversary yesterday, Delegate Bunting.

Delegate Bunting gave up his 19th wedding anniversary with his wife to stay with us until 1:30 this morning. I think the record should protect Delegate Bunting.

PRESIDENT BRODERICK. We offer him our sincere congratulations.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Desmond	Leach	Roberts
Allison	Devlin	Lee, K.	Rovner
Amsterdam	Dumbauld	Lee, L.	Ruth
Aurentz	Erwin	Leinbach	Sahli
Baldrige	Fagan	Leonard	Scales
Baldus	Fawcett	Levin	Scarlett
Baldwin	Fay	Manderino	Scott
Banes	Feather	Mangery	Scranton
Barron	Filson	Markley	Sebastian
Barry	Fleming	Mattioni	Shapiro
Bashoff	Fohl	McGeary	Sharp
Benedict	Gabreski	McGlynn	Shettig
Benfield	Gehrlein	Meyer	Shively
Bloom	Gerber	Michael	Shoemaker
Braham	Goldstein	Michener	Shrager
Brennan	Gouger	Miller, D.	Silverman
Broderick	Griffith	Miller, R.	Solomon
Brown	Hannum	Moorhead	Sprogell
Buck	Harding	More	Stout
Bunting	Hatter	Morton	Strickler
Burkholder	Henderson	Murray	Swope
Butera	Heyburn	Nelson	Tate
Cain	Himes	Orban	Thomson
Camardella	Hoeker	Orbin	Thornburgh
Caputo	Hook	Otto	Tomascik
Caron	Horne	Parquerilla	Tully
Casey	Hostetler	Pelletier	Van Sant
Clark	Huggins	Percey	Waldron
Clinger	Jirolanio	Popil	Warman
Conley	Johnson	Pott	Welsh
Corey	Kauffman	Powell	Westerberg
Cortese	Keller, J.	Prendergast	Whittum
Cosetti	Keller, M.	Quiles	Wilcox
Croop	Kelly	Rappaport	Wilmarth
Cunningham	Kline	Rea	Woodring
Curran	Krill	Redick	Woodside
Dailey	Laputka	Reynolds	

PRESIDENT BRODERICK. The electric roll call tabulator indicates that 147 delegates have recorded their presence.

The Chair also notes the presence of the following delegates:

Bagenstose	Goldman	O'Donnell	Richter
Fineman	Irvis	Pechan	Stroup
Forster	King		

CALENDAR

COMMITTEE PROPOSAL ON SECOND CONSIDERATION

Agreeable to order,

The Convention proceeded to the second consideration of **Committee Proposal No. 7, Printer's No. 28,** entitled:

A proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

PRESIDENT BRODERICK. Now, we will take up Proposal No. 7, Printer's No. 28.

The Chair recognizes Delegate Fawcett pursuant to the Chair's promise that as soon as we are free, we would hear Delegate Fawcett.

MOTION

DELEGATE FAWCETT. Mr. President, I believe that we have debated all of the issues until there is absolutely no debate left.

I move you Printer's No. 7, Proposal No. 7.

PRESIDENT BRODERICK. I have a motion by Delegate Fawcett. Is there a second?

DELEGATE NELSON. I second the motion. I understand this will take us back to the original Committee proposal with respect to amendments and therefore, I second it.

PRESIDENT BRODERICK. Delegate Fawcett, do I understand you are moving to advance Proposal No. 7, Printer's No. 28 to second consideration.

DELEGATE FAWCETT. No. 7, the original Committee proposal.

PRESIDENT BRODERICK. The original Committee proposal is not on the calendar, it is not before us at the present time. What you would have to do would be to revert to the original printer's number.

DELEGATE FAWCETT. Have we voted on the original printer's number?

PRESIDENT BRODERICK. The original printer's number has been amended at least 75 or 100 times.

DELEGATE FAWCETT. I know, but we have not voted on it in its original concept.

PRESIDENT BRODERICK. We voted on the amendments and this is the process that we have been going through with all proposals.

We have the proposal presented by the Committee and then, I do not know how many days ago, about seven days ago we started the process of amendment. It was probably longer than that.

DELEGATE FAWCETT. If I move to a prior printer's number, what does that do?

PRESIDENT BRODERICK. I am advised by the Parliamentarian that there can be a motion to revert to the prior printer's number.

DELEGATE NELSON. Which one?

PRESIDENT BRODERICK. We have to find out which printer's number the delegate is referring to.

You are referring to the original Committee proposal?

DELEGATE FAWCETT. Mr. President, I was hopeful that we could consider the original proposal.

PRESIDENT BRODERICK. Delegate Fawcett, I think I understand now what you probably want to do. You want to revert to the prior printer's number and that would be whatever it is on the original proposal that came out of the Committee, and that would be Proposal No. 7 and I will have to find out what that printer's number is. I understand it was Printer's No. 7.

DELEGATE FAWCETT. Yes.

PRESIDENT BRODERICK. Is there a second to Delegate Fawcett's motion?

DELEGATE NELSON. Mr. President, I second the motion.

PRESIDENT BRODERICK. The motion has been made by Delegate Fawcett and seconded by Delegate Nelson that this Convention now revert to Proposal No. 7, Printer's No. 7, which I understand was the original proposal of the Judiciary Committee.

This proposal is open for debate and I will now recognize anyone who wants to be heard.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. As I understand the motion to have been made, the motion is to call up or reconsider the original Proposal No. 7 as brought out by the Committee. Am I wrong or right?

PRESIDENT BRODERICK. I think the motion is to revert to the prior Printer's No. 7, which I think was the procedure used in connection with Proposal 1 or 2 or both.

DELEGATE JIROLANIO. May I ask a further question?

PRESIDENT BRODERICK. Yes.

DELEGATE JIROLANIO. The original proposal has been amended many, many, many times so that the original proposal, before that could be taken up, I believe, as a parliamentary question, that you would have to take up each amendment that was passed and incorporated in the original proposal.

PRESIDENT BRODERICK. All the Chair can say in answer to that is, I hope not.

DELEGATE JIROLANIO. I would like to have a ruling because you have the original proposal, you amended the original proposal, the original proposal is no longer before us.

PRESIDENT BRODERICK. We will give you a ruling if you will just stand by at ease.

The Parliamentarian has stated that the motion is in order.

We have used this motion before in connection with Printer's No. 1 and it, in effect, is a motion to revert to the prior printer's number.

The motion is now open for debate.

The Chair now recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, normally I am not a very excitable sort of person but that was a terrible thing to throw on a fellow the first thing in the morning, that Proposal No. 7, Printer's No. 7. So that there is no misunderstanding in any of your minds as to exactly what has been proposed and what will be on the floor for a vote, it is an attempt to destroy and to negate absolutely everything we have done in the last two weeks.

Now I do not care how much we become enbroiled in argument and in dispute and in compromise in finally working out the final proposal which is Printer's No. 28. Regardless of all that work that has gone into it, that work represents a composite belief of all of us delegates here. To now deny the results of our work is not only wrong insofar as our beliefs are concerned, but is entirely wrong and is, in my opinion, a shoddy attempt to just completely obviate everything we have done and to call everything that we have done of no effect whatsoever. I strongly urge that we turn this down.

MOTION TO TABLE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I believe the issues are sharply drawn. I think everyone comprehends what is intended. Accordingly, I move that Delegate Fawcett's motion be laid upon the table.

PRESIDENT BRODERICK. It has been moved by Delegate Barron and seconded by Delegate Keller that the motion made by Delegate Fawcett be laid on the table.

Just a moment while we check with the Parliamentarian.

I would like to discuss with Delegate Barron his motion, please.

MOTIONS WITHDRAWN

PRESIDENT BRODERICK. Do you want to be heard, Delegate Fawcett?

DELEGATE FAWCETT. I will withdraw my motion.

I hope that I have shaken everyone up sufficiently so that they will be willing to compromise and come to some kind of reasonable decision on this Proposal No. 7.

PRESIDENT BRODERICK. Delegate Fawcett, let me say that the Chair thanks you and I just want to say that you woke them up. I will assume that all other motions have likewise been withdrawn.

Now the question before the Convention is, will the Convention agree to advance Proposal No. 7, Printer's No. 28 to third consideration?

DELEGATE SHAPIRO. Proposal No. 7, Printer's No. 28 does not conform to the actions of this body last evening, specifically in connection with the amendment offered, I believe, by Delegate Amsterdam.

At page 6, lines 29 and 30, it contains the language: ". . . except in the cases of justices of the peace, which shall be by a majority." This language did not appear in the amendment that was presented to us last night.

Now on a number of occasions, both last night and on prior occasions the Chair has consistently ruled that an amendment to an amendment must be in writing. You ruled that way in connection with Delegate McGlynn's offer to amend the Amsterdam Amendment and in connection with my offer to amend the amendment.

PRESIDENT BRODERICK. I want the delegates to know that you are correct. I have consistently so ruled. But when that amendment in language was offered last night by Delegate Amsterdam, there was no objection, and, frankly, the Chair thought he indicated that it was a typographical error.

DELEGATE SHAPIRO. I heard no motion to amend the amendment or to suspend the rules. The rules clearly provide that amendments to amendments must be in writing. I heard no motion to suspend the rules. I, therefore, submit to you, sir, that the amendment, as written and as handed out to the delegates, is the amendment which we adopted last night.

PRESIDENT BRODERICK. As I undertstand it, the amendment was written and handed out to the delegates. There was an explanation. I will call right now on Chairman Amsterdam to repeat the explanation he gave last night. No one seemed to object.

DELEGATE SHAPIRO. I did not object because I heard no motion, Mr. President. I heard everything Delegate Amsterdam said.

DELEGATE AMSTERDAM. Mr. President, I indicated that that portion which Delegate Shapiro is talking to was put in as an inadvertence and represented a complete reversal of a decision made within the preceding second or third legislative day and that it was intended from the beginning that those words which he referred to—namely: ". . . except justices of the peace, which shall be by a simple majority."—was intended to be included as a part of the amendment and, at that time, no objection of any kind was made. I naturally assumed that that was satisfactory unanimously to the entire body.

DELEGATE SHAPIRO. Mr. President, I submit that under our rules, regardless of what Delegate Amsterdam's intention may have been, the amendment that was passed out to all of the delegates and who voted on that amendment was the amendment which does not include the words, and there was no motion to suspend the rules, and the rules clearly provide that amendments to amendments must be in writing.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I move that this body suspend the rules for the purpose of accepting those words and that phraseology.

PRESIDENT BRODERICK. Delegate Irvis, I want you to know that as far as the Chair is concerned, we accepted that phrase last night and that phrase was made part of the amendment. If this body feels that they do not wish that amendment, there can be a motion to reconsider and we can vote on it if that is what Delegate Shapiro wants to do.

The Chair rules that last night, when this statement was made, the official copies of the amendment included that. All the delegates were asked to include that particular phrase in the amendment. We did that to expedite the process. I might add that that was not the first time that that has been done by this body. This was done to expedite the proceedings. It was considered as explained by Delegate Amsterdam a typographical omission, as I understood it.

DELEGATE SHAPIRO. I submit that Delegate Irvis' motion is the proper way to correct the situation but I will accept your ruling.

PRESIDENT BRODERICK. We have it in the official

copy that is right in front of you. It has already been accepted. That is what the Parliamentarian has advised me. As my memory serves me, the amendment we adopted had the language in it.

DELEGATE IRVIS. I support the Chair's ruling absolutely.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. I am getting just as sick and tired of this nitpicking as a great many of the other nonlawyer delegates are and I move Proposal No. 7, Printer's No. 28.

DELEGATE IRVIS. I would second that motion.

PRESIDENT BRODERICK. The motion and the question is, will the Convention agree to advance Proposal No. 7, Printer's No. 28 to third consideration?

It has been moved and seconded.

Are we ready for the question?

The Chair now recognizes Delegate Casey.

DELEGATE CASEY. Point of parliamentary inquiry.

Do we not have a right to speak on this motion?

PRESIDENT BRODERICK. There is a right to speak. There is a right to debate and speak.

I now recognize Delegate Casey.

DELEGATE CASEY. I want to speak to the merits of Proposal No. 7. Before this proposal is placed in position for third consideration, there are a number of points that I want to bring to the attention of this Convention because I think the record should be absolutely clear on this matter. I refer to the traffic court system in the City of Philadelphia as it exists today and as it will exist under Committee Proposal No. 7 in its present form. I rise to speak against that portion of Committee Proposal No. 7 for the following reasons:

The traffic court system in Philadelphia is now a statutory system, presided over, as I understand it, by a chief magistrate who has complete and full power and dominion over the personnel in that department.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. I believe that the learned delegate from Lackawanna County is not speaking on the question because he is now speaking on a matter that has already been passed and decided upon and, therefore, is out of order to talk about the traffic court.

DELEGATE CASEY. I am speaking directly to the point, Mr. President. We have the right now to rise, as I understand the rules, and debate this matter on the merits and to speak either for or against the proposal in its present form.

I am speaking against it. If Delegate Jirolanio wants to speak for it, that is his privilege.

PRESIDENT BRODERICK. I will answer the point of parliamentary inquiry: I think the delegates have a right, at this time, if they so desire, to speak for or against the entire proposal as it now stands. As I have said before, we have this privilege provided by the rules and until we get a motion to close debate and move the question—and that motion cannot be given at this time while the delegate has the floor.

Delegate Casey, you may proceed.

DELEGATE CASEY. Mr. President, the present traffic court system in Philadelphia has been discredited and criticized by every knowledgeable observer, every knowledgeable person who has investigated it. It is a patronage system pure and simple, and my understanding was that one of the primary goals of Proposal No. 7 was to take the judiciary out of politics, and I question seriously whether Committee Proposal No. 7 does it with regard to the traffic court when we consider that the president judge of the traffic court will be appointed by the governor, just as the chief magistrate is now appointed by the governor, and that the president judge will continue to have complete and utter control and dominion over the personnel in that particular department.

I say to you, Mr. President, this is a bad system, whether the governor is a Democrat or a Republican. This is not a system that we should recommend to the people of Philadelphia. This is not a system, Mr. President, I submit, that the people of Philadelphia want. How can we in this body ignore the recommendations of the Specter Report? How can we ignore the recommendations of the American Bar Association committee which investigated the traffic court in 1963 and very clearly said to the Board of Magistrates that the people of Philadelphia have lost confidence in the integrity of that system? How can we ignore the committee of 70 as well as the co-chairman of the Judiciary Committee on February 13th which pointed out that this system is wrong? It should not be perpetuated. How can we freeze in the 28 magistrates in the City of Philadelphia, 22 in the municipal court and 6 in the traffic court? How can we treat them differently and give the municipal court magistrates a double grandfather, not only the completion of their present term, but an additional term? How can we let the judges in the traffic court go on running with no limit on their tenure? What is the justification for this?

We were told last evening that this is the way it is done in other states. Well, I ask the members of this Convention, in the other states that were studied, did those states place in control of the minor judicial system, men who have been discredited and found to be corrupt in the way the magisterial system in Philadelphia has been found to be corrupt? How can we sell this plan to the people of Philadelphia and the people of Pennsylvania, a system which the people in Philadelphia, from all available evidence that I can gather, do not want? How can we say this is really judicial reform for the Commonwealth of Pennsylvania? I have been told that the panacea, the answer to all these questions, is the fact that there is now a referendum provision in this proposal which lets the people of Philadelphia vote on this question.

To that contention I have two answers. No. 1, I am not convinced as a matter of statutory construction, as I read Proposal No. 7, that a referendum on this question would wipe out the municipal court and traffic court and require the judges in those courts be learned in the law, but the second question I raise is a more fundamental one. I do not think on this issue we can pass the buck back to the people of the City of Philadelphia. We were sent here to make a judgment on the minor judicial system in Penn-

sylvania. I am prepared to make that judgment, and I have been told that it is very late and we cannot do anything about it. I say it is not too late. We have until Thursday night at midnight, as I read the statute, and until that time I intend to continue to fight for the best judicial proposal we can find, and I think we can do a lot better than Proposal No. 7 in its present form as it applies to the traffic court in the City of Philadelphia.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair now recognizes Delegate Goldman.

DELEGATE GOLDMAN. I would like to amend my original offering to move this question, and I would like to amend it to the extent of limiting debate to those delegates who are now standing, Delegate Michener and Delegate Kauffman.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MICHENER. I do not wish to speak to the amendment. I want advice from the Chair on a technical problem.

PRESIDENT BRODERICK. I would be glad to answer.

DELEGATE MICHENER. In New York a lot of delegates got into serious trouble because they voted for an amendment like this, which carried a great many things, and then they went out across the state and fought against it. Their rationale was that they thought they had to vote for it in order to terminate the work of the Convention, and yet they were not giving it their sponsorship, and they fell under heavy criticism. I do not want to fall under that criticism. A great many agencies of public opinion are hammering right now for opinions on the Convention, and I think it is a wonderful job that we have done.

I do find in Committee Proposal No. 7, Printer's No. 28, three or four things that I simply cannot speak in favor of, and I want somewhere where I can, to register the fact, although I want to move this forward as Convention business, I do not want to be bound later on by somebody saying, "Well, you voted for it." I have not voted for it. How do we do this?

DELEGATE GOLDMAN. I have a motion on the floor.

PRESIDENT BRODERICK. There is a motion on the floor and the motion is to close debate and vote on the question. Is that correct?

DELEGATE GOLDMAN. That is correct.

DELEGATE CROOP. I second the motion.

PRESIDENT BRODERICK. That motion was seconded by Delegate Croop.

Your motion permitted Delegate Michener and Delegate Kauffman to speak.

DELEGATE GOLDMAN. That was all.

PRESIDENT BRODERICK. I think Delegate Orban was there. I am not sure.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban. For what purpose does the gentleman rise?

DELEGATE ORBAN. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE ORBAN. I would point out to the Chairman of the Judiciary Committee, that under Proposal No. 6, which we have passed, we have constituted various officers as constitutional officers. Will that section of Committee Proposal No. 6, Section 4, be negated by the unified judicial set-up in Proposal No. 7? In other words, can the Supreme Court eliminate any of those officers that are set forth in Section 4 of Proposal No. 6?

I raise the question because I have received two different opinions.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I suggest that is really a legal question. We would like to get the advice of counsel for the Convention.

PRESIDENT BRODERICK. We will have counsel for the Judiciary Committee and counsel for the Convention confer with the Chairmen, and the Chairmen can express the opinion when it is received.

Delegate Michener, I was not ignoring your point of inquiry. I just want to point out from the standpoint of the Chair that we now have a period, and you have been recognized as being within those lines, so that you can still speak within the motion if you wanted to express your opinion.

DELEGATE MICHENER. It is just a technical question as to how a delegate ought to vote. The first provision was divided in two and you could choose. In the third it was the same way. Here, it seems to me, if one votes now in favor of both moving this and voting it final, as I propose to do, it commits you to the whole proposal. How do you enter a disclaimer on the part that you do not want to be held responsible for in the debate that follows?

PRESIDENT BRODERICK. I think that is a matter of the delegate's preference and conscience. You can only say that you are in agreement with everything in the proposal except that you are going to vote for, and I think that is something that every delegate has a right to do, except for the motion that has been made.

SENIOR CLASS OF WARWICK HIGH SCHOOL OF LITITZ WELCOMED

PRESIDENT BRODERICK. I have had a request from Delegate Horne that he has some guests and they have to leave at exaclty 12:00 o'clock, and I promised that they would be recognized. We have with us in the balcony today the Senior Class of Warwick High School, Lititz. They are the guests of Delegates Caron of Berks, Feather of Lebanon, and Horne of Lancaster.

Would they please stand so we can give them our warm cordial welcome?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, we are informed, and those who have been in the conference agree, that the officers which are mentioned in Section 4 of the

Local Government Article are constitutionally protected and cannot be removed by the Supreme Court. However, the Supreme Court under the unified judicial system and its administration may change the duties from time to time, eliminate duties, add duties, but may not under the Constitution remove actually those officers. They are protected.

DELEGATE ORBAN. Thank you.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—117

Aberman	Erwin	Leinbach	Rovner
Allison	Fagan	Leonard	Ruth
Amsterdam	Fawcett	Manderino	Sahli
Aurentz	Fay	Mangery	Scales
Bagenstose	Fineman	Markley	Scarlett
Baldrige	Gabreski	McGeary	Scott
Baldwin	Gehrlein	Meyer	Scranton
Banes	Gerber	Michael	Sebastian
Barry	Goldman	Michener	Shapiro
Benedict	Goldstein	Miller, D.	Sharp
Benfield	Gouger	Miller, R.	Shettig
Brennan	Griffith	Moorhead	Shively
Broderick	Hannum	More	Shrager
Brown	Hatter	Morton	Silverman
Buck	Henderson	Murray	Solomon
Butera	Heyburn	Orbin	Strickler
Cain	Himes	Otto	Stroup
Camardella	Horne	Pasquerilla	Swope
Caputo	Hostetler	Pechan	Tate
Caron	Huggins	Pelletier	Thomson
Clark	Irvis	Popil	Tully
Corey	Jirolanio	Pott	Van Sant
Cortese	Johnson	Powell	Waldron
Croop	Kauffman	Prendergast	Warman
Cunningham	Keller, M.	Quiles	Westerberg
Curran	Krill	Rappaport	Whittum
Dailey	Laputka	Redick	Wilcox
Desmond	Leach	Reynolds	Wilmarth
Devlin	Lee, L.	Roberts	Woodring
Dumbauld			

NAYS—32

Baldus	Clinger	Hocker	Orban
Barron	Conley	Hook	Percey
Bashoff	Cosetti	Keller, J.	Rea
Bloom	Feather	Kelly	Shoemaker
Braham	Filson	Kline	Sprogell
Bunting	Fleming	Mattioni	Stout
Burkholder	Fohl	McGlynn	Thornburgh
Casey	Harding	Nelson	Welsh

NOT VOTING—14

Donaldson	Lee, K.	Gray	Richter
Donolow	Levin	Musselman	Tomascik
King	Forster	O'Donnell	Woodside
Lane	Fortney		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

The question recurs,
Will the Convention agree to the proposal on second consideration?

The roll was recorded as follows:

YEAS—126

Aberman	Desmond	Kelly	Reynolds
Allison	Devlin	Kline	Rovner
Amsterdam	Dumbauld	Krill	Ruth
Aurentz	Erwin	Laputka	Sahli
Bagenstose	Fagan	Leach	Scales
Baldrige	Fawcett	Lee, L.	Scarlett
Baldus	Fay	Leinbach	Scott
Baldwin	Feather	Leonard	Scranton
Banes	Fineman	Manderino	Sebastian
Barron	Fleming	Mangery	Shapiro
Barry	Fohl	Markley	Sharp
Bashoff	Gehrlein	McGeary	Shettig
Benedict	Gerber	Meyer	Shively
Benfield	Goldman	Miller, D.	Shrager
Braham	Goldstein	Miller, R.	Silverman
Brennan	Gouger	Moorhead	Solomon
Broderick	Griffith	More	Strickler
Brown	Hannum	Morton	Stroup
Buck	Hatter	Murray	Tate
Butera	Henderson	Orbin	Thomson
Cain	Heyburn	Otto	Thornburgh
Camardella	Himes	Pasquerilla	Tomascik
Caputo	Hocker	Pechan	Tully
Caron	Horne	Popil	Van Sant
Clark	Hostetler	Pott	Waldron
Conley	Huggins	Powell	Warman
Corey	Irvis	Prendergast	Welsh
Cortese	Jirolanio	Quiles	Westerberg
Croop	Johnson	Rappaport	Whittum
Cunningham	Kauffman	Rea	Wilmarth
Curran	Keller, J.	Redick	Woodside
Dailey	Keller, M.		

NAYS—23

Bloom	Gabreski	Michener	Shoemaker
Bunting	Harding	Nelson	Sprogell
Burkholder	Hook	Orban	Stout
Casey	Mattioni	Pelletier	Wilcox
Clinger	McGlynn	Percey	Woodring
Filson	Michael	Roberts	

NOT VOTING—14

Cosetti	Fortney	Lee, K.	O'Donnell
Donaldson	Gray	Levin	Richter
Donolow	King	Musselman	Swope
Forster	Lane		

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

PRESIDENT BRODERICK. Now, the Chair will take up Proposal No. 4, Printer's No. 27, which is a proposal on third consideration.

The question is, will the Convention agree to advance Proposal No. 4, Printer's No. 27 to final passage?

This is the last opportunity to amend this proposal, but I want to remind the delegates that before an amendment may be received for consideration, it must obtain the consent of a majority of the delegates present, and in accordance with our previous procedure, we first are going to recognize Chairman Johnson who will give the Committee Report, and then after we receive the Committee Report, the other delegates who want to be recognized will be recognized.

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,
The Convention proceeded to the third consideration of **Committee Proposal No. 4, Printer's No. 27,** entitled:

A proposal amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

Amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

On the question,
Will the Convention agree to the proposal on third consideration?

DELEGATE JOHNSON. Mr. President, I stand in place and read the Report on Committee Proposal No. 4.

COMMITTEE ON STYLE AND DRAFTING

519 North Office Building
Harrisburg, Pennsylvania 17106

February 26, 1968

To the Honorable,
The Delegates Assembled,
1967-1968 Pennsylvania Constitutional Convention

Re: Audit and Budget Procedures

Mesdames and Sirs:

We submit herewith our Report on Commmittee Proposal Four respecting audit control of public funds, the Governor's budgets and financial plan, and appropriations.

As we have noted previously, the Committee on Style and Drafting, to insure harmonious usage in style and manner of expression throughout the proposed Article Eight, held this proposal until the Committee had completed its consideration of Proposals Three and Five. Similarly, the Committee, in consultation with one of the Co-Chairmen of the Committee on Arrangement, Submission and Address to the People, has renumbered the sections amended by this proposal to insure a logical numerical pattern in accordance with the view of the Convention expressed Friday last during third consideration of Proposal Three.

The Committee once again acknowledges the cooperative spirit and willing attention to detail of the substantive committee as this Committee sought to discharge its duty of examination and editing under Rule 22. We are pleased to note that the changes in style and manner of expression have met with the agreement of the substantive committee.

Significant Changes in Drafting

1. In Section 10, the description "body" was deleted and a more encompassing noun "entity" inserted.

2. The statement with respect to the officer responsible for the pre-transaction and post-transaction audit has been restated to make clear the sense of the Convention that the officer who initially oversees financial transactions cannot be the officer held responsible for the ultimate verification of those transactions.

3. Section 12 has been rearranged to eliminate unnecessary duplication and to more precisely describe the Governor's responsibilities in the preparation of a budget and financial plan. Similarly, in Section 13 precision of expression was sought by minor changes in style.

4. Section 12 (b) has been reworded to insure that the intention of the Convention to bring all capital expenditures within the scope of the capital budget is realized.

Respectfully submitted,
COMMITTEE ON STYLE AND DRAFTING

By: ROY H. JOHNSON
LAWRENCE L. PELLETIER
Co-Chairmen

ANF:WPH:met

COMMITTEE PROPOSAL NO. 4

A PROPOSAL

Amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section fourteen of article eight of the Constitution of Pennsylvania is amended to read:

Section [14. The making of profit out of the public moneys or using the same for any purpose not authorized by law by any officer of the State, or member or officer of the General Assembly, shall be a misdemeanor and shall be punished as may be provided by law, but part of such punishment shall be disqualification to hold office for a period of not less than five years.] 10. Audit.—The financial affairs of any ENTITY funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to AUDITS made in accordance with generally accepted auditing standards.

ANY COMMONWEALTH OFFICER WHOSE APPROVAL IS NECESSARY FOR ANY TRANSACTION RELATIVE TO THE FINANCIAL AFFAIRS OF THE COMMONWEALTH SHALL NOT BE CHARGED WITH THE RESPONSIBILITY FOR AUDITING THAT TRANSACTION AFTER ITS OCCURRENCE.

Section 2. Article eight of the Constitution of Pennsylvania is amended by adding three new sections to read:

Section 12. Governor's Budgets and Financial Plan.—ANNUALLY, AT the TIMES SET by law, the Governor shall submit to the General Assembly:

(A) A balanced operating budget for the ensuing fiscal year setting forth in detail (I) proposed expenditures CLASSIFIED BY department or agency and BY program AND (II) estimated revenues from all sources. If estimated revenues AND AVAILABLE SURPLUS are LESS THAN proposed expenditures, the Governor shall recommend specific additional sources of revenue sufficient to pay THE deficiency AND the estimated REVENUE TO be derived from each source;

(B) A capital budget for the ensuing fiscal year setting forth in detail PROPOSED expenditures to be financed from the proceeds of OBLIGATIONS OF THE COMMONWEALTH OR OF ITS

AGENCIES OR AUTHORITIES or from operating funds; AND

(C) A financial plan for NOT less than the NEXT succeeding five fiscal years, WHICH plan shall include for each such fiscal year:

(I) PROJECTED operating expenditures CLASSIFIED BY DEPARTMENT OR AGENCY AND BY program, in reasonable detail and ESTIMATED revenues, by major categories, from existing and ADDITIONAL sources, and

(II) PROJECTED expenditures FOR CAPITAL PROJECTS SPECIFICALLY ITEMIZED by purpose, and THE proposed source of financing each.

Section 13. Appropriations.—(a) Operating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues AND SURPLUS available in THE SAME fiscal year.

(b) The General Assembly shall ADOPT a capital budget for the ensuing fiscal year.

Section 14. Surplus.—All surplus of operating funds at the end of the fiscal year shall be appropriated during the ensuing fiscal year by the General Assembly.

Section 3. The following schedule is adopted: Sections TEN, TWELVE, THIRTEEN and FOURTEEN of Article eight shall take effect as soon as possible, but no later than July 1, 1970.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1968 SESSION

PROPOSAL NO. 4

A PROPOSAL

Amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section fourteen of article eight of the Constitution of Pennsylvania is amended to read:

Section 10. Audit.—The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.

Any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the responsibility for auditing that transaction after its occurrence.

Section 2. Article eight of the Constitution of Pennsylvania is amended by adding three new sections to read:

Section 12. Governor's Budgets and Financial Plan.—Annually, at the times set by law, the Governor shall submit to the General Assembly:

(a) A balanced operating budget for the ensuing fiscal year setting forth in detail (i) proposed expenditures classified by department or agency and by program and (ii) estimated revenues from all sources. If estimated revenues and available surplus are less than proposed expenditures, the Governor shall recommend specific additional sources of revenue sufficient to pay the deficiency and the estimated revenue to be derived from each source;

(b) A capital budget for the ensuing fiscal year setting forth in detail proposed expenditures to be financed from the proceeds of obligations of the Commonwealth or of its agencies or authorities or from operating funds; and

(c) A financial plan for not less than the next succeeding five fiscal years, which plan shall include for each such fiscal year:

(i) Projected operating expenditures classified by department or agency and by program, in reasonable detail, and estimated revenues, by major categories, from existing and additional sources, and (ii) projected expenditures for capital projects specifically itemized by purpose, and the proposed source of financing each.

Section 13. Appropriations.—(a) Operating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues and surplus available in the same fiscal year.

(b) The General Assembly shall adopt a capital budget for the ensuing fiscal year.

Section 14. Surplus.—All surplus of operating funds at the end of the fiscal year shall be appropriated during the ensuing fiscal year by the General Assembly.

Section 3. The following schedule is adopted: Sections ten, twelve, thirteen and fourteen of Article eight shall take effect as soon as possible, but no later than July 1, 1970.

PRESIDENT BRODERICK. The Convention will now please come to order so we can receive the report of Style and Drafting on Proposal No. 4, Printer's No. 27.

DELEGATE JOHNSON. Mr. President, every delegate should have these two items of information, a report from the Committee on Style and Drafting and also Proposal No. 4, as it has been revised by the Committee on Style and Drafting. These were distributed yesterday by the pages and I understand they have additional copies if you do not have them at hand.

I will now proceed with our report and you will note the first page simply repeats the rationale of our committee and that we have conferred with the committee and sub-committee chairmen relative to this proposal. We have secured their agreement and we now wish to call your attention to certain significant changes in drafting that had been incorporated into the proposal as now submitted by Style and Drafting.

You will note first of all that in Section 10, "descriptive body" was deleted and we use a more encompassing now "entity," to confirm that, so including those of any "en-

tity created, funded, or financially aided by the Commonwealth."

You will also note that the statement with respect to the officer responsible for the pre-transaction and post-transaction audit have been restated to make it clear; that the officer who initially oversees financial transactions cannot be the officer held responsible for the ultimate verification of those transactions.

If you will again refer to your most recent copy of the proposal, you will see that Section 12 has been re-arranged to eliminate unnecessary duplication and to more precisely describe the governor's responsibilities in the preparation of the budget and financial plan.

There are also minor changes expressed in Section 13.

Finally, Section 12 (b) has been reworded to insure that the intention of this Convention to bring all capital expenditures within the scope of capital budget is realized. With these changes I think you should understand what has been done in the redrafting of this proposal.

PRESIDENT BRODERICK. The Chair will recognize Delegate Hocker, who I think had the microphone first.

DELEGATE HOCKER. Mr. President, I would like to interrogate Delegate Johnson.

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE HOCKER. Mr. President, some of us on the committee are a little bit concerned with what has been done in Style and Drafting. We think that by erasing line 14 and part of 15 and putting the new language in it, they have overstepped their bounds and added new material which changes the original concept that was in the proposal.

DELEGATE JOHNSON. I can say in reply, Mr. President, that this was done with full approval and even the collaboration of the chairman and co-chairman of your Committee.

DELEGATE HOCKER. I agree with that. Mr. President, I would ask the gentleman in his opinion, whether he thinks this does change the concept?

DELEGATE JOHNSON. I think it clarifies it rather than changes it. That is my own judgment.

DELEGATE HOCKER. Mr. President, that is all for Delegate Johnson and I thank the gentleman. Some of us on the original Committee think that they did change the concept. If I may return to this microphone at a later date, I may have some people here who are vitally interested, and I think that they can explain what we are trying to do, before I ask for a vote to offer my amendment. I would like to yield to Delegate Swope, if I may, sir.

PRESIDENT BRODERICK. The Chair will come back to Delegate Hocker.

The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, may I further interrogate Delegate Johnson?

PRESIDENT BRODERICK. You may.

DELEGATE SWOPE. Mr. President, is it a fact that the Auditor General is a Constitutional officer?

DELEGATE JOHNSON. Yes, it is.

DELEGATE SWOPE. Is it a fact that by the Constitution and statute, the Auditor General prepares warrants upon the Treasurer for payment of Commonwealth funds for obligations for which the Commonwealth is responsible?

DELEGATE JOHNSON. Yes.

DELEGATE SWOPE. Is it a fact that the Auditor General by Constitutional power and statutory power, also is the general auditing officer of all the Commonwealth's financial transactions?

DELEGATE JOHNSON. The gentleman is correct, Mr. President.

DELEGATE SWOPE. Is it therefore the intention of the Committee to take away from the Auditor General some of the functions that have for many years been vested in that officer by statute and Constitutional power?

DELEGATE JOHNSON. Mr. President, I think the rationale of the action of the Committee, and again I call attention to the fact with the full collaboration of the representatives of the substantive committee in question, was to clearly separate what is sometimes known as the pre-audit and the post-audit, and not have the same officer in charge of both.

DELEGATE SWOPE. Would this language that has been placed in here by this Committee take away from the Auditor General, either the warranting power or the auditing power?

DELEGATE JOHNSON. That is a legal question, Mr. President.

DELEGATE SWOPE. I think the question should be resolved whether it is legal or otherwise. I think the Convention cannot vote intelligently on this question unless they know.

DELEGATE JOHNSON. My colleague, Delegate Pelletier, may be able to answer that.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Pelletier.

DELEGATE PELLETIER. Mr. President, perhaps I can clarify this matter again. If you will go back to the original copy, the original copy says, "The same Commonwealth officer shall not have the responsibility for both the pre-audit and post-audit function." I assume that means exactly what it says. The function of the Committee here was to try to get away from the use of pre-audit and the post-audit which seems to be confusing, so the Committee tried to describe generally what was covered by the terms pre-audit and post-audit.

To respond directly to the question, I thought the vote of the Convention said, that the pre-audit and the post-audit function should not be exercised by the same officer of the Commonwealth. I think our language says the same thing.

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. May I proceed with further interrogation?

PRESIDENT BRODERICK. You may. Who did you wish to interrogate?

DELEGATE SWOPE. Either chairman.

PRESIDENT BRODERICK. Either Chairman Johnson or Chairman Pelletier.

Chaiman Johnson will stand for interrogation.

DELEGATE SWOPE. I do not think I have had a yes or no answer on my question as to whether this language will deprive the Auditor General of one of the functions that has been vested upon him by the Constitution and

statutory law, that being, namely, the requirement that he warrant the Treasurer to pay funds, and, secondly that he be the general auditing officer of the Commonwealth.

DELEGATE JOHNSON. The matter that was mentioned by Delegate Swope, was not considered as far as I know by either the substantive committee or by the Committee on Style and Drafting. We were concerned with the matter of intent and purpose, and I think that is clearly expressed in the language of the proposal.

DELEGATE SWOPE. Is the delegate saying that one of these functions, then, by this language, would be taken away from the Auditor General?

DELEGATE JOHNSON. That is conceivable, Mr. President.

DELEGATE SWOPE. I think it is not only conceivable, but I think it is absolute, because the Auditor General does perform these two functions by virtue of constitutional and statutory power.

Now, if one of these functions is taken away from him, it is very difficult for me, as a Certified Public Accountant and as a former Deputy State Treasurer, to understand where one of these functions could be placed.

DELEGATE JOHNSON. I understand the delegate's dilemma.

We, as a Committee on Style and Drafting, have merely been trying to carry out the intent of the substantive committee and if the Treasury Department could have one function and the post-audit another, that could solve the dilemma.

DELEGATE SWOPE. I would like to have the gentleman repeat the last sentence because I did not hear it.

DELEGATE JOHNSON. If the Treasury Department could exercise one function and the Auditor General another, that could solve the dilemma.

DELEGATE SWOPE. Mr. President, Delegate Johnson has now given a very interesting sidelight on this—as his opinion, I assume—and I would agree with that opinion, not as a lawyer but as one who is familiar with the workings of Commonwealth government. I think, under the original language, the Treasurer could be made responsible for what has been called the pre-audit.

Now I ask, Mr. President, for a suspension of consideration at this point until counsel for the Convention has answered my question of whether this language will deprive the Auditor General of one of two functions—not only two functions, but one of these two functions which I have repeated: The warranting process and the auditing process. I think we must have a legal ruling on this before we can have any intelligent approach to the question.

PRESIDENT BRODERICK. Delegate Swope, I will ask the counsel for the Committee and counsel to the Convention to confer with you right now to determine your inquiry. I will also ask them to give their answer to the chairman of the substantive committee, Chairman Leonard, so that he may give it to the Convention. This is the way we have been having the opinions given.

DELEGATE SWOPE. Thank you, Mr. President.

PRESIDENT BRODERICK. I will ask the counsel to please confer with Delegate Swope.

Now the Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, I have independently—I did not know about this colloquy that was going to go on—a problem about this wording also. If they are going to reword this section at any time, I would like to make my point. It is unfortunate in Pennsylvania that the Auditor General is not a completely independent office, which is the way it ought to be. It does come under the Executive arm of the government. Frequently, as we know, even in parties, the Governor and the Auditor General are one and the same in their partisanship. This, I think, is also unfortunate. However, since this is the case, we have to take it into consideration when we are raising constitutional articles—and when I read this section, which now says:

"Any Commonwealth officer whose approval is necessary for any transaction relative to financial affairs of the Commonwealth," and I point out that this includes the Governor in many instances, ". . . shall not be charged with the responsibility for auditing that transaction after its occurrence." I would like to point out that the Governor, under our non-independent Auditor General set up, is responsible for any executive action that is taken, including that of the Auditor General, in the final analysis. I think this is putting him in a position which is most unfortunate. May I say that I think this could be easily corrected, as far as I am concerned, by simply pointing out that they shall not be charged with the primary responsibility for the function of auditing, which would then precisely put it where it is and not make the Governor responsible for both of these things.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, I have a few questions I would like to direct to the chairman.

PRESIDENT BRODERICK. You wish to question whom?

DELEGATE MURRAY. Chairman Johnson or Pelletier, either one.

PRESIDENT BRODERICK. Chairman Johnson or Pelletier. Chairman Johnson has the microphone.

DELEGATE MURRAY. Mr. President, was the fiscal code of the Commonwealth considered in the redrafting of this item?

DELEGATE JOHNSON. Not by the Committee, no.

DELEGATE MURRAY. If the fiscal code of the Commonwealth makes both fiscal offices, the Auditor General's Department and the State Treasurer's Department, the person "whose approval is necessary," does that not prohibit the Auditor General from auditing the affairs of the Commonwealth of Pennsylvania?

PRESIDENT BRODERICK. I take it that was a question directed to Chairman Johnson.

DELEGATE MURRAY. Yes, Mr. President.

DELEGATE JOHNSON. Will you please restate it?

DELEGATE MURRAY. If the fiscal code, which gives the authority or the responsibility to the State Treasurer and the Auditor General—and I use the quote directly from the rewording, "whose approval is necessary for the financial transaction," does that not prohibit those two agencies or the two fiscal offices—in particular, does it prohibit the Auditor General from auditing the affairs of the Commonwealth of Pennsylvania?

DELEGATE JOHNSON. Yes, Mr. President.

DELEGATE MURRAY. Another question: This item, which seems to stem from a long attempt to destroy or to diminish the duties of the Auditor General, has been kicking around in the Committee of which I was a part for many months. It has been said someone from the Com-

mittee collaborated with the delegates on the working of this new wording, who was that?

DELEGATE JOHNSON. We had the co-chairmen of the Committee, Delegates Woodring and Leonard, who collaborated with us.

DELEGATE MURRAY. Another question: Regarding the Fohl Amendment, was the intent of the Fohl Amendment not to change the entire functions around and hand out contracts to outside accounting firms; was that concept kept in the new wording of your proposal here?

DELEGATE JOHNSON. Yes. It was our purpose to retain all amendments.

DELEGATE MURRAY. Mr. President, it would seem to me that if the fiscal code would stop the Auditor General and the Treasurer, the two fiscal offices, and, as Governor Scranton said, the administrative offices, from doing the auditing of the transaction after its occurrence, it would almost mandate the use of large accounting firms, doing outside work for the Commonwealth, is that not true?

DELEGATE JOHNSON. That was not the intention.

DELEGATE MURRAY. I know it was not the intention but is that not true?

DELEGATE JOHNSON. That is your judgment.

DELEGATE MURRAY. I think this needs a lot more work. It is not the intention that came out of this committee.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, it is easy to recognize the people who are raising the same questions now and are standing up trying to read something into this where there was no intention for such to be. These same people fought the matter in the sub-committee, they fought it in the standing committee, they fought it on the floor, they fought for reconsideration and in everyone of these areas they were in the minority. Now we have come to this point where it has gone through all these stages and we get up to here and we are going back through the same thing.

Let me tell you several things.

No. 1, these words were written by Delegate O'Donnell, a member of the Style and Drafting Committee, and Judge Woodring and I—particularly myself—to merely put a few clarifying words in there. The basic idea of not putting the words "pre-audit" and "post-audit" was that of Delegate O'Donnell, which I heartily concur with.

No. 2, there is not a question in the world—and this has been said many times—that the idea of this is to strengthen the Auditor General's office and is going to take him off the hook. When it is put in such a way that it is depriving him of jobs and responsibilities, that is looking at it from the wrong viewpoint. It will mean if he chooses, or if the General Assembly prescribes—who we certainly trusted up to this point and I hope we will continue to trust them in the future to write proper laws—it is going to mean that they will designate who will be doing the post-audit work and who will be doing the pre-audit work. What this establishes is nothing new in the Constitution. The Constitution just recently—and you people probably voted upon it at the polls—set up the principle that the same person who is a part of a transaction cannot later audit himself. This was done very recently with the amendment that the State Treasurer may not become the Auditor General until after a four-year period. What do you think that principle is? It is clearly for the reason that a person who has a part of a transaction cannot later audit himself. Now you put that in the Constitution already. Now you are coming back and nit picking at this and trying to make it appear as though it was something it is not. I would very much like to interrogate Governor Scranton, if he will, because I think his point may be well taken and I would like to understand that because that gets to the substance of what we are talking about.

PRESIDENT BRODERICK. The delegate will proceed.

DELEGATE LEONARD. I do not understand how the Governor is put into a bad position here because the meaning of these words is that an officer whose signature or approval is necessary to consummate a transaction, that means that he is head of the part of decision making, he shall not later be asked or have the responsibility for auditing that transaction after it has been consummated.

DELEGATE SCRANTON. My problem, Mr. President, is the word "responsibility." The Governor is responsible under our present system for all Executive Department actions. My suggestion which I just put in—this is the first time I have been a nit picker, and I admit it—but I feel very strongly that I am here to protect the Governor, which is one of my lesser functions in this and all I would suggest is that we take the words "the responsibility for" out and put in "the function of." Then it is clear that it is the function of auditing and not the responsibility of auditing.

DELEGATE LEONARD. That makes sense. I would certainly be willing to accept that wording, Mr. President.

PRESIDENT BRODERICK. Now we will recognize Delegate Swope.

DELEGATE SWOPE. Mr. President, I believe that the counsel have come to a resolution of the question that I propounded previously.

PRESIDENT BRODERICK. I want to ask counsel if they have given their opinion to Chairman Leonard. They are prepared to give their opinion and they are on their way down.

DELEGATE LEONARD. I do not need it. I know the answer. It is crystal clear but I would be glad to have it.

PRESIDENT BRODERICK. That makes it all the clearer.

Now, while they are engaging in that transaction, may I recognize Delegate Dailey?

DELEGATE DAILEY. Mr. President, I came here with greatest intentions in the world. I tried to play it square. I became friends with Delegate Devlin. I trust him. I voted with him and I voted against him. I voted the way I felt and I told the people that voted for me that I would come down here and vote for what I thought was right. But I am not going to desert the party that I am registered with, and Delegate Leonard has got to convince me that somebody is not trying to steal 200 jobs from the Auditor General.

I listened to all you fellows, and you can smile all you want, but we farmers are not so dumb either, and somewhere in here there is a catch. Somewhere in this act is a catch. You gentlemen can smile all you want to. I will ask one thing, what are you going to do with these 200 jobs? Where will they go as they now exist? There are, at present time, with what you are talking about,

a sum of 200 jobs. Where do they go? Do they stay with the Auditor General or do you have 200 employes that have to have a job next fall? I would like to be sure they have those jobs. There is a doubt in my mind. I trust you. We are friends, like I told Delegate Devlin. But I ask you one question, where do these 200 jobs go? I know you will not eliminate them because you never have eliminated any so you will not start now.

DELEGATE LEONARD. Are we through with the questioning?

DELEGATE DAILEY. Yes.

DELEGATE LEONARD. I must answer very coldly that it is not my concern, nor the concern of our Committee, what happens to anyone in the Auditor General's Department or any other office whose function is eliminated. I do not believe that there will be, under this proposal, 200 jobs eliminated but it is not my purpose here, as a member of this Committee involved in the Constitutional Convention, to be concerned with 200 jobs. I think we are trying to establish a principle and I think this principle is well established and well documented. I can present some documentation as to the history of this principle. I just stated it is already written in the Constitution with respect to the Auditor General not being able to have been a Treasurer immediately preceding being elected to Auditor General. That is a well-established principle. I can go back to the report of the Joint State Government Commission in 1950 where it says the post-auditing and pre-auditing functions will be separated. I can go back to the Chessman Report in 1953 which states that the post-auditing and pre-auditing function be separated. I can go back to all sorts of tax books and all sorts of reports written in the state around this country which say that the post-auditing and pre-auditing function should be separated. There is no trick. It is so simple and so basic, and if people get concerned that there will be jobs lost, I am sorry I wasted my three months up here as a member of this Constitutional Convention.

DELEGATE DAILEY. I am sorry about your three months. That is too bad for you. But I am not intellectually dishonest and I would be very hypocritical if I did not have the intestinal fortitude to stand here and ask you that and I am still not convinced that there is not something wrong. There have been no dishonest Treasurers nor have there been dishonest—I do not think that is a matter for this outfit, to try and change those jobs now, that is the Legislature's job. You are a better educated man than I am. The trouble with this whole outfit here is that there are too many that are intellectually dishonest. They can twist these words. That is all we did for three months. We twisted this word and twisted that word. That is why we are here so long. That will suffice for that.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. I shall attempt to be less critical than the last speaker, but I feel just about as strongly concerning this Proposal No. 4.

I would call the attention of the delegates to the fact that to the rear of this Hall are three panels, the center of which has a rather attractive painting thereon. The side panels on either side have no paintings. The reason, I understand, is that the artist became too old or too ill or died and was unable to place a painting thereon. It occurs to me, why did not someone else do the job? Why was not something put in there? The obvious answer is that when you have something beautiful and you want something equally beautiful with it, you do not want to just step in and put anything there just to fill the gap. Now gentlemen, this is certainly true of all artists, all poets, all musicians, all legislators and all delegates to the Constitutional Convention that our product is not equal in all areas. In some areas, it may be laudable. In some areas, it may be superb. In some areas, it may not come up to the full measure of the standard that we would like it. We have already, on the question of state debt, approved unanimously a change in the debt limit. To take this proposal and place it side by side with that one is going to make something good and something not so good stand side by side.

I can agree that there are some laudable comments or concepts in the text of Proposal No. 4 which lies before us for consideration. But just because there are some laudable concepts there, does not mean that we must be duty bound to approve and pass onto the people as constitutional timber those concepts, especially if they do not measure up to the standard which we have set in other areas.

Mr. President, I do not believe that this proposal is necessary to imbed in the Constitution. I believe it contains legislative material. I believe and I respectfully submit that the Committee proceeded with this with all good intent and I regret heartily that I must speak against the fruits of their three months of labor thereon. I would call attention that we, too, the rest of the delegation, spent a great deal of time debating and discussing this question, but that does not excuse us putting before the people and saying we feel this is something they should approve and place in the Constitution of our great State when we feel it is something that does not measure up. It is my opinion that it does not measure up and that it is legislative in nature. It is not necessary for the Commonwealth of Pennsylvania to have this in the Constitution. I intend to vote "no" on this on its final passage and I ask the rest of you to consider carefully whether or not you should not do likewise.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Percey.

DELEGATE PERCEY. Mr. President, I do not see where it is the function of this Convention to concern itself with patronage jobs, and I would like to move that Delegate Leonard would answer Delegate Swope's question, and then I move the question.

PRESIDENT BRODERICK. I will recognize Delegate Murray, and then we will return, if we may.

DELEGATE MURRAY. Mr. President, I would like to direct a few things in line with what was just said. Yes, there is a tremendous political significance to this thing. There are a great number of jobs. There is an element of political piracy involved in this thing, and there is an element of contracts, politically dealt out involved in this job. I am not just speaking off the top of my hat. Delegate Casey unfortunately is in a position in which he is a candidate and he cannot speak for himself. I think a lot of us understand his position. There are hundreds and hundreds of jobs in the Auditor General's office which will be politically pirated off with this move. You are

going to take a large political party in this state, which is going to realize this, and start working against part of your Constitutional Convention work.

If the jobs are not dealt out to the opposite political party, you are going to get back to the contract system, and who gets the contracts and where do they go? Who handles the contracts now for the offices just like this that are allowed to be audited under certain statutes of the law? Let us take the gloves off. Let us call the shots right down the line. I am calling on Delegate Leonard with respect to some of this. Who has audited the Auditor General's office for the last two years? I submit it is the firm of Adler, Faunce and Leonard for the sum of $12,000 to June 30th, 1966.

Who audited the Auditor General's office last year, June 30th, 1967? It was the firm of Peat, Marwick and Mitchell Company. The contracts were signed on September 11, 1967 by Robert L. Leonard, partner, and it was signed by Mr. Sampson, Secretary of Administration, for $22,000. This is for one little small agency of the government with a small budget. What are we talking about in the whole Commonwealth of Pennsylvania, half a million dollars, a million dollars? We are talking about enormous contracts, or enormous patronages. Let us not kid ourselves. This is political piracy in handing out jobs for the big contracts. Let us call the shots down the line. Let us not let this auditing go on in the Constitution, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Leonard.

DELEGATE LEONARD. I would say that Delegate Murray was in error. We also had a contract for the year ending December 30th, 1964 to audit the affairs of the Auditor General. I must say, Mr. President, I had expected this sort of thing was going to come up. It is not surprising as a fight in which we are trying to do something worthwhile here. One of the reasons that I am so interested in the Auditor General's office is because I have been privy to the affairs and have had the opportunity to audit this office for the past three years. Let me say Mr. President, that the Administrative Code and Fiscal Code of the Commonwealth provides for the Governor to be able to audit the financial affairs of the Auditor General. Again, this is showing the division of responsibility so that a person cannot audit himself. In 1964, under the direction of Governor Scranton, I believe it was the first time that the Auditor General's office had been audited, and it was as a result of that audit that I learned a great deal about the auditing function in this Commonwealth. It was as a result of that audit in 1964, and again in 1966 that I set out to do all that I could to improve the effectiveness of the audit functions in this Commonwealth.

I want to make it crystal clear that when Delegate Murray was going to bring this up in the committee; I made it known to all of the committee people that he thought he had something that was going to be one on me. I made it crystal clear that the reason that I know so much about the affairs of the Auditor General is only because I had the opportunity to be the partner in charge of the audit of this office for the last several years.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Swope.

DELEGATE SWOPE. I think I would like to clear up a statement that was made by Chairman Leonard, that by constitutionial provision adopted by the people of Pennsylvania at the Primary Election in 1967 it prevents the State Treasurer from becoming the Auditor General immediately following his term as State Treasurer. It can be very well understood why this was done, because the State Treasurer has financial transactions in his own department, and very obviously ought not be permitted to audit those transactions when he moves over to the Auditor General's department, as he has been able to do throughout a great many years. This is not the same thing as auditing the affairs of the state government. The affairs of the state government are not the affairs of the Treasurer. They are not the affairs of the Auditor General. They are the affairs of the administration, and in the wisdom of our forefathers, they decided that two independent fiscal offices ought to be created in order that they could examine the transactions made by the administration.

Since the question of outside certified public accountants has come up, Mr. President, and I think it is pertinent, completely pertinent to this question, the State of Illinois, which placed something like this in its present constitution, is today employing 60 certified public accounting firms in its auditing procedures. If this is the direction the delegates want to go, I have no objection, but I want my constituents to know that I am not willing to go in that direction.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I am afraid that in these closing days when most of the delegates are quite tired from the energies that they expended in getting these articles together, there might be a tendency to leave pass through this chamber, proposals which do not represent the best work products of this Constitutional Convention. I have very serious misgivings about the wisdom of this section and Committee Proposal No. 4 dealing with audits. Certainly, the language that is used is language that does not have all the clarity of intention and purpose that is possible. Admittedly, the subject matter is one that is complex and one that is not too rapidly understood by members who have not been exposed to this problem, and I am concerned, lest we put out in the form of a constitutional document, language that is going to invite subsequent litigation. I think this is language that will invite litigation. It is language that is totally unnecessary and has no place in the constitutional document. This view is shared by General Schnader whom we all know has been a moving force in bringing about constitutional change in the state, and with whom I have not always agreed as to the merits of constitutional proposals, but with whom I would not disagree as to whether or not language should or should not be found in a Constitution. General Schnader unequivocally stated that this kind of language has no place in a constitutional document, and I share that view completely. As to the merits of the proposal, I will also have very serious reservations as to the wisdom of the incorporation of this language in the Constitution. Under this proposal, as I read it, once the Auditor General signs a warrant, he would be completely estopped from thereafter making an audit of that transaction, because once he signs that warrant, that execution of the warrant,

in effect, constituted an approval by him of the transaction.

Let me tell you what happened just several years ago, which illustrates the shortcoming in such a situation. Several years ago warrants were submitted or requests for warrants were submitted to the Auditor General's office. We subsequently learned that the information that was submitted to the Auditor General's office was false information. The invoices were falsified. The Auditor General had no way of knowing this at the time he issued his warrants. For instance, there was one invoice that provided for reimbursement to an officer, a law enforcement officer of this Commonwealth, for a trip to another part of the country to buy electronic equipment. We did not learn that that electronic equipment included wire-tap equipment, which was contrary to the law of this state, and the expenditure of any money for wire-tap equipment was completely illegal. The Auditor General did not know this. The fact that he approved the warrant for these monies was not a bad reflection on him, but if this language, which we now seek to put in the Constitution, were then in effect, the Auditor General could not have gone back and retraced his steps and made an audit of the monies that were expended by the State Police for the purchase of wire-tap equipment. I say this would have seriously curtailed the proper activities of the Auditor General who is charged with the responsibility of auditing the fiscal affairs of the Commonwealth, and we should think twice about inserting such encumbering language in our constitutional document. Our fiscal code, as Delegate Murray has already stated, clearly spelled out what the responsibilities of the fiscal officers are of this Commonwealth, and if this proposal does have any merit, then I say it should be the subject of legislative enactment and not the subject of embracement within a constitutional document. I would hope that this body would, therefore, move to strike out completely from this constitutional document all language dealing with this post- and pre-audit subject matter. It is one that must be delved into more in depth. It is one that has to be more completely understood, more understood than we at this moment understand it, and one that has no place in the constitutional document.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Clark.

DELEGATE CLARK. Mr. President, I regret that it is necessary to speak again on this subject. It has been debated through hours of subcommittee meetings, through hours of the standing committee and on this floor.

I characterize myself as a businessman in support of this type of language in our proposal. I support completely the stand that Chairman Leonard has taken in this situation. I cannot understand the opposition which Delegate Murray uses to oppose the simple function of auditing the accounts of this state, which is, as I have remarked before, a two billion dollar annual business. We should not under any circumstances permit a situation to exist in this state, or for that matter in any business, which makes it easy for anyone to use dishonest practices. I submit to you, as I did a few days ago, it is our responsibility to set up every standard and every possible means to prevent such things.

Auditing is not something that is opposed to by businessmen. There are towns that have their activities audited regularly, and it is a common practice for financial organizations and public accounting firms to do this, that is outside organizations, and it seems to me that we are coming to a point where we are, again, going over ground which has been carefully explored and carefully considered. With the suggestion that Governor Scranton has made, and I understand there will be an amendment incorporated in the language, it seems to me that we have a good sound piece of work here which we should support and I urge you to do so.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Caron.

DELEGATE CARON. I would like to speak for the proposal and if there is somebody else who would like to speak against it, perhaps they would like to speak first.

PRESIDENT BRODERICK. You may proceed, Delegate Caron.

DELEGATE CARON. The question that disturbs me is the allegations that have been thrown around this morning.

I came from a state which had a scandal, and one of the reasons it had a scandal is because it had nothing within its Administrative Code whereby an audit could be made of the monies handled by the State Auditor General. I realize that this state has never had a scandal and as a practical businessman I think we have an obligation to see that it does not have a scandal. One of the basic ways to avoid the scandal is as Delegate Clark just said, to separate the difference between the man who takes a look at your books and the man who checks it afterwards.

The thought that crosses my mind when we start talking about honesty, is the fact that this does not preclude that some day somebody might come along who has sticky fingers, and I hope if we have established a guideline within our own Constitution, that this can be prevented. One of the things that disturbs me when people get up and talk against an audit is whether or not there is a reason behind their own thinking. I believe that every transaction within the state should be audited, and I do not think there is anything that should not be audited. One of the questions I would like to pose to your own conscience and to your own thinking is whether or not the Legislature's contingency fund should not be audited, and if this is true, then, in my opinion, we have an obligation to support this article. I spent three months on it, and if it is the will of this group to feel that the work that I and others did is in vain, I am quite willing to go along with your conscience, but I do not think so. I will readily agree that there can be minor language changes to, perhaps, make it a little bit more readable and understandable, as I have seen done in other articles and other proposals, but basically and essentially I say that we should have an audit in the State of Pennsylvania, and I support the proposal as submitted.

MOTION

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gouger.

DELEGATE GOUGER. I move you the question.

PRESIDENT BRODERICK. We have a motion to move the question.

I will now recognize Delegate Hocker.

DELEGATE HOCKER. I would ask before we put the

question, we are still having some legal troubles and I am having additional amendments, and before I ask this body to do anything, I want to make sure that I am right in what I am doing. I am sure we all feel the same.

I suggest that we take a lunch break wherein we will iron out the legal problems over the lunch break, and then come back and pick it up from there.

PRESIDENT BRODERICK. I want to point out to Delegate Gouger who rose and made the motion to close debate on the question, that Delegate Hocker has had an amendment that ran into some legal difficulties, and if it had not been for that, I am sure he would have probably introduced it; also Delegate Scranton has an amendment, and he is standing at the microphone. I have not had a second to your motion, but I want to point out to you that both of these gentlemen had come up here with their amendments.

DELEGATE SCRANTON. Mr. President, I think we can get over with mine quickly, because I have already consulted with the Committee chairman and counsel, and it seems to be acceptable to them.

MOTION WITHDRAWN

DELEGATE GOUGER. I withdraw my motion.

DELEGATE HOCKER. The answer I would give to the Governor is that if his amendment goes in and then my amendment, which is already drafted, but I have one legal question on it, it would not fit the article that we are working on if he gets his amendment in.

DELEGATE SCRANTON. Mr. President, if everybody is agreeable to my motion, I will put it in, and then when Delegate Hocker comes up with his problem we can face the problem at that time.

PRESIDENT BRODERICK. I want to say that the Chair is in the position where it can accept an amendment. I want to say we have been having trouble with your language, and we will certainly accommodate it, and I have not read this amendment of Governor Scranton's, so I do not know exactly what it is, except in connection with what he said. So, we are ready to accept amendments.

DELEGATE HOCKER. Mr. President, all I want to say, and I am going to plead with Governor Scranton, since he has always been fair with me. I have not always been fair with him. That is a confession, Governor Scranton. I wish we could iron this out, and then we will move ahead in one thrust rather than confusing the delegation.

DELEGATE SCRANTON. All right, we will get together, Mr. President.

PRESIDENT BRODERICK. Delegate Scranton said that he will be glad to get together with Delegate Hocker.

Now, are we ready for a luncheon recess?

POINTS OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Orbin. For what purpose does the gentleman rise?

DELEGATE ORBIN. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE ORBIN. Thank you. I have with me my wife Ozzie and two of my five children, Robin and Douglas sitting back in the audience.

PRESIDENT BRODERICK. I think that is personal enough. We ask Mrs. Orbin and the children to stand so we can give them our warm cordial greeting.

The Chair recognizes Delegate Shrager.

DELEGATE SHRAGER. I rise on a point of personal privilege.

PRESIDENT BRODERICK. State what it is, please.

DELEGATE SHRAGER. I voted "yea" for the Casey Amendment No. 3, to the famous Proposal No. 7 last night. My vote was not so recorded and I wanted it recorded "yea."

PRESIDENT BRODERICK. We will spread that remark on the record.

COMMITTEE ANNOUNCEMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. I have a committee announcement. The luncheon meeting of the Committee on Arrangement, Submission and Address to the People immediately following the adjournment of this session has been moved from Room 401 to Room 615.

PRESIDENT BRODERICK. The Chair recognizes Delegate Clark.

DELEGATE CLARK. Mr. President. I rise to a point of personal privilege.

PRESIDENT BRODERICK. State what that is, please.

DELEGATE CLARK. Mr. President, I rise to speak on the remarks made by Delegate Gerber yesterday.

Delegate Gerber chose to make some remarks regarding the League of Women Voters, the Association of the American University Women and in fact, it seems to me, cast some doubt upon the activities of all women who are wives, mothers and daughters. I realize one of the closest, finest and most precious assets we have in this Convention at this time is time itself, and I think we also have some honor. Delegate Gerber's remarks were recorded rather broadly in the press; the public in general has come to the conclusion that he was speaking for the entire Convention; I would like to have the record indicate that I for one, do not agree with his comments. I think they are ill-conceived and they were very ill-mannered, and I would like very much to have my thoughts and my feelings spread on the record of this Convention.

DINNER TICKETS

PRESIDENT BRODERICK. The Chair recognizes Delegate Waldron.

DELEGATE WALDRON. Mr. President, I would appreciate it if those who have not picked their dinner tickets will do so. We will be set up in the hall when you come out.

Also, I would like to state at this time, for those who are observing the season of Lent, the Lieutenant Governor's office has had a confirmation that we are permitted to eat meat once that day.

PRESIDENT BRODERICK. This must be a new function of the Lieutenant Governor's office.

Now, unless we hear an objection, I am going to suggest that we recess for lunch until 2:30.

WIFE OF DELEGATE BUCK WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Curran.

DELEGATE CURRAN. Mr. President, I have refrained from introducing any particular guest up to this particular time. It is particularly gratifying to me that for my first introduction I have the privilege of introducing one of the loveliest wives that I have seen appear here at this Convention, and that is Mary Buck from Uniontown, Pennsylvania, who is the wife and bride of Herman Buck.

PRESIDENT BRODERICK. We are very happy she is with us.

RECESS

PRESIDENT BRODERICK. Unless there is objection, we stand in recess for lunch until 2:30.

The Chair hears none, and the Convention is now in recess until 2:30 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

GUESTS WELCOMED

DELEGATE GERBER. Mr. President. I rise on a point of personal privilege.

PRESIDENT BRODERICK. State what your point of personal privilege is.

DELEGATE GERBER. I would like to introduce a constituent of mine, a law partner of mine and an uncle of mine, Mr. Raymond Pearlstein of Montgomery County.

PRESIDENT BRODERICK. I want to say hello to Ray. He has been a friend of mine for many years. I am glad to have you with us.

GUESTS WELCOMED

DELEGATE BARRON. I rise to a point of personal privilege and ask to present my guests.

PRESIDENT BRODERICK. You may proceed.

DELEGATE BARRON. I am very pleased to present my aunt and cousin Frances A. McNitt and Marian E. McNitt.

PRESIDENT BRODERICK. We hope that the family and friends of Delegate Barron will stand up so we can give them our warm cordial welcome.

STUDENTS OF RADNOR TOWNSHIP JUNIOR HIGH SCHOOL WELCOMED

DELEGATE WHITTUM. I rise to a point of personal privilege to introduce some guests.

PRESIDENT BRODERICK. You may proceed.

DELEGATE WHITTUM. I would like to introduce the Student Council of the Radnor Township Junior High School and their teacher, Mr. Donald McKenny. They have come to Harrisburg to learn how to write a Constitution, since they are in the process of revising their student constitution and I hope they can learn something from us.

PRESIDENT BRODERICK. The only thing I can say is that they came to the right place. Stand up and we will give them our cordial greeting. I am very happy to have you with us.

GUESTS WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Redick.

DELEGATE REDICK. Mr. President, I see another guest here from Pittsburgh and I am not speaking for Delegate Fagan, but Mrs. Fagan is in the audience.

DELEGATES WIVES WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Krill.

DELEGATE KRILL. Mr. President, there have been two women with us for a number of weeks. In fact, they have been with us last night up until the very end. I would like to introduce to the delegation Mrs. Pott and my wife, Mrs. Krill.

PRESIDENT BRODERICK. Will Mrs. Pott and Mrs. Krill please stand and let me say again how happy we are to have you with us.

Are we ready to resume the amendment process? The Convention will please come to order.

The Chair will recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I do not know exactly where we were when we left off. I know Delegate Gouger had moved the question. I do not think it was voted on.

PRESIDENT BRODERICK. He withdrew his motion.

The Chair now recognizes you.

MOTION FOR CONSENT TO INTRODUCE HOCKER AMENDMENT TO COMMITTEE PROPOSAL No. 4

DELEGATE HOCKER. Mr. President, at this time I would ask the permission of the delegation to be able to offer an amendment to Proposal No. 4 on third reading. I think I must ask permission.

PRESIDENT BRODERICK. You must at this time ask to obtain the consent of a majority of the delegation present, before you present and offer an amendment. But, we have ruled that you should be able at this time to explain what your amendment is, so the delegates may vote intelligently on this consent.

I have one question that I would like to ask. I have two pieces of paper and they both say Hocker Amendment. Can you tell me which one it is?

DELEGATE HOCKER. The first one that I had drafted and gave. In other words, the amendment taking out the language that was inserted by the Committee on Style and Drafting, Mr. President.

PRESIDENT BRODERICK. Yes. You may proceed with an explanation.

DELEGATE HOCKER. I have already explained this I think, but I will very quickly do it again. I think that the Committee on Style and Drafting went beyond their scope and I think legal counsel has ruled that it is new matter and that it is not the same as the old matter that was in, and for that reason, Mr. President, I present an amendment to erase the language in Proposal No. 4 at the bottom of the page starting on line 15, ending, "any Com-

monwealth Officer," over and including line 3. That is the material that was put in Style and Drafting. That is what I want to amend first.

PRESIDENT BRODERICK. May I ask that we be at ease? There is some question about these amendments and Delegate Hocker, I am sorry but would you come up and would the body be at ease please?

The Chair will recognize Delegate Scranton.

DELEGATE SCRANTON. Mr. President, while we are having a lull, I have been informed that the suggestion I want to make in this amendment can be taken care of by Style and Drafting so I will not have an amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, for the delegation, if you give me permission to amend the amendment that I will present, and it will only be one amendment, we will strike out all of lines 14, 15, 1, 2 and 3, and insert in lieu of "The General Assembly shall designate the officers or department to conduct any such audits." That will be the amendment. Are they being distributed?

PRESIDENT BRODERICK. I am afraid they may have distributed two of yours. They have two. Will you please identify which amendment you wish to present?

DELEGATE HOCKER. The one that has the language on it, "The General Assembly shall designate the officers or departments to conduct any such audits."

PRESIDENT BRODERICK. The Chair recognizes Delegate Whittum.

DELEGATE WHITTUM. On Printer's No. 27, Proposal No. 4, lines 14 and 15 which are crossed out, were originally inserted in this proposal by the amendment of Delegate Fohl. The capitalized language on line 15 and 1, 2 and 3 of the second page were substituted by the Style and Drafting department.

My question is, do we need a vote to reconsider the Fohl Amendment in order to delete that language?

PRESIDENT BRODERICK. The answer to your question is, that we do not need a vote to reconsider because Delegate Hocker is offering a new and different amendment, different language which of course strikes that out, but he offers another amendment which, consistent with the Chair's ruling, heretofore has been that you can do this without a motion to reconsider.

DELEGATE WHITTUM. One further question. If Delegate Hocker's amendment is adopted, does the language of the Fohl Amendment which is now stricken, come back into this proposal?

PRESIDENT BRODERICK. No. My understanding is and I want you to ask Delegate Hocker, but my understanding is of his amendment, that he is striking that language out and inserting new language. Is that what you are doing Delegate Hocker? I do not wish to interpret your amendment because that is your job.

DELEGATE HOCKER. That is true, sir.

PRESIDENT BRODERICK. I just want you to know that Delegate Hocker still has the floor and you have the floor, Delegate Hocker, for the purpose of speaking to the delegates and asking their consent.

DELEGATE HOCKER. That is exactly what I have done. I am still doing it and I am simply asking the delegation whether they will give me permission to insert an amendment on third reading which must be done by consent of the delegates.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron. For what purpose does the gentleman rise?

DELEGATE CARON. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE CARON. The question I have for the Chair is, every time Style and Drafting changes something, does that mean it can be amended? I thought Style and Drafting could not change the concept, just the wording to mean the same thing.

PRESIDENT BRODERICK. I have to answer your question by two answers. You asked me two questions.

One question is, that Style and Drafting, in effect, cannot change the substantive meaning. It can only make changes in the style and the drafting. But this particular amendment, now, is being offered to change the substance of what was in there.

DELEGATE CARON. Am I correct that the assumption is that Style and Drafting has also changed the substance?

PRESIDENT BRODERICK. Let me just say the Chair has not been asked to rule on that but what you are doing is, you are, in effect, on this amendment, striking out both the original Fohl language as well as the language of Style and Drafting and you are inserting new language. That is, if you agree to this amendment.

DELEGATE ABERMAN. I was going to reply as a member of Style and Drafting in an effort to elucidate a bit on this motion. It was never the intention of Style and Drafting to change the language that we found in the original proposal as it came to us off the floor. We have been beset and besieged by any number of persons from both sides of the discussion that this language does not resolve the conflict that existed with the pre-audit and post-audit language. I would think, in the interest of solving this problem the minimum that we should do is allow Delegate Hocker to go onto the floor with this so that we can, once and for all, forestall this entire discussion. Perhaps the best thing we might do is simply delete the entire language from the proposal, because it has engendered more comment than solution, but I think, simply on the motion to reconsider, there are parties on both sides of the fence that would like to have this reopened and resolved.

DELEGATE CARON. The only question I have, Mr. President, is that Style and Drafting admits to the fact that the concept has changed—someone has. My question to you, Mr. President, is, should we not really be voting on Delegate Hocker's amendment based on the original language in the proposal rather than what Style and Drafting has presented? That is what I question.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hocker.

DELEGATE HOCKER. In order to expedite this, I ask the Chair for a ruling on whether or not counsel for the delegation thought that there was a change of concept in what Style and Drafting presented. You asked Mr. Leonard to explain that and he did not, so I am asking the Chair to ask the attorney what his ruling was.

PRESIDENT BRODERICK. To which attorney are you referring?

DELEGATE HOCKER. Mr. Comisky.

PRESIDENT BRODERICK. Mr. Comisky advises me he has not ruled on this language.

I just want to say this, the question you wish to present regarding consent to the amendment makes this a matter that does not have to be decided as to whether or not the language offered by Style and Drafting constitutes a substantive change, because the amendment that you now want to offer is striking out both the language of the Fohl Amendment and the Style and Drafting Committee, and inserting entirely new language.

DELEGATE HOCKER. Mr. President, I will agree with Delegate Aberman when he states there are people in the delegation who are dissatisfied with the whole thing and the first thing we must do is, get the permission of this delegation to reopen, and then we should move from there.

DELEGATE ABERMAN. I second the motion and call for the question.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. Do we have a motion that we close the debate and vote?

DELEGATE ABERMAN. Yes. I have seconded Delegate Hocker's motion.

I now move to close debate on this topic and vote.

PRESIDENT BRODERICK. I understand that it has been moved by Delegate Hocker and seconded by Delegate Aberman that we close debate and vote on the question.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman. For what purpose does the gentleman rise?

DELEGATE GOLDMAN. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GOLDMAN. May I have the right to interrogate without debate?

PRESIDENT BRODERICK. Not after we have a motion on the floor. We have to vote on the motion and see whether or not the body wants to hear more about it. This is a motion to close debate at this time.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—93

Aberman	Desmond	Leinbach	Reynolds
Amsterdam	Erwin	Levin	Roberts
Aurentz	Fagan	Manderino	Rovner
Bagenstose	Gabreski	Mangery	Sahli
Baldrige	Gehrlein	McGeary	Scales
Barry	Gerber	Michael	Scarlett
Bashoff	Goldstein	Michener	Scott
Benedict	Gouger	Miller, D.	Scranton
Benfield	Harding	Miller, R.	Sebastian
Bloom	Hatter	Moorhead	Shoemaker
Braham	Henderson	Murray	Silverman
Brennan	Himes	Nelson	Solomon
Brown	Hocker	Orbin	Strickler
Cain	Hostetler	Otto	Stroup
Camardella	Huggins	Pelletier	Swope
Caputo	Irvis	Percey	Tate
Caron	Johnson	Popil	Thomson
Clark	Kauffman	Powell	Thornburgh
Clinger	Keller, M.	Prendergast	Tully
Conley	Kelly	Quiles	Van Sant
Cortese	King	Rappaport	Warman
Cosetti	Krill	Rea	Whittum
Croop	Lee, L.	Redick	Wilmarth
Dailey			

NAYS—46

Baldwin	Fineman	Markley	Shettig
Banes	Fleming	Mattioni	Shively
Broderick	Fohl	McGlynn	Shrager
Buck	Forster	Meyer	Sprogell
Bunting	Goldman	Mure	Stout
Burkholder	Griffith	Morton	Waldron
Butera	Heyburn	O'Donnell	Welsh
Corey	Jirolanio	Orban	Westerberg
Curran	Keller, J.	Pott	Wilcox
Fawcett	Kline	Richter	Woodring
Feather	Lee, K.	Shapiro	Woodside
Filson	Leonard		

NOT VOTING—24

Allison	Donaldson	Hannum	Musselman
Baldus	Donolow	Hook	Pasquerilla
Barron	Dumbauld	Horne	Pechan
Casey	Fay	Lane	Ruth
Cunningham	Fortney	Laputka	Sharp
Devlin	Gray	Leach	Tomascik

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

MOTION ON CONSENT TO RECEIVE HOCKER AMENDMENT TO COMMITTEE PROPOSAL No. 4

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to receive an amendment to Proposal No. 4 being offered by Delegate Hocker?

We now unlock the voting machine. Remember you are not voting on the amendment. You are voting on the consent. It requires a majority to give consent.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—81

Aberman	Fay	Manderino	Scales
Amsterdam	Feather	Mangery	Shapiro
Bagenstose	Filson	Mattioni	Shettig
Baldus	Fineman	McGeary	Shoemaker
Banes	Fleming	McGlynn	Shrager
Barron	Gabreski	Meyer	Silverman
Barry	Gehrlein	Michener	Solomon
Bashoff	Gerber	Murray	Sprogell
Benedict	Harding	O'Donnell	Stout
Benfield	Henderson	Orbin	Stroup
Braham	Himes	Otto	Swope
Brennan	Hocker	Popil	Tate
Broderick	Hostetler	Prendergast	Thomson
Brown	Huggins	Quiles	Thornburgh
Bunting	Irvis	Rappaport	Tomascik
Camardella	Jirolanio	Redick	Tully
Caputo	Keller, M.	Richter	Waldron
Conley	Kelly	Roberts	Welsh
Cosetti	King	Ruth	Wilmarth
Dailey	Kline	Sahli	Woodside
Fagan			

NAYS—64

Aurentz	Devlin	Lee, K.	Pott
Baldrige	Erwin	Lee, L.	Powell
Baldwin	Fawcett	Leinbach	Rea
Bloom	Fohl	Leonard	Reynolds
Burkholder	Forster	Levin	Rovner

Butera	Goldman	Markley	Searlett
Cain	Goldstein	Michael	Scott
Caron	Gouger	Miller, D.	Sebastian
Clark	Griffith	Miller, R.	Shively
Clinger	Hatter	Moorhead	Strickler
Corey	Heyburn	More	Van Sant
Cortese	Johnson	Morton	Warman
Croop	Kauffman	Nelson	Westerberg
Cunningham	Keller, J.	Orban	Whittum
Curran	Krill	Pelletier	Wilcox
Desmond	Leach	Percey	Woodring

NOT VOTING—18

Allison	Dumbauld	Horne	Pasquerilla
Buck	Fortney	Lane	Pechan
Casey	Gray	Laputka	Scranton
Donaldson	Hannum	Musselman	Sharp
Donolow	Hook		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

HOCKER AMENDMENT TO COMMITTEE PROPOSAL No. 4

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I now present an amendment to Committee Proposal No. 4.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE HOCKER offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 1, lines 14 and 15; page 2, lines 1 to 3, by striking out all of said lines, and inserting: The General Assembly shall designate the officers or departments to conduct any such audits.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, I think we have been over this thoroughly. I think the delegates understand the problem. I do not want to take up all their time and if there are any questions I will be happy to answer them. If not, I am ready to proceed.

PRESIDENT BRODERICK. You mean you are ready to proceed to vote?

The Chair now recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, I think something should be said in opposition to this amendment. It is conceived out of hatred, malice and suspicion. I remember a colleague over on the other side of the Legislature who used to make an annual speech about "suspicion." It is the nastiest word in the English language. It is something that you cannot see, you cannot feel and you cannot guard yourself against it. The only attack that has been made on this section of Proposal No. 4, Mr. President, is because one or two of the delegates have become suspicious and have sown that nasty seed of thought among other delegates. Let us examine what we are talking about here. We are saying that any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the function of—that is the Scranton Amendment—auditing that transaction after its occurrence. I ask you and all of the delegates within the hearing of my voice, what is wrong with that section? If you had a business, if you had a corporation, if you have any kind of financial dealings of your own or in which you were interested, you would want the safeguard of exactly that type of provision. This proposal has come out of the Committee on Taxation and State Finance and that Committee, I might say, including both its Co-Chairmen —excepting present company—and the sub-chairman of several committees and of the committee members which was a good, honest, hard working committee. After debating this problem for a long time to try to put the fiscal affairs, the financial affairs of the Commonwealth on a sound bookkeeping and auditing basis, a basis on which there would be checks and double checks for the continued integrity and the good name of our Commonwealth, out of all that work came this harmless but desirable provision. Now out of this suspicion of which I spoke comes this proposal that we strike all of that. What do we add? We add the General Assembly shall designate the officers or departments to conduct any such audits. And what does that mean? It is a meaningless amendment. I suggest that we uphold the hands of a committee, uphold the hands of the co-chairman and all of its members and vote down this amendment which was born out of vengeance and suspicion.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Forster.

DELEGATE FORSTER. I would say amen, Mr. President, to everything that Delegate Woodring has said. This has been a partisan matter from the beginning, and if you will think back to the day when Proposal No. 4 was first debated on this floor, Chairman Leonard pointed out that when the Constitution of 1874 was drafted, the knowledge of what auditing was was not even known.

The only thing they could do, if I remember his language, was if a man's hands was in the till, put him in the clink. The guts of Proposal No. 4 is in the pre-audit and post-audit which needs to be separated. We have gone through the devious task of having that amendment put in. It was refused for reconsideration last week. Style and Drafting made changes in the language, and now we come along with this stupid amendment to take it out and absolutely destroy the meaning of Proposal No. 4.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Fineman.

DELEGATE FINEMAN. Mr. President, I rise to respectfully ask the members of this Convention to adopt this amendment. I want to assure Delegate Woodring that I am not being motivated by malice, nor hatred nor suspicion. I do not choose to characterize this amendment as a stupid amendment. I think it is an amendment that makes a great deal of sense. I support the amendment simply because the implications of this language are not fully known nor fully understood. It will unquestionably invite litigation and bring trouble to this Commonwealth, and as I stated earlier, if the proposal has merit, it more properly belongs in a piece of legislation rather than a constitutional document.

We already have a fiscal code which in large measure spells out the fiscal responsibility and the auditing responsibility of both the State Treasurer and the Auditor General, as I have already informed Delegate Leonard in

private conversation that I would be very happy to add my name as a sponsor to any meaningful piece of legislation which will tighten the audit of the Commonwealth's monies. I subscribe completely to the view that the disbursements of the Commonwealth's monies should be subject to audit, but to say in language that locks in for all time that it should be done in a particular way is, indeed, not a sensible approach. I also want to say that the mere fact that an opposing viewpoint is being heard here today does not cast any unfavorable reaction or reference on the Committee that suggested this.

I think that is why we are here as delegates, to examine collectively, together, on this floor proposal, whether they be the proposals of individual members or proposals of a Committee, and in the judgment and in the good sense of this body we have already changed many proposals as submitted by the Committee and that does not constitute any attack on the Committee to change their thinking. We have done that with other bills. This is not a meaningless amendment as it was suggested, nor is it a partisan approach to the problem. It certainly cannot be partisan if I have Senator Fleming joining my viewpoints on this matter, or even Delegate Hocker who is of a political party that is of a different persuasion than mine. I would respectfully ask the delegates of this Convention to adopt the Hocker Amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Percey.

MOTION TO CLOSE DEBATE

DELEGATE PERCEY. Mr. President, I have to part company with a lot of people. I have to part company with the learned judge in terms of his adjectives in describing this amendment, and I have to part company with an old friend, Delegate Forster, who is being partisan on his part, and I have to part company with Delegate Hocker, who tells me that this is merely a rearrangement of Style and Drafting. It is not. Delegate Hocker is not only rearranging what Style and Drafting has given to this Convention, he is rearranging the intent of the sub-committee and the Committee as a whole on this proposal, and I think what many of us ought to be aware of is that this issue is partisan, but it is not partisan Republican or Democrat. This is a patronage issue, and this is what some of my learned friends and colleagues are talking about. They know who controls the Auditor General's office today, but they do not know who is going to control it in January.

I do not think it is the business of this Convention to deal with how many jobs are in that office. I do not think it is our function at all. I think that what we are trying to do and what our Committee was trying to do is lay down a principle which we think is important, and that it is not relevant to partisan politics, and I would move the question, with the exception of the gentlemen who are now standing on the floor.

PRESIDENT BRODERICK. You move the question. Is there a second?

DELEGATE KRILL. I second the motion.

PRESIDENT BRODERICK. It has been moved by Delegate Percey and seconded by Delegate Krill that we close debate and vote on the question, with the exception of Delegates Wilcox, Morton, Scarlett, and of course, Hocker, Fohl, Caron and Swope, be heard.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—115

Aberman	Cunningham	Leinbach	Rovner
Amsterdam	Dailey	Leonard	Ruth
Aurentz	Devlin	Levin	Sahli
Bagenstose	Erwin	Manderino	Scales
Baldrige	Fagan	Mangery	Scarlett
Baldus	Fawcett	Markley	Scott
Baldwin	Fay	Mattioni	Scranton
Banes	Feather	McGeary	Sebastian
Barry	Filson	McGlynn	Shapiro
Bashoff	Fineman	Meyer	Shively
Benedict	Forster	Michener	Shoemaker
Benfield	Gabreski	Miller, D.	Shrager
Bloom	Gerber	Miller, R.	Silverman
Braham	Goldstein	Moorhead	Solomon
Brennan	Gouger	More	Strickler
Broderick	Griffith	Murray	Stroup
Brown	Harding	Nelson	Swope
Burkholder	Hatter	O'Donnell	Tate
Butera	Huggins	Orban	Thomson
Cain	Johnson	Orbin	Thornburgh
Camardella	Keller, J.	Otto	Tomascik
Caron	Keller, M.	Pelletier	Tully
Clark	Kelly	Percey	Van Sant
Clinger	King	Popil	Warman
Conley	Kline	Prendergast	Welsh
Corey	Krill	Quiles	Westerberg
Cortese	Leach	Reynolds	Wilcox
Cosetti	Lee, K.	Richter	Wilmarth
Croop	Lee, L.	Roberts	

NAYS—26

Buck	Henderson	Morton	Sprogell
Bunting	Heyburn	Pott	Stout
Caputo	Himes	Rappaport	Waldron
Curran	Hocker	Rea	Whittum
Desmond	Irvis	Redick	Woodring
Fleming	Jirolanio	Shettig	Woodside
Goldman	Kauffman		

NOT VOTING—22

Allison	Fohl	Horne	Musselman
Barron	Fortney	Hostetler	Pasquerilla
Casey	Gehrlein	Lane	Pechan
Donaldson	Gray	Laputka	Powell
Donolow	Hannum	Michael	Sharp
Dumbauld	Hook		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. Now, the Chair will recognize Delegate Swope.

DELEGATE SWOPE. Mr. President, I hope I will not have to reassure my good personal friend, former Judge from Northampton County, Delegate Woodring, that my position on this amendment is not out of malice or out of suspicion. My position on this amendment is out of faith, faith in the Legislature of Pennsylvania, which has for the last hundred years prescribed the responsibilities with respect to the fiscal audits of our Commonwealth finances, properly in such a manner as has brought no suspicion, has brought no scandal upon the fiscal offices of the Commonwealth. I believe that the Legislature should be continued so as to have this kind of authority and to dispense with responsibility as it sees fit. I also would like, in closing, to say to my friend, Delegate Caron, from Reading—who was formerly from Illinois—that the finances of this Commonwealth are being audited. There is no gap in the audit procedure of Pennsylvania, and I, therefore, ask my fellow delegates to vote for this amendment and reassert their faith in the past performance of these two

fiscal offices and the Legislature's ability to carry on in the future.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Wilcox.

DELEGATE WILCOX. Mr. President, I rise in vigorous opposition to this amendment. If the delegates will recall, when our Committee first brought this before the Convention, we had assigned various tasks with regard to post- and pre-audit to various officers. This proved controversial, and we took it out.

The Convention itself, when it adopted the Fohl Amendment, inserted the principle, the very valuable principle that we would not expect the mouse to be the guardian of the cheese. In this case we all have come along with this principle and now the present amendment would strip the principle entirely from the proposal.

As far as trusting the Legislature is concerned, I think it is obvious that the proposal as it now stands does precisely that. The proposal does not assign various tasks to any particular officers. It will be up to the Legislature to implement this. The Legislature will have time to study a very serious problem. It can get, at leisure, its recommendations from studies, commissions, and groups. If it chooses to go into an independent controller type modeled after the Federal system, it could do that. If it chooses to allocate between State officers, it could do that. If it chooses to give certain powers to administrators under the Governor, it could do that. But all of these would be bound by the valuable principle that we separate the functions and we do not have one person checking out his own previous actions. I think this is a very valuable principle. I think it does trust the Legislature, which will have time to make adequate provisions. I think most of us want a very independent auditing system in this State and I, therefore, urge all the delegates to vote down this amendment.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Scarlett. For what purpose does the gentleman rise?

DELEGATE SCARLETT. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SCARLETT. Mr. President, I have a couple of questions I would like to ask. First, it is my understanding that the General Assembly will or shall designate offices or departments to conduct such audits. Does this mean that it will only be done by such offices or departments as designated by them?

PRESIDENT BRODERICK. I am sure Delegate Hocker will answer your inquiry.

DELEGATE HOCKER. Mr. President, I will answer the gentleman. I do not think that is quite true, Mr. President. I have faith in the legislative arm, to be sure. I think that they will do what is right. I am not a member of it anymore, but I have great faith in it, the same way as you people are going to have faith in the people who passed some of this trash that is going through this Convention. You better have faith. If you take Proposal No. 4 and you look at the statement on line 9, "Audit.—The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards."

In my humble opinion, this covers the whole issue. If this whole mess were out of here, this would cover this. "Auditing standards" are something that are set up and things that are abided by by all people. I want to say to you, sir, I think that the Legislature who has to go to the people every two years for reelection will not make a mistake in this area.

DELEGATE SCARLETT. Thank you for that answer.

May I ask another question, Mr. President?

PRESIDENT BRODERICK. You may proceed.

DELEGATE SCARLETT. In reading this, it would then be my understanding that no office or department could or would be audited by any outside auditing firm. Is that correct?

DELEGATE HOCKER. No. I do not think that is true, because we have done it in the past under existing law. It was brought on the floor this morning that the Governor has the right to audit, and he did bring a firm into audit, and it can be done. This will not eliminate that, in my opinion.

DELEGATE SCARLETT. But it does not state in here that the General Assembly would have to authorize it.

DELEGATE HOCKER. I think you will find that in the Fiscal Code or in the Administrative Code. I cannot quote it, but I think that is where you will find it.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Fohl.

DELEGATE FOHL. I would like to interrogate Delegate Hocker.

PRESIDENT BRODERICK. He will stand for interrogation. Proceed with your question.

DELEGATE FOHL. In the present Style and Drafting language, as well as the original language, would it be the delegate's interpretation that it implies that the General Assembly shall designate how that be carried out?

DELEGATE HOCKER. Under my amendment, yes, Mr. President.

DELEGATE FOHL. No, no. Under the Style and Drafting language as well as the original language?

DELEGATE HOCKER. I do not think so, Mr. President. In fact, I cannot understand, and I have been studying it all day, just what Style and Drafting are trying to do or say. I cannot figure it out. I really do not know what is in there. The judge said there is an air of suspicion. I agree.

DELEGATE FOHL. If the Style and Drafting language were prefaced by saying, "the General Assembly shall provide that—" and then as it reads now, would that then be more understandable?

DELEGATE HOCKER. I am quite sure it would, yes. Mr. President, I think I could understand that then. Maybe I am stupid, but I cannot understand what they have inserted in here, and that arouses suspicion.

DELEGATE FOHL. If that insertion would be made, would that be any different from the proposed amendment?

DELEGATE HOCKER. I do not know how it can be made; that is the reason we are up here fighting. I have no other course than what I am following, Mr. President.

DELEGATE FOHL. It could be made by the same

mechanism that you are going by, by amendment, but I was asking a hypothetical question. Would it be any different than yours if it had that?

DELEGATE HOCKER. If Style and Drafting were to put in there the language that I am trying to put in?

DELEGATE FOHL. No, no. If Style and Drafting had styled and drafted their revision to say the General Assembly shall by law provide that any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the responsibility for auditing that transaction after its occurrence.

DELEGATE HOCKER. Where is the gentleman reading from? Is he reading from Proposal No. 4?

DELEGATE FOHL. Yes, Mr. President.

DELEGATE HOCKER. Where?

DELEGATE FOHL. Section 12 of the paper in your left hand, line 15, where it starts off "any Commonwealth officer," and the first three lines on page 2.

DELEGATE HOCKER. The same Commonwealth officer or department shall not have the responsibility for both the pre- and post-audit; is that what you are saying? I do not think that would do what I am trying to do.

DELEGATE FOHL. That is not what I asked. Starting near the end of line 15 on page 1.

DELEGATE HOCKER. Starting with "any Commonwealth officer"?

DELEGATE FOHL. Yes. That is right, and the first three lines of page 2.

DELEGATE HOCKER. "Any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the responsibility for auditing that transaction after its occurrence."

I do not, and I beg ignorance, understand that language.

DELEGATE FOHL. Thank you for your replies.

I would suggest that it is quite clear that that language leaves in the hands of the General Assembly just what you want to leave in the hands of the General Assembly.

DELEGATE HOCKER. I have to disagree with the delegate. I do not think it does.

DELEGATE FOHL. Mr. President, since Committee Proposal No. 4 came on the floor it has been assaulted and reassaulted with emasculating amendments. This proposal is a proposal designed for good sound financial management of the Commonwealth's affairs. I think this Convention should right now say we are drawing the line on knocking the stuffing out of Committee Proposal No. 4. Let us not cross that line. Let us reject this amendment, and presuming that Governor Scranton introduces his corrective language, amend that and accept this Committee proposal. I do not believe the people on April 23rd will vote against any proposal that assures them sound financial management of two billion dollars a year.

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron.

DELEGATE CARON. Mr. President, I also would like to speak in support unless there is somebody else who wishes to speak the other way.

PRESIDENT BRODERICK. We only have Delegate Morton left.

DELEGATE KLINE. Mr. President, I would like to direct a question to Delegate Hocker.

PRESIDENT BRODERICK. I am sorry, I do not think that is proper under our motion because our motion closed debate except for the delegates that were standing.

DELEGATE HOCKER. I will be happy to come over there and converse with the gentleman.

PRESIDENT BRODERICK. Delegate Caron, you may proceed.

DELEGATE CARON. I would like to speak against the amendment for very sound practical reasons. I think the previous speaker, Delegate Fohl, has very amply stated that this Committee Proposal No. 4 represents sound business judgment in taking a look at your own affairs. We have agreed, this council as a group, that the audit is a necessity, and now the next thing that has happened is the attempt to change the language in one section of it. The main reason I am against Delegate Hocker's amendment is very simple. The very principle of audit is to have somebody else check up on what you are doing to avoid any problems, and the amendment as proposed by Delegate Hocker specifically gives to the General Assembly, our Legislature, the right to be responsible for its own actions. This is the very thing that I think leads to the problems of tomorrow. I do not accuse anybody. I admit Delegate Swope was perfectly correct when he stated the State of Pennsylvania has never had a problem of the magnitude that was had in my own State of Illinois, but I would like to feel free that it would not happen here and that the citizens of our Commonwealth are protected. I find it very difficult to understand why the General Assembly should have the privilege of designating the offices or departments that are to conduct the audits when they themselves have the responsibility of a rather large sum of money, which as far as I know, has not been audited to this point.

What I am trying to say is, I do not think we can give the legislators the privilege to have the opportunity to say yes or no to auditing their own accounts. It has to be done across the board for every agency and every facility within this Commonwealth. I urge my fellow delegates to defeat this amendment.

PRESIDENT BRODERICK. The Chair recognizes Delegate Morton.

DELEGATE MORTON. Mr. President, this particular item of Proposal No. 4 has been subject to more debate, I think, than most of the items in the Judiciary. Finally after much debate as to whether it should be the Auditor General or Treasurer, we adopted the Fohl Amendment by a vote of 88 to 47, then we had stirring addresses by Delegate Michener and Delegate Casey about past actions of this Convention where we had rescinded other actions we had taken. A few days later a motion to reconsider the Fohl Amendment came up and it was defeated 86 to 53. Once again we are faced with a motion in another manner in which it is designed to throw out a different post-audit and a different pre-audit. I say to you that there are all those who have spoken about good business practices and many people in my own area have commented that this section introduces into government the best business practice that you can have, a separate pre-audit and a separate post-audit. If it is good for business, it is good for government, and I hope that this delegation will stay with its decision which it so soundly made a number of weeks ago, instead of letting someone now come in and say we have found a new whipping boy, we are going to take it out on Style and Drafting to try to do what we

could not do before. To me it is very clear here all that Style and Drafting is doing is the same as we said before; there will be a pre-audit and there will be a post-audit and the same person will not do both of them. For good government and for good business let us stay with our decisions that we so overwhelmingly adopted last week.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Hocker for closing and you have eight and one-half minutes left.

DELEGATE HOCKER. Mr. President, it will not take me that long. I think they have heard enough. I disagree with some of the proponents of the article as it is. I think Delegate Swope—and they talk about parties—Delegate Swope has always been on the other side of what I subscribed to, but we never accused each other of having malice or hatred. I am very sorry that had to enter into this. I want to answer the gentleman by saying that I have no malice in me. I may be a little cantankerous at times. Suspicious? Yes. That is the reason that I am up here. I could be just as well sitting in my seat. But I have suspicion of this language. Hatred? No. I never met a man in my life that I did not like—that has been said before—but some I liked better than others. I believe in what I am doing here. I believe it is good for government. I believe that when you start fooling with the constitutional offices, if those offices were not honest, if those offices were not doing a good job, I am quite sure that there would be a call in this Convention to do something about them. I believe what we are doing today is sufficient. I can see in the future with this language an additional expenditure of four or five million dollars a year to set up another department or to hire outside help. Mr. President, the suspicion still remains with me. It is the only thing that I will admit to. I ask this delegation, if you do not do anything else, do not go away from this Convention hating the Legislature and the legislators that put in just as bad hours as you are putting in here now. You are getting a little taste of what they go through and what I went through for twenty years. It is not all peaches and cream. They are honest, honorable people, whether they be Democrats or Republicans. Mr. President, let us vote.

On the question,
Will the Convention agree to the Hocker amendment?

The roll was recorded as follows:

YEAS—63

Aberman	**Fineman**		**Shettig**
Amsterdam	Fleming	Mattioni	Shoemaker
Aurentz	Gabreski	McGlynn	Shrager
Bagenstose	Gehrlein	Miller, D.	Silverman
Banes	Gerber	Murray	Stout
Barron	Harding	O'Donnell	Stroup
Barry	Henderson	Orbin	Swope
Bashoff	Hocker	Popil	Tate
Brennan	Huggins	Prendergast	Thomson
Brown	Irvis	Quiles	Tomascik
Camardella	Keller, M.	Rappaport	Van Sant
Caputo	Kelly	Redick	Waldron
Dailey	King	Ruth	Welsh
Fay	Kline	Sahli	Wilmarth
Feather	Manderino	Scales	Woodside
Filson	Mangery	Shapiro	

NAYS—80

Baldrige	**Cunningham**	**Leach**	**Powell**
Baldus	Curran	Lee, K.	Rea
Baldwin	Desmond	Lee, L.	Reynolds
Benedict	Devlin	Leinbach	Richter
Bloom	Erwin	Leonard	Roberts
Braham	Fagan	Levin	Rovner
Broderick	Fawcett	McGeary	Scarlett
Buck	Fohl	Meyer	Scott
Bunting	Forster	Michael	Scranton
Burkholder	Goldman	Michener	Sebastian
Butera	Goldstein	Miller, R.	Shively
Cain	Gouger	Moorhead	Sprogell
Caron	Griffith	More	Strickler
Clark	Hatter	Morton	Thornburgh
Clinger	Heyburn	Nelson	Tully
Conley	Himes	Orban	Wurman
Corey	Johnson	Otto	Westerberg
Cortese	Kauffman	Pelletier	Whittum
Cosetti	Keller, J.	Percey	Wilcox
Croop	Krill	Pott	Woodring

NOT VOTING—20

Allison	**Dumbauld**	**Horne**	**Musselman**
Benfield	**Fortney**	**Hostetler**	**Pasquerilla**
Casey	**Gray**	**Jirolanio**	**Pechan**
Donaldson	**Hannum**	**Lane**	**Sharp**
Donolow	**Hook**	**Laputka**	**Solomon**

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

MOTION ON CONSENT TO RECEIVE SCRANTON AMENDMENT TO COMMITTEE PROPOSAL No. 4

On the question,
Will the Convention agree to the motion?
It was agreed to.

SCRANTON AMENDMENT TO COMMITTEE PROPOSAL No. 4

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, I now present an amendment to Committee Proposal No. 4.

On the question recurring,
Will the Convention agree to the proposal on second consideration?

DELEGATE SCRANTON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 2, line 3, by striking out "THE RESPONSIBILITY FOR" and inserting: the function of

On the question,
Will the Convention agree to the amendment?

DELEGATE SCRANTON. Mr. President, I have discussed this with the two co-chairmen of the Style and Drafting Committee and the two co-chairmen of Taxation and Finance Committee, and with my friend Delegate Hocker, and with a number of other people and so far everybody says we can do this. But, as I understand it, the parliamentary people say I have to go through this and that it is not just a change of wording. What I would like to do and what the amendment does is to take out on line 3 of page 2, the words "the responsibility for" and to insert "the function of." The only purpose for this is that in our form of government here in Pennsylvania the Governor is responsible, must make approval when necessary for some transaction relative to the financial affairs of the Commonwealth, and he is responsible for the auditing of that transaction after its occurrence. This sometimes does not take place for a very long time, but, unfortunately, that is an executive position and there-

fore, I want to make clear that we eliminate the possibility that we may be up against in charging him with the responsibility for the auditing when we are talking about the actual function of it. I want you to know that I am not doing this out of suspicion, hatred, malice, and I still like the League of Women Voters.

PRESIDENT BRODERICK. Are we ready for the question?

I take it we have unanimous consent to vote on this amendment now without further discussion and I will unlock the voting machine. All those voting "yea" will vote to support the Scranton Amendment, and those voting "nay" will vote to reject it.

On the question,
Will the Convention agree to the Scranton amendment?

The roll was recorded as follows:

YEAS—134

Aberman	Desmond	Lee, L.	Ruth
Amsterdam	Erwin	Leinbach	Sahli
Aurentz	Fagan	Leonard	Scales
Bagenstose	Fawcett	Levin	Scarlett
Baldrige	Fay	Mangery	Scott
Baldus	Feather	Markley	Scranton
Baldwin	Filson	Mattioni	Sebastian
Banes	Fineman	McGeary	Shapiro
Barron	Fleming	McGlynn	Sheffig
Barry	Fohl	Meyer	Shively
Bashoff	Forster	Michael	Shoemaker
Benedict	Gabreski	Michener	Silverman
Bloom	Goldman	Miller, D.	Solomon
Braham	Goldstein	Miller, R.	Sprogell
Brennan	Gouger	Moorhead	Stout
Broderick	Griffith	More	Strickler
Brown	Harding	Morton	Stroup
Buck	Hatter	Murray	Swope
Bunting	Henderson	Nelson	Tate
Burkholder	Heyburn	Orban	Thomson
Butera	Himes	Otto	Thornburgh
Cain	Hocker	Pelletier	Tomascik
Camardella	Huggins	Percey	Tully
Caputo	Irvis	Popil	Van Sant
Caron	Johnson	Pott	Waldron
Clark	Kauffman	Powell	Warman
Clinger	Keller, J.	Prendergast	Welsh
Conley	Keller, M.	Quiles	Westerberg
Corey	Kelly	Rea	Whittum
Cortese	King	Rodick	Wilcox
Croop	Kline	Reynolds	Wilmarth
Cunningham	Krill	Richter	Woodring
Curran	Leach	Rovner	Woodside
Dailey	Lee, K.		

NAYS—2

O'Donnell	Rappaport

NOT VOTING—27

Allison	Dunbauld	Horne	Orbin
Benfield	Fortney	Hostetler	Pasquerilla
Casey	Gehrlein	Jirolanio	Pechan
Cosetti	Gerber	Lane	Roberts
Devlin	Gray	Laputka	Sharp
Donaldson	Hannum	Manderino	Shrager
Donolow	Hook	Musselman	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

REFERRAL TO COMMITTEE

PRESIDENT BRODERICK. Under the rules this proposal will now be resubmitted to the Committee on Style and Drafting with the request that the Committee report it back to us just as quickly as it can be printed.

REPORT FROM COMMITTEE

PRESIDENT BRODERICK. Now, I understand Delegate Johnson has a report for us on Proposal No. 5.

DELEGATE JOHNSON. Proposal No. 5 has now cleared the Committees and is at the printer's, so I wish to stand in place and present Proposal No. 5, which will be presented to the delegates.

COMMITTEE ON STYLE AND DRAFTING

Room 519, North Office Building
Harrisburg, Pennsylvania 17106

February 27, 1968

To the Honorable,
The Delegates Assembled,
1967-68 Pennsylvania Constitutional Convention

Re: Taxation and State Finance
Exemptions—Public Utilities

Mesdames and Sirs:

On behalf of the Committee, we are pleased to submit to you herewith our report on Committee Proposal No. 5, relative to exemptions from taxation and providing for the taxation of real property of public utilities.

As was the case with Proposals Nos. 3 and 4, this Committee has worked closely with the Co-Chairmen and Counsel of the substantive committee on Taxation and State Finance, and we are pleased to report that the changes effected in this proposal are concurred in by those gentlemen:

The following is a summary of the significant changes in draft effected by this committee:

1. The provisions set forth in Sections 1A and 1A1 of Committee Proposal No. 5 have been regrouped and renumbered on a subject basis. Subsection (a) continues as before to set forth categories of property and institutions which the General Assembly is authorized to exempt from taxation; subsection (b) sets forth the subjects of taxation for which the General Assembly may by general law establish standards and qualifications, and may grant exemptions or make special tax provisions; and subsection (c) sets forth the self-operating exemption of residence property occupied by certain wounded war veterans.

Subsection (c), which was approved by the voters in 1961, has been retained verbatim, but the Committee would call your attention to the fact that this subsection would now seem to be redundant in view of the expanded section relative to certain classes of exemptions, including "disability." We further observe that the section contains certain poorly phrased descriptors, makes constitutional reference to a non-constitutional agency, viz.: "the State Veterans' Commission," and more important, is limited in application. For example, is a citizen and resident of the Commonwealth who became a paraplegic as a result of service on a United States vessel standing off the coast of Israel and inadvertently attacked eligible under this section? We believe not as the veteran has not served in "any war or armed conflict in which

the United States was engaged. . . ." We understand this section was added by amendment on second consideration and thus do not believe we can act upon it, although the Committee is of the strong opinion it ought to be deleted or, at minimum, authorization given to provide more precise language.

2. In the listing of exemptions from taxation which the General Assembly is authorized to adopt, set forth in subsection 1 (a), the Committee retained verbatim several adjectives which are in our opinion redundant and apt to cause confusion. The Committee understands that the insertion of "actually" in certain phrases was an attempt to make more strict the construction of the exemption and to provide an appropriate rule of reference for judicial interpretation. Recognizing the detailed consideration this subsection has been given, this Committee finally acquiesced in the verbatim language chosen by the substantive committee. This reliance upon prior judicial interpretations which have not been, in the opinion of the Committee, sufficiently restrictive with respect to tax exemptions is a grave mistake.

3. The Section dealing with the taxation of real property of public utilities has been rearranged and reworded to accomplish the following objectives:

(a) The exemption for the real property useful in furnishing public utility services is an exception to the general principle that the real property of public utilities shall be subject to real estate taxes imposed by local taxing authorities. (The last sentence of Committee Proposal No. 5, Printer's No. 18 has simply restated this principle and has therefore been deleted.)

(b) The exemption is only applicable to the extent that the General Assembly provides for the distribution of funds to compensate local taxing authorities for lost real property taxes.

(c) The phrase "in lieu of local taxes" has been retained, but in view of the ambiguity of that phrase standing alone, it has been defined in terms of the requirements originally set forth in that Section for the applicability of the exemption.

Respectfully submitted,
COMMITTEEE ON STYLE AND DRAFTING
By: ROY H. JOHNSON
LAWRENCE L. PELLETIER
Co-Chairmen

WPH:ANF:emk

DELEGATE JOHNSON. I ask that it be placed on the calendar for a third reading.

PRESIDENT BRODERICK. We will accept your report and we will see that it is printed and placed on the calendar.

Will the delegates please take their seats and would the clerk please sound the bell for the delegates outside to come in?

Fellow delegates. We have now completed the calendar this afternoon as far as we can go at this time. But, we have more work to do today. What the Chair has been doing is trying to obtain an estimate as to when Proposals Nos. 4 and 5 will be ready for third and final consideration on the calendar. The safest estimate that I can receive on Proposals Nos. 4 and 5 is 8:00 o'clock this evening.

The Chair would therefore like to suggest that we recess now until 8:00 p.m. this evening and come back on Proposals Nos. 4 and 5 with a hope that we will pass both of them on third consideration and final passage. Of course, they will both be on third consideration.

In addition, we have the problem of Proposal No. 7 on the Judiciary, and I know that Style and Drafting is working as hard as they can on the Judiciary proposal, and when we come back tonight we will have an announcement from Style and Drafting, I hope, as to when we can expect Proposal No. 7 to come back on third consideration from the Judiciary, which will not be tonight by the way, but will be some time I hope tomorrow morning.

COMMITTEE MEETING

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. I have a Committee announcement. The Committee on Arrangement, Submission and Address to the People will meet in Room 401 of this building after we leave here.

RECESS

PRESIDENT BRODERICK. It is now 4:15 p.m. and unless there is objection, we will recess until 8:00 p.m. The Chair is willing to hear objections to that if there are any.

The Chair hears none, and the Convention is now in recess until 8 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

VIRGINIA KNAUER WELCOMED

DELEGATE WOODRING. Mr. President and members of the Convention, it is my great pleasure to present to the Chair at this Convention, a very dear friend of mine, a former member of the Philadelphia Council and present Consumer Research Director of the Commonwealth of Pennsylvania, Virginia Knauer.

PRESIDENT BRODERICK. Where is Viriginia? We are very happy to have you with us this evening.

The Chair recognizes Delegate Reynolds.

DELEGATE REYNOLDS. Mr. President. We have been here for quite a while. Very few people have helped us with our problems in Philadelphia, but tonight we had a glorious occasion. A delegate from another county has tried to steal our glory. I want to re-introduce and tell you that we are very proud of a lady from Philadelphia who has been appointed as Director of the Bureau of Consumer Protection in the Department of Justice. She has been one of the greatest advocates of all the fine things that we have tried to do here. She has been in the legislative department of Philadelphia for two consecutive terms. She has served in all the places. Yesterday one of our delegates said that the women were not serving. She has done everything to make America a better place to live. I want to re-introduce our great lady

from Philadelphia, Virginia Knauer, who is one of our greatest advocates of freedom, justice and equal opportunity, and I want to congratulate the Governor of the State of Pennsylvania for appointing her as well as the people of Philadelphia who caused the appointment.

I wish she would stand again so we can really see Virginia Knauer.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom. For what purpose does the gentleman rise?

DELEGATE BLOOM. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BLOOM. Mr. President and delegates of this Convention. I took it upon myself, nobody nominated me, and I am appearing here on personal privilege.

It seems as though the Pennsylvania Bar Association's name has been ridiculed with malice and hatred towards none of the delegates that did so. I wish to take this opportunity to inform the delegates as to what the Pennsylvania State Bar Association stands for in a little history and give you some facts. I am doing it at this time because the Judicial Article is practically finished. If I did this or made this talk to you on personal privilege before this time, you may think that I was a representative of the Pennsylvania State Bar Association. I have been a member of this Association for the past 40 years. I have never held an office in this Association. I have never been on a Committee in this Association. I have been what is known as a member that attended the meeting of this Association at such times that I was able to do so and get away from my offce.

I think it is very important that someone gives these delegates that are assembled here, some history and some background of the Pennsylvania State Bar Association. In the first place, I have been hooted before gentlemen, by a larger delegation than this.

I am very serious about it, because I think that most of us do not understand the Pennsylvania Bar Association and what it stands for.

This Association has been in existence since 1895. It is not a come lately thing, it has been here since 1895 and that is practically 73 years. The membership of the Association on January 1st of this year was 8,346 and that is quite a few attorneys that belong to this Association. Of the 67 counties, 60 per cent of the county Bar Associations are members of this Association and they are integrated members. By integrated members for those who do not understand the term, it means every member of that particular county bar association; the dues are paid by that particular county bar association and each member of that association is a member of the Pennsylvania State Bar Association.

To give you some idea as to what the by-laws of the Association state: It was formed to advance the science of jurisprudence. To promote the administration of justice. To see that no one on account of poverty is deprived his legal rights. To secure proper legislation. To encourage a thorough legal education. To uphold the honor and dignity of the Bar. To cultivate cordial intercourse among the lawyers of Pennsylvania and to perpetuate the history of the profession in the memory of its members.

The reason why it is important for these delegates to know about this Association is the fact that it has been said that this Association has been dominated by the large law offices of the State of Pennsylvania. Let me tell you this. Gilbert Nurick of Harrisburg, Dauphin County, was the past president. The present president is Andrew Horrigan of Luzerne County. Neither one of these gentlemen are members of any large law firms. Judge Braham was also president of this Association and he comes from New Castle and there are only two members of his firm. You can see by the presidents of the Bar Association in the past three years that it has not been dominated by the large law firms of Philadelphia and Pittsburgh.

There are 89 delegates in the House of Delegates that determine the policy of the Association. They are elected from different zones of the State of Pennsylvania, and they represent the zones in all its deliberations.

Since 1961, this Association has made a study of the revised Constitution and particularly the Judicial Article. They have been studying that by a commission and the commission not only contains one lawyer or two lawyers or a small committee, but it contains 300 lawyers, and after a study of five to six years on this particular project where they had meetings and discussed this problem, they came up with their article on Judicial reform.

We, as delegates, had a right to ignore the Pennsylvania Bar Association on its proposal. I do not think they at any time came before this Association and asked this Association to adopt it. They did not use any tactics to state how any member of the Association should vote, but I want to state this: In our particular Bar Association of which I was President, and I was also President of the Pitlaw Association, that you get to be president of these particular bodies by the work that you do in these associations and the interest that you portray in carrying forward the constructive matters that they have. I want to advise you that I am proud, and it hurt me very much as a member of long standing of the State Bar Association, to have been placed on the line in the manner in which it was done by some of the members of this Association.

I think that after five or six years of study by a committee of 300 judges and members of the Association, that they came up with a proposal. We should have given them some credit for the study they made of that particular proposal. I say this: When they call us the 90-day wonders, we are the 90-day wonders when we could come up with a proposal such as we did.

I want to say one other thing and this is just in the manner of a joke and I will conclude with this little joke of mine and it is my own joke. When I came to this Convention, I told the people that I was going to take a trip. They said, "What, are you taking LSD?" I said, "No, Con Con pills and thank goodness in about two more days I will not have to take the Con Con pill and I will come down to earth."

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham.

DELEGATE BRAHAM. I wanted to add one sentence by way of comment to Delegate Bloom's speech. The sentence is, I like to see a man stand up for his horse, even if it is a mule.

MOTHER OF DELEGATE COSETTI WELCOMED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Cortese.

DELEGATE CORTESE. Mr. President. I rise to a point of personal delight.

PRESIDENT BRODERICK. The Parliamentarian indicates we have not had one of those for a long time.

DELEGATE CORTESE. Mr. President, I respectfully request that you recognize the presence here of a distinguished visitor from Ohio, the La Dist Inere Senoire Mary Cosetti, mother of our illustrious Delegate Cosetti.

PRESIDENT BRODERICK. Will Mrs. Cosetti please stand so we can give her our cordial greeting?

CALENDAR

COMMITTEE PROPOSALS ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of **Committee Proposal No. 4, Printer's No. 29**, entitled:

A proposal amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

On the question,

Will the Convention agree to the proposal on third consideration?

PRESIDENT BRODERICK. Now, we take up the calendar and we call up Proposal No. 4, Printer's No. 29. This is on third consideration and the question before the Convention is, will the Convention agree to advance Proposal No. 4, Printer's No. 29 to final passage.

The Chair wishes to point out that Proposal No. 4 is now on third consideration. This means that this is the last opportunity to amend the proposal, but before any amendment can be received for consideration, delegates must obtain the consent of a majority of those present.

The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I have run up the white flag. I do not fight any more after I have been beaten three or four times. I believe I am duty bound as a delegate of this Convention to point out my concept of the reading that was placed in Proposal No. 4 by the Style and Drafting Committee, when I say to you, Mr. President, that under that language, since the Auditor General and the State Treasurer, together with the Governor, must take steps for the annual borrowing of cash anticipation notes and thereby, their approval is necessary to that financial transaction, I hope that under this language, neither the Auditor General nor the State Treasurer can possibly audit any of the expenditures that are made with the money that has been borrowed through the action of these two fiscal officers and the Governor. I am not going to make any motion of any kind. I want this in the record. I want to show what this Convention did today.

MOTION TO CLOSE DEBATE

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, we have debated Proposal No. 4 for many lengthy hours. I would like to move Proposal No. 4, Printer's No. 29 with no further debate.

DELEGATE WILCOX. I second the motion.

PRESIDENT BRODERICK. Moved by Delegate Goldman and seconded by Delegate Wilcox that we close debate and vote.

On the question,

Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—105

Aberman	Curran	Lesch	Scarlett
Amsterdam	Dailey	Lee, L.	Scott
Aurentz	Desmond	Leinbach	Scranton
Bagenstose	Devlin	Leonard	Sebastian
Baldrige	Dumbauld	Manderino	Shettig
Baldus	Erwin	Mangery	Shively
Baldwin	Fawcett	McGeary	Silverman
Banes	Fay	Michael	Sprogell
Benedict	Feather	Miller, D.	Stout
Benfield	Fohl	Miller, R.	Strickler
Bloom	Forster	Moorhead	Swope
Braham	Fortney	Morton	Tate
Brennan	Gerber	Nelson	Thomson
Broderick	Goldman	Orban	Thornburgh
Brown	Goldstein	Otto	Tomascik
Buck	Gouger	Pelletier	Tully
Bunting	Griffith	Popli	Van Sant
Burkholder	Hatter	Pott	Waldron
Camardella	Henderson	Prendergast	Warman
Caron	Heyburn	Rea	Welsh
Clark	Himes	Reynolds	Westerberg
Clinger	Johnson	Richter	Whittum
Corey	Kauffman	Roberts	Wilcox
Cortese	Kelly	Rovner	Wilmarth
Cosetti	King	Sahli	Woodring
Croop	Krill	Scales	Woodside
Cunningham			

NAYS—18

Barron	Huggins	McGlynn	Orbin
Filson	Irvis	Michener	Rappaport
Gabreski	Jirolanio	Murray	Ruth
Gehrlein	Kline	O'Donnell	Shoemaker
Hostetler	Mattioni		

NOT VOTING—40

Allison	Fagan	Keller, M.	Pechan
Barry	Fineman	Lane	Percey
Bashoff	Fleming	Laputka	Powell
Butera	Gray	Lee, K.	Quiles
Cain	Hannum	Levin	Redick
Caputo	Harding	Markley	Shapiro
Casey	Hocker	Meyer	Sharp
Conley	Hook	More	Shrager
Donaldson	Horne	Musselman	Solomon
Donolow	Keller, J.	Pasquerilla	Stroup

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question,

Will the Convention agree to the proposal on third consideration?

The roll was recorded as follows:

YEAS—108

Aberman	Cunningham	Leach	Scarlett
Amsterdam	Curran	Lee, L.	Scott
Aurentz	Desmond	Leinbach	Scranton
Bagenstose	Devlin	Leonard	Sebastian
Baldrige	Dumbauld	Levin	Shettig
Baldus	Erwin	Manderino	Shively
Baldwin	Fawcett	Mangery	Shrager
Banes	Fay	McGeary	Silverman
Barron	Feather	Michael	Solomon
Benedict	Fohl	Miller, D.	Sprogell
Benfield	Forster	Miller, R.	Stout
Bloom	Fortney	Moorhead	Strickler
Braham	Gerber	Morton	Tate

Brennan	Goldman	Nelson	Thomson
Broderick	Goldstein	Orban	Thornburgh
Brown	Gouger	Otto	Tomascik
Buck	Griffith	Pelletier	Tully
Bunting	Hatter	Popil	Van Sant
Burkholder	Henderson	Pott	Waldron
Camardella	Heyburn	Powell	Warman
Caron	Himes	Rea	Welsh
Clark	Jirolanio	Reynolds	Westerberg
Clinger	Johnson	Richter	Whittum
Corey	Kauffman	Roberts	Wilcox
Cortese	Kelly	Rovner	Wilmarth
Cosetti	King	Sahli	Woodring
Croop	Krill	Scales	Woodside

NAYS—20

Dailey	Huggins	Michener	Rappaport
Filson	Irvis	Murray	Redick
Gabreski	Kline	O'Donnell	Ruth
Gehrlein	Mattioni	Orbin	Shoemaker
Hostetler	McGlynn	Prendergast	Swope

NOT VOTING—35

Allison	Donolow	Horne	Musselman
Barry	Fagan	Keller, J.	Pasquerilla
Bashoff	Fineman	Keller, M.	Pechan
Butera	Fleming	Lane	Percey
Cain	Gray	Laputka	Quiles
Caputo	Hannum	Lee, K.	Shapiro
Casey	Harding	Markley	Sharp
Conley	Hocker	Meyer	Stroup
Donaldson	Hook	More	

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

PRESIDENT BRODERICK. Now this proposal, pursuant to the rules, has been considered on three different days and agreed to and the question now is, will the Convention finally pass this proposal? At this time, of course, the proposal must receive 32 votes.

The Chair recognizes Delegate Kline.

DELEGATE KLINE. Mr. President, I intend to vote against this proposal. I think it is one of the poorest things we have drafted in the Convention and I would like to tell you why. As far as pre-audit and post-auditing of Commonwealth accounts, the way this language now reads, this proposal effectively does nothing. All you have to do is read the language. That is precisely what persons will do when they look to this section of the Constitution in the future. It says, essentially, that the financial affairs of any entity of the Commonwealth shall be subject to audit. That, of course, does not mandate any audit. It just means they shall be subject to audit. Then, in the battle over language, the fight became so intense between the two forces that I think we ended up with, if not a negative, certainly a neuter that really says absolutely nothing. It says, in effect, any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth—and here we get very negative and I say we do nothing—shall not be charged with the function of auditing the transaction after its occurrence. So we say that anyone who has to approve an expenditure before the money is expended shall not be charged with auditing it after it is expended. Then we go silent and do not say anything about who is supposed to audit it after it is expended.

I am satisfied that if this passes, the Fiscal Code which now empowers the Auditor General and other certain officers with certain responsibilities will prevail and protect the interests of the citizens. That code, of course, comes from the General Assembly, so actually we are doing, I think, what Delegate Hocker wanted to do in the clearest, plainest language possible; charge the General Assembly with the responsibility. This could have been much better. I am disappointed that it was not.

PRESIDENT BRODERICK. Now the Chair asks, does anyone else wish to be heard or are we ready for the question?

The question is, will the Convention finally pass this proposal?

And said proposal having been read a third time, considered and agreed to,

On the question,

Shall the proposal be finally adopted?

The roll was recorded as follows:

YEAS—89

Amsterdam	Desmond	Leinbach	Scarlett
Aurentz	Devlin	Leonard	Scott
Bagenstose	Dumbauld	Levin	Scranton
Baldrige	Erwin	Manderino	Sebastian
Baldus	Fawcett	Markley	Shively
Baldwin	Fleming	McGeary	Solomon
Banes	Fohl	Michael	Sprogell
Barron	Forster	Miller, D.	Strickler
Benedict	Fortney	Miller, R.	Tate
Benfield	Goldman	Moorhead	Thomson
Bloom	Goldstein	Morton	Thornburgh
Braham	Gouger	Nelson	Tomascik
Broderick	Griffith	Orban	Tully
Buck	Hatter	Otto	Van Sant
Bunting	Heyburn	Pelletier	Waldron
Caron	Himes	Pott	Warman
Clark	Jirolanio	Powell	Westerberg
Clinger	Johnson	Rea	Whittum
Corey	Kauffman	Reynolds	Wilcox
Cortese	Krill	Richter	Wilmarth
Cosetti	Leach	Roberts	Woodring
Croop	Lee, L.	Rovner	Woodside
Cunningham			

NAYS—42

Aberman	Gehrlein	McGlynn	Sahli
Brennan	Gerber	Michener	Scales
Brown	Henderson	Murray	Shettig
Burkholder	Hostetler	O'Donnell	Shoemaker
Camardella	Huggins	Orbin	Shrager
Curran	Irvis	Popil	Silverman
Dailey	Kelly	Prendergast	Stout
Fay	King	Rappaport	Stroup
Feather	Kline	Redick	Swope
Filson	Mangery	Ruth	Welsh
Gabreski	Mattioni		

NOT VOTING—32

Allison	Donaldson	Hook	More
Barry	Donolow	Horne	Musselman
Bashoff	Fagan	Keller, J.	Pasquerilla
Butera	Fineman	Keller, M.	Pechan
Cain	Gray	Lane	Percey
Caputo	Hannum	Laputka	Quiles
Casey	Harding	Lee, K.	Shapiro
Conley	Hocker	Meyer	Sharp

The majority having voted in the affrmative, the question was determined in the affirmative and the proposal was adopted.

REFERRAL TO COMMITTEE

PRESIDENT BRODERICK. This proposal is passed and is referred to the Committee on Arrangement, Submission and Address to the People.

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of **Committee Proposal No. 5, Printer's No. 30**, entitled:

A proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

On the question,

Will the Convention agree to the proposal on third consideration?

PRESIDENT BRODERICK. Now we take up Proposal No. 5, Printer's No. 30.

The Chair, at this time, recognizes the Chairman of Style and Drafting, either Chairman Pelletier or Chairman Johnson.

DELEGATE JOHNSON. Mr. President, it will be about 15 minutes before we are ready for this. There is one slight change that has to be made.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MICHENER. I had a very difficult problem last night. In view of Delegate Gerber's attack upon the fair sex, it was pointed out to me that he was the man who had introduced my wife to this assembly and it was the legal opinion that everything he said was retroactive and that, therefore, technically, my wife was not introduced properly. But we had other legal opinions this morning and they say that Delegate Gerber's attack did not wipe out the female side of the race completely. It was highly selective. It did apply to Barbara Sprogell and my beautiful seatmate here but it did not apply to my wife, who is not a member of that association, and the legal opinion was that my wife was duly introduced, a fact for which I am highly grateful.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gerber.

DELEGATE GERBER. One of the reasons that Delegate Michener's wife evidently was not introduced prior to my having this pointed opportunity to do so, was because he was so wrapped up in words for such a long period of time that he forgot about beauty, and I would only like to say that I do not need legal opinions to direct my attacks but I always need the help of beauty to show me beauty, and were it not for the lovely wife of Delegate Rea, who pointed out the omission on the part of Delegate Michener, I would not have had the privilege of presenting Delegate Michener's wife's name to the record and I think it only fair that when we talk about lovely, beautiful women, we also place in that category the lovely wife of Delegate Rea.

PRESENTATION TO DELEGATE GERBER

PRESIDENT BRODERICK. Do you wish to be recognized, Delegate Scales?

DELEGATE SCALES. Mr. President, a very serious problem has arisen. I wish that Delegate Gerber would remain at the microphone because it is such a characteristic pose for him.

DELEGATE GERBER. I thank the gentleman, Mr. President.

DELEGATE SCALES. By mistake, I am sure, Mr. President, a package was delivered to my desk this evening. I am sure it is by mistake because on the package it says "For Delegate Gerber, with love from the League of Women Voters."

PRESIDENT BRODERICK. You better drop it in water.

DELEGATE SCALES. One of the comments appears to be out of place, Mr. President, but I am sure Style and Drafting could take care of that problem. I would like one of the pages, however, to come forward so that this may be delivered to Delegate Gerber.

DELEGATE BANES. From where I stand, it looks to me like a doghouse.

DELEGATE GERBER. I never had the dean of a law school play the part of a delivery boy before and I want to thank Dean Manderino for his kind help.

The question now is as I hold this in my hand, do I pull it out with my finger or do I pull it out with my teeth? I am told that I cannot pull it out with my teeth because I have both feet in my mouth.

RECESS

PRESIDENT BRODERICK. Unless there is objection, we will recess for about 15 minutes. We will then be ready to take up Proposal No. 5, Printer's No. 30.

The Chair hears none.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

DELEGATES' WIVES WELCOMED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Cortese.

DELEGATE CORTESE. I have the honor to introduce the charming wife, the counsellor of Delegate Corey, Mrs. Elizabeth Corey, who is here among us as a most interested spectator. I ask that her presence be officially recognized.

PRESIDENT BRODERICK. We would ask that Mrs. Corey, the wife of Delegate Corey, stand. There she is.

We are all very happy to have you here.

Now, I understand, we also have with us the wife of Delegate Croop, and if Mrs. Croop will please stand, we would like to give you our warm cordial greeting.

Now, the Chair recognizes Delegate Leach.

DELEGATE LEACH. Mr. President, one of your most faithful followers happens to be sitting right beside Mrs. Croop. Her first name is Claire, and I have been married to her for a few days. I do not think she has been introduced yet.

PRESIDENT BRODERICK. Well, let me just say this, that we certainly want to present Mrs. Leach.

Where are you, Mrs. Leach? There she is. We are very, very glad to have you with us.

Now, the Chair recognizes Delegate Richter.

DELEGATE RICHTER. I would like to rise for a point of personal privilege. There is a lady in this Convention who has attended practically every session we have had,

and I believe that she should be introduced and given a good appreciative hand. She is Mrs. Ruth Scott, the wife of Delegate Mayor Scott.

PRESIDENT BRODERICK. Where are you, Mrs. Scott? There she is. Let us give her a big hand.

BIRTH ANNOUNCEMENT

PRESIDENT BRODERICK. Now, the Chair recognizes Delegate Orbin.

DELEGATE ORBIN. I would just like to say that on November 30th, after driving through a snowstorm for five hours, we arrived in Harrisburg and shortly thereafter we received a phone call that we had a new granddaughter, Robyn Elaine back home. Today, after the recess, we went back to the hotel, and within a half hour we had another phone call and another granddaughter, Kelley Rae.

PRESIDENT BRODERICK. I think that is very good news, indeed.

I can only say it is lucky for you that this Convention is going to be over on the 29th.

Now, returning to business, we will take up Proposal No. 5, Printer's No. 30.

The question is, will the Convention agree to advance this proposal to final passage, and the Chair first recognizes the Chairman of the Committee on Style and Drafting, Chairman Johnson.

DELEGATE JOHNSON. Mr. President, I stand here now on behalf of the Committee on Style and Drafting to present for a third reading Proposal No. 5.

COMMITTEE ON STYLE AND DRAFTING

Room 519, North Office Building
Harrisburg, Pennsylvania 17106

February 27, 1968

To the Honorable,
The Delegates Assembled,
1967-68 Pennsylvania Constitutional Convention

Re: Taxation and State Finance
Exemptions—Public Utilities

Mesdames and Sirs:

On behalf of the Committee, we are pleased to submit to you herewith our report on Committee Proposal No. 5, relative to exemptions from taxation and providing for the taxation of real property of public utilities.

As was the case with Proposals Nos. 3 and 4, this Committee has worked closely with the Co-Chairmen and Counsel of the substantive committee on Taxation and State Finance, and we are pleased to report that the changes effected in this proposal are concurred in by those gentlemen:

The following is a summary of the significant changes in draft effected by this committee:

1. The provisions set forth in Section 1A and 1A1 of Committee Proposal No. 5 have been regrouped and renumbered on a subject basis. Subsection (a) continues as before to set forth categories of property and institutions which the General Assembly is authorized to exempt from taxation; subsection (b) sets forth the subjects of taxation for which the General Assembly may by general law establish standards and qualifications, and may grant exemptions or make special tax provisions; and subsection (c) sets forth the self-operating exemption of residence property occupied by certain wounded war veterans.

Subsection (c), which was approved by the voters in 1961, has been retained verbatim, but the Committee would call your attention to the fact that this subsection would now seem to be redundant in view of the expanded section relative to certain classes of exemptions, including "disability." We further observe that the section contains certain poorly phrased descriptors, makes constitutional reference to a non-constitutional agency, viz.: "the State Veterans' Commission", and more important, is limited in application. For example, is a citizen and resident of the Commonwealth who became a paraplegic as a result of service on a United States vessel standing off the coast of Israel and inadvertently attacked eligible under this section? We believe not as the veteran has not served in "any war or armed conflict in which the United States was engaged. . . ." We understand this section was added by amendment on second consideration and thus do not believe we can act upon it, although the Committee is of the strong opinion it ought to be deleted or, at minimum, authorization given to provide more precise language.

2. In the listing of exemptions from taxation which the General Assembly is authorized to adopt, set forth in subsection 1 (a), the Committee retained verbatim several adjectives which are in our opinion redundant and apt to cause confusion. The Committee understands that the insertion of "actually" in certain phrases was an attempt to make more strict the construction of the exemption and to provide an appropriate rule of reference for judicial interpretation. Recognizing the detailed consideration this subsection has been given, this Committee finally acquiesced in the verbatim language chosen by the substantive committee. This reliance upon prior judicial interpretations which have not been, in the opinion of the Committee, sufficiently restrictive with respect to tax exemptions is a grave mistake.

3. The Section dealing with the taxation of real property of public utilities has been rearranged and reworded to accomplish the following objectives:

(a) The exemption for the real property useful in furnishing public utility services is an exception to the general principle that the real property of public utilities shall be subject to real estate taxes imposed by local taxing authorities. (The last sentence of Committee Proposal No. 5, Printer's No. 18 has simply restated this principle and has therefore been deleted.)

(b) The exemption is only applicable to the extent that the General Assembly provides for the distribution of funds to compensate local taxing authorities for lost real property taxes.

(c) The phrase "in lieu of local taxes" has been retained, but in view of the ambiguity of that

phrase standing alone, it has been defined in terms of the requirements originally set forth in that Section for the applicability of the exemption.

Respectfully submitted,
COMMITTEEE ON STYLE AND DRAFTING
By: ROY H. JOHNSON
LAWRENCE L. PELLETIER
Co-Chairmen

WPH:ANF:emk

COMMITTEE PROPOSAL NO. 5

A PROPOSAL

Amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section one of article eight of the Constitution of Pennsylvania is amended and A NEW SECTION IS added after said section, to read:

Section 1. Uniformity of Taxation.—All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws [; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, institutions of purely public charity and real and personal property owned, occupied, and used by any branch, post or camp of honorably discharged soldiers, sailors, and marines; and the General Assembly may, by general laws, set up standards and qualifications for private forest reserves, and make special provision for the taxation thereof. Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double or quadruple amputees, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein. Any taxing authority may exempt from occupational privilege taxes, persons deriving less than one thousand dollars per year from such occupation].

Section 2. EXEMPTIONS AND SPECIAL PROVISIONS.—(a) The General Assembly may by LAW exempt from taxation:

(I) Actual places of regularly stated religious worship;

(II) Actual places of burial, when used or held by a person or organization deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith;

(III) That portion of public property which is actually and regularly used for public purposes;

(IV) That portion of the property owned and occupied by any branch, post or camp of honorably discharged servicemen or servicewomen which is actually and regularly used for benevolent, charitable or patriotic purposes; AND

(V) Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.

(b) The General Assembly may, by LAW:

(I) ESTABLISH standards and qualifications for private forest reserves, and make special provision for the taxation thereof;

(II) ESTABLISH as a class or classes of subjects of taxation the property or privileges of persons who, because of age, disability, infirmity or poverty are determined to be in need of tax exemption or of special tax provisions, AND FOR any such class or classes, uniform standards and qualifications. The Commonwealth, or any other taxing authority, may adopt or employ such class or classes and standards and qualifications, and except AS HEREIN PROVIDED may impose taxes, grant exemptions, or make special tax provisions in accordance therewith. NO EXEMPTION OR SPECIAL PROVISION SHALL BE MADE UNDER THIS SUBPARAGRAPH WITH RESPECT TO TAXES UPON THE SALE OR USE OF PERSONAL PROPERTY, AND NO EXEMPTION FROM ANY TAX UPON REAL PROPERTY SHALL BE GRANTED BY THE GENERAL ASSEMBLY UNDER THIS SUBPARAGRAPH UNLESS THE GENERAL ASSEMBLY SHALL PROVIDE for the reimbursement of local taxing authorities by or through the Commonwealth for revenue losses occasioned by such exemption;

(III) ESTABLISH standards and qualifications by which local taxing authorities may make uniform special tax provisions AVAILABLE TO A TAXPAYER FOR A LIMITED PERIOD OF TIME TO ENCOURAGE IMPROVEMENT OF deteriorating property or areas BY AN INDIVIDUAL, ASSOCIATION OR CORPORATION, OR TO ENCOURAGE industrial development BY a non-profit corporation; AND

(IV) MAKE special tax provisions on ANY INCREASE IN value of real estate resulting from RESIDENTIAL construction. Such special tax provisions shall BE AVAILABLE FOR A PERIOD NOT TO EXCEED two years.

(C) Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and

residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, THEY are blind, paraplegic or double or quadruple amputees, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein.

SECTION 2. SECTIONS ONE B, TWO, EIGHTEEN, TWENTY-FOUR AND TWENTY-FIVE OF ARTICLE EIGHT OF THE CONSTITUTION OF PENNSYLVANIA ARE RENUMBERED THREE, FIVE, ELEVEN, FIFTEEN AND SIXTEEN RESPECTIVELY, AND SECTION THREE OF ARTICLE EIGHT OF THE CONSTITUTION OF PENNSYLVANIA IS AMENDED TO READ:

SECTION [3] 6. TAXATION OF CORPORATIONS.—THE POWER TO TAX CORPORATIONS AND CORPORATE PROPERTY SHALL NOT BE SURRENDERED OR SUSPENDED BY ANY CONTRACT OR GRANT TO WHICH THE [STATE] COMMONWEALTH SHALL BE A PARTY.

SECTION 3. ARTICLE EIGHT OF THE CONSTITUTION OF PENNSYLVANIA IS AMENDED BY ADDING AFTER SECTION 3, A NEW SECTION, TO READ:

SECTION 4. PUBLIC UTILITIES.—THE REAL PROPERTY OF PUBLIC UTILITIES IS SUBJECT TO REAL ESTATE TAXES IMPOSED BY LOCAL TAXING AUTHORITIES. PAYMENT TO THE COMMONWEALTH OF GROSS RECEIPTS TAXES OR OTHER SPECIAL TAXES IN REPLACEMENT OF GROSS RECEIPTS TAXES BY A PUBLIC UTILITY AND THE DISTRIBUTION BY THE COMMONWEALTH TO THE LOCAL TAXING AUTHORITIES OF THE AMOUNT AS HEREIN PROVIDED SHALL, HOWEVER, BE IN LIEU OF LOCAL TAXES UPON ITS REAL PROPERTY WHICH IS USED OR USEFUL IN FURNISHING ITS PUBLIC UTILITY SERVICE. THE AMOUNT RAISED ANNUALLY BY SUCH GROSS RECEIPTS OR OTHER SPECIAL TAXES SHALL NOT BE LESS THAN THE GROSS AMOUNT OF REAL ESTATE TAXES WHICH THE LOCAL TAXING AUTHORITIES COULD HAVE IMPOSED UPON SUCH REAL PROPERTY BUT FOR THE EXEMPTION HEREIN PROVIDED. THIS GROSS AMOUNT SHALL BE DETERMINED IN THE MANNER PROVIDED BY LAW. AN AMOUNT EQUIVALENT TO SUCH REAL ESTATE TAXES SHALL BE DISTRIBUTED ANNUALLY AMONG ALL LOCAL TAXING AUTHORITIES IN THE PROPORTION WHICH THE TOTAL TAX RECEIPTS OF EACH LOCAL TAXING AUTHORITY BEAR TO THE TOTAL TAX RECEIPTS OF ALL LOCAL TAXING AUTHORITIES.

SECTION 4. THE FOLLOWING SCHEDULE IS ADOPTED:

SECTION 1. NOT WITHSTANDING THE PROVISIONS OF SECTION 4 OF ARTICLE EIGHT, STATUTES WHICH PRESENTLY SUBJECT REAL PROPERTY OF PUBLIC UTILITIES USED AND USEFUL IN FURNISHING PUBLIC UTILITY SERVICES TO LOCAL REAL ESTATE TAXATION BY LOCAL TAXING AUTHORITIES SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED.

SECTION 2. SECTIONS 1 AND 2 SHALL TAKE EFFECT AS SOON AS POSSIBLE, BUT NO LATER THAN JULY 1, 1970. SECTION 4 SHALL TAKE EFFECT JULY 1, 1970, UNLESS THE GENERAL ASSEMBLY EARLIER PROVIDES ENABLING LEGISLATION IN ACCORDANCE THEREWITH.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1968 SESSION

PROPOSAL NO. 5

A PROPOSAL

Amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section one of article eight of the Constitution of Pennsylvania is amended and a new section is added after said section, to read:

Section 1. Uniformity of Taxation.—All taxes shall be uniform, upon the same class of subects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Section 2. Exemptions and Special Provisions. —(a) The General Assembly may by law exempt from taxation:

(i) Actual places of regularly stated religious worship;

(ii) Actual places of burial, when used or held by a person or organization deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith;

(iii) That portion of public property which is actually and regularly used for public purposes;

(iv) That portion of the property owned and occupied by any branch, post or camp of honorably discharged servicemen or servicewomen which is actually and regularly used for benevolent, charitable or patriotic purposes; and

(v) Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.

(b) The General Assembly may, by law:

(i) Establish standards and qualifications for private forest reserves, and make special provision for the taxation thereof;

(ii) Establish as a class or classes of subjects of taxation the property or privileges of persons who, because of age, disability, infirmity or poverty are determined to be in need of tax exemption or of

special tax provisions, and for any such class or classes, uniform standards and qualifications. The Commonwealth, or any other taxing authority, may adopt or employ such class or classes and standards and qualifications, and except as herein provided may impose taxes, grant exemptions, or make special tax provisions in accordance therewith. No exemption or special provision shall be made under this subparagraph with respect to taxes upon the sale or use of personal property, and no exemption from any tax upon real property shall be granted by the General Assembly under this subparagraph unless the General Assembly shall provide for the reimbursement of local taxing authorities by or through the Commonwealth for revenue losses occasioned by such exemption;

(iii) Establish standards and qualifications by which local taxing authorities may make uniform special tax provisions available to a taxpayer for a limited period of time to encourage improvement of deteriorating property or areas by an individual, association or corporation, or to encourage industrial development by a non-profit corporation; and

(iv) Make special tax provisions on any increase in value of real estate resulting from residential construction. Such special tax provisions shall be available for a period not to exceed two years.

(c) Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double or quadruple amputees, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein.

Section 2. Sections one B, two, eighteen, twenty-four and twenty-five of article eight of the Constitution of Pennsylvania are renumbered three, five, eleven, fifteen and sixteen respectively, and section three of article eight of the Constitution of Pennsylvania is amended to read:

Section 6. Taxation of Corporations.—The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the Commonwealth shall be a party.

Section 3. Article eight of the Constitution of Pennsylvania is amended by adding after section 3, a new section, to read:

Section 4. Public Utilities.—The real property of public utilities is subject to real estate taxes imposed by local taxing authorities. Payment to the Commonwealth of gross receipts taxes or other special taxes in replacement of gross receipts taxes by a public utility and the distribution by the Commonwealth to the local taxing authorities of the amount as herein provided shall, however, be in lieu of local taxes upon its real property which is used or useful in furnishing its public utility service. The amount raised annually by such gross receipts or other special taxes shall not be less than the gross amount of real estate taxes which the local taxing authorities could have imposed upon such real property but for the exemption herein provided. This gross amount shall be determined in the manner provided by law. An amount equivalent to such real estate taxes shall be distributed annually among all local taxing authorities in the proportion which the total tax receipts of each local taxing authority bear to the total tax receipts of all local taxing authorities.

Section 4. The following schedule is adopted:

Section 1. Notwithstanding the provisions of section 4 of article eight, statutes which presently subject real property of public utilities used and useful in furnishing public utility services to local real estate taxation by local taxing authorities shall remain in full force and effect until repealed.

Section 2. Sections 1 and 2 shall take effect as soon as possible, but no later than July 1, 1970. Section 4 shall take effect July 1, 1970, unless the General Assembly earlier provides enabling legislation in accordance therewith.

DELEGATE JOHNSON. Mr. President, I call to the attention of the delegates the address of the Committee on Style and Drafting commenting on Proposal No. 5 as it now appears, and you will note that according to this comment, that the provisions set forth in Section 1A and 1A1 of Committee Proposal No. 5 have been regrouped and renumbered on a subject basis. Subsection (a) continues as before to set forth categories of property and institutions which the General Assembly is authorized to exempt from taxation; subsection (b) sets forth the subjects of taxation for which the General Assembly may by general law establish standards and qualifications, and may grant exemptions or make special tax provisions; and also subsection (c) sets forth the self-operating exemption of residential property owned by certain wounded war veterans. And since I wish to comment some in part in detail on this, if the delegates will please turn to page 3, line 24, where you will find this section; subsection (c), you will recall that this was approved in exactly this form by the voters as an amendment to the Constitution in 1961. But the committee would call your attention to the fact that this subsection would now seem to be redundant in view of the expanded section relative to certain classes of exemptions, including "disability." We further observe that the section contains certain poorly phrased descriptions, makes constitutional reference to a non-constitutional agency, viz.: "the State Veterans' Commission", and more important, is limited in application. For example, is a citizen and resident of the Commonwealth who became a paraplegic as a result of service in the United Nation's peace-keeping forces contributed by the United States at the request of the Secretary General, eligible under this section? We believe not as the veteran has not served in "any war or armed conflict in which the United States was engaged . . . ." We understand this section was added by amendment on second consideration and thus do not believe we can act upon it, although the Committee is of the strong opinion

it ought to be deleted or, at minimum, authorization given to provide more precise language.

Also, in the listing of exemptions from taxation which the General Assembly is authorized to adopt, set forth in subsection 1 (a), the Committee has retained verbatim several adjectives which are in our opinion redundant and apt to cause confusion. The Committee understands that the insertion of "actually" in certain phrases was an attempt to make more strict the construction of the exemption and to provide an appropriate rule of reference for judicial interpretation. Recognizing the detailed consideration this subsection has been given, this Committee finally acquiesced in the verbatim language chosen by the substantive committee. This reliance upon prior judicial interpretations which have not been, in the opinion of the Committee, sufficiently respective with respect to tax exemptions is a grave mistake.

The Section dealing with the taxation of real property of public utilities has been rearranged and reworded to accomplish the following objectives:

(a) The exemption for the real property useful in furnishing public utility services is an exception to the general principle that the real property of public utilities shall be subject to real estate taxes imposed by local taxing authorities. (The last sentence of Committee Proposal No. 5, Printer's No. 18 has simply restated this principle and has not therefore been deleted.)

(b) The exemption is only applicable to the extent that the General Assembly provides for the distribution of funds to compensate local taxing authorities for lost real property taxes.

(c) The phrase "in lieu of local taxes" has been retained, but in view of the ambiguity of that phrase standing alone, it has been defined in terms of the requirements originally set forth in that Section for the applicability of the exemption.

Now, Mr. President, there was a slight delay and you called a recess because inadvertently certain items had been left out of Proposal No. 5 as presented for a third reading. If the delegates will kindly turn to page 5, line 15, and after the word "authorities" we have to insert a comma and this phraseology "or in such other equitable proportion as may be provided by law"; that should have been in the draft and we now ask permission to put it in. On line 19 of the same page, delete the word "and" and substitute "or," "utilities used or useful in furnishing public utility services to local real estate taxation." With those corrections I think I will conclude my report.

DELEGATE BALDWIN. Would you state that again?

DELEGATE JOHNSON. It is found on page 5, line 15, after the word "authorities, taxing authorities" insert a comma "or in such other equitable proportion as may be provided by law."

PRESIDENT BRODERICK. Was there another change? Did you mention another change, Chairman Johnson?

DELEGATE JOHNSON. Yes, the other change was substituting in line 9, deleting "and" and inserting "or" on line 19.

PRESIDENT BRODERICK. Is that the "and" after "used"?

DELEGATE JOHNSON. The "and" after "used" should be deleted and "or" substituted.

MOTION

DELEGATE MICHENER. In view of the discussion we ran into this afternoon, I think we should take formal note in the entire body that these changes are acceptable to us, so they cannot be challenged later, and I so move you, sir.

PRESIDENT BRODERICK. May I recognize, please, Chairman Pelletier?

DELEGATE PELLETIER. May I make one other comment, also, before we move to Delegate Michener's motion, and that is that in submitting this schedule, since Section 1 is of a permanent character, that is, reasonably so, we would like it to be clearly understood that this schedule is a part of this article, and it is intended that the provisions contained herein shall have the same force and effect as those contained in the number section of this article, Mr. President.

PRESIDENT BRODERICK. Are you suggesting any change in language?

DELEGATE PELLETIER. No, we simply want it to be clear that this is simply regarded as schedulized changes.

PRESIDENT BRODERICK. Are there any delegates who object to these two changes that have been made? I understand they are typographical.

Now, the Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I wish to direct an inquiry to Delegate Johnson.

PRESIDENT BRODERICK. Yes. Proceed.

DELEGATE SOLOMON. Does subsection (c) remain as passed by this Convention?

DELEGATE JOHNSON. Yes, it is as passed by this Convention.

DELEGATE SOLOMON. And the recommendations have no effect, other than raised in the question, is that correct?

DELEGATE JOHNSON. I just raised the question that it does not cover certain persons who may need exemptions or who have served in the military.

DELEGATE SOLOMON. That is not off the coast of Israel either.

DELEGATE JOHNSON. No.

DELEGATE SOLOMON. In Vietnam.

DELEGATE JOHNSON. That is right.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate. For what purpose does the gentleman rise?

DELEGATE TATE. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE TATE. Mr. President, I am concerned by the same section, and I am not quite sure that I understand the recommendation or the statements of Style and Drafting. I wonder if I might have a further clarification from Delegate Johnson.

Did I understand him to say in his initial report that subsection (c), as it now stands, and as previously passed by this Convention on second consideration, is regarded by the Committee on Style and Drafting as surplusage and redundant as a result of other provisions that are in this proposal?

DELEGATE JOHNSON. Yes. Delegate Tate, you will find in the proposal that local tax authorities are empowered to grant exemptions to persons who are disabled, any dis-

abled person, and that, of course, will cover veterans who are disabled.

DELEGATE TATE. Mr. President, does that mean that there is nothing contained in Subsection (c) which is not already authorized somewhere else in this proposal?

DELEGATE JOHNSON. Yes. Subsection (c) of course, specifies certain types of persons.

DELEGATE TATE. But it does not expand authorization given elsewhere?

DELEGATE JOHNSON. No, Mr. President.

DELEGATE TATE. Well, then, Mr. President, I would like to ask a question of parliamentary inquiry at this stage in the proceeding. What would be the proper step to take in order to serve the cause of brevity in our Constitution as well as good draftsmanship so that we might eliminate this, in view of the fact that it seems to be the opinion of Style and Drafting that we would not take anything out of the Constitution by so doing.

PRESIDENT BRODERICK. It is the opinion of the Parliamentarian, which I will express, that it would require an amendment.

DELEGATE TATE. May I ask, Mr. President, whether such an amendment has been requested by any delegate of the drafting bureau?

PRESIDENT BRODERICK. We have no amendments, I am advised.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam. For what purpose does the gentleman rise?

DELEGATE AMSTERDAM. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE AMSTERDAM. I am wondering whether the explanation that has been given is quite correct.

It seems to me that the general clause that was first referred to permits the establishment of a class or classes of subjects and so on which includes those who are incapacitated, whereas (c) specifically requires, without giving an authorization to a local community to do something about it, specifically requires an exemption to be given. It seems to me they are quite different, if I am correct.

DELEGATE JOHNSON. The delegate is correct in that the one is mandatory and the other is permissible.

DELEGATE AMSTERDAM. One certainly is not covered by the other. The mere fact that a community has the right to give such an exemption is quite different from the fact that we are mandating an exemption here. I cannot see that one includes the other; that is my difficulty.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Goldman.

DELEGATE GOLDMAN. May I interrogate Delegate Johnson, please?

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE GOLDMAN. Mr. President, in the two errors that were commented on as typographical errors on page 5, he added in, if my note taking was correct, on line 15 "or such other equitable proportions as provided by law." Is that correct?

DELEGATE JOHNSON. Yes, Mr. President.

DELEGATE GOLDMAN. That was not the context of the original proposal as amended to Style and Drafting. Am I correct?

DELEGATE JOHNSON. Yes.

DELEGATE GOLDMAN. It was not?

DELEGATE JOHNSON. It was not, no.

DELEGATE GOLDMAN. So that they have made a substantive change in that respect.

DELEGATE JOHNSON. No, Mr. President.

I will now call on Delegate Leonard who is the Chairman of that Committee.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Leonard.

DELEGATE LEONARD. I would like to say that it was in the original proposal that the method of apportioning this tax among the local taxing authorities was not specifically in accordance with the ratio or proportion that the total tax receipt of each local taxing authority bears to the total of all, but that there was some discretion in there, the original wording was "that it would have due regard for the proportion." I would say that it was the intent of the Committee that these words that are being added now be in here, and it was strictly an omission that this was not printed, because it came from our Committee, and it came through Style and Drafting. Am I clear on this?

DELEGATE GOLDMAN. The delegate is clear on that, Mr. President.

I am just concerned if that was the intent of the delegates here or whether it was really the intent to return all of the funds, or as was said, "such equitable proportions as shall be provided by law."

DELEGATE LEONARD. It is intended to return all the funds. What we are dealing with here is the manner of allocating these funds to the various taxing authorities.

DELEGATE GOLDMAN. Except that this does not say that. It now says, "or such other equitable proportions as provided by law," so that one could conceivably work out a proportion which would be returning something far less.

DELEGATE LEONARD. That is not meant to be.

DELEGATE GOLDMAN. Am I correct, though, in my understanding? Am I reading my interpretation of what this says correctly?

DELEGATE LEONARD. It is not meant to be less.

DELEGATE GOLDMAN. I have one other question. Where the typographical change is in line 19, where they changed "and" to "or," now is that not a deviation from the actual state of the law, the case law which states—

DELEGATE LEONARD. Excuse me, Mr. President, the wording is "or in such other equitable proportions as shall be provided by law." So it is meant to distribute the entire amount. The only question that is being dealt with here is how the sum is to be allocated. I think that is crystal clear, and the words are "or in such other equitable proportions."

DELEGATE GOLDMAN. I would rather see the word "manner" than "proportions," because to my thinking the word "proportions" indicates that something less or something more may be redistributed, and the word "manner" would clearly define that you intended that all the money is to be redistributed, because when you use the word "proportions" you could conceivably cut down the amount

that is being redistributed or increased. That is my thought on it.

Mr. President, where they changed the word "and" to "or" in line 19, have they not changed substantively the test of what constitutes public utilities to be subject to taxes? Has not the test always been in the past that real property which is used and useful in furnishing public utility services to local real estate shall continue to remain in full force and effect? Have they not changed that test to now make it "or" rather than "and" which requires both?

DELEGATE JOHNSON. Yes, to broaden the coverage.

DELEGATE GOLDMAN. So that they have substantively changed it, and have not made a typographical correction.

DELEGATE JOHNSON. That is a matter of opinion. I would just recommend in commenting that both of these typographical changes are not in fact typographical, but they are, in fact, substantive, which will require the voting of the delegates.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, in response to Delegate Goldman's position and his questions, with reference to the language "or in such other equitable proportions as may be prescribed by law," which unfortunately and inadvertently the Style and Drafting Committee in their copy they submitted to us as delegates, those words do not appear. This was the intent of the subcommittee. This was the intent of the Standing Committee, because what this purports to express is that—I think Delegate Leonard expressed it rather well—we hope to get the money back, monies collected in the form that the monies collected would be that which the local municipalities would be able to collect if they were able to charge a local real estate tax.

However, we want to provide a formula, flexible enough for the General Assembly to be able to allocate funds back to the municipalities, that will be able to take into consideration issues not inclusively dealing with the amount of property from the specific municipalities which are covered by the public utilities. In other words, in our expression there was no effort on our part to create a Peach Bottom problem through the gross receipt tax that could have just as easily been created through a local real estate tax, and that is why this is the language that we elected to adopt in order to permit the General Assembly to allocate the funds back to the municipalities in a proportion that they feel is equitable to the municipalities based on their tax exemption. I feel that was expressed rather clearly by Delegate Leonard, and I hope my response may be not equally but may be better of an answer to Delegate Goldman.

I must say, though, however, that the change of the word "and" to "or" does change words of art and it does change words that we in the subcommittee and in the standing committee have become accustomed to working with, because as I understood the words heretofore, we were not talking about real property of public utilities used and useful, and there was no word, no language that I recall in the months of deliberation that had the word "or" instead of "and." It seems to me that Delegate Goldman does raise a pertinent point, because the difference between the three letter word "and" and the two letter word "or" does change the picture considerably from the language that we have been accustomed to working with.

Now, if I am wrong on this, I respectfully yield to Delegate Woodring who is the co-chairman of the Committee, but it seems to me that the change in the word "and" and the word "or" does change the situation.

PRESIDENT BRODERICK. I want at this time to call on either Delegate Leonard or Delegate Woodring to answer the question that has been propounded by Delegate Gerber in connection with this matter.

DELEGATE KLINE. I would like to ask a question to get some clear explanation of what this language means in connection with public utilities. If you start on page 4, and read, Section 4. Public Utilities.—it says "The real property of public utilities is subject to real estate taxes imposed by local taxing authorities." Then it proceeds to say that payment to the Commonwealth of gross receipts taxes or other special taxes in replacement of gross receipts taxes by a public utility shall be in lieu of local taxes.

I would like to understand clearly if this is the thinking of the committee, if the Commonwealth were to repeal its gross receipts taxes, would utilities then be subject to local taxes? I read it that way. Is that what we are doing?

PRESIDENT BRODERICK. The Chair now asks the chairmen of the Committee, Chairman Woodring and Chairman Leonard to answer.

DELEGATE WOODRING. Mr. President, the answer is clearly, yes. If the gross receipts tax or some other special tax would replace at sometime the gross receipts tax would be repealed and not in effect, then the first sentence of this section would be applicable and the property, real estate of public utilities would be subject to local real estate taxation.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, Delegate Kline has asked the one part of the question. I would now like to ask Delegate Woodring the second part of the question, which I think is extremely important, and that is this, does this language imply that those public utilities that are not now paying gross receipts tax will pay property taxes?

DELEGATE WOODRING. Mr. President, the answer is clearly, yes, unless certain public utilities might be otherwise exempt under other provisions; but in the absence of some special provision, public utilities would be taxable unless they pay gross receipts taxes.

The only exemption under this clause is to those public utilities which pay the gross receipts taxes.

DELEGATE PASQUERILLA. Mr. President, is it possible to get an official opinion for the record on that from the counsel of this Convention or counsel for the Taxation Committee or from the Style and Drafting Committee or from somebody because to me it is rather confusing. It is in one paragraph and I think it should be emphatically stated that all public utilities are subject to taxes. Putting it together, I think, makes it a little confusing. I think it should be clear

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. The only clear and forthright answer to that question is the first sentence of Section 4 beginning on page 4, "The real property of public utilities is subject to real estate taxes imposed by local taxing authorities."

DELEGATE PASQUERILLA. Mr. President, I have two full time attorneys in my office who always tell me that there is legal language when it is contained in the same paragraph, one reads with the other. I am not an attorney and I think it should be plainer.

PRESIDENT BRODERICK. Well, now, Delegate Pasquerilla, you asked could we have an opinion.

I will ask the attorney for the Committee on Taxation as well as the attorney for the Convention to give their opinion on this matter to Delegate Woodring and Delegate Leonard and they can report it to the Convention.

PRESIDENT BRODERICK. Now, the Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I rise in defense of the Style and Drafting Committee on this question of "or" or "and." I would like to refer Delegate Goldman and everyone else who has discussed and raised questions about this to Printer's No. 5 which is the Proposal No. 5 as it originally came from the Committee. In the second sentence, gross receipts taxes imposed by the Commonwealth on said public utilities shall, however, be in lieu of local taxes on that real property which is used or useful in furnishing its public utility service.

Every printer's number of Proposal No. 5 since then has contained that language. The corrected amendment which was made on the floor tonight for the correction which was referred to on the floor tonight is in the schedule which deals with interim provisions that simply makes the language in the schedule correspond to the language in Section 4. But the words have always been in prior to Style and Drafting receiving it and from the time it first came on the floor, "used or useful." If there is an error in that, it is not the error of the Committee on Style and Drafting.

DELEGATE LEONARD. Mr. President, Delegate Shapiro is right. I erred in my response to Delegate Goldman first and I want it on the record that Delegate Shapiro's statement is correct. I checked my original Proposal No. 5 and I was in error in reporting that it was "and" instead of "or." He is correct.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup. For what purpose does the gentleman rise?

DELEGATE STROUP. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE STROUP. Mr. President, I do not know to whom I shall address my inquiry but I will just pose a question. First of all, as I understand, what we are trying to do in Proposal No. 5 is to impose a real estate tax upon all utilities whether those utilities are being used or useful or not. This is my first premise. I would ask one of the gentlemen who are the proposers and one of the chairmen whether or not I am correct.

PRESIDENT BRODERICK. The Chair will ask either Chairman Woodring or Chairman Leonard to please answer the question if they will.

DELEGATE STROUP. Mr. President, I am just trying to clarify this issue.

DELEGATE LEONARD. The intention, Mr. President, is: It is used or useful.

DELEGATE STROUP. And now Delegate Leonard, may I direct this question to you. A real estate tax shall be imposed by the General Assembly whether it is used or useful or whether it is not, is that correct?

DELEGATE LEONARD. No, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Woodring.

DELEGATE WOODRING. Mr. President, the answer to Senator Stroup is "yes." The first sentence imposes real estate taxes on land used or useful or otherwise and presently, Senator Stroup, in further answer to that, land which is not used or useful is presently subject to real estate taxes.

DELEGATE STROUP. Mr. President, I thank Delegate Woodring now for that response and I am sure that is correct and this brings us now to the crux of the entire argument with relation to the entire subject. Therefore, I believe that when we vote, the suggestion made and the change in Section 1 from "and" to "or" is absolutely correct and should be adopted by this Convention.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, I may be out of my league here among attorneys but on page 3, line 24, "Certain Disabled Veterans" has been crossed out.

As I read this, "Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from payment of all real property taxes," etc. Does this mean, Mr. President, that a veteran from the Russian Army or Italian Army or any other army that has fought against this country, by the mere fact that he becomes a citizen will be eligible for exemption? As I read this language it gives him that right.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, as I understand the question of Delegate Camardella, it pertains to a section that was amended into the Committee proposal.

The words that were used were those identical to the existing Constitution and we were very careful not to change any commas, periods or semi-colons.

We do not know precisely what it means, but whatever it has meant in the past, that is what it means in the future.

DELEGATE CAMARDELLA. Mr. President, I am not taking anything for granted. As I read this, I would like to have a legal interpretation, I believe that any soldier or veteran from any foreign country that has fought against this country and becomes a citizen of this country or this Commonwealth will be eligible for the benefits as this is written. Some of these shrewd lawyers, from what I have seen here, can do something with this. I would like to see clear-cut language in it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, this same question has been brought up previously in a different form.

Delegate Camardella is referring to Section (c) of the article on page 3. Section (c) is a verbatim insert from the present and existing 1874 Constitution. It was expressly placed into this article by amendment, I believe by Delegate Solomon.

Section 2 (b) (2) beginning on page 2 also grants exemption to people who are in need by reason of physical disability or otherwise. The Committee on Style and Drafting thinks that by reason of the provisions of (b) (2), the provisions of Section (c) are redundant. Nevertheless, the provisions of Section (c), the old 1874 Constitutional provision, have been expressly incorporated here by amendment of Delegate Solomon and they are part of this article by action of the Convention.

DELEGATE CAMARDELLA. Mr. President, I feel very strong about this. I would like to get a legal opinion. As I read this, any veteran from any foreign soil would be eligible according to the language.

PRESIDENT BRODERICK. Did you hear the answer of Delegate Woodring?

DELEGATE CAMARDELLA. Mr. President, I have heard this answer for the last three months, but after seeing some of these attorneys jockeying the law around, I would like to see it in clearer language.

PRESIDENT BRODERICK. I now recognize Delegate Woodring.

DELEGATE WOODRING. Mr. President, in further answer to the distraught Delegate Camardella, section (c), which is a reprint from the 1874 Constitution, ends up that those veterans are entitled to this, if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein. In answer to his express question, it would seem to me that the State Veterans' Commission would not certify, Delegate Camardella, those veterans of the Russian Army or any other armies of foreign soil and foreign doctrines.

DELEGATE CAMARDELLA. Mr. President, I would appreciate very much if Delegate Woodring or anyone else would tell me where this document says he must fight for the United States Army. Where in this document?

PRESIDENT BRODERICK. What you have asked is, can we give you a legal answer and we will try. I cannot guarantee legal answers. I will ask again the attorney for the Committee on Taxation to get together with the attorney for the Convention and provide an answer to Delegates Woodring and Leonard for transmittal to this Convention.

The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, perhaps I can talk to you and the members of this Convention. I do not know too much about Delegate Camardella. I do not know how much respect he has held for the Attorneys General of this State since 1961 and before, but this is the law of the state. This has been the law and those who have been given this very small exemption of real estate have been paraplegics and blind veterans who fought in the defense of their country. Delegate Camardella, if you cannot understand that sort of thing, it is tough.

DELEGATE CAMARDELLA. The sly remarks that have been made here seem to be like a union meeting and if you want that sort of thing you can have it. I am not standing here and talking against any disabled veteran. If we talk about giving our veterans exemptions, let us spell it out. If he wants to wear the armband, let him wear it and keep his remarks to himself.

PRESIDENT BRODERICK. The Chair recognizes Delegate Popil.

DELEGATE POPIL. Mr. President, I have in my hand Committee Proposal No. 5 as amended on second consideration and this is Printer's No. 16. The last sentence of this proposal which deals with utilities states as follows: "That real property of public utilities which is not used or useful in furnishing their public utility services, shall remain subject to local taxation."

In the proposal which we received today, this sentence has been deleted. I would like to know from Delegate Johnson whether the intent is still in the proposal as submitted by Style and Drafting.

PRESIDENT BRODERICK. I see Delegate Leonard rising and he is raising his hand and if it is all right with you, we will have him answer it.

DELEGATE LEONARD. Mr. President, on line 17 of page 5, the Style and Drafting Committee decided that the best place for that would be in the schedule, so they wrote, "Notwithstanding the provisions of Section 4 of Article 8, statutes which presently subject real property of public utilities used, and that should be "or useful," "in furnishing public utility services to local real estate taxation by local taxing authorities shall remain in full force and effect until repealed." It was moved into the schedule by the suggestion of Style and Drafting.

DELEGATE POPIL. This is not what is stated in Proposal No. 5 as amended. Let me read it again. It states that real property of public utilities which is not used or useful in furnishing public utility services are subject to tax. We are not talking about that which is used, we are talking about that which is not used or useful.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE WOODRING. Mr. President, the answer to Delegate Popil's question is that Style and Drafting has seen fit to transpose the sentence involved from the negative to the affirmative, and it now reads that "Notwithstanding the provisions of Section 4 of Article 8, statutes which presently subject real property of public utilities used or useful."

Heretofore, this sentence was raised in the negative as those properties which were not used or useful, and I think we get exactly the same result whether we state it in the affirmative manner or in the negative manner, because Style and Drafting has now stated it in the affirmative manner.

DELEGATE POPIL. All I am interested in is if the intent is there. I still do not fully agree with Delegate Woodring, but perhaps he is correct. I do know now properties which are not used or useful by the utilities, do pay a tax to the local municipalities.

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman.

DELEGATE GOLDMAN. I would like to ask Delegate Gerber or any of the other delegates in Style and Drafting if they would be willing to change, since we are talking about a typographical error, we are talking about words

that were inadvertently omitted. If in line 13 on page 5, the word "proportion" could be changed to "manner."

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, I cannot answer that on behalf of the Committee. I would have to say "no," unless the co-chairmen of the Standing Committee, Judge Woodring and Delegate Leonard would agree to it. I would have to hold to the word "proportion" now because I think that expresses their intent.

PRESIDENT BRODERICK. Would you yield a second please? The Chair would like to suggest that the chairman of the Taxation Committee, Delegate Woodring and Delegate Leonard, if they would come up front here with Delegate Gerber and anyone else they care to bring up, I think we can expedite this discussion. I think it is most important they get together on this thing and we find out what the opinion of the substantive committee is.

DELEGATE LEONARD. I would like to suggest the members of the Style and Drafting Committee also come up front. Those who worked on this particular proposal should be up front to relieve us of a lot of the problems that have arisen.

PRESIDENT BRODERICK. That is an excellent suggestion and if we congregate up at the two mikes, I think we can expedite the two questions.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla. For what purpose does the gentleman rise?

DELEGATE PASQUERILLA. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE PASQUERILLA. Mr. President, before we go into that, is it going to require an amendment on page 5, line 19 to insert the word "or" in place of "and?"

PRESIDENT BRODERICK. When we return from recess, I will give you that answer.

DELEGATE PASQUERILLA. The other answer I would like to know which confuses me is the change in the language in the schedule where it says, "real estate taxation by local taxing authorities shall remain in full force and effect until repealed." Repealed by whom? I think there are a lot of questions that the Style and Drafting attorneys or their co-chairmen should come forth and answer on this very important document.

PRESIDENT BRODERICK. May I suggest that you come up and join the discussion and ask your questions, because it is up to the Committee here to answer these questions. You understand that the Chair is not able to answer them.

The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. If I may have the attention of the delegates, I have an important matter to call to your attention. In Section 4 of this proposal, there is no definition of "public utilities." I think it is important to know whether or not we are talking about private utilities or municipal utilities and if you are to use Section 1 under Section 4, then those municipal utilities which are presently possibly exempt from taxation, would now be subject to taxation and I refer this to the Committee for their consideration.

RECESS

PRESIDENT BRODERICK. Unless there is objection, we will recess for about 10 minutes and let these committees get organized to answer the questions of this Convention.

The Chair hears none, and the Convention is now in recess until 10 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

ANNOUNCEMENT OF THE CHAIR

PRESIDENT BRODERICK. Fellow delegates, I understand that the problems in the language are being worked out now. I have also received an estimate that it would take about another thirty minutes to have the language mimeographed or typed, whatever they are doing, to present it to you. This change of language, I understand, is a change being made by the Committee on Style and Drafting and I, at this time, just repeat what they have told me that there are no changes in substance but a change in Style and Drafting's language. If this is so, we can get this change within about thirty minutes.

Several delegates have come up to me and asked why we are waiting tonight. I want you to know that if we can make the change satisfactorily, we can consider the proposal as we intended to on third consideration and we will not have to come in until late tomorrow because tomorrow afternoon is the first time we will be able to get Proposal No. 7 back from the Committee on Style and Drafting. Therefore, I say to you fellow delegates, if you will remain at ease for about thirty minutes, I think we can complete this this evening and we will have tomorrow morning and part of the afternoon for committee meetings.

RECESS

PRESIDENT BRODERICK. Unless there is objection, we will recess for thirty minutes.

The Chair hears none, and the Convention is now in recess.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of **Committee Proposal No. 7, Printer's No. 28,** entitled:

A proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

On the question,
Will the Convention agree to the proposal on third consideration?

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier, Chairman of the Style and Drafting Committee.

DELEGATE PELLETIER. Mr. President, the Style and Drafting Committee, in working on Proposal No. 7 of the Judiciary Committee, does not find provisions which seem important in view of the decision made by this Convention to elect all judges in the Commonwealth.

These are, one, the lack of a provision permitting the Legislature in setting up the commonwealth courts to provide for selection of nine original judges and to provide for the staggering of terms so that all of the judges of that court are not required to run for office in the same election or retention election. Two, the lack of a provision permitting the Legislature to set up an orderly procedure for the election of judges to succeed judges who have reached the mandatory retirement age of seventy years, including the extension of the terms of such judges to the end of the calendar year in which such successor is elected.

We, therefore, would like to suggest that the Judiciary Committee may wish to meet as promptly as possible to recommend to this Convention appropriate provisions to cover these problems so that the Convention, in turn, may act in time for the Style and Drafting Committee to incorporate the proposals of the Committee in the proposal to be returned to the Convention tomorrow.

PRESIDENT BRODERICK. Do I understand, Chairman Pelletier, that you are now temporarily returning to the Convention, Proposal No. 7, Printer's No. 28, which is now on third consideration?

DELEGATE PELLETIER. That is correct.

PRESIDENT BRODERICK. The Chair recognizes Chairman Amsterdam of the Judiciary Committee.

DELEGATE AMSTERDAM. Mr. President, the members of the Judiciary Committee that have been working with the Committee on Style and Drafting have been discussing the very problems that Delegate Pelletier just gave to this Convention. We are of the opinion that a meeting of the Judiciary Committee at this time might be very helpful in trying to arrive at a conclusion that we could recommend to this body.

I might say that Judge Woodside, in rereading the entire Judiciary Article in light of the last important decision which we made to elect statewide judges, came across the very problems that have been indicated by Style and Drafting.

These seem, to us, to be quite serious also and, therefore, we should like to announce a meeting of the Judiciary Committee to be held immediately in the Senate caucus room on the first floor of the Capitol and we would appreciate it if the members of the Judiciary Committee would prepare there at this time.

We would hope to report back to this Convention as soon as possible and I would think, from the discussions that we have had, that it may take anywhere from thirty to forty-five minutes for us to report back to this Convention floor.

RESOLUTION

PRESIDENT BRODERICK. The Chair now recognizes Delegate Croop.

DELEGATE CROOP. Mr. President, I ask your indulgence for just a few minutes to read and present for immediate consideration, and I trust favorable consideration, the following resolution:

In the Constitutional Convention, Feb. 27, 1968

Delegate Floyd W. Musselman residing in Cumberland County and representing the 31st Senatorial District reentered the Polyclinic Hospital in Harrisburg this past Monday for examination and treatment.

During the past three months, Delegate Musselman has gained the respect of this body through his contributions to the Convention and the friendship of many of his fellow delegates; therefore be it

RESOLVED, That this Constitutional Convention pay tribute to Delegate Floyd W. Musselman for his fine contributions and wish him a speedy recovery.

FRANK D. CROOP
DOROTHY K. TULLY
JOHN T. VAN SANT
H. RICHARD HOSTETLER
JAMES W. NELSON
BILL DEVLIN

On the question,
Will the Convention agree to the resolution?
It was agreed to.

PRESIDENT BRODERICK. The resolution is unanimously adopted and will appear in the record. A copy will be prepared.

DUPLICATING STAFF AND CONVENTION REPORTING STAFF COMMENDED AND THANKED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I have not had the privilege of introducing my wife because I do not have one. I have not introduced my mother because she is deceased. I have not introduced any fourth, fifth, sixth or seventh graders because I no longer teach. But I have noted that we have failed to give credit to one group in this Convention which I think is the hardest working group of any of the employees. If you will count the number of sheets of paper that we have used so far in amendments and realize that every single one of them had to be prepared and duplicated, I think you will all join with me in thanking the people who have been working on the duplicating machinery and preparing the amendments. I think we owe them to put this into the record, that we are very grateful for them.

Mr. President, I regret to say that it was necessary to remind me that we ought to include the Convention stenographers who have been sitting down here trying to take down every foolish thing that we have said as well as some of the wise ones.

PRESIDENT BRODERICK. The Chair certainly agrees with Delegate Irvis. I think we owe them a big round of applause because they have done a wonderful job.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport. For what purpose does the gentleman rise?

DELEGATE RAPPAPORT. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE RAPPAPORT. I gather that the Judiciary Committee is presently meeting and that the Committee on Style and Drafting is also presently meeting. Am I correct in my assumption that we will transact no business for about a half hour?

PRESIDENT BRODERICK. Delegate Rappaport, the Chair shares your dilemma and the dilemma is, when are we going to be ready? Let me make some inquiries because I think it would be nice if we had a definite time.

Delegate Rappaport, I have had an estimate up here that we think it will be definitely at least twenty minutes before we will be ready.

DELEGATE RAPPAPORT. I thank the Chair.

RESOLUTION

DELEGATE OTTO requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

> In the Constitutional Convention, Feb. 27, 1968
>
> The efficient and time consuming chores of maintaining good relations between the Pennsylvania Constitutional Convention of 1967-1968 and the press, informing and educating the public about the Convention's activities and functions, and preparing the "Reporter," the publication of the Convention, have been performed with diligence and skill by the Information Officer, Peter M. Coleman, and his staff.
>
> Mr. Coleman, of Mechanicsburg, under the general direction of Executive Director John W. Ingram, has been aided in his efforts by two Assistant Information Officers, David Lcherr, and Gordon Griffiths, and two assistants, Jane H. Henninger and Albert F. Ceres; therefore be it
>
> RESOLVED, That the Convention extend its congratulations to Peter M. Coleman and his staff for their excellent job of publicizing the work of the Convention, and be it further
>
> RESOLVED, That a copy of this resolution be transmitted to Mr. Peter M. Coleman and his staff.

RECESS

PRESIDENT BRODERICK. If there is no objection we will remain completely at ease until 11:00.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

PAGES COMMENDED AND THANKED

PRESIDENT BRODERICK. The Chair will recognize Delegate Scott.

DELEGATE SCOTT. I would like to amend Delegate Irvis' motion and give the page boys a big hand because they have done a wonderful job.

PRESIDENT BRODERICK. I understand, Delegate Amsterdam, that the amendment is not ready.

DELEGATE AMSTERDAM. That is correct, but we have something that is so unusual and so startling, Mr. President, that I think it ought to be announced without waiting at all. We have finally had an amendment that has been approved unanimously by all the members of the Judiciary Committee.

(Overwhelming ovation.)

DELEGATE ABERMAN. I have noted in the minutes of our proceedings that there are numerous instances where applause is noted in the comments of various speakers. I would hope that the comment made under the remark of Delegate Amsterdam is an overwhelming ovation.

DELEGATE BANES. The Chair recognizes that that announcement was so startling it even awakened me, and I might add I think at this time that I would demand a roll call vote to verify that.

PRESIDENT BRODERICK. Is the amendment ready to be distributed?

DELEGATE AMSTERDAM. I understand, Mr. President, that we need the approval of this Convention to consider the amendment in order to take it up at this time, and whatever the procedure is for having that consideration, I would like to recommend it to the Convention. I would be glad to identify the amendment without it being specifically written. It will be written in a very few minutes and we will have it.

PRESIDENT BRODERICK. I think you may proceed.

The understanding is, of course, that this is here on third consideration temporarily, and in order to amend a proposal on third consideration, you must receive the consent of the majority of the delegates present, and you are now recognized for the purpose of explaining your amendment in order to obtain that consent.

DELEGATE AMSTERDAM. We found as a result of the consideration in front of the Judiciary Committee that we have, in effect, placed a straight jacket around the Legislature so that they would have, in setting up the commonwealth court, been required to have all the judges of that court run in an election at the same time, and that they would be required in the future years to, also, continue to run all at the same time. That obviously would not be a beneficial method of election of judges in the commonwealth or a statewide court. Under the circumstances, we are going to recommend an amendment to the schedule of the Judiciary Article which will read substantially as follows:

"Notwithstanding anything to the contrary in this article, the General Assembly shall stagger the initial terms of judges of the Commonwealth Court."

This will permit the General Assembly in setting up the court to provide for staggered terms so that they will be elected two at a time or one at a time, or whatever the Legislature may feel is desirable, depending upon the number of members of that court that are set up by the Legislature.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I want to commend Delegate Amsterdam and the Judiciary Committee

for this correction. I have taken the microphone now on two occasions, and I have tried to point out this same factor which has disturbed me for the last couple of weeks with relation to the commonwealth court, and I certainly am well pleased with the report which he gives us in taking care of this particular situation, and I will be very happy to support the recommendation that this Committee brings to us when we have the amendment in front of us.

MOTION ON CONSENT TO RECEIVE SCRANTON-AMSTERDAM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. Now are we ready for the question? The question is, will the Convention agree to receive an amendment to Proposal No. 7 as described and explained by Delegate Amsterdam.

All those voting "yea" will vote their consent, and those voting "nay" will reject the consent.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—121

Aberman	Desmond	Leinbach	Sahli
Amsterdam	Devlin	Leonard	Scales
Aurentz	Dumbauld	Levin	Scarlett
Bagenstose	Erwin	Manderino	Scott
Baldrige	Fawcett	Mangery	Scranton
Baldus	Fay	Markley	Sebastian
Baldwin	Feather	Mattioni	Shapiro
Banes	Forster	McGeary	Shettig
Barron	Fortney	Michael	Shively
Benedict	Gabreski	Michener	Shoemaker
Bloom	Gehrlein	Miller, D.	Shrager
Braham	Gerber	Miller, R.	Silverman
Brennan	Goldman	Moorhead	Solomon
Broderick	Goldstein	Morton	Strickler
Brown	Gouger	Nelson	Stroup
Buck	Griffith	O'Donnell	Swope
Bunting	Henderson	Orban	Tate
Burkholder	Heyburn	Orbin	Thomson
Butera	Himes	Otto	Thornburgh
Camardella	Hocker	Pasquerilla	Tomascik
Caputo	Irvis	Pelletier	Tully
Caron	Jirolanio	Popil	Van Sant
Clark	Johnson	Pott	Waldron
Clinger	Kauffman	Powell	Warman
Corey	Kelly	Rea	Welsh
Cortese	King	Redick	Westerberg
Cosetti	Krill	Reynolds	Whittum
Croop	Leach	Richter	Wilcox
Cunningham	Lee, K.	Roberts	Woodring
Curran	Lee, L.	Rovner	Woodside
Dailey			

NAYS—1

Rappaport

NOT VOTING—41

Allison	Fineman	Huggins	Musselman
Barry	Fleming	Keller, J.	Pechan
Bashoff	Fohl	Keller, M.	Percey
Benfield	Gray	Kline	Prendergast
Cain	Hannum	Lane	Quiles
Casey	Harding	Laputka	Ruth
Conley	Hatter	McGlynn	Sharp
Donaldson	Hook	Meyer	Sprogell
Donolow	Horne	More	Stout
Fagan	Hostetler	Murray	Wilmarth
Filson			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. The Judiciary Committee has received one of the greatest tributes this Convention could ever pay to any Committee by voting their consent of yeas, 121, nays, 1.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam. For what purpose does the gentleman rise?

DELEGATE AMSTERDAM. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE AMSTERDAM. I wonder at this time whether I might ask for some information? Will it be necessary, since this is on third reading, to receive the consent of this body to keep it on third consideration after this amendment, or will it automatically remain on third consideration?

PRESIDENT BRODERICK. It automatically goes back to the Committee where it came from and it is the hope of the presiding officer that they will be able to get it out some time soon. I think we estimated tomorrow afternoon, but we will have a later report on that before we adjourn this evening.

The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, may I have the attention of the delegates for just a moment? As I have been attending this Convention and the work all through these proceedings, I have been singularly impressed with the burden of conformity of the legislative process with the demands being made, and revised in the Constitution. As I contemplate the burden which is going to be placed under the time schedule upon the General Assembly, I question very seriously whether or not we are not forcing upon the General Assembly an impossibility of performance under that time schedule. I am not referring to any particular proposal, but I do say this, Mr. President, that if we are to provide a legislative process under this Constitution and have it adopted in the Primary Election in 1968, I do not see how it can be done by January 1st, 1969, in many of the instances which we are required to do it, and I would ask, therefore, that some attention be given to this particular problem.

You must realize, as Governor Scranton stated, he hopes that the Legislature will not be in long session, but if we must address ourselves to all of the problems now being forced upon us by this Constitutional Convention, then it would be almost an impossibility for us to accomplish what would be required to be accomplished if all the revisions are adopted. I, therefore, suggest to the committee chairmen that they adhere very carefully to the time schedule that they are putting on the General Assembly of Pennsylvania.

SCRANTON-AMSTERDAM AMENDMENT TO COMMITTEE PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on third consideration?

DELEGATE AMSTERDAM offered the following amendment which was read by the clerk:

Amend Schedule, page 32, by inserting between lines 24 and 25: Commonwealth Court

Section 24. Notwithstanding anything to the contrary in this article, the General Assembly shall stagger the initial terms of judges of the Commonwealth Court.

Amend Schedule, page 32, line 26, by striking out "24." and inserting: 25.

Amend Schedule, page 32, line 2, by striking out "25." and inserting: 26.

Amend Schedule, page 32, line 9, by striking out "26." and inserting: 27.

On the question,

Will the Convention agree to the amendment?

DELEGATE AMSTERDAM. Mr. President, I am almost afraid to push my luck. The response has been so overwhelming that it would seem to me that simply looking at the amendment and seeing that it does, indeed, say what I had indicated, namely, that there be added to the schedule a provision for the commonwealth court as Section 24, and providing therein, "Notwithstanding anything to the contrary in this article, the General Assembly shall stagger the initial terms of judges of the Commonwealth Court."

The language apparently is exactly as I have indicated, and I believe we are ready for the question, and I should like to suggest that we take a vote at this time.

PRESIDENT BRODERICK. Are we ready for the question?

The question before the Convention is, will the Convention agree to the amendment being offered by Delegate Amsterdam.

The Chair will recognize Delegate Jirolanio.

DELEGATE JIROLANIO. May I interrogate Delegate Amsterdam?

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE JIROLANIO. I do not want to hold up the Convention at all. There is a question I would like to ask the delegate. As I understand it, the Legislature would have the authority to stagger the initial terms of the judges of the commonwealth court; is that correct?

DELEGATE AMSTERDAM. That is correct, sir. They already have been given the authority to fix the number of judges and so on.

DELEGATE JIROLANIO. Now, who, then, would appoint judges of this particular court?

DELEGATE AMSTERDAM. They would be appointed in exactly the same way that it is provided for in any other vacancy, by the Governor, depending on whether the Legislature was then in session or had been adjourned sine die; either with two-thirds or without the consent of the Senate. In other words, it would be done in exactly the way we set it up heretofore. There would be no changes made, none whatsoever.

DELEGATE JIROLANIO. Mr. President, assuming that the Senate would be adjourned sine die, would that mean, assuming that the Legislature had said there would be seven or nine members who would compose this particular court, that the Governor could then appoint the entire seven or the entire nine members without the consent and advice of two-thirds of the Senate?

DELEGATE AMSTERDAM. That is correct, but, of course, he would have to appoint them to whatever staggered terms the Legislature had set up, and presumably the Legislature would see that the appointments were made at the time they were in session. As was indicated, if they were not in session, the appointment would be made without the consent of the Senate.

PRESIDENT BRODERICK. Are we ready for the question?

DELEGATE AMSTERDAM. One moment, please, Mr. President. I understand that there is a change. There may be a change which is necessary, there are three references to page numbers. The first is page 32, line 26 which is correct. The next one says, page 32, line 2, which is incorrect. It should be page 33, line 2. The next one reads, page 32, line 9, and that should be page 33, line 9.

The question recurs,

Will the Convention agree to the amendment offered by Delegates Scranton and Amsterdam?

The roll was recorded as follows:

YEAS—126

Aberman	Desmond	Lee, K.	Rovner
Amsterdam	Devlin	Lee, L.	Sahli
Aurentz	Dumbauld	Leinbach	Scales
Bagenstose	Erwin	Leonard	Scarlett
Baldrige	Fawcett	Levin	Scott
Baldus	Fay	Manderino	Scranton
Baldwin	Feather	Mangery	Sebastian
Banes	Filson	Markley	Shapiro
Barron	Fohl	McGeary	Shettig
Benedict	Forster	Michael	Shively
Bloom	Fortney	Michener	Shoemaker
Braham	Gabreski	Miller, D.	Shrager
Brennan	Gehrlein	Miller, R.	Silverman
Broderick	Gerber	Moorhead	Solomon
Brown	Goldman	Morton	Strickler
Buck	Goldstein	Nelson	Stroup
Bunting	Gouger	O'Donnell	Swope
Burkholder	Griffith	Orban	Tate
Butera	Henderson	Orbin	Thomson
Camardella	Heyburn	Otto	Thornburgh
Caputo	Himes	Pasquerilla	Tomascik
Caron	Hocker	Pelletier	Tully
Casey	Hostetler	Popil	Van Sant
Clark	Huggins	Pott	Waldron
Clinger	Irvis	Powell	Warman
Corey	Jirolanio	Rappaport	Welsh
Cortese	Johnson	Rea	Westerberg
Cosetti	Kauffman	Redick	Whittum
Croop	Kelly	Reynolds	Wilcox
Cunningham	King	Richter	Woodring
Curran	Krill	Roberts	Woodside
Dailey	Leach		

NAYS—1

Mattioni

NOT VOTING—36

Allison	Fineman	Keller, M.	Pechan
Barry	Fleming	Kline	Percey
Bashoff	Gray	Lane	Prendergast
Benfield	Hannum	Laputka	Quiles
Cain	Harding	McGlynn	Ruth
Conley	Hatter	Meyer	Sharp
Donaldson	Hook	More	Sprogell
Donolow	Horne	Murray	Stout
Fagan	Keller, J.	Musselman	Wilmarth

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

REFERRAL TO COMMITTEE

PRESIDENT BRODERICK. Proposal No. 7 is recommitted to the Committee on Style and Drafting, having been reported out for the purpose of amendment in this instance.

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of **Committee Proposal No. 5, Printer's No. 30**, entitled:

A proposal amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

On the question,

Will the Convention agree to the proposal on third consideration?

REVISIONS TO REPORT OF COMMITTEE ON STYLE AND DRAFTING

PRESIDENT BRODERICK. Now we get on to Proposal No. 5, Printer's No. 30 and we now recognize the Chairman of the Style and Drafting Committee, Delegate Pelletier.

DELEGATE PELLETIER. I have two revisions to Committee Report of Style and Drafting on No. 5 which I would like to present.

PRESIDENT BRODERICK. I understand your revision, I think the short one is being handed out first. There is no way the delegates have of determining whether it is the long one or the short one, but if it only has about six lines, it is the short one. Is that the one that you are referring to now?

DELEGATE PELLETIER. Yes.

PRESIDENT BRODERICK. You may proceed.

DELEGATE PELLETIER. Mr. President. This revision refers to the language in Section (c) on page 3. This is the language relating to exemptions for disabled veterans.

The Committee would like to suggest as a revision in language there in Section 2, that is paragraph (c), the striking of "any war or armed conflict in which the United States was engaged," on lines 25 and 26 and inserting, "the Armed Forces of the United States."

Secondly, it would revise line 29 by inserting after the last "of," that is at the very end of the line "as a result of," insert "hostile action while in the" so that lines 29 and 30 would read, "as a result of hostile action while in the military service."

These two revisions, Mr. President, we think would clarify the obvious intent of this provision.

PRESIDENT BRODERICK. My understanding is there are no substantive changes involved here but just changes in Style and Drafting, is that correct?

DELEGATE PELLETIER. That is correct, Mr. President. I would like to move this Convention approve these revisions in style.

PRESIDENT BRODERICK. The Chair first recognizes Delegate Westerberg.

DELEGATE WESTERBERG. I would like to ask Delegate Pelletier one question.

PRESIDENT BRODERICK. I am sure he will stand for interrogation. You may proceed.

DELEGATE WESTERBERG. Mr. President, in this wording now, would this actually cover someone who served in the Pennsylvania National Guard?

DELEGATE PELLETIER. I would assume so, but I think you will have to ask—

DELEGATE SAHLI. This would only apply when on active duty with the National Guard.

DELEGATE WESTERBERG. Even in peacetime?

DELEGATE SAHLI. Yes, sir.

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell.

DELEGATE POWELL. Does this, now refer to anyone in the Armed Forces?

DELEGATE PELLETIER. I would read it that way.

DELEGATE POWELL. Is that what the old amendment which was passed by referendum also stated?

DELEGATE PELLETIER. Well, the delegate has the original language of that referendum in front of him. We are amending it right now.

DELEGATE POWELL. Perhaps I ought to question Judge Woodring or Delegate Pott whether this is a substantive change based on the Committee's recommendation.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pott.

I would suggest at this time, that the chairman of this Committee come forward to answer these substantive questions. It is understood that the chairman of the Committee on Style and Drafting should answer the questions on Style and Drafting.

Now, we recognize Delegate Pott.

DELEGATE POTT. Mr. President, it is my interpretation that this is correct, only while a member of the Armed Forces is engaged in hostile action would they be exempt. What if a person was in training in the United States and was in a serious automobile accident and became a double or quadruple amputee, which happens, or what if he was in training on a grenade range or something like this? This is a concern to me. Maybe it is explicit in here but I cannot see it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Sahli.

DELEGATE SAHLI. The original wording was, "citizens and residents of this Commonwealth, who served in any war or armed conflict," so there is no substantive change. That was the original.

PRESIDENT BRODERICK. May the Chair again suggest that the members of Delegate Leonard's Committee come up here.

I think they should come forward and answer these questions.

DELEGATE LEONARD. Delegate Powell asked whether this was considered in Committee. This was an amendment that was made on the floor and the words in that section from line 24 down are the identical words that now appear in the Constitution today, so what is now happening is, and this was Delegate Solomon's amendment, and it was taken precisely from the Constitution which we had deleted in Committee, but now it was brought back and now there are a few changes, so we cannot go back to what the Committee meant. I do not think there is any substantive change here at all.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kelly.

DELEGATE KELLY. Delegate Leonard, going back to line 24, "citizens and residents of this Commonwealth, who served in any war," and that leaves a whole lot to the imagination. Would it not be wise to add in there after "Commonwealth," "who never fought against the United States."

DELEGATE LEONARD. These are words that appear in the Constitution today.

DELEGATE KELLY. We were not having wars all over the world in 1873.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Delegate Kelly, there has been no problem with the language in the present Constitution today as was adopted by referendum by the people of Pennsylvania, and it was interpreted by the Department of Justice of the Commonwealth, and the specific veterans' organization to which any individual covered by the amendment would go to if he could prove need. There has been no problems up-to-date and I see no reasons to raise problems here tonight.

DELEGATE KELLY. What would be wrong with protecting it?

DELEGATE GERBER. Mr. President, I suspect there would be nothing wrong with protecting it. My experience in law has been when you tamper with language and change it, especially when it has been established in the Commonwealth, it seems foolish to change it now.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, language which we have now in the proposal is good language, mainly because it has been passed on by the people of Pennsylvania and it operated upon those who they sought to take care of growing out of World War II and the Korean Conflict and I am sure that it is workable, it is pliable, and it expresses the sentiment of the Commonwealth. Those who felt perhaps they did not want it in their proposal and still feel they do not want it in this Constitution, I dare them to amend this and destroy the affect of it.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Morton who has been up and then I will recognize the other side.

DELEGATE MORTON. I can appreciate the problem raised by Delegate Camardella. I see the possibility of this amendment putting us in the reverse situation.

It is my recollection that during the Second World War, some of our residents served with the Canadian Air Force and the Canadian Army. As I would see this, this amendment is limited to the Armed Forces of the United States and would limit them to be eligible now. Is there anyone now receiving a pension who served with the allied forces who was not a member or is not a member of the Armed Forces of the United States?

DELEGATE LEONARD. We do not know.

DELEGATE MORTON. I am opposed to making any changes in the 1961 language. We might be cutting off someone who served with the allies and not with the Armed Forces of the United States.

DELEGATE LEONARD. We do not know where this amendment came from. It does not have any name on it. We were very pleased to leave the language as it is in the Constitution today.

PRESIDENT BRODERICK. I want first of all to say, Delegate Leonard, that you have no amendment that I know of and we are not considering any amendment. What we received was a revised report from the Committee on Style and Drafting, and I just want to point out to the delegates, most of the questions I have been hearing recently have been substantive questions in relation to this matter. Of course, if substantively something is changed, it has to have an amendment.

FIRST REVISION WITHDRAWN

PRESIDENT BRODERICK. The Chair now recognizes Delegate Pelletier, Chairman of the Style and Drafting Committee in connection with this matter.

DELEGATE PELLETIER. Mr. President, I would like to withdraw this revision.

PRESIDENT BRODERICK. The language is now withdrawn.

Now I recognize Delegate Pelletier in connection with the second revision of your report. We will now have it distributed. There are some delegates who wanted to be recognized before I recognized Delegate Pelletier in connection with this report that is now being distributed.

The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Something has been distributed here that says, "The report of the Committee on Style and Drafting is revised to read as follows."

I should like to ask whether there has been a meeting of the Style and Drafting Committee at which this revision was agreed upon. I know of no such meeting.

PRESIDENT BRODERICK. I suggest you ask the chairman, he is right here. Delegate Pelletier.

DELEGATE SHAPIRO. I ask that question, then, of Delegate Pelletier.

DELEGATE PELLETIER. Delegate Shapiro, I assumed that we had a quorum of the Style and Drafting Committee as we were working on this over in this corner of the room.

DELEGATE SHAPIRO. This language has just been presented to me and I know I have not voted on this at all and I do not know that any other member of the Committee on Style and Drafting has voted to present this language. I find a great deal of fault with this language.

DELEGATE PELLETIER. I thought we were all in this corner of the room. If the Committee does not feel it can accept this language, I think it ought to say so.

PRESIDENT BRODERICK. The Chair, I think, was aware that a group of the Committee was together here and I thought you were part of that group.

DELEGATE SHAPIRO. I was part of the group but this is the first time, a few moments ago, when I saw this language. I do not think that the Committee on Style and Drafting have recommended this language. I think Mr. Comisky has prepared this.

PRESIDENT BRODERICK. Are you suggesting you would like for us to recess until the Committee on Style and Drafting meets? If that is your suggestion, we will.

DELEGATE SHAPIRO. I am making no suggestion except that if this matter is to be presented at this time and

without a vote having been taken, that the section of it which reads, "The report of the Committee on Style and Drafting is revised to read as follows" be deleted and this be offered as an amendment by whoever it is that proposes this as an amendment.

RECESS

PRESIDENT BRODERICK. Unless there is objection, we will recess for approximately five minutes and the Committee on Style and Drafting can gather for a meeting.

The Chair hears none, and the Convention is now in recess.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

The Chair now recognizes Delegate Pelletier, Chairman of Style and Drafting.

DELEGATE PELLETIER. Mr. President, I realize the hour is late, the problem is complex, and it is going to get more complex, I suspect, because the Committee on Style and Drafting voted unanimously to go back to its initial proposal which you have before you in Committee Proposal No. 5, Printer's No. 30, as included in Section 4, pages 4 and 5.

I would like to ask Delegate Aberman to comment on the reasons for the Committee taking this position.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Aberman.

DELEGATE ABERMAN. I am beginning to wonder whether Style and Drafting should get hazard pay in addition to their salary. We find ourselves in a rather enviable position. There seems to be three sides to an argument and we seem to occupy the middle ground.

Very simply—if I can use that word for such a complex matter—the situation is basically this:

The Style and Drafting Committee acted upon the language that came off the floor of the Convention. That language that came off the floor reflected an amendment which was proposed by Delegate Shapiro and was adopted by a vote of approximately 124 to 8, or somewhere in that general vicinity. After this language was acted upon by the Style and Drafting Committee, we were then met with the explanation by members of the substantive committee that the net effect of what we had done was to change the intention of the substantive committee and the issue that you will be asked to discuss and to disguise is whether or not the intention of the substantive committee, not of the Style and Drafting, is reflected in the language or whether or not Style and Drafting has not reached the intention. I just want to focus on the issue so you can follow the discussion from this point. The issue revolves around certain real estate which is located in the Cities of Philadelphia and Pittsburgh.

You may have noted the reference to these particular pieces of real estate owned by utilities in your manual. These pieces of utility real estate were not exempted under the Constitution of 1874. The exemption that they were given were developed prior to that time and they were developed according to a court opinion that was issued subsequent to the 1874 Constitution. That may sound involved but the point of the matter was that some utilities said, "We cannot be taxed because we were exempt prior to the Constitution and the Constitution did not speak, and, therefore, we are now exempt after the Constitution of 1874." The court said, "That is correct, you are exempt."

Statutes were then passed to remedy what was considered to be a bad court opinion and this real estate was then taxed under the statutes.

The question that now evolves is, where do we go with the presently taxed real estate?

Now this type of real estate, to further complicate your life, divides itself into two types of real estate: The type of real estate that is used in the operation of the utility and the type of real estate that is not used in the operation of the utility.

If any of you are attempting to graph this, that is a very important distinction that Delegates Baldus and Brennan will bring forward to you and I wish you would keep it in mind.

So we are now dealing with real estate that was held to be exempt and then taxed by a statute passed by the General Assembly. We are now attempting to decide what happens to this real estate in the face of the expressed intention of this Constitutional Convention that this real estate of public utilities from this time forward shall be subject to real estate taxes by local taxing authorities. If you remember, there were saving clauses in the original Committee proposal which attempted to save from the operation of this exemption clause. I use the term "exemption clause" because the distribution of the gross receipts under this clause is an attempt to resolve the exemption question, what happens to this real estate which is presently taxed under this statute? That is the question we are trying to resolve right now. I hate to sound like I am lecturing, but this is a terrifically complicated thing at 12:45 in the morning. Is there any question anyone would like to ask from this point up to now?

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. I have questions but I do not know who to ask them of at this point.

PRESIDENT BRODERICK. I understand Delegate Aberman is speaking on behalf of Style and Drafting and either Delegate Woodring or Delegate Leonard will represent the Committee on Taxation. If it is a question involving substance then I think the Committee on Taxation should be able to help.

DELEGATE PASQUERILLA. I will ask the President questions. He can direct them to someone.

As I understand it, we are now reverting back to consideration of the Committee Proposal No. 5, Printer's No. 30 as it now came out of Style and Drafting, is that correct?

DELEGATE ABERMAN. That is correct.

DELEGATE PASQUERILLA. I have several questions I would like to ask. On page 5, line 17, if the Legislature repeals certain statutes which permits taxation of the railroad properties in the Cities of Pittsburgh and Philadelphia, who taxes the property and who gets the money?

DELEGATE ABERMAN. May I reply first on behalf of Style and Drafting?

PRESIDENT BRODERICK. You may.

DELEGATE ABERMAN. It was exactly at this point that we begin to diverge. The answer of the Style and Drafting Committee is that it was our intention that this real estate would remain taxable until such time as the

General Assembly discontinued its taxation, and thereafter when that taxation terminated, that real estate to the extent that it was used or useable within the meaning of the language in the immediate preceding section of Section 4, would then fall within the distribution scheme, and would then become part of the over-all local taxable property; and that was the answer of Style and Drafting.

DELEGATE PASQUERILLA. In other words, what the gentleman is now saying is that if the statutes are repealed, and let me get this in very simple language, the taxes that Pittsburgh or Philadelphia are now collecting, will now be distributed under your distribution system?

DELEGATE ABERMAN. That is the answer of Style and Drafting.

DELEGATE PASQUERILLA. Is that the intent of the substantive committee?

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring, and I understand the question is now directed toward your committee.

DELEGATE WOODRING. Mr. President, I think in order to fully appreciate the situation, and in order to endeavor to answer this question, we have to recognize that there are three types of real estate involved: That which is used or useful and which by reason of its being used or useful has been up to this time exempt from real estate tax, but the public utilities have been subject to a gross receipts tax. That land which is not used or useful and that has been subject to a real estate tax, and the remaining classification is that which is used or useful and is subject to tax.

The small segment in which we have developed difficulty here, this small portion of the real estate in the Commonwealth belonging to public utilities which has given rise to the problem, is that portion of public utility real estate owned by the railroad in the old Allegheny and in the old Philadelphia County, which is used and useful but taxable as real estate.

DELEGATE PASQUERILLA. What is the answer to my question? If the Legislature would repeal that act, who gets this tax money?

DELEGATE WOODRING. Mr. President, my answer would be, if and when the Legislature repeals any tax, there would be no tax revenues to be accounted for.

DELEGATE PASQUERILLA. In other words, the railroad property in Pittsburgh and Philadelphia would pay no taxes whatsoever?

DELEGATE WOODRING. As such, but they are public utilities and would fall within the first line of Section 4. The real property of public utilities is subject to real estate taxes at the local level. It would become subject to taxes at the local level, but in lieu of making such payment, providing the Legislature continues the gross receipts tax or some other special tax in replacement of the gross receipts tax, and provided that that revenue would be at least equal to the amount which would be recovered from the real estate at the local level, makes that distribution, then such distribution shall be in lieu of the local taxation.

DELEGATE PASQUERILLA. Does the Pennsylvania Railroad pay gross receipts tax right now?

DELEGATE WOODRING. I cannot answer that.

DELEGATE PASQUERILLA. They do not. I will answer it. Now, what happens to the money?

DELEGATE SHAPIRO. I hate to interrupt, but that is an erroneous statement, I believe.

DELEGATE PASQUERILLA. I was told that the Pennsylvania Railroad does not pay gross receipts tax. Would somebody correct me?

PRESIDENT BRODERICK. I will recognize the delegates, and you will be recognized, Delegate Shapiro, but just let us have one delegate talking at a time.

DELEGATE WOODRING. Mr. President, I think we ought to go back for clarification in another attempt to answer the question. We have to distinguish between three types of real estate.

DELEGATE PASQUERILLA. I am going to get to the second part as soon as we get the railroad over with.

DELEGATE WOODRING. What is the question about the railroad?

DELEGATE PASQUERILLA. My question is, is the Pennsylvania Railroad paying gross receipts tax, and if the Legislature repeals the present laws, where Pittsburgh and Philadelphia are now collecting real estate tax, who gets the money?

DELEGATE WOODRING. I am advised by counsel for the Committee that the railroads, in addition to the local real estate tax, do pay gross receipts tax.

DELEGATE PASQUERILLA. In other words, then the answer is that this money will now go into the so-called pool and the money will be distributed?

DELEGATE WOODRING. No. There is a savings clause here.

DELEGATE PASQUERILLA. Where is the savings clause?

DELEGATE WOODRING. The savings clause reads this way: "All real property of public utilities subject to local taxation at the time of the adoption of this provision shall remain subject to local taxation."

DELEGATE PASQUERILLA. Mr. President, I call attention once again to page 5, line 17, which says that the Pennsylvania Railroad is paying taxes under an old statute, and it says that is in effect until it is repealed. What happens if they repeal the statute?

DELEGATE WOODRING. The same as any taxation which is repealed. If there is a repeal, there would be no taxes collected, and that applies to the six per cent sales tax.

DELEGATE PASQUERILLA. As I interpret this, Mr. President, if the Legislature repeals the present statute which permits Pittsburgh and Philadelphia to collect these taxes, and since the Pennsylvania Railroad you have now said to us is paying a gross receipts tax, therefore, then this will now come in lieu of the gross receipts tax and will be distributed on an equitable basis as established by the General Assembly. Is that correct or not correct?

DELEGATE WOODRING. Well, I did not hear the whole thing because I was interrupted. I think the answer is yes.

DELEGATE PASQUERILLA. Therefore, Pittsburgh and Philadelphia, if the statute is repealed, will lose the taxes they are presently getting, all of it.

DELEGATE WOODRING. If the tax is repealed, they will not get the tax; that is true.

DELEGATE PASQUERILLA. My second question is, the taxes which are being paid to the municipalities for property which was not used or useful in public utilities

such as office buildings, now that is, also, by what, law or statute?

DELEGATE WOODRING. Statutes are part of law.

DELEGATE PASQUERILLA. Statutes are part of law?

DELEGATE WOODRING. That is right.

DELEGATE PASQUERILLA. If that is ever changed, does that mean that the local municipality that is now collecting all the money for this office building, then would lose all of this money, and it also would come under gross receipts?

DELEGATE WOODRING. If these taxes are repealed, then the municipality would not get the taxes. So long as the local municipality exacts taxes on not used or useful property, this act does not apply to that land.

DELEGATE PASQUERILLA. Would it be correct to say that the Committee on Style and Drafting has substantially changed your report by adding the section on page 5 when it talks about the statutes until repealed, and it now means that the present local municipalities who are collecting taxes are going to lose this benefit they now have?

DELEGATE WOODRING. I would say, Mr. President, that Section 4 reflects the intent of the Taxation Committee from lines 30 on page 4 to and including line 15 on page 5.

I believe that Style and Drafting has added in its report, I think it stated that at the end of the sentence, as it appears in the printed form on line 15, that there should be added these words "or in such other equitable manner provided by law." I believe that is incorporated by and through the report of the Committee on Style and Drafting.

Section 1 of the schedule, I, individually,—perhaps I speak for the committee—am not in accord and I think that the language which we have previously used in our reports ought to be incorporated as a substantive part of Section 4 and not made a part of the schedule, and that part to which I refer says this, and it is a savings clause and protects the municipalities which are now receiving local real estate tax, and it says that, "All real property of public utilities subject to local taxation at the time of the adoption of this provision shall remain subject to local taxation." We cannot say it with much more direct language than that.

DELEGATE PASQUERILLA. Mr. President, I submit that I buy that language, but did not Style and Drafting change that language?

DELEGATE WOODRING. They have endeavored to substitute what appears in the schedule as Section 1 of the schedule.

DELEGATE PASQUERILLA. Therefore, Mr. President, we are not in disagreement and I submit to this Convention that Style and Drafting made a substantial change when they added into the schedule Section 1, line 17, and were entirely out of order. I submit that the Committee was right in their submission to the proposal which was approved by this Convention, and that we did make a big change, because there now appears to be complete disagreement between Delegate Aberman who is speaking for Style and Drafting and between the Committee on Taxation and Finance which is what this Convention adopted. I believe that we have changed this thing entirely wrong, and we have now hurt the communities who are presently collecting real estate taxes from utilities under the present statute.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Aberman.

DELEGATE ABERMAN. Delegate Pasquerilla, I would like to yield for the moment to Delegate Shapiro so that you might hear from Delegate Shapiro the response I would have given you relating to the Shapiro Amendment. I think that everything you say may be true if we adopt the substantive committee amendment. I would respectfully submit to you, sir, that Delegate Shapiro's amendment precludes that speech you just made.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I submit what the Style and Drafting Committee has submitted to this Convention tonight, is simply a change in Style and Drafting of Proposal No. 5, Printer's No. 18; Printer's No. 30 reflects in it Style and Drafting changes. Printer's No. 18 which was approved by this Convention, incorporates into it not only the intention of the Committee on Taxation, but also amendments made on the floor including an amendment which speaks directly to the subject that Delegate Pasquerilla is addressing himself to. The Committee on Style and Drafting deleted certain language which it believed was redundant and I believe it is redundant, but the specific amendment that was adopted on the floor of this Convention by the vote of 128 to 4, incorporated first in Printer's No. 16, carried through No. 18, a phrase which read, "and not specifically subjected to local taxation by statute."

The Committee on Style and Drafting felt that was a schedule item and therefore moved it into the section about which Delegate Pasquerilla is now complaining about and changed the language somewhat, but did not change the meaning.

I think there have been a number of unfortunate answers here. The facts are as follows: Taxation of utilities. Utilities are presently exempt by court interpretation except that there are two old statutes which remain on the books; one was adopted in 1858 and one in 1859. Those statutes respectively imposed a tax; the first one on real estate used or useful in the operation of certain transportation companies in the City of Philadelphia, notwithstanding the fact that other properties of other utilities were exempt, and the second imposed a tax on the transportation companies in the City of Pittsburgh, even though that property was used or useful. All other properties used or useful in the operation of utilities is at this moment exempt from taxation.

What the Committee came up with is a provision which would subject all real estate of utilities to tax, except if a utility pays a gross receipts tax, and if the money paid by the utility to the State in the form of gross receipts taxes is passed onto local communities or at least if a certain portion of it is passed onto local communities, then the property which is used or useful is not to be taxed by the local authorities with the exception that these two statutes are to remain in force and effect. It was the assumption of the Committee on Style and Drafting, since these two items of property are subjected to tax only by statute, that taxation could always have been terminated by the Legislature by repealing its statute and there was

nothing that was brought to the Committee on Style and Drafting, either in the Committee reports, in the Proposals, or any of the printer's numbers, that would have indicated anything to the contrary. The language that was incorporated in Printer's Nos. 16 and 18 as a result of my amendment followed that pattern and there is no reason Style and Drafting had to change that. I submit, the language in Printer's No. 30, while altered, is altered as a matter of Style and Drafting and carries with it the substance of what was in Printer's No. 18. That may not be what the Committee wants, but it was what the Committee wanted as amended on the floor of this Convention. The Style and Drafting Committee has not changed that.

DELEGATE PASQUERILLA. Mr. President, I would have to disagree with the lawyer, because it says on page 4, line 15, "That real property of public utilities which is not used or useful in furnishing their public utility services shall remain subject to local taxation."

DELEGATE SHAPIRO. As I explained earlier, that language was omitted by the Committee on Style and Drafting on the recommendation of its counsel as being completely redundant of the language which appears at the very beginning of the section. "The real property of public utilities shall be subject to real estate taxes imposed by local taxing authorities."

DELEGATE PASQUERILLA. I would have to disagree with the gentleman, because I interpret that language to mean that at all times, public utility property which is not used or useful, which means an office building or the Pennsylvania Railroad property in Pittsburgh and Philadelphia or an office building of any kind in any community in this Commonwealth, is always subject to local taxation, and that is what this Committee and this Convention adopted.

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodring.

DELEGATE PASQUERILLA. The gentleman is shaking his head that I am right.

DELEGATE WOODRING. Of course you are right. Mr. President, that is exactly what the Committee has stated right along. The property which is not used or useful for the manufacture of the utilities' services has always been subject to taxation. The Bell Telephone Office Building in the City of Harrisburg and every community which has an office building and not used by the utility is taxable at the local level.

DELEGATE PASQUERILLA. I request, Mr. President, that we agree on that point. However, when you go to page 5 and start reading line 17, if those statutes are repealed and you have now stricken out lines 15 and 16 on page 4, that means then that that property which is not used and if the utility is paying gross receipts taxes that means it comes out of gross receipts and is distributed in a manner provided by the General Assembly and that is a tremendous substantive change in this report and in this article.

DELEGATE SHAPIRO. It does not direct itself to property not used or useful. It directs itself to used or useful property.

DELEGATE PASQUERILLA. It says, "not used."

DELEGATE SHAPIRO. I do not see the word "not" in my copy.

PRESIDENT BRODERICK. If the delegates will kindly address their questions to the Chair, we will proceed more expeditiously.

Now, we recognize Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I try to direct my question to the Chair. On page 4, line 15, "That real property of public utilities which is not used or useful in furnishing the public utility services, shall remain subject to local taxation."

It definitely says, "not used."

PRESIDENT BRODERICK. The Chair recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, I do not know whether I can make a contribution to this particular problem or not, but I will make a suggestion. I now have before me the revision of Committee Proposal No. 5, Printer's No. 30. I suggest in the savings clause, that that savings clause include whether that property is used or useful and also those not used or useful, and then you will have satisfied Delegate Pasquerilla's question. In that savings clause, you will then protect it. I try to make that contribution, Delegate Leonard, so take it the way you please.

PRESIDENT BRODERICK. I understand that report you have in front of you has been withdrawn. Of course, you can refer to it.

DELEGATE STROUP. I was not aware of that.

PRESIDENT BRODERICK. That has been withdrawn.

DELEGATE STROUP. Then, Mr. President, I would have to submit that Delegate Pasquerilla is correct. Line 15, page 4 should be retained and not be stricken out.

I have another problem which I would like to direct to either Delegate Aberman, Delegate Leonard or Delegate Shapiro, or whoever can answer my question. I have directed to this assembly before my question for a definition of what is a public utility. We have in the Commonwealth of Pennsylvania many municipal public utilities, water works, storage plants, gas works, electric companies and so forth. There is no definition as to whether or not these municipally-owned utilities are subject to real estate taxes or not, at least as far as I can see, unless, Mr. President, you would rely upon the provision on page 2, Exemptions and Special Provisions, Article subsection (iii), "That portion of public property which is actually and regularly used for public purposes."

If that is the provision on which we rely, I question very much the depthness of it, the specificity of it and whether or not we are under some litigation. At the present time, as I understand it, municipally-owned lands are not subject to real estate taxation. However, they can be by the General Assembly, subject to the gross receipts tax and I direct this question to whoever can answer the question for me in the interests of the municipally-owned public utilities.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. In behalf of the committee, it was the intent of the Committee that the municipally-owned water works or other utilities, would fit under that section which would be defined as that portion of public property which is actually and regularly used for public purposes. That is to be distinguished from non-municipally owned utilities which would fit into the section defined as public utilities, Mr. President.

DELEGATE STROUP. One more question. This then,

puts the burden upon the General Assembly, as to whether or not, the General Assembly shall impose by statute, real estate taxation upon municipally-owned property. Can it or can it not? I pose this question to you.

Also, gross receipts tax upon municipally-owned utilities used or useful in public service. Will you respond to that question, please?

DELEGATE GERBER. Mr. President, in response to the last question, it is my understanding that the language, "That portion of public property which is actually and regularly used for public purposes," is a permissive exemption; permissive in that the Constitution permits the General Assembly to grant that exemption and the General Assembly does not have to grant that exemption if it does not wish to do so.

DELEGATE STROUP. I believe, Mr. President, now that I have an adequate response to my interrogation, and I want to summarize it for the interest of the delegates and for myself and for the future action of the General Assembly. I want to be sure I am correct. The General Assembly could if it saw fit to tax the real estate of municipally-owned properties, is that correct?

DELEGATE GERBER. Mr. President, that is correct in the language of Section 2, Subsection (iii).

DELEGATE STROUP. The second thing is the General Assembly could also tax with gross receipts the income from the services rendered by a municipally-owned public service.

DELEGATE GERBER. Mr. President, no, sir. I repeat again that utility which is publicly owned fits as I understand the language and the intent of the language of the Committee under Section 2, Subsection (iii), that portion of public property which is actually and regularly used for public purposes. It does not, as I understand it, fall within the category of Section 4, Public Utilities. Therefore, as I understand it, it is real estate that would be exempt if the General Assembly would so deem to permit, but I do not think it fell in the category of Section 4 under the gross receipts tax.

DELEGATE STROUP. This again poses a question. Heretofore the General Assembly has had the authority to impose the gross receipts tax upon municipally-owned properties on their income. Now, are you telling me this Constitution is changing that permissive right to the General Assembly?

DELEGATE GERBER. No, I am not stating the General Assembly is right to impose the gross receipts tax on municipally-owned utilities has changed. I must correct myself in stating the General Assembly would have the right to impose both the gross receipts tax, as they are presently permitted to do, and impose the real estate tax which I might add as I understand it, they are presently able to do also on that portion of public property which is actually and regularly used for public purposes which is presently an exemption, which is only a permissive exemption now.

DELEGATE STROUP. The whole purpose of my interrogation is to try to straighten out, insofar as the general fund is concerned, the amount of money that may be taken from the general fund in lieu of taxes back to the local districts. I think now the problem has been clarified and I am satisfied with the response I received and I want to make this a matter of record in this Convention.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. There has been a conference between Delegates Pasquerilla, Brennan, Aberman, Woodring, and Gerber and I think there is agreement that this language might settle most objections and problems, maybe not everybody's.

If you take the language of the Style and Drafting Committee up to line 15 and leave it exactly as it is and cross out "Section 4. The following schedule is adopted," all of line 16, and cross out the words "Section 1" in line 17, and then following, it would read, "Notwithstanding the provisions," of the previous paragraph, because this would be part of Article 8, any law changing statutes to any law which presently subjects real property of public utilities, cross out "used and useful in furnishing public utility services," so it would read, "of public utilities to local real estate taxation by local taxing authorities shall remain in full force and effect."

I think everyone that I talked to thinks that meets the objection.

PRESIDENT BRODERICK. Let the Chair make a comment. We have to do, fellow delegates, either one of two things.

One. We ask the Committee on Style and Drafting to revise their report.

Two. We offer an amendment.

We went through this procedure a few minutes ago, asking Style and Drafting to revise the report. I might add, that we are now on as you know the third consideration and it may expedite matters if this is agreeable to Style and Drafting, to submit a revised report.

The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. I submit, it is not the function of Style and Drafting and it never had asserted the right to make substantive changes.

PRESIDENT BRODERICK. If this is a substantive change, it has to be done by amendment.

DELEGATE SHAPIRO. Realizing the hour and not wanting to cut anybody off, I would like to suggest that I offer a motion which would determine the feeling of the delegates as to whether or not there should be a change and without foreclosing anybody from doing anything that they want beyond that if the Convention is willing to wait for further changes. If this Convention is satisfied to adopt Proposal No. 5 in its present form as presented by the Style and Drafting Committee, I think we ought to vote.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. For what purpose does the gentleman rise?

DELEGATE SHOEMAKER. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHOEMAKER. I would like to know, as a matter of parliamentary inquiry, whether it would be possible at this time to move that we revert, in these sections only, to the language used in Printer's No. 18. In other words, we came off this floor and went to Style and Drafting out of Printer's 18 and that was passed by a vote

of 133 to 2 and I would like to know if we could take Section 1(C), from line 20 on page 4 over to line 6 on page 5 and revert to that language which we have already approved and hashed over in place of this disputed language under question here.

PRESIDENT BRODERICK. Do you make this in the form of an inquiry?

DELEGATE SHOEMAKER. I do.

PRESIDENT BRODERICK. I am advised by the Parliamentarian that it cannot be done that way.

MOTION ON CONSENT TO OFFER IRVIS AMENDMENT TO COMMITTEE PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, we have an amendment which we think will simplify the matter. We have an amendment which we think we can vote on and settle this point. If you will give us five minutes to have the girl type it—she is working on it now—we think we can resolve this without any further technicalities involved.

PRESIDENT BRODERICK. Do you suggest we be at ease until we work on the amendment?

DELEGATE IRVIS. If you will.

PRESIDENT BRODERICK. May I state that we are now on third consideration, and because it is on third consideration, the delegate must obtain the consent of the majority of the delegates present in order to offer this amendment.

Now unless there is going to be debate, we can put the question on the consent.

The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. Chairman, I think this amendment squarely puts the issue of whether or not we want to freeze into this Constitution certain provisions which are presently statutory and decision law. They relate solely to property in Pittsburgh and property in Philadelphia. If we stay with the proposal that has been brought before you by the Committee on Style and Drafting, you retain what has been adopted previously by this Convention, which is, that property now subject to tax by the 1858 and 1859 statutes will remain subject to tax as long as the Legislature wishes it to be subject to tax. When and if the Legislature decides otherwise, it is possible that the City of Philadelphia and the City of Pittsburgh would then cease to collect real estate taxes on that part of the property which we are dealing with, which is used or useful in the operation of those utilities, and that money would then go into the pot which would be distributed among all of the communities throughout the Commonwealth of Pennsylvania. The amendment which is being offered would eliminate that possibility and provide constitutionally that for all time the City of Philadelphia and the City of Pittsburgh shall continue to collect those taxes and that cannot be changed by the Legislature. I think we should vote on the issue.

PRESIDENT BRODERICK. The Chair recognizes Delegate Brennan.

DELEGATE BRENNAN. This is an extremely important issue. I know that the Pennsylvania Railroad is the largest taxpayer in the City of Pittsburgh. It is a very substantial taxpayer in Allegheny County and to the School District of the City of Pittsburgh. If we would not adopt this amendment, we would be putting the second largest area practically at the mercy of the Legislature. I believe if the City of Philadelphia knew what the impact of this is, they would be just as concerned as I am. I cannot more strenuously ask this delegation to hold this amendment to be adopted.

DELEGATE IRVIS. I think some of us are now being confused. We are debating the amendment. As I understand the procedure before this delegate body, we must first agree to open the proposal for an amendment and then, if we agree to do that, then we vote on the amendment; is that correct?

PRESIDENT BRODERICK. You are absolutely correct.

The question before the Convention now is, will the Convention agree to receive the amendment now being offered by Delegate Irvis? Of course, they can debate the question as to whether or not you should have consent to offer the amendment.

Now does anyone else wish to be heard?

DELEGATE PASQUERILLA. Mr. President, this is such an important part of this whole Article that I would respectfully ask that these delegates permit this amendment to come before this floor for full consideration and debate and ask a yes vote to permit the amendment to be discussed.

I move the question.

PRESIDENT BRODERICK. Question moved by Delegate Pasquerilla and seconded by Delegate Aberman that we close debate and vote on the pending question.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—107

Aberman	Dumbauld	Lee, K.	Scales
Amsterdam	Erwin	Lee, L.	Scarlett
Bagenstose	Fawcett	Leinbach	Scott
Baldrige	Fay	Leonard	Scranton
Baldus	Feather	Levin	Sebastian
Baldwin	Ellson	Manderino	Shettig
Banes	Fohl	Mangery	Shively
Barron	Forster	Markley	Shoemaker
Benedict	Fortney	Mattioni	Shrager
Bloom	Gabreski	Michael	Silverman
Braham	Gehrlein	Miller, R.	Solomon
Brennan	Gerber	Moorhead	Stout
Broderick	Goldman	Morton	Stroup
Brown	Goldstein	Orban	Swope
Buck	Griffith	Orbin	Tate
Bunting	Hannum	Otto	Thomson
Camardella	Henderson	Pasquerilla	Thornburgh
Caputo	Heyburn	Popil	Tomascik
Caron	Himes	Pott	Tully
Casey	Hocker	Rappaport	Van Sant
Clark	Hostetler	Rea	Waldron
Corey	Huggins	Redick	Warman
Cortese	Irvis	Reynolds	Welsh
Cosetti	Jirolanio	Richter	Whitmm
Croop	Johnson	Roberts	Wilcox
Desmond	Kelly	Rovner	Woodring
Devlin	Leach	Sahli	

NAYS—13

Clinger	Krill	O'Donnell	Shapiro
Cunningham	Michener	Pelletier	Westerberg
Gouger	Nelson	Powell	Woodside
Kauffman			

NOT VOTING—43

Allison	Donaldson	Keller, M.	Musselman
Aurentz	Donolow	King	Pechan
Barry	Fagan	Kline	Percey
Bashoff	Fineman	Lane	Prendergast

Benfield	Fleming	Laputka	Quiles
Burkholder	Gray	McGeary	Ruth
Butera	Harding	McGlynn	Sharp
Cain	Hatter	Meyer	Sprogell
Conley	Hook	Miller, D.	Strickler
Curran	Horne	More	Wilmarth
Dailey	Keller, J.	Murray	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

IRVIS AMENDMENT TO COMMITTEE PROPOSAL No. 5

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, I now present an amendment to Committee Proposal No. 5.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE IRVIS offered the following amendment which was read by the clerk:

Amend Schedule, Section 1, page 5, lines 16 and 17, by striking out all of line 16 and "SECTION 1." in line 17.
Amend Schedule, Section 1, page 5, line 18, by striking out "STATUTES WHICH PRESENTLY SUBJECT" and inserting: any law which presently subjects
Amend Schedule, Section 1, page 5, line 19, by striking out "USED AND USEFUL IN FURNISHING PUBLIC UTILITY SERVICES"
Amend Schedule, Section 1, page 5, line 21, by striking out "UNTIL REPEALED"

On the question,
Will the Convention agree to the amendment?

IRVIS AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes the proposer of the amendment, Delgate Irvis.

DELEGATE IRVIS. Mr. President, the clerk has already read the amendment and I propose that this amendment be adopted. I quite agree with the learned gentleman from Allegheny County who stated that without this amendment we would very possibly be stripping Pittsburgh and Philadelphia of millions of dollars in tax funds, and subjecting them to the whim of the decision of the Legislature, which might or might not be in favor of returning that amount of money to Pittsburgh and Philadelphia. I think by adopting this amendment we will resolve a problem which has given us problems for the last four hours. I think it is a fair amendment. It does no more than what already has been done, and it will, of course, have to answer to the people to say whether or not they approve it, and I move the adoption of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I would like to draw the attention of this body to a rather historical occasion.

It is now the 28th of February and Delegate O'Donnell did not once address this body on the 27th of February. I think that is a rather historical occasion.

I would like to speak on the 28th of February, however, very briefly.

PRESIDENT BRODERICK. I thought you were going to say you wanted to keep that record intact.

DELEGATE O'DONNELL. Mr. President, I believe I have my record for the 27th of February intact. On the 28th, however, I would like to speak against this amendment.

First of all, I find it astonishing that my very good friend and fellow delegate, Delegate Irvis, would premise an argument on the whim of the Legislature. I think that we have covered that issue in the last several weeks in favor of trusting the Legislature. The biggest problem with this amendment, and I would like to echo the comments made by Delegate Fagan of the Local Reapportionment Committee when he referred to a matter of sportsmanship, and I think that the matter of sportsmanship is an issue here. Once on Monday, once yesterday and today twice, I have heard a speaker address this body and state his view, and then immediately move the question, effectively cutting off a reply or retort by anyone. I happen to think that is poor form. Secondly, there is another problem of sportsmanship. We had plenty of time to cover the Shapiro Amendment to this Committee's proposal on this subject. That amendment passed this body by a vote of 128 to 4. We are now doing something which I think is incredibly foolish. We are trying to write a Constitution from the floor at ten minutes of 2 o'clock in the morning. I think we are insane for making the effort.

The principal problem, and I can well recognize that Delegate Irvis and certain delegates from Philadelphia would like to have the Constitution continue to see to it that Philadelphia and Pittsburgh receive certain taxes from the utilities, and I am with them 100 per cent. I think that these two cities should continue to receive those taxes, but am I willing to so freeze the tax structure of this State so that any effort by the General Assembly to adopt, perhaps, a uniform method of taxation which would exist throughout the entire Commonwealth of Pennsylvania will have to be structured around these two islands or these two exceptions, one for the City of Philadelphia and one for the City of Pittsburgh? I think it is an atrocious error. We have trusted the General Assembly in every single area of tax exemption. We have trusted the General Assembly to decide whether a tax exemption should or should not be granted. The thrust of this proposal would be to take away from the General Assembly the power to suggest that there should be a different method or a different approach to the taxation of public utility properties in two of the cities of this Commonwealth, and I think that is a mistake.

I think that Delegate Shapiro is entitled to be backed up by this body. I think he is entitled to the sportsmanship which is involved in supporting the proposal that carried this floor by such an astonishing majority, and I move the defeat of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gouger.

DELEGATE GOUGER. Mr. President, I am going to say many of the things that Delegate O'Donnell has just said. I had our distinguished delegate, Governor Scranton, remind me with great feeling about the growing maturity of the Legislature; about how they can be trusted to act with maturity and with fairness toward all people,

and I say to the Legislature, I reiterate your ex-Governor's feelings, I am sure you can be trusted, and if you can, then you have no problems about freezing this matter into law. Now, we are overlooking one thing. As we protect Pittsburgh and Philadelphia by discriminatory legislation, we are doing so at the expense of the rest of the State. It is just that simple. We regulate our utilities by how much they can earn, and under this provision the taxes flow back to all areas on a pro rata basis. Now, this means very simply that all the small counties will simply receive less while we protect the status quo of Pittsburgh and Philadelphia. I am a little startled and a little shocked at Delegate Pasquerilla who comes from a section of the State that could well use these revenues, that he is now going to deny them in order to protect the income of both Philadelphia and Pittsburgh. Now, all the way through this Convention I have heard of the special treatment of Philadelphia and Pittsburgh over and over again. Here we are again by reverse reasoning curiously enough this time, because now we cannot trust the Legislature, because if we do not freeze this in, the Legislature is liable to remove discriminatory taxes which now exist in favor of Pittsburgh and Philadelphia.

I move the defeat of this proposal, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I am thoroughly amazed at several of the delegates on both sides of this issue who think that this problem is strictly Pittsburgh and Philadelphia, because it is not just Pittsburgh and Philadelphia. Now, we have a delegate from Johnstown who represents a utility company, and I do not want to interrogate him, but I do know this, Mr. President: that there are utility companies who are presently paying taxes in practically every county of this Commonwealth.

Under the present system this is not merely to protect Pittsburgh and Philadelphia. There are utility companies who are paying for properties which they own, which are not used or useful in the furnishing of their public utility services, and these are in other cities and counties throughout Pennsylvania.

This amendment that we are now offering is not just to protect Pittsburgh and Philadelphia. The only difference of Pittsburgh and Philadelphia is the special consideration of the railroad, the Pennsylvania Railroad, but we have not talked about other utility companies who pay gross receipts tax and who are also paying real estate taxes in other communities throughout the Commonwealth.

I am sure that if the delegate from Johnstown would want to verify it, he would be the first to tell you that his utility company, the General Telephone Company, presently pays real estate taxes in communities which his company is serving, and this is not a Pittsburgh and a Philadelphia amendment, and I urge that this amendment be accepted.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Cosetti.

DELEGATE COSETTI. Mr. President, I want to make it extremely clear that it was the intent of the Committee not to take any property that is subject to taxation off of the tax rolls, and no member of that Committee, whether he voted for this or voted against that will disagree with that statement.

Let me repeat, it was not the intent of the Committee to take any property which is now taxable off of the tax roll. Neither was it the intent of the Committee to grant to the Legislature a rather circuitous means to exempt real estate of utilities, which is the way the wording of the present measure would have its effect. It would be a circuitous way to take existing real estate property, which is now taxable off the tax roll; that was not the intent of the Committee. It is a possibility of the present language.

I want to object to the kind of reasoning we have heard here that our attempt to keep this property on the tax roll is expressing some special provision; that is a kind of negative approach. If you keep taxable property on the tax roll, you are granting some sort of special permission. The entire thrust of the Committee's action on exemption was to keep property on the tax roll, and I suggest that Representative Irvis' amendment does exactly that. It keeps existing property which is now taxable on the tax roll.

MOTION TO CLOSE DEBATE

DELEGATE GERBER. I move the question, Mr. President.

PRESIDENT BRODERICK. We have some delegates who are at the microphone.

DELEGATE GERBER. I meant to include those delegates who are presently up, Judge Woodring, Delegate Buck, Delegate Pelletier, Delegate Manderino, and then I move the question.

PRESIDENT BRODERICK. Also Delegate Irvis.

DELEGATE GERBER. I am sorry. I did not know which one was speaking, and also Delegate Aberman who is to my right.

PRESIDENT BRODERICK. We have a motion on the floor. You are not helping very much with that one.

Delegate Baldus, were you also on your feet to be included?

DELEGATE BALDUS. Yes.

PRESIDENT BRODERICK. All right. Therefore, the motion before the House is to close debate and vote on the question after we have heard the delegates that are on their feet, and you do not have to rename them. They have already been named.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—91

Aberman	Dumbauld	Lee, K.	Sahli
Amsterdam	Erwin	Lee, L.	Scales
Bagenstose	Fawcett	Leinbach	Scarlett
Banes	Forster	Leonard	Scott
Benedict	Fortney	Levin	Scranton
Bloom	Gabreski	Manderino	Sebastian
Braham	Gehrlein	Mangery	Shively
Brennan	Gerber	Markley	Silverman
Broderick	Goldman	Michener	Solomon
Brown	Goldstein	Miller, R.	Stout
Buck	Griffith	Moorhead	Stroup
Butera	Hannum	Morton	Swope
Caputo	Henderson	Nelson	Tate
Caron	Heyburn	O'Donnell	Thomson
Clark	Himes	Otto	Tomasetk
Clinger	Hostetler	Pasquerilla	Tully
Corey	Huggins	Pelletier	Waldron
Cortese	Irvis	Pott	Warman
Croop	Jirolanio	Rappaport	Westerberg
Cunningham	Johnson	Reynolds	Whittum
Curran	Kauffman	Richter	Wilcox

Desmond	Krill	Roberts	Woodring
Devlin	Leach	Rovner	

NAYS—31

Baldrige	Fay	Michael	Shettig
Baldus	Feather	Orban	Shoemaker
Baldwin	Filson	Orbin	Shrager
Barron	Fohl	Popil	Thornburgh
Bunting	Gouger	Powell	Van Sant
Camardella	Hocker	Rea	Welsh
Casey	Kelly	Redick	Woodside
Cosetti	Mattioni	Shapiro	

NOT VOTING—41

Allison	Fagan	King	Musselman
Aurentz	Fineman	Kline	Pechan
Barry	Fleming	Lane	Percey
Bashoff	Gray	Miller, D.	Prendergast
Benfield	Harding	Laputka	Quiles
Burkholder	Hatter	McGeary	Ruth
Cain	Hook	McGlynn	Sharp
Conley	Horne	Meyer	Sprogell
Dailey	Keller, J.	More	Strickler
Donaldson	Keller, M.	Murray	Wilmarth
Donolow			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

PRESIDENT BRODERICK. I will now recognize Delegate Woodring.

DELEGATE WOODRING. Mr. President, it occurs to me that we have become so enmeshed in necessary technicalities that we have lost sight of the purpose of this section of the proposal, and while I will not speak very long I think we ought to be reminded of the purpose of this section. It is not to impose taxes. It is rather to create an exemption for a very laudable purpose, a very necessary purpose, and that is to raise a fund to return to the municipalities all over the Commonwealth by reason of the shrinking tax base which they have experienced because of the growth of schools, because of the growth of colleges, because of the growth of our charitable institutions and our public institutions and so on. Because of this the Committee felt that it was necessary to try to do something and afford some assistance to the municipalities in order to get them some tax monies.

With respect to this amendment, I quite concur with my colleague and Committee member, Delegate Cosetti, who stated the case very ably, that this amendment does, in my opinion, restore the intent of the Committee. I am thoroughly in favor of it, and I am going to vote for it.

PRESIDENT BRODERICK. Did you wish to be recognized, Delegate Baldus?

DELEGATE BALDUS. I would like to reply briefly to the statement made by Delegate Gouger. He stated that the passage of this amendment will reduce the proportionate share that the smaller communities of the Commonwealth will receive from the fund collected from gross receipts. This is an incorrect statement.

The proposal now before us provides for the annual distribution of a fund equivalent to all of the taxes which local bodies could have imposed. Whether or not Pittsburgh and Allegheny County and Philadelphia can continue to tax the property that they do now will in no way reduce the size of the fund which will be available for distribution. There will be no reduction in the proportionate amount that the smaller communities of the Commonwealth receive.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. Mr. President, I hesitate to say anything at this hour, but I must confess that the experience of this Committee on Style and Drafting with this Article suggests that one must be in a fantasy land. I would like to make a number of points.

One is, I wish somebody would make up his mind as to what his intent really is, because I have listened to a number of honest gentlemen on this floor tonight deny the report of this Committee, when yesterday they said this indicated precisely their intent. Now, I assume that they did not understand what they saw yesterday, and I can only assume that, perhaps, they do not understand what is before them today. If they were equally confused yesterday or at 2:00 o'clock in the morning I am willing to concede that even a flash of lightning has hit me, and suddenly they see what their intent really was. In any case, Mr. President, I must confess to an unusual feeling of frustration, and I have had many in this Convention, that one would spend a whole day working with them yesterday to find that it was a day wasted, and maybe they do not prize their time, but I prize mine.

Secondly, I think this Convention ought to keep in mind that it did vote the Shapiro Amendment, and quite frankly I will say that I am rather ashamed of myself because I lost the Shapiro Amendment in my own mind, and I very nearly gave it away as Chairman of the Committee. I think the Shapiro Amendment represented the intent of this Convention as it came to the Committee on Style and Drafting, and I do not think in the flush of this moment that we should forget that this Convention did vote that amendment, and I honestly think that if we are going to vote it again, we ought to vote in under some kind of reconsideration in fairness to Delegate Shapiro. Having made the points, I now side with the realization that they are probably more by nature of therapy for me than of any aid to the delegates.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, Delegate Pelletier has saved me at least five minutes of my remarks, and I concur wholeheartedly in his last statement.

I would also call to the delegates' attention the fact that I led an unsuccessful fight to strip out the entire provision related to public utility exemption and the distribution of gross receipts, and I find myself in a rather curious position of supporting this motion, because as I interpret this motion, we have gone beyond the reach of the floor, and we now have imposed on the utilities the additional taxation which we never conceived of at the time we voted on this thing on the floor, and therefore, I rise to support this amendment.

DELEGATE IRVIS. I do not ask for summation.

On the question,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—87

Aberman	Fawcett	Leonard	Scarlett
Bagenstose	Fay	Levin	Scranton
Baldrige	Feather	Manderino	Sebastian
Baldus	Filson	Mangery	Shettig
Baldwin	Fohl	Markley	Shively

Banes	Gabreski	Mattioni	Shoemaker
Barron	Gehrlein	Miller, R.	Shrager
Benedict	Gerber	Moorhead	Silverman
Brennan	Goldstein	Morton	Solomon
Broderick	Hannum	Orbin	Stroup
Brown	Heyburn	Otto	Swope
Butera	Hines	Pasquerilla	Tate
Camardella	Hucker	Popli	Thomson
Caputo	Hostetler	Rappaport	Tomascik
Caron	Huggins	Rea	Tully
Casey	Irvis	Redick	Van Sant
Clark	Jirolanio	Reynolds	Waldron
Cortese	Kelly	Richter	Warman
Cosetti	Leach	Roberts	Welsh
Croop	Lee, K.	Rovner	Westerberg
Devlin	Lee, L.	Sahli	Woodring
Erwin	Leinbach	Scales	

NAYS—33

Amsterdam	Desmond	Kauffman	Powell
Bloom	Dumbauld	Krill	Scott
Braham	Forster	Michener	Shapiro
Buck	Fortney	Nelson	Stout
Bunting	Goldman	O'Donnell	Thornburgh
Clinger	Gouger	Orban	Whittum
Corey	Griffith	Pelletier	Wilcox
Cunningham	Johnson	Pott	Woodside
Curran			

NOT VOTING—43

Allison	Fagan	King	Musselman
Aurentz	Fineman	Kline	Pechan
Barry	Fleming	Lane	Percey
Bashoff	Gray	Laputka	Prendergast
Benfield	Harding	McGeary	Quiles
Burkholder	Hatter	McGlynn	Ruth
Cain	Henderson	Meyer	Sharp
Conley	Hook	Michael	Sprogell
Dalley	Horne	Miller, D.	Strickler
Donaldson	Keller, J.	More	Wilmarth
Donolow	Keller, M.	Murray	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION TO SUSPEND RULES

DELEGATE JIROLANIO. Mr. President, would it be in order for a motion to suspend the rules and have the present proposal up for third and final vote now?

PRESIDENT BRODERICK. I just want to say that it is always in order to suspend the rules. I understand it takes 109 votes, but I want to point out that certainly we have to come back here later on today and I also want to point out that I think that the delegates should probably take a look at this as it is amended in its final form but that is only a personal opinion of the Chair. I will still be guided by the wishes of this Convention.

DELEGATE JIROLANIO. Mr. President, I direct attention to page 2, rule 5, Suspension of Rules, and you will find there is an execption on the 109 votes, and that is upon consideration of a bill on third reading. I ask the Parliamentarian to look at it, please.

PRESIDENT BRODERICK. The Parliamentarian has interpreted that rule which states, "Any standing rule of the Convention may be suspended temporarily by a vote of two-thirds (109) of the Delegates—"

The exception is that you cannot suspend the rule requiring consideration of proposals on three different days.

DELEGATE JIROLANIO. I move to suspend the rule and call up this bill for third and final passage.

PRESIDENT BRODERICK. Let me state the motion, please, and I will recognize you.

I want to state what the motion is before the Convention.

The motion of Delegate Jirolanio and it was seconded by Delegate Gerber and we are referring to rule 26, subsection 12, which says, "In the event the proposal of the Committee on Style and Drafting is amended on third consideration, a vote on final passage shall not be taken thereon, but such proposal shall automatically be reprinted and recommitted to the Committee on Style and Drafting in the same manner and with the same effect as a proposal advanced from second to third consideration."

It has been moved and seconded and it is before the Convention.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales. For what purpose does the gentleman rise?

DELEGATE SCALES. I rise for a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SCALES. Mr. President, before we take a vote on Delegate Jirolanio's motion may I ask Delegate Aberman briefly, concerning a single word change which I believe the Committee has agreed to in substance. The change does not affect substance. It is only a style change and as I understand it, there has been agreement by the Committee. The change I refer to is on page 3, line 14. As I understand it, the word "available," the third word from the end of the line appears perhaps by mistake, and the Committee wishes to change that word to "applicable," rather than "available."

PRESIDENT BRODERICK. The Chair recognizes Delegate Aberman.

DELEGATE ABERMAN. Is the interrogation whether the statement is correct?

DELEGATE SCALES. Yes.

DELEGATE ABERMAN. That is correct. "Available" should be changed to "applicable" in that line 14.

PRESIDENT BRODERICK. Will the delegates therefore please change their copies to conform? I understand this is a typographical error.

DELEGATE ABERMAN. There is another change requested by Delegate Baldus. The same repeat change on line 23 has been called to our attention, where the word "available" also appears and it should be made to read "applicable."

PRESIDENT BRODERICK. Does anyone else wish to be heard?

Are we ready for the question?

The question is on the motion to suspend the rules in order to, in effect, consider Proposal No. 5 immediately, without sending it back to Style and Drafting as required by the rule which I read.

On the question,

Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—75

Amsterdam	Dalley	Irvis	Richter
Bagenstose	Desmond	Jirolanio	Rovner
Banes	Devlin	Johnson	Sahli
Barron	Erwin	Kauffman	Scales
Benedict	Fawcett	Kelly	Scarlett
Bloom	Fay	Leach	Sebastian
Braham	Fohl	Lee, K.	Shettig
Brennan	Forster	Leonard	Shively

Brown	Fortney	Manderino	Shoemaker
Buck	Gabreski	Mangery	Thomson
Bunting	Gehrlein	Mattioni	Tully
Butera	Gerber	Miller, R.	Waldron
Camardella	Goldstein	Moorhead	Warman
Caputo	Griffith	Morton	Welsh
Caron	Hannum	Pasquerilla	Whittum
Clark	Henderson	Popil	Wilcox
Corey	Himes	Pott	Woodring
Cortese	Hostetler	Rappaport	Woodside
Croop	Huggins	Reynolds	

NAYS—47

Aberman	Filson	Nelson	Shapiro
Baldrige	Goldman	O'Donnell	Shrager
Baldus	Gouger	Orban	Silverman
Baldwin	Heyburn	Orbin	Stout
Broderick	Hocker	Otto	Stroup
Casey	Krill	Pelletier	Swope
Clinger	Lee, L.	Powell	Tate
Cosetti	Leinbach	Rea	Thornburgh
Cunningham	Levin	Redick	Tomascik
Curran	Markley	Roberts	Van Sant
Dumbauld	Michael	Scott	Westerberg
Feather	Michener	Scranton	

NOT VOTING—41

Allison	Fineman	Kline	Pechan
Aurentz	Fleming	Lane	Percy
Barry	Gray	Laputka	Prendergast
Bashoff	Harding	McGeary	Quiles
Benfield	Hatter	McGlynn	Ruth
Burkholder	Hook	Meyer	Sharp
Cain	Horne	Miller, D.	Solomon
Conley	Keller, J.	More	Sprogell
Donaldson	Keller, M.	Murray	Strickler
Donolow	King	Musselman	Wilmarth
Fagan			

Less than two-thirds having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

REFERRAL TO COMMITTEE

PRESIDENT BRODERICK. The proposal is referred back to the Committee on Style and Drafting.

The Chair recognizes Delegate Caron.

DELEGATE CARON. Mr. President, in deference to all of us, I feel we cannot intelligently vote, at least I cannot, and would suggest a motion that we adjourn until perhaps 1:00 o'clock or 2:00 o'clock tomorrow, or a time convenient that you may suggest.

PRESIDENT BRODERICK. I suggest for the benefit of my fellow delegates, to determine what time you wish to convene later today. This proposal can be back to us I think by 1:30 tomorrow.

We hope that we can and I want Delegate Pelletier to indicate approval or disapproval, that we can have the Judiciary Article back by 4:00 o'clock, because there are things that we would like to do also tomorrow evening.

My suggestion is that we adjourn until 2:00 o'clock tomorrow.

The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Would it be better for us to leave the hall quietly and agree to meet at 1:30, so as not to pass a legislative day?

PRESIDENT BRODERICK. We have not passed a legislative day according to our Parliamentarian. When we come in and pass the day, that day is the same day until you leave the house.

DELEGATE RAPPAPORT. What I am asking is, we not formally adjourn this evening.

When we act on these tomorrow, we will be on the February 27th calendar and go to another day.

PRESIDENT BRODERICK. We do not have any problem with the calendar day.

DELEGATE CARON. I move, sir, that we adjourn until 2:00 o'clock.

COMMITTEE MEETINGS

PRESIDENT BRODERICK. The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON. If we are to keep the schedule and have proposals ready late tomorrow afternoon, the Committee on Style and Drafting will have to meet at 9:00 o'clock in the morning.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. There will be a committee meeting of the Committee on Taxation and Finance in room 500 of the North Office Building.

Bring your pencil and notebook and I think this one will be one of the final meetings.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron for the adjournment motion.

DELEGATE CARON. Mr. President, I move that this Convention do now adjourn until Wednesday, February 28, 1968, at 2 p.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Caron, seconded by Delegate Rappaport, that this Convention do now adjourn until Wednesday, February 28, 1968, at 2 p.m., e.s.t.

The motion was agreed to, and (at 2:20 a.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 Wednesday, February 28, 1968 Number 53

The Convention was called to order at 2:40 p.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

DR. MORLEY MAYS, President of Elizabethtown College, Elizabethtown, offered the following prayer:

O God, mysterious presence from Whom there is no shrinking away and before Whom all the generations come and go, we face our tasks today in deference to Thee. Thou dost stand in judgment over us and within us moment by moment, beckoning us to seek Thy holy will for our lives, requiring of us justice and mercy, rather than to seek fame or favor.

Give us today a fresh understanding that we are responsible to Thee for the management of civil affairs. The orders of men and of nations are Thy handiwork as much as the scenes of nature and the interminable spaces beyond. We would understand that we toil not alone for the people of this Commonwealth but for Thee. Give us this dimension of the Eternal in all that we undertake in the closing hours of this historic assembly.

As we pray for ourselves, we pray also for this Commonwealth and the country of which it is a part, for its fields and streams, for the rich ores hidden in its hills, for the skill and strength of those on whose toil our life depends, for those who in commerce and industry, in communication and travel hold the state together, for those who nurture the minds and spirits—for all these we give Thee our humble thanks.

These are fateful days, O God, in which we live. We cannot be casual or selfish, nor can we be cynical or unenlightened. May what we do here build efficiency into our government, equity into our laws, and stability into our society. The threat to these things comes not only from without but also from within. Help us to understand that we do not need power so much as we need reconciliation, that we do not need bureaucracy so much as we need self-discipline and constraint, that we do not need affluence so much as we need character. Amen.

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance to the Flag was recited by the Convention, led by Delegate Redick.

ANNOUNCEMENTS BY SECRETARY

SECRETARY MICHENER. Mr. President. I have three announcements on problems which delegates have brought to my attention at various times.

There will be bound copies of the complete journal delivered to your homes some time within six months after the termination of this Convention. Bound copies of the journal will reach you in your home.

There will be certificates of honor for all delegates who participated in this Convention. They are large parchment sheets and properly framed and put in any law office, will entitle you to charge $5 more an hour. There will be a ceremony provided whereby each of 163 of us will sign the document that results from our labors. How that will be done, we are not quite certain yet, but it will be done tomorrow and you should all have sharp fountain pens.

Yesterday, having gotten rid of a very troublesome lady delegate, it is only fair we now throw one of the bums on the male side out that has been giving us a lot of trouble at this Convention. He is a graduate of Penn Law School, of Dickinson, of Temple, of Pitt, of Duquesne. He is Mr. Thrust. We are sending him home forever, because of the fact that we are black and blue from being thrusted at from all sides. Mr. President, the thrust of what I am trying to say is this: We just want to get rid of him on this last day when we have our last crack at the Judiciary Article. No one may say today that the thrust of what I intended to say was something or other.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. In accordance with our procedure, the leaves will be approved unless objection is heard. I am happy to report that we have no leaves other than from Delegate Thrust.

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. There are no Journals to be approved this morning.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Desmond	Keller, J.	Redick
Allison	Devlin	Keller, M.	Richter
Amsterdam	Dumbauld	Kelly	Roberts
Aurentz	Erwin	King	Rovner
Bagenstose	Fagan	Krill	Ruth
Baldrige	Fawcett	Leach	Sahli
Baldus	Fay	Lee, K.	Scales
Baldwin	Feather	Lee, L.	Scarlett
Banes	Filson	Leinbach	Scranton
Barron	Fineman	Leonard	Shapiro
Barry	Fleming	Levin	Sharp
Bashoff	Fohl	Manderino	Shettig
Benedict	Forster	Mangery	Shively
Benfield	Fortney	Markley	Shoemaker

Bloom	Gabreski	Mattioni	Shrager
Braham	Gehrlein	McGeary	Silverman
Brennan	Gerber	McGlynn	Solomon
Broderick	Goldman	Meyer	Sprogell
Brown	Goldstein	Michael	Strickler
Bunting	Gouger	Michener	Stout
Burkholder	Gray	Miller, D.	Stroup
Butera	Griffith	Moorhead	Swope
Cain	Hannum	More	Tate
Camardella	Harding	Morton	Thomson
Caputo	Hatter	Nelson	Thornburgh
Caron	Henderson	Orban	Tomascik
Casey	Heyburn	Orbin	Tully
Clark	Himes	Otto	Van Sant
Clinger	Hocker	Pasquerilla	Waldron
Corey	Hook	Pechan	Warman
Cortese	Hostetter	Popil	Welsh
Cosetti	Huggins	Pott	Westerberg
Croop	Irvis	Powell	Whittum
Cunningham	Jirolanio	Prendergast	Wilcox
Curran	Johnson	Rappaport	Wilmarth
Dailey	Kauffman	Rea	Woodring

PRESIDENT BRODERICK. The electric roll call tabulator indicates that 144 delegates have recorded their presence.

The Chair also notes the presence of the following delegates:

Buck	Laputka	O'Donnell	Sebastian
Conley	Murray	Pelletier	Woodside

COUNTY OFFICIALS WELCOMED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Roberts.

DELEGATE ROBERTS. I would like to present to the Chair and fellow delegates, the Register of Wills and Recorder of Deeds of Monroe County who is visiting today and that is Mr. Carl Yost.

PRESIDENT BRODERICK. If he will stand, we will give him our cordial greeting.

WIVES OF DELEGATES WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. I rise to a point of personal privilege. I would like to introduce my wife to the delegate body and also the wife of Mr. William Stout. I would like to introduce my wife Edie Hook and Mary Stout.

PRESIDENT BRODERICK. Will the ladies please rise so we can give them our cordial greeting?

GUEST OF DELEGATE WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Gray.

DELEGATE GRAY. Mr. President, I would like to introduce a member of our church who does not sing in our choir so therefore she did not come up here when the choir was here. She is the sister of Superior Court Judge Theodore Spaulding. I would like to present Mrs. Odessa Spaulding to this delegation.

PRESIDENT BRODERICK. We are very happy to have you here with us. Please rise and we will give you our cordial welcome.

FAMILIES OF DELEGATES WELCOMED

PRESIDENT BRODERICK. Let me recognize Delegate Barry who has been standing for some time.

DELEGATE BARRY. Mr. President, I rise to a point of personal privilege. I would like to introduce my wife Ruth and my children Margaret, Thomas, Sheila, Francis, Patrick, Rita and Eileen.

PRESIDENT BRODERICK. I think that deserves a long line of applause. We are very happy to have you with us and we want you to know we are very proud of the good work Delegate Barry has been doing.

The Chair now recognizes Delegate Sharp.

DELEGATE SHARP. Mr. President, I should like to rise on a point of personal privilege and introduce the presiding judge of my household, my wife and my son Thomas.

PRESIDENT BRODERICK. If you will please stand up, we are very happy to have the Sharp family with us and we will give you our warm cordial welcome.

We now recognize Delegate Henderson.

DELEGATE HENDERSON. I rise to introduce Mrs. Carol Brennan, the daughter of one of our delegates, T. Robert Brennan. She is a student at Dunbarton College of Washington, D. C.

PRESIDENT BRODERICK. We are very happy to have you with us. We want you to know we are proud of the good work your dad has been doing.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Buck. For what purpose does the gentleman rise?

DELEGATE BUCK. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

PRESIDENT BUCK. I wish first of all to record my presence.

PRESIDENT BRODERICK. We will have your presence noted on the record and you make 145 present.

DAUGHTER OF DELEGATE WELCOMED

DELEGATE BUCK. I thank you and I also wish to introduce my youngest daughter, Judy.

PRESIDENT BRODERICK. Judy, would you stand? We are very happy to have you with us. We are very proud of your dad, he is doing a great job.

GUEST OF DELEGATE WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Barron.

DELEGATE BARRON. Mr. President, I rise to introduce the one person, the one human being who has made my appearance at this Convention possible, and that is my law partner who survived in a two-man law office, this particular three-month absence of the junior partner. It is with a great deal of pleasure I introduce to this delegate body, Mr. Harold W. Houck of the Mifflin County Bar.

PRESIDENT BRODERICK. We are very happy to have you with us.

WIVES OF DELEGATES WELCOMED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bashoff.

DELEGATE BASHOFF. Mr. President, I rise to a point of personal privilege. I would like to present to the body my wife, Debbie Bashoff.

PRESIDENT BRODERICK. Mrs. Bashoff, would you please stand so we can give you our warm personal and cordial greeting?

I want you to know that your husband is doing a marvelous job.

The Chair now recognizes Delegate Wilcox.

DELEGATE WILCOX. We also have with us the shy wives of the shy delegates, Westerberg and Whittum with us.

PRESIDENT BRODERICK. We certainly want them to stand and we will give them our cordial welcome and tell them how proud we are of the work that their good husbands have been doing.

BIRTHDAY GREETINGS TO DELEGATE

PRESIDENT BRODERICK. Now, the Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, I rise to a point of personal privilege and would like to announce that today is the 39th birthday of the distinguished Delegate Douglas Moorhead. I wish also to announce that the local Finance Subcommittee will celebrate the event by meeting in the back of this chamber during the first recess, in order to rewrite the local government article.

PRESIDENT BRODERICK. I think we can all say happy birthday to Delegate Moorhead.

RESOLUTION

DELEGATE FAGAN requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 28, 1968

The standing Committee on Legislative Apportionment having now completed its substantive duties with respect to Legislative Apportionment proposals would indeed be remiss if it failed to give recognition to the members of the staff assigned to the committee to assist it in performing its duties.

First, the committee wishes to express its gratitude to Lawrence Zeger, Committee Staff Director, and Attorneys William Woodside, Ronald Davenport, Irving Backman, Fred Fiegenberg and Maxwell Ominsky, all of whom devoted many hours of their time collecting and preparing research material for the committee so that it could make intelligent decisions on proposals to be reported from our committee. Special mention should also be made that William Woodside, who is the son of Delegate Robert Woodside and Chief Counsel to Delegate Stanley Stroup, Majority Leader of the Senate, worked very closely with counsel to our committee in solving the problems the committee had before it. No convention committee could have asked for a more talented research staff than these men.

Second, the committee wishes to give recognition to Russell A. Davis who was assigned by the Preparatory Committee as counsel to our committee. The committee believes it appropriate here to point out to the convention that Mr. Davis has served State government well for a number of years. He started his State government career with the Legislative Reference Bureau, the drafting bureau for the Legislature and for this convention. Since then, and over a span of almost fourteeen years, he has served in many responsible governmental positions. Presently, he is chief counsel to Herbert Fineman, Democratic Floor Leader of the House, who is also a delegate to this convention. As chief counsel, he assisted in drafting the constitutional convention law, under which the convention is now assembled and spent numerous hours before this convention convened with Mark Gruell, Convention Parliamentarian, in drafting the operating rules for this convention. The committee makes reference to his governmental background solely to highlight the fact that with such knowledge and understanding of State government and the legislative process, Mr. Davis has been an outstanding legal adviser and an invaluable asset to our committee. Accordingly, the standing Legislative Apportionment Committee desires to express and place in the record that it is indeed grateful to him for his legal advice and counsel, therefore be it

RESOLVED, That the Constitutional Convention of Pennsylvania congratulate Russell A. Davis and the above-named research staff and express its gratitude to them for a task well done; and be it further

RESOLVED, That a copy of this resolution be prepared for Mr. Davis and the research staff members as a token of the convention's appreciation.

COMMITTEE MEETINGS

DELEGATE BLOOM. While we are wating here, I want to announce a very important meeting. I think it will be the final meeting of the Committee on Administration and Finance. This will be at room 401 in the Capitol here immediately after recess. It will be a very short meeting. I would like to have all the members present.

CALENDAR

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of **Committee Proposal No. 5, Printer's No. 31**, entitled:

A Proposal amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

On the question,

Will the Convention agree to the proposal on third consideration?

PRESIDENT BRODERICK. Now, we take up the calendar of the day.

On our calendar for early this afternoon we have Proposal No. 5, Printer's No. 31.

I have been advised that this has been distributed and is on the desks of all of our delegates.

I am also informed that it contains one small typographical error of omission on page 6, line 22.

After the word "provisions" should be inserted the word "of."

If you will look on the clean copy on page 4, line 22, you will see that the "of" is on the clean copy so this is clearly a typographical omission.

Now, the question before the Convention is, will the Convention agree to advance Proposal No. 5, Printer's No. 31 to final passage?

I think we all know by this time that this is the last opportunity to amend and an amendment can only be accepted if consent is obtained.

Now we will unlock the voting machine and will vote over. That will be the easiest way to do it.

The question before the Convention is, will the Convention agree to advance Proposal No. 5, Printer's No. 31 to final passage?

On the question,

Will the Convention agree to the proposal on third consideration?

The roll was recorded as follows:

YEAS—136

Allison	Desmond	Kelly	Rovner
Amsterdam	Devlin	King	Ruth
Aurentz	Dumbauld	Krill	Sahli
Bagenstose	Erwin	Leach	Scales
Baldrige	Fagan	Lee, K.	Scarlett
Baldus	Fawcett	Lee, L.	Scranton
Baldwin	Fay	Leinbach	Sebastian
Banes	Feather	Leonard	Shapiro
Barron	Filson	Levin	Sharp
Barry	Fineman	Manderino	Shettig
Bashoff	Fleming	Mangery	Shively
Benedict	Fohl	Markley	Shoemaker
Benfield	Forster	Mattioni	Shrager
Bloom	Fortney	McGeary	Silverman
Braham	Gehrlein	McGlynn	Solomon
Brennan	Gerber	Meyer	Sprogell
Broderick	Goldman	Michener	Stout
Brown	Goldstein	Miller, D.	Strickler
Buck	Gouger	Moorhead	Stroup
Bunting	Griffith	More	Swope
Butera	Hannum	Morton	Tate
Cain	Harding	Nelson	Thomson
Camardella	Hatter	Orban	Thornburgh
Caputo	Henderson	Otto	Tomascik
Caron	Heyburn	Pasquerilla	Tully
Casey	Himes	Pechan	Van Sant
Clark	Hook	Pelletier	Waldron
Clinger	Hostetler	Popil	Warman
Corey	Huggins	Pott	Welsh
Cortese	Jirolanio	Powell	Westerberg
Cosetti	Johnson	Prendergast	Wilcox
Croop	Kauffman	Rea	Wilmarth
Cunningham	Keller, J.	Richter	Woodring
Curran	Keller, M.	Roberts	Woodside

NAYS—3

Aberman	Hocker	O'Donnell

NOT VOTING—24

Burkholder	Gray	Michael	Quiles
Conley	Horne	Miller, R.	Rappaport
Dailey	Irvis	Murray	Redick
Donaldson	Kline	Musselman	Reynolds
Donolow	Lane	Orbin	Scott
Gabreski	Laputka	Percey	Whittum

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

And said proposal having been read a third time, considered and agreed to,

On the question,

Shall the proposal be finally adopted?

PRESIDENT BRODERICK. The Convention has advanced Proposal No. 5, Printer's No. 31 to final passage.

This proposal, under the rules, has been considered on three different days and has been agreed to and now we have the question, will the Convention finally pass this proposal? Of course, this vote must receive 82 votes.

I now recognize Delegate Shapiro.

DELEGATE SHAPIRO. On behalf of the nit pickers society, sir, on page 6, line 10, there is a misspelling of the word "service." May I suggest it be corrected before we finally pass the bill?

On the question,

Will the Convention agree to final passage of Proposal No. 5?

DELEGATE BROWN. Mr. President, on page 2, the back section of this proposal, you will see another misspelled word. On line 3, it says "that portion." They have "p-r-o-t-i-o-n."

PRESIDENT BRODERICK. All right, we will fix that. That is line 3.

Now we will make another try. The question is, will the Convention finally adopt this proposal?

The roll was recorded as follows:

YEAS—137

Allison	Devlin	King	Roberts
Amsterdam	Dumbauld	Krill	Rovner
Aurentz	Erwin	Leach	Ruth
Bagenstose	Fagan	Lee, K.	Sahli
Baldus	Fawcett	Lee, L.	Scales
Baldrige	Fay	Leinbach	Scarlett
Baldwin	Feather	Leonard	Scranton
Banes	Filson	Levin	Sebastian
Barron	Fineman	Manderino	Shapiro
Bashoff	Fleming	Mangery	Sharp
Benedict	Fohl	Markley	Shettig
Benfield	Forster	McGeary	Shively
Bloom	Fortney	McGlynn	Shrager
Braham	Gehrlein	Meyer	Silverman
Brennan	Gerber	Michael	Solomon
Broderick	Goldman	Michener	Sprogell
Brown	Goldstein	Miller, D.	Stout
Buck	Gouger	Moorhead	Strickler
Bunting	Griffith	More	Stroup
Burkholder	Hannum	Morton	Swope
Butera	Harding	Nelson	Tate
Cain	Hatter	Orban	Thomson
Camardella	Henderson	Orbin	Tomascik
Caputo	Heyburn	Otto	Tully
Caron	Hook	Pasquerilla	Van Sant
Casey	Hostetler	Pechan	Waldron
Clark	Huggins	Pelletier	Warman
Clinger	Irvis	Popil	Welsh
Corey	Jirolanio	Pott	Westerberg
Cortese	Johnson	Powell	Whittum
Cosetti	Kauffman	Prendergast	Wilcox
Croop	Keller, J.	Rea	Wilmarth
Cunningham	Keller, M.	Redick	Woodring
Curran	Kelly	Richter	Woodside
Desmond			

NAYS—8

Aberman	Himes	Mattioni	Shoemaker
Barry	Hocker	O'Donnell	Thornburgh

NOT VOTING—18

Conley	Gray	Miller, R.	Quiles
Dailey	Horne	Murray	Rappaport
Donaldson	Kline	Musselman	Reynolds
Donolow	Lane	Percey	Scott
Gabreski	Laputka		

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was adopted.

REFERRAL TO COMMITTEE

PRESIDENT BRODERICK. This proposal has passed and is now referred to the Committee on Arrangment, Submission and Address to the People.

RECESS

PRESIDENT BRODERICK. Will the Convention please be at ease?

AFTER RECESS

PRESIDENT BRODERICK. Will the Convention please come to order?

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Pechan. For what purpose does the gentleman rise?

DELEGATE PECHAN. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE PECHAN. To read into the record of this Convention a statement relating to the work of the Convention and my participation therein.

PRESIDENT BRODERICK. You may proceed.

DELEGATE PECHAN. Mr. President, I was honored to have been one of the members of the Preparatory Committee which worked for some six months preparing the groundwork for this Convention. During the very early days of the Convention I determined that having completed the preparatory work, I was delighted to exceed to the tenure of the Convention, wherein the elected delegates should take up the work and proceed forward.

I would like to read into the record, if I may, Mr. President, a letter that I wrote to the secretary, Mr. James A. Michener, Secretary of the Constitutional Convention, North Office Building, Harrisburg, Pennsylvania, on January 10.

> "Dear Mr. Michener, accept this as a respectful request for a leave of absence from the Constitutional Convention. I am, however, prepared to meet my Convention obligations that demand my personal attention.
>
> Further, I feel that by virtue of my Senate office and as a member of the Preparatory Committee, I have discharged my designated Convention responsibilities, and that my Senatorial district is most ably represented by the duly elected delegate.
>
> Sincerely yours,
> Senator Ralph Pechan."

I would like at this time to mention that the elected delegates of my 41st Senatorial district in alphabetical order are Delegate Baldrige, Delegate Filson and Delegate Leach, and I am sure that they have been a credit, not only to the 41st Senatorial district, but to the operation of this Convention.

I want to say, too, Mr. President, if I may, I believe I offered Proposal No. 1, but you and your officers felt that the proposal did not fall within the purview of this Convention and it was not considered, and that was that the Legislature should not continue beyond 180 days. I understand there has been some movement. In fact, the Senate has passed such a resolution and sent such a bill to the House of Representatives for their concurrence, and I am hopeful that they will concur, and it will be adopted.

I would like to make this one observation, Mr. President, and that is that I feel that the delegates of this Convention have learned of the problems that we have in the Legislature, and I think they can be sympathetic with some of the time we spent and some of the work that we have to do. I would also like to say, Mr. President, that we in the Legislature have learned from you that you can do your work or that our work can be done more expeditiously if we stick to the work just as you fellows have. There are many times when we are in session until 3:00, 4:00 or 5:00 o'clock in the morning, but it is usually late in the session, but I think that if we have a set time, let us say 180 days, and know that we have to complete our work in that time, we can learn a good lesson from this Convention.

I would like to at this time, because I am going to leave, thank not only the officers and the delegates for the very many courtesies that they have not only shown me, but also other members of the Legislature. I want to thank the delegates. I think this is a grand group of men and women, and I am sure that the Commonwealth of Pennsylvania is going to be a better place to live in in the next hundred years.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Huggins.

DELEGATE HUGGINS. Mr. President, I stand in place to read the following resolution.

PRESIDENT BRODERICK. You may proceed.

DELEGATE HUGGINS. I think it is appropriate in these last waiting hours that many of us look around the room, which is normally filled with members of the Legislature from which came the greatest guys of critical nobility. We thought they were wrong and we were going to show them how to do it. We were going to show them that we could, indeed, accomplish much in three months, minus all of the hot air, minus all of the things for which we were critical of them.

It is for this reason, Mr. President, that I offer the following resolution, and I think it is appropriate that it is offered following the remarks made by Senator Pechan.

RESOLUTION

DELEGATE HUGGINS requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

> In the Constitutional Convention, Feb. 28, 1968
>
> It is evident after this long, but short, Constitutional Convention that we delegates have become more aware of the problems that must be, in part, faced by our legislators. We have used this august chamber, and have used their desks and names in a shared way for three months. We

have been through our own special kind of legislative turmoil. And we have sheltered our selfish interests in ways similar to those for which we have been critical of them.

We have learned that dignity comes not in title, but in performance. We have learned that creative law is born through a brave spirit and a shared trust. We have learned that man is always capable of doing excellence if he struggles beyond human negligence; therefore be it

RESOLVED, That through Delegates Fineman and Donaldson, we send our resolution concerning a new appreciation for their capabilities, their fortitude and their diligence for the good of this Commonwealth. We've filled their desks and chairs, but find it difficult to fill their shoes.

RESOLUTION

DELEGATE BLOOM requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 28, 1968

The many fine and competent employes of the Convention who have assisted in the preparation, reproduction and printing of the many proposals, amendments, amendments to amendments, revisions, and revisions to revisions which we have submitted to the Convention should be congratulated.

Regrettably, each of these cannot be thanked by name, but Frank P. Garber, and his staff of the Convention Drafting Bureau, the xerox machine operators, Regis D. Steighner and his staff of the Data Processing Center, and George E. Zeiders, Legislative Printing Clerk and his staff, all contributed to the success of the Convention; therefore be it

RESOLVED, That the Pennsylvania Constitutional Convention of 1967-1968 express its gratitude to Frank P. Garber and his staff of the Convention Drafting Bureau, the xerox machine operators, Regis D. Steighner and his staff of the Data Processing Center, and George E. Zeiders, Legislative Printing Clerk and his staff; and be it further

RESOLVED, That copies of this resolution be transmitted to Frank P. Garber, Convention Drafting Bureau; Regis D. Steighner, Data Processing Center; and George E. Zeiders, Legislative Printing Clerk.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I rise to offer the following resolution, and as I offer this resolution, I will call off the various names and various individuals who I think all of us know by face but not by name, and I would like each and every one of them to step forward and be recognized by the body as a whole.

RESOLUTION

DELEGATE HOOK requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 28, 1968

All those who contributed to the smooth operation of this Convention deserve special thanks and recognition from the delegates. Those who recorded the proceedings will also share the appreciation of historians.

Among the persons directly involved during deliberations on the floor of the Convention Hall are John W. Ingram, Executive Director; Ralph D. Tive, Assistant Executive Director; Marvin Comisky, General Counsel; Mark Gruell, Jr., Parliamentarian; Thomas R. Balaban, Solicitor and Assistant Parliamentarian; Anthony J. Petrosky, Director of Convention Operations; Alan Hepford, Head Page; Howard Yale; Lillian Carr; Kay Clarke; John Zubeck; R. P. "Rags" Stimmel; Robert Sheipe; Ford O'Dell; Albert S. Marshall; Agnes O'Neill; Sue Smith; Douglas Wagner; Roy Brungard; Martin Stern; Herbert Kroll; Lewis Weinschel; Bill Reed; David Shultz, and Betty Aversa; therefore be it

RESOLVED, That the delegates to the Pennsylvania Constitutional Convention of 1967-1968 extend their sincere appreciation to all of these persons who helped in the success of this Convention.

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, it comes as a surprise to no one, I am sure, that I have not always agreed with the members of the press, and I suspect that, perhaps, there are one or two others in this Hall who will also not always agree with the members of the press.

Like the rest of us, the press becomes confused and makes mistakes; also like the rest of us, the press comes to Harrisburg to do a job for the people of Pennsylvania, and I submit, Mr. President, that the press has done just that.

There are many men and women newspaper people, television and radio people, who have come to this Convention and helped in its democratic processes.

There are five men who, in my recollection, Mr. President, have been here almost every single hour, certainly every single day since this Convention began, and I call the attention of the Chair to Pat Boyle of the Pittsburgh press, to Duke Kaminski of the Philadelphia Bulletin, William Ecenbarger of U. P. I., Bill Geiger of the Associated Press, and Fred Walters of Group W. Westinghouse.

Therefore, Mr. President, on behalf of Delegate Bob Curran and myself, I offer the following resolution:

In the Constitutional Convention, Feb. 28, 1968

WHEREAS, The newspapers in the Commonwealth of Pennsylvania have played a most important role in bringing about the Constitutional Convention of 1967-1968, and

WHEREAS, The press, with vigilance and determination, has informed the citizens of Pennsylvania of the progress of this Convention, and

WHEREAS, The press has demonstrated a commitment to a better Constitution for all Pennsylvanians; therefore be it

RESOLVED, That this Convention expresses its gratitude, its appreciation, and its commendation to the members of the press for their daily and regular coverage of this Constitutional Convention from December 1, 1967 to February 29, 1968, and for their devotion to the best interests of the people of Pennsylvania.

AMENDMENTS TO SCALES RESOLUTION

DELEGATE FLEMING. Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fleming.

DELEGATE FLEMING. Mr. President, I wonder if Delegate Scales would possibly agree to an amendment which I might possibly give to this. I am sure that newsmen and radio and the television and radio commentators for whom he has suggested we give just commendation have done a magnificent wonderful job, but I would, also, draw to your attention, Delegate Scales, that in western Pennsylvania we have two men here, particularly Mr. Patrick Boyle of the Pittsburgh press and Mr. Frank Matthews of the Pittsburgh Post Gazette who have covered this every single day. They have done a magnificent job of coverage for those of us in western Pennsylvania, and I would like, if I could possibly do so, to add their names to those who are especially being commended.

DELEGATE SCALES. Mr. President, I am delighted to accept the resolution of our fellow delegate.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Benedict.

DELEGATE BENEDICT. Would Delegate Scales accept a further amendment to the amendment, to also include Joe Miller and Saul Kohler?

DELEGATE SCALES. Mr. President, I am happy to accept Delegate Benedict's further amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Banes.

DELEGATE BANES. I should like to offer a further amendment of the resolution as follows:

Be it further resolved that they should be hereafter known as the roasting and toasting fraternity.

DELEGATE SCALES. In view of the various amendments, and in order to demonstrate my own sometime confusion, I would like to state that despite all the advertising that takes place in Philadelphia and the rest of this State, I still do not know whether in Philadelphia nearly everybody reads the Bulletin or the Inquirer.

PRESIDENT BRODERICK. Now do I understand that you have accepted these amendments to your resolution?

DELEGATE SCALES. Yes, indeed, Mr. President.

PRESIDENT BRODERICK. Do you wish it voted on now?

DELEGATE SCALES. Yes.

PRESIDENT BRODERICK. Is there any objection to the immediate consideration of this resolution? The Chair hears none. All those in favor of the resolution please signify by saying aye. Anyone opposed say no. The resolution is unanimously adopted and will appear in the record and copies will be made.

FAMILY OF DELEGATE CAPUTO WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Caputo.

DELEGATE CAPUTO. Mr. President, I rise to a point of personal privilege.

PRESIDENT BRODERICK. Would you state what your point of personal privilege is?

DELEGATE CAPUTO. I have had the pleasure of sitting with this delegation for several months, but the most pleasant moment of this Convention has now arrived.

I had hoped that my daughter from Beverly Hills, California, Phyllis Varroff and her two children, Nicholas and Flavio would be here today, but my daughter from Palisades, New York, Paula Babalis and her three daughters, Alexandria, Maria and Lara are here, and also my wife, Mrs. Caputo, and I would like to present them to you.

PRESIDENT BRODERICK. If they will all stand up we will give them our cordial greeting and welcome.

COMMITTEE MEETING

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, there will be an immediate meeting of the Judiciary Committee in the Majority Senate Caucus room.

It will last fifteen minutes, but it must be right now.

PRESIDENT BRODERICK. We will have the meeting.

May I make an announcement before they go to that meeting? I would like you to hear this announcement. We had various estimates as to the time when we would be ready to take up on this floor Proposal No. 7.

Is anything that you are going to do require action this afternoon? I was going to suggest we recess until No. 7 was ready, but will you require action on your meeting, or as a result of your meeting?

DELEGATE SCRANTON. The reason for the meeting is because of the request of the heads of the Legislature, of which you are aware.

PRESIDENT BRODERICK. So, we better, therefore, remain in session until your meeting has been completed.

DELEGATE SCRANTON. Frankly, I do not think any action could be taken on what we will do until the opening of the session with regard to the Style and Drafting report. I think you could do it at the beginning of that if that is what you want to do.

PRESIDENT BRODERICK. Let me suggest that we will remain at ease until your committee returns.

DELEGATE SCRANTON. We should not be more than fifteen minutes.

AMENDMENTS TO HOOK RESOLUTION

PRESIDENT BRODERICK. We will be at ease for fifteen minutes.

I recognize Delegate Caron.

DELEGATE CARON. This has been a very long and difficult chore. Time after time I have been deeply concerned when I get on my feet and we have an amendment and then someone amends an amendment and then someone amends the amendment and I do not think that we should let this opportunity go by without amending the amendment to the amendment that I want to make to the amendment.

Under the circumstances, I have asked Delegate Hook if he would permit an amendment to the amendment to the amendment and in deference to the young lady who has worked so hard and helped so much, I would like to

ask this group to add Betty Aversa's name to that list of those who we already recognized as having helped so much.

PRESIDENT BRODERICK. I am happy to hear her name has been suggested. She has done a wonderful job.

Do you have any objection, Delegate Hook?

DELEGATE HOOK. I have no objection to this being added as an amendment to the amendment to the amendment.

PRESIDENT BRODERICK. Thank you.

We will see that it is added to the record.

I recognize Delegate Gouger and then I will recognize Delegate Swope.

DELEGATE GOUGER. I do not present an amendment to an amendment.

I submit a proposal.

I submit to you and to the members of this Constitutional Convention that we have spread upon the records our sincere and profound appreciation for the following people:

First and foremost, our most capable and courteous sergeants-at-arms who have handled our guests so graciously and who have guarded our portals against disturbance and who have generally served us so remarkably well.

Secondly, the research staff that has not been mentioned in so many of these resolutions.

Thirdly, the counsel of so many of our committees who have worked so ably and so well.

Our messengers, the members of the secretarial pool who have put up with our idiosyncrasies and bad English.

The executive office staff, the telephone attendants, the fine people down in the document room, the pages, and all those people which we cannot identify but who made our ninety day stay here so highly comfortable and pleasant.

Mr. President, I move you this motion.

PRESIDENT BRODERICK. Delegate Gouger, that was in the form of a motion?

DELEGATE GOUGER. That is correct.

PRESIDENT BRODERICK. It has been moved by Delegate Gouger and seconded by Delegate Gerber.

Is there any discussion on the motion?

The Chair recognizes Delegate Croop.

DELEGATE CROOP. I wanted to add one other group which has tried to take very good care of us and has encountered at times the displeasure of others.

I refer to the police force which has seen to the availability of parking space out here for us day after day in all kinds of weather.

DELEGATE GOUGER. I happily accept that amendment to my resolution.

PRESIDENT BRODERICK. Is there further discussion on that motion? The Chair hears none.

I recognize Delegate Van Sant.

DELEGATE VAN SANT. Mr. President, as long as we are expressing gratitude to people, I think that our blessings are very much in the interest of those who made out the checks.

DELEGATE GOUGER. I accept this amendment.

PRESIDENT BRODERICK. I will now call for a vote on the resolution.

DELEGATE GOUGER. May I amend my own motion? Our most capable clerk, Bill Wagner, has not been mentioned in all these resolutions. May we add his name with great gratitude?

PRESIDENT BRODERICK. We certainly shall.

I now notice you are referring to it as a resolution and I will do likewise.

Now is there any objection to the immediate consideration of that resolution?

The Chair hears none. All those in favor of the adoption of the resolution please say aye. Anyone opposed say no. The resolution is unanimously adopted. It will appear in the record and copies will be made.

RESOLUTION

DELEGATE GOUGER requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 28, 1968

All those who contributed to the smooth operation of this Convention deserve special thanks and recognition from the delegates.

Among the persons making such contributions are: Research Staff; Counsels; Sergeants-at-Arms; Messengers; Members of Secretarial Pool; Executive Office Staff; Document Room Staff; Telephone Attendants; Postmasters; Pages; Reading Clerk and the Capitol Police and all others who contributed; therefore be it

RESOLVED, That the delegates to the Pennsylvania Constitutional Convention of 1967-1968 extend their sincere appreciation to all of these persons who helped in the success of this Convention.

AMENDMENT TO SCALES RESOLUTION

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, I would like to offer yet another amendment to the amended Scales' resolution and include the names of John Scotzin and Carmen Brutto, reporters from our local Harrisburg papers whose keen and perceptive writing have been instrumental in informing the people of our Senatorial District about the progress of this Convention.

PRESIDENT BRODERICK. I am sure that Delegate Scales will have no objection to that amendment.

Therefore, we will see that the record is amended to include the names just mentioned by Delegate Swope.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber. For what purpose does the gentleman rise?

DELEGATE GERBER. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GERBER. I would like to make a request to the Chair, in the spirit of ecumenicalism, that is being expressed here today, I would like to ask permission of the Chair to have certain phrases that I uttered extemporaneously on the floor expunged from the record in the statement I made earlier this week in view of the fact

that I do not think those words belong in the final record of the Constitutional Convention of this great Commonwealth of Pennsylvania.

I therefore make this request to the Chair and I believe my colleague, Delegate Thomson, would like to comment as well.

PRESIDENT BRODERICK. Since you have your lawyers there advising you, I have to have these gentlemen here advise me.

DELEGATE GERBER. I specifically refer to certain statements made about two days ago by me with reference to the League of Women Voters.

Pursuant to my request, I direct the attention of the Chief Clerk to page 78, certain words in the record which I have bracketed and on page 79, to have them expunged from the record of the Convention. I make that in a form of a personal request of the Chair.

PRESIDENT BRODERICK. Does the Chair hear any objection to the request made by Delegate Gerber? The Chair hears none. Therefore, we will see that that request appears in the record.

DELEGATE GERBER. Thank you very much, Mr. Chairman.

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson.

DELEGATE THOMSON. Mr. President, in view of Delegate Gerber's request and the proceeding thereon, at the same session and following Delegate Gerber's remarks at that time, I made somewhat similar remarks that I would now request be removed from the record.

PRESIDENT BRODERICK. Is there any objection to the request just made by Delegate Thomson? The Chair hears none. Therefore, the request will be recognized and will appear in the record.

DELEGATE THOMSON. Thank you.

RECESS

PRESIDENT BRODERICK. We are officially at ease.

AFTER RECESS

PRESIDENT BRODERICK. Will the Convention please come to order?

WIVES OF DELEGATES WELCOMED

PRESIDENT BRODERICK. I want to ask if Mrs. Waldron is back there, the wife of Delegate Waldron. If she is, I would like her to stand. Where is Mrs. Waldron? There she is. I want to give her our cordial greeting. I just want you to know your good husband has been doing a wonderful job.

DELEGATE CARON. I rise to a point of personal privilege. As many of you know Monday night was my 24th wedding anniversary and I realize that it is in the record that I was here, but when I got home, my wife did not believe me. Inasmuch as Mrs. Caron is here today, I would appreciate the body as a whole, substantiating the fact that I was here on the occasion of my wedding anniversary and I would like to introduce my wife, Mrs. Caron.

PRESIDENT BRODERICK. Where is Mrs. Caron? I see her. Please stand up and we will give you our cordial welcome.

DELEGATE HOOK. Will Delegate Caron stand for interrogation please?

It has been called to my attention that there must be trouble in your household because you have two rooms at the hotel tonight, is this true?

DELEGATE CARON. That is true. Are you hinting?

PRESIDENT BRODERICK. The Chair has also been made aware that Mrs. Baldwin, the wife of Delegate Baldwin is here. We want you to know we are very happy to have you with us.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Mr. President, I would like to introduce the wife of one of our charming delegates Franklin Mangery, the real mayor of Belmont, Pennsylvania, Mrs. Nancy Mangery.

PRESIDENT BRODERICK. Let us give her a warm greeting.

WIFE AND FAMILY OF DELEGATE MURRAY WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray.

DELEGATE MURRAY. Mr. President, I would like to take the personal privilege of introducing my wife and family. Mrs. Bridget Murray and my mother and father, Mr. and Mrs. Charles Murray, Sr.

PRESIDENT BRODERICK. Will the Murray family please stand? We welcome you.

WIFE AND SON OF DELEGATE SOLOMON AND WIFE OF DELEGATE SHRAGER WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Shrager.

DELEGATE SHRAGER. I rise to a point of personal privilege. I want to introduce the wife and son of a very fine delegate, but he is too modest to rise, Delegate Solomon. I wish to welcome his wife Ann and his son Jeremiah.

PRESIDENT BRODERICK. We are very happy to have you with us.

DELEGATE SHRAGER. And I also want to introduce my wife.

PRESIDENT BRODERICK. We are very happy to see you here today, Mrs. Shrager.

WIFE OF DELEGATE LEINBACH WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Leinbach.

DELEGATE LEINBACH. Mr. President, I rise to a point of personal privilege to introduce my wife Ruth. She finally got here.

PRESIDENT BRODERICK. Where is Mrs. Leinbach? There she is. We are very happy to have you with us.

ANNOUNCEMENTS BY THE CHAIR

PRESIDENT BRODERICK. The Chair wishes to announce that we have been in constant contact with the Committee on Style and Drafting, as well the Drafting Bureau for the Convention.

I would like your attention please for just a moment. May I have your attention, fellow delegates, for just one moment?

I am going to ask you if you will please just hold that picture for a second until we finish, because everyone will want to hear what we are doing and why.

The Committee on Style and Drafting and the Drafting Bureau as well as the printers indicate that they cannot have the proposal on the Judiciary Article finished until about 8:00 p.m. this evening.

In view of the fact that we have had a dinner dance scheduled, I have consulted with the Chairman of the Dance, Delegate Waldron, and it was thought that the best plan for tonight would be to come back here at exactly 11:00 o'clock.

I know that this may not fit in with everyone's plan, but the alternative of coming back at 8:00 o'clock seemed not feasible under the circumstances.

Unless the Chair hears objection, I am going to suggest that we recess until 11:00 p.m. I want you to know that it seems that we must consider the Judiciary Article today.

A DELEGATE. What do we do at 11:00 o'clock tonight? Do we receive the report of Style and Drafting and act on it, or does it appear on the calendar?

PRESIDENT BRODERICK. It will be on the calendar tonight for third consideration and final passage, and I hope at that time, we can put it in the hands of the Committee on Arrangements, Submission and Address to the People. Of course, you have to give some consideration to the Committee on Arrangements, Submission and Address to the People. They have to have a report for us tomorrow morning which we will consider tomorrow, and it is the hope of your presiding officer, that we can close pursuant to our mandate tomorrow afternoon.

If we let this report go over to tomorrow, we run the risk of finding mistakes. We run the risk of amendment and this is a risk that your presiding officer would rather take tonight than tomorrow.

I hope I will have your agreement on that.

The Chair recognizes Delegate Banes.

DELEGATE BANES. Mr. President, does the Chair have any knowledge relative to any proposed amendment to the Judiciary Article?

PRESIDENT BRODERICK. The Chair does not have any knowledge of any amendment to the Judiciary Article this evening. I want to also add that the Chair has not had too much knowledge of many of the amendments that have been offered.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio. For what purpose does the gentleman rise?

DELEGATE JIROLANIO. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE JIROLANIO. It seems so many of the delegates have their wives with them and they have arranged a get-together party with everyone concerned. I do believe that it somewhat will interfere with one night of enjoyment and good fellowship.

I wonder whether or not we could not resort to a parliamentary matter in this way. Not adjourning today, but recessing until tomorrow, keeping the day open as of today, and tomorrow, then of course very early at 8:30, come in or 9:00 o'clock come in and get the Proposal No. 7 and study it and then vote it and pass it on third reading and still give it to the Committee to draft it which will be a different day immediately after the proposal passed.

PRESIDENT BRODERICK. I want to say that your suggestion—

DELEGATE JIROLANIO. I am only trying to scheme a little time for the boys and girls.

PRESIDENT BRODERICK. Both the parliamentarian and attorney have pointed out something that we have been considering all day and that is this. We are not faced with any problem on extending today. The only problem we are faced with is getting our work done. It does not require any change of rules or any parliamentary maneuvering whatsoever. It is just a question of getting back here sometime and adopting this proposal which I hope it will be the feeling of the body, and show consideration to the Committee on Arrangements, Submission and Address, so they will have it and so they will be able to work.

I want to say this. The time of the party was considered and I have considered that with Delegate Waldron and let me just say this to you. If this thing is done quickly tonight when we return at 11:00 o'clock, I want you to know that the Chair has no objection to your returning to the party.

DELEGATE JIROLANIO. How about a question of the quorum? We may not have a quorum present.

PRESIDENT BRODERICK. I feel we have a sufficient interest on the part of every delegate here that we want to get this job done pursuant to our mandate and get it done tomorrow on schedule, and I am going to ask now, is there any objection to the suggestion that we do recess until 11:00 o'clock? There is objection.

The Chair recognizes Delegate Butera.

DELEGATE BUTERA. As a practical matter, what is going to take place between 11:00 o'clock tonight and 9:00 o'clock tomorrow, that could not be done between 9:00 o'clock tomorrow and 11:00 o'clock tomorrow?

PRESIDENT BRODERICK. I wish I could answer you. I have said this and I have seen it happen too. I can only call your attention to Proposal No. 5 and our experience in connection with it.

I cannot guarantee you that we will not have the same experience in connection with Proposal No. 7, except to tell you that I hope and pray that we will not.

I do not think it is good planning to wait until tomorrow to see whether you are going to have such an experience. I would rather suggest that we face it today. The time that Style and Drafting, and I will state it again, they indicate they can have it at 8:00 o'clock this evening.

Let me say to you that I am willing to abide by the wishes and I have always abided by the wishes of this body, and I am willing to come back at the time this body determines, but I also want to urge you to give consideration to the fact that we may have problems and I have heard many of them being expressed up at this Chair today. I do not want to leave a step unturned or an hour wasted. I will feel a lot better and I think you will, if you know we are going to get the job done.

COMMITTEE MEETING

DELEGATE BUCK. The Committee on Arrangements, Submission and Address to the People will meet promptly following the adjournment or recess of this meeting in Room 517 B, which is in the North Office Building. It is very important.

PRESIDENT BRODERICK. Thank you.

The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I have been assured by the rear benches that the rule in "Ludlow fair" will not apply this evening. They will be back at 11:00 o'clock.

PRESIDENT BRODERICK. Do you wish to be recognized, Delegate Tate?

DELEGATE TATE. I have been in and out of the chambers several times and I may have missed what has been said on this subject but I wonder whether there are any portions of the report of the Committee on Arrangments, Submission, and Address to the People which might be considered by this body during the next half hour or hour, and if not, whether there are any portions which we might have to review individually so that we possibly can avoid further delay on this report either tonight or tomorrow.

PRESIDENT BRODERICK. Your question, of course, I think, has been directed to the Chair but I can only refer you to that Committee for an answer to that.

We have not received a report and, of course, under the rules, they are not required—as a matter of fact, the rules indicate that the report is due after these proposals go in.

Now if you want to know, I have had very many conversations with the co-chairmen of this Committee and I think they are pretty well organized. The plan was that they would have their report ready tomorrow morning.

The Chair recognizes Delegate Forster.

DELEGATE FORSTER. I think I can answer the gentleman's question on behalf of Chairman Nelson because I think he has stepped outside.

Our Committee's work is pretty well done but we do not have sufficient copies reproduced to distribute to all delegates for the primary reason that the reproduction and collating facilities are all tied up on the Judiciary Proposal No. 7 at the moment.

DELEGATE TATE. I understand that there is an approximately 45-page address to the people and if it would be at all possible to have any parts of that, or a draft of that, distributed so that we might read it sometime between now and when it is placed before this body for action, I think it might be helpful so that we do not act hastily and out of ignorance.

PRESIDENT BRODERICK. I would be very happy if you would consult with the Chairman and if that can be done, I think it would be wonderful that we would expedite it in that way.

Now the Chair recognizes Delegate McGeary.

DELEGATE McGEARY. This may be a completely silly suggestion but are we required by our rules to meet here?

We would save an awful lot of time if we met down there.

I am serious.

PRESIDENT BRODERICK. I know you are and I think that the act requires at least that we meet in Harrisburg and—I think we would have to take some formal action to change a meeting place. I know you are serious and I am just wondering how serious the deliberation would be.

Now we recognize Delegate Murray.

DELEGATE MURRAY. Thank you, Mr. President.

We had a lot of jokes about the hidden force of the Convention. Possibly the wives of the delegates might become a hidden force tonight. I would like to see if we could amend your suggestion to 1:00 A.M. because we may sit here for two hours waiting for something to do from 11:00 to 1:00. The fair little ladies would rather be holding our hands and having our good fellowship. Could we not move it to 1:00 A.M. and then do it?

PRESIDENT BRODERICK. Let me say the Chair will be agreeable to anything.

I just want you to know that we have some delegates that are complaining that 11:00 is too late. I certainly would have no personal objection to any time except that I hope you will stay with me in my thought that we come back here and get this job done.

I ask your support in that.

The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. As a matter of inquiry, Mr. President, will the printer's copy be ready at that time, at 10:30? Is that the assurance you have?

PRESIDENT BRODERICK. The assurance I have is that it will be ready sometime—I just want you to know that I have no assurance that this will be done, except that they have told me that they thought they would have it done by 11:00 o'clock tonight.

They have indicated that it could possibly be done by 8:00 o'clock. We are giving them this leeway. They are running into difficulties and the difficulties they run into are the changes that are being made by Style and Drafting. They then go to the Legislative Drafting Bureau. They then get typed. Then we have the printers standing by.

DELEGATE BLOOM. I suggest that as soon as you get your printer's copy and know that you are sure of it, that someone ought to appear and make an announcement down at this dance.

PRESIDENT BRODERICK. How is that? I think that is the best suggestion I have heard tonight.

DELEGATE BLOOM. Then we could come up here and get our work done and those that want to go back and dance all night can do so.

DELEGATE MANDERINO. I was going to make a similar motion. I move we recess until 11:00 P.M. unless, prior to that time, a messenger brings an anouncement to the Holiday Inn that we are not ready at 11:00 and the new time will be set by the messenger's announcement.

PRESIDENT BRODERICK. We had a motion made by Delegate Manderino which was seconded by Delegate Baldrige.

All those in favor, please say aye.

Those opposed say no.

The ayes have it.

DELEGATE VAN SANT. Mr. President, I would suggest that we have a legislative procedure which would be

very applicable for tonight. We coud run it on a consent calendar.

PRESIDENT BRODERICK. The parliamentarian has indicated that that is a very good suggestion but is not acceptable.

Now we stand, if I understand the motion, in recess until 11:00 P.M. unless word is received that we will not have the printer's copy ready by that time, and when it is ready after 11:00 P.M., we will come back.

May I say for the benefit of those that are not going to the dance, I personally regret the inconvenience.

DELEGATE JIROLANIO. Is it possible that if the proposal, itself, is prepared before 11:00 o'clock that it could be distributed as soon as possible and be on the desks, because there may be some delegates who will be here?

PRESIDENT BRODERICK. It is not only possible, it is the procedure. The moment it comes up it will be put on the desks.

DELEGATE JIROLANIO. Thank you.

RECESS

PRESIDENT BRODERICK. As the Chair previously stated, it is now 4:40 and, unless there is objection, we will recess until 11:00 o'clock.

The Chair hears none, and the Convention is now in recess until 11 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

I just want to explain this: The first estimate of the time we would have the proposal was 8:00 o'clock, then it went to 10:00 o'clock, then it went to 12:00 o'clock; now it is up to 1:00 o'clock in the morning. We had a meeting of the officers and some of the people on the committee and it was determined that it would be best for all of us if we came back tomorrow morning at 9:00 o'clock so that we now stand adjourned until 9:00 o'clock tomorrow morning.

DELEGATE VAN SANT. Are you recessing until 9:00 o'clock tomorrow morning or are you adjourning until 9:00 o'clock tomorrow morning? This is a very important technicality.

PRESIDENT BRODERICK. Just a minute until I consult with the parliamentarian. I think maybe we can adjourn until 9:00 o'clock tomorrow morning.

DELEGATE VAN SANT. You are losing a legislative day.

PRESIDENT BRODERICK. I understand we do not have to worry about the legislative day under the rules we have in connection with the consideration of this proposal. That is what Mark Gruell has been advising me. I think we can stick to this.

ADJOURNMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Van Sant for the adjournment motion.

DELEGATE VAN SANT. Mr. President, I move that this Convention do now adjourn until Thursday, February 29, 1968, at 9 a.m., e.s.t.

PRESIDENT BRODERICK. It has been moved by Delegate Van Sant that this Convention do now adjourn until Thursday, February 29, 1968, at 9 a.m., e.s.t.

The motion was agreed to, and (at 11:58 p.m., e.s.t.) the Convention was adjourned.

PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968

JOURNAL

Volume 1 **Thursday, February 29, 1968** **Number 54**

The Convention was called to order at 9:10 a.m., e.s.t.

THE PRESIDENT (Raymond J. Broderick) IN THE CHAIR

PRAYER

REV. GEORGE A. KEMP of St. John's Episcopal Church, York, Pennsylvania, offered the following prayer:

CHAPLAIN KEMP. Let us pray.

All eternal God through Whose almighty power our fathers won their liberties of old, grant us grace that we may maintain these liberties and righteousness and peace. Have mercy upon this whole land. Guide and direct our Governor and all in authority over us. Cast Thy blessings upon all people in every way possible and direct, we pray Thee by Thy Holy Spirit the deliberations of these Thy servants here present.

We have called upon Thee in days past, and Thou hast heard our plea. How precious are Thy councils, oh Lord, how glorious Thy wisdom. As prayers for the guidance have been raised unto Thee each day since this Convention first assembled, so now as these sessions draw to a close, we give Thee humble and hearty thanks for hearing our prayers and favoring us with Thy presence. Bless that which is good, which has been fashioned by the minds, hands and hearts of these Thy servants, and may all that has been begun in Thy name be continued to the glorious fruition. Thou hast prepared for it in all to Thy glory. These things we pray in Thy name and for Thy sake. Amen.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the Flag was recited by the Convention, led by Delegate Redick.

LEAVES OF ABSENCE

PRESIDENT BRODERICK. The Chair recognizes our secretary, Secretary Michener.

DELEGATE MICHENER. Mr. President, I am not submitting my report in writing this morning because as I was leaving the party last night, some Republican stepped on my fingers.

As to the leaves of absence, Mr. President, with regret and with sorrow for passing friendships, the other delegates have asked me to announce they will not be here after tomorrow. We shall miss you everyone.

PRESIDENT BRODERICK. Thank you.

I am very happy to announce that we have no requests for leaves today.

QUORUM CALL

PRESIDENT BRODERICK. We will now call the roll for the purpose of determining a quorum. The delegates will please record their presence by voting "aye."

The roll was recorded as follows:

Aberman	Dumbauld	Krill	Sahli
Amsterdam	Erwin	Laputka	Scales
Aurentz	Fagan	Leach	Scarlett
Baldrige	Fay	Leinbach	Scranton
Baldwin	Feather	Levin	Sebastian
Banes	Filson	Markley	Sharp
Barry	Gabreski	Mattioni	Shettig
Bashoff	Gerber	McGeary	Shively
Benedict	Goldman	McGlynn	Shoemaker
Benfield	Goldstein	Michael	Shrager
Bloom	Gouger	Michener	Silverman
Braham	Gray	Miller, D.	Solomon
Brennan	Griffith	Miller, R.	Sprogell
Broderick	Hannum	Moorhead	Strickler
Brown	Harding	Murray	Swope
Buck	Hatter	Nelson	Tate
Bunting	Henderson	Orban	Thornburgh
Burkholder	Heyburn	Orbin	Tomascik
Caputo	Himes	Otto	Tully
Casey	Hocker	Pasquerilla	Van Sant
Clark	Hook	Pelletier	Waldron
Conley	Horne	Popil	Warman
Corey	Hostetler	Pott	Welsh
Cortese	Huggins	Prendergast	Westerberg
Cosetti	Johnson	Quiles	Whittum
Croop	Kauffman	Rappaport	Wilcox
Cunningham	Keller, J.	Rea	Wilmarth
Curran	Keller, M.	Redick	Woodring
Desmond	Kelly	Roberts	Woodside
Devlin			

PRESIDENT BRODERICK. The electric roll call tabulator indicates that 117 delegates have recorded their presence.

The Chair also notes the presence of the following delegates:

Allison	Fawcett	Leonard	Reynolds
Bagenstose	Fineman	Manderino	Richter
Baldus	Fohl	Mangery	Rovner
Barrun	Forster	Meyer	Ruth
Butera	Gehrlein	More	Shapiro
Cain	Irvis	Morton	Stout
Camardella	Jirolanlo	O'Donnell	Stroup
Caron	King	Percey	Thomson
Clinger	Lee, L.	Powell	

CALENDAR

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of **Committee Proposal No. 7, Printer's No. 32,** entitled:

A Proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary, and adding a new Judiciary article.

On the question,

Will the Convention agree to the proposal on third consideration?

WIFE AND DAUGHTER OF DELEGATE BENFIELD WELCOMED

PRESIDENT BRODERICK. At this time I see we have a delegate wishing to be recognized, Delegate Benfield.

DELEGATE BENFIELD. Mr. President, before we get down to business this morning, I would like very much to have the opportunity to introduce Mrs. Benfield and my daughter, Elaine. I want the Judiciary Committee to pay particular attention to this. I did not buy that wedding ring before. I had it.

PRESIDENT BRODERICK. Where is Mrs. Benfield and Elaine? There they are. We want you to know we are very happy you are with us today. Again, to coin a new expression, your husband has been doing a great job.

WIFE OF DELEGATE GOLDSTEIN WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldstein.

DELEGATE GOLDSTEIN. Mr. President, I rise to introduce my wife to the Convention.

Last night we had a wonderful party. There were so many delegates there that I could not introduce my wife. I want to introduce my wife to all the delegates, Mrs. Lena Goldstein.

PRESIDENT BRODERICK. Will Mrs. Goldstein please rise? We are very happy to have you with us. Again, I want you to know we have been very, very happy that Delegate Goldstein has been one of us.

DELEGATE GOLDSTEIN. Mr. President, may I say that as of last night, I will not sell you any more suits. You will have to buy your suits somewhere else.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gray.

DELEGATE GRAY. Mr. President, I want to record the fact that Brother Goldstein came to my church and gave $100 and now I invite Mrs. Goldstein there so I can get another $100.

PRESIDENT BRODERICK. So far, you are the only one I know who has made any money out of this Convention.

LEGISLATIVE REPORTERS AND TYPISTS THANKED

PRESIDENT BRODERICK. The Chair recognizes Delegate Krill.

DELEGATE KRILL. Mr. President, I would like to amend, I do not know whether it is Delegate Scales' or Delegate Hook's amendment thanking the Legislative reporters and typists for the wonderful work and service they have given this Convention. I hope that Delegate Scales and Delegate Hook will agree to that.

PRESIDENT BRODERICK. Delegate Hook?

DELEGATE HOOK. Mr. President, I will accept that amendment.

PRESIDENT BRODERICK. Thank you, and we will see that is placed on the record.

FAMILY OF DELEGATE TULLY WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Tully.

DELEGATE TULLY. Mr. President, I would like to introduce a very special lady this morning, my mother-in-law, Mrs. Tully, and my son, Richard and my youngest son Todd.

PRESIDENT BRODERICK. Will the Tully family please stand? We are very, very happy to have you with us today.

WIFE OF DELEGATE HUGGINS WELCOMED

PRESIDENT BRODERICK. I understand that Mrs. Joy Huggins is with us, the wife of Delegate Huggins. Would you stand so we can give you our greeting?

We want you to know we certainly have enjoyed having your husband with us.

The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. Mr. President, I was not here yesterday afternoon for the series of appropriums that we had, except briefly. It is my understanding, at least so I was informed last night, that one gentleman who I think has been responsible as anybody else in the entire City of Harrisburg for the success of this Convention, and particularly with regard to the details that always are forgotten by persons and, for the work he has done for literally three months' time, and in preparation therefor two months before that, and he is responsible for all the various units that were given appropriates yesterday, I want every member of this congregation—

PRESIDENT BRODERICK. That will cost you money.

DELEGATE SCRANTON. I would like every member of this Convention to rise on their feet and applaud as loudly and as long as they can, for the man that just went out the door and this is Mr. John W. Ingram.

(Whereupon there was a standing ovation.)

PRESIDENT BRODERICK. To use a Scranton expression, I could not agree more.

Now, the Chair recognizes Delegate Pott.

DELEGATE POTT. Mr. President, last Friday this Convention passed a very momentous proposal, Proposal No. 6. For some unknown reason I was not reported as voting "aye" for it and I would like it to be on the record that I support it 100 per cent.

WIFE OF DELEGATE CURRAN WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Desmond.

DELEGATE DESMOND. It gives me great pleasure this morning, sir, to announce the presence of the wife and better half of Delegate Curran, Mrs. Mimi Curran.

PRESIDENT BRODERICK. Please stand. There she is.

As you heard your husband say last night, we are very happy and proud of the good work that Delegate Curran is doing.

HUSBAND OF DELEGATE MICHAEL WELCOMED

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Michael.

DELEGATE MICHAEL. Mr. President, I am very proud to introduce my husband, Dick, who was here before with the children but we spent most of that time in recess so I did not have the chance to introduce him.

PRESIDENT BRODERICK. Where is Mr. Michael?

We are very happy that you are with us today.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport. For what purpose does the gentleman rise?

DELEGATE RAPPAPORT. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE RAPPAPORT. Because of an unavoidable absence for part of the day, I was not recorded as having voted on Proposal No. 6 regarding Local Government and I wish to have the record reflect that I would have voted "aye" had I been here.

PRESIDENT BRODERICK. Your remarks will be spread upon the record.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Thomson. For what purpose does the gentleman rise?

DELEGATE THOMSON. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE THOMSON. Mr. President, I was a little tardy. May I be marked present?

PRESIDENT BRODERICK. You may. We will see that Delegate Thomson is marked present.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener. For what purpose does the gentleman rise?

DELEGATE MICHENER. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MICHENER. Mr. President, yesterday Delegate Scales brought in a very moving and appropriate memorial to the press and you announced the vote as unanimous. I wish it recorded that there was one loud dissent. It was 162 to 1. I have a book coming out shortly and it is an act of honor in my profession that when you are in that position you treat the press with complete contempt, because in a few weeks they will treat you that way.

The rule in our job is that the relationship between the press and the writer should be the same relationship that the press has with the Legislature, the knife to the throat.

This has done writers a great service, because it has kept our profession clean, and I think that that relationship in this Convention has helped us all very much. The press has ridden herd on us. We have been a better Convention because of it and, although I appreciate Delegate Scales' warm tribute to the press, I would like to be recorded as giving them the back of my hand, in the old Irish phrase.

SON OF DELEGATE BRENNAN WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Hocker.

DELEGATE HOCKER. Mr. President, it is a real pleasure for me this morning to introduce Thomas Brennan, the son of our good friend, T. Robert Brennan or Delegate Robert Brennan. The boy is in the rear of the hall. He is also a student at Duquesne University.

PRESIDENT BRODERICK. Will Thomas Brennan, Jr., please rise and be recognized?

We are very, very happy to have you with us. I just want you to know that your dad has been one of the great outstanding delegates in this Convention.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Horne. For what purpose does the gentleman rise?

DELEGATE HORNE. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE HORNE. Mr. President, on Monday of this week, although I believe it has been expunged from the record, a certain ladies' organization was taken to task. I believe they were defended by a member of that organization. But I think comments must be made.

Incidentally, I am not a member of that organization, though I am a kind of biological monstrosity:

As the head of a girls' school, I am a male headmistress and I do think that I am necessarily aware, as the head of a girls' school, how pointedly women can tell a man what to do, when to do it and how to do it. As a matter of fact, I think I, more than any delegate here, know why the good Lord made women last. I think He made all creative things first, because He did not want any advice while making them. Having said that, I want to make three observations.

One, that we were under pressure here not only by this particular organization of "Lady Birds," but there were other groups, as well. I also want to make this observation for the record, that if it had not been, at least in my area, for the work of that group, I doubt whether the vote would have been as effective as it was.

My final observation is this, if this Convention is to be a success, that success will be determined by the attitude of the voters at the polls in April. I believe that we will need the help of all groups and I would, therefore, as a delegate, like to make my peace with the League of Women Voters.

BARBARA BROWN COMMENDED

DELEGATE HORNE. Mr. President, having voted the staunch support of the resolutions of commendations offered yesterday to the supporting staff of this Convention, I discovered with dismay that one, at least, was overlooked.

I here, then, submit and ask for its immediate adoption a resolution commending Mrs. Barbara Brown, office manager for the Convention, who has done so much for so many. That is my motion.

PRESIDENT BRODERICK. I think that we can get a unanimous second to your motion, but it has been seconded here by Delegate Bloom.

All those in favor please say aye. Anyone opposed say no.

The record should show the motion was unanimously carried and we will place it in the form of a resolution and see that Mrs. Brown receives a copy.

RESOLUTION

In the Constitutional Convention, March 19, 1968

Mrs. Barbara Brown, Office Manager for the Pennsylvania Constitutional Convention of 1967-1968 was one of the major reasons for the smooth administrative work of the Convention.

Her dedication to her work and her thoroughness in carrying out the many tasks required of her were an example to all; therefore be it

RESOLVED, That the Constitutional Convention of the Commonwealth of Pennsylvania expresses its gratitude to Mrs. Barbara Brown for her work as Office Manager of the Convention; and be it further

RESOLVED, That a copy of this resolution be transmitted to Mrs. Barbara Brown.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Braham. For what purpose does the gentleman rise?

DELEGATE BRAHAM. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BRAHAM. Mr. President, it has always been my custom, as with Mr. Bloom, to rise and speak in defense of my friends when I hear them somewhat traduced.

I want to say a word on behalf of the lawyers of the Convention. The lawyers have the best opportunity for making speeches of anyone. They are like the members of the press, the raw material is right before them. No matter whether the argument is to be on a trial of an hour or a year, the lawyer, at the end, is supposed to stand up and summarize. It is not unlike the story told about the sculptor who is making an effigy of an elephant out of granite. Someone asked him how he did it. He said: "It is very easy. You simply knock off everything that does not look like an elephant." That is the way a lawyer has to speak. Now the particular point of this is, I want to call your attention to something about the program last night. You will go a long time before you hear as much indigenous humor and wit as we heard from these young gentlemen last night, for the most part, lawyers. They spoke of experience in this Convention exclusively. No worn out cliches, no vaudeville tricks. Just commenting on what has happened. I thought it was admirable.

Of course, now, for example, there were some oversights. I would have liked to have heard Delegate O'Donnell, for example, who is one of our wits—we heard him on the defense—I on the offense, because it is my belief that Delegate O'Donnell could be just as offensive as any of these men.

I want to thank you all. I want to thank the people who got up this program last night for one of the memorable nights in my life and I shall always remember it with great pleasure.

PRESIDENT BRODERICK. I thank Delegate Braham for calling it to our attention. It was one of the most wonderful parties that I have ever attended in my life and those of you who missed it, I just say that you are going to regret missing one of the greatest performances—I would say almost impromptu—and one of the best that I have ever seen. The credit for last night's dinner goes to the Committee, and particularly Ed Waldron, our good delegate, and his assistants, Phil Harding, Ralph Orbin, Roy Miller and Mrs. Tully. They all did a magnificent job and there were so many that participated in the program. I want you to know that we have talent here in this Convention. It was displayed last night and the presiding officer just wants to thank you on behalf of your fellow delegates for the greatest show I have ever seen, believe me.

RESOLUTION

DELEGATE GOLDSTEIN requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, February 29, 1968

The sense of camaraderie that has developed these past few months between all the delegates of this Pennsylvania Constitutional Convention of 1967-1968 should not be allowed to dissipate simply because the Convention ends on the 29th of February.

Though we travel separate and diverse paths these next few days, the flame of this spirit can be kept alive if each year on the 28th of February (on the 29th of February, when possible), the delegates gather together at one location in the Commonwealth to commemorate the anniversaries of this Convention; therefore be it

RESOLVED, That the Constitutional Convention of 1967-1968 meet each year to celebrate their labors.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster. For what purpose does the gentleman rise?

DELEGATE FORSTER. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE FORSTER. I ask that the record show that Delegate Jirolanio as well as myself are in attendance this morning.

PRESIDENT BRODERICK. The record will show your presence.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Caron. For what purpose does the gentleman rise?

DELEGATE CARON. I rise to a point of personal privilege.

PRESIDENT BRODERICK. If you will yield a second, I am going to ask Chairman Pelletier to please take the microphone, because I am going to recognize either Chairman Pelletier or Chairman Johnson next to give their report on Proposal No. 7, because we must go to work.

DELEGATE CARON. In view of your remarks, I will make mine very brief.

I have been informed by the corporation by which I have been employed that now that I have spent three months

up here, I might just as well look for a job somewhere else, and I decided that the best change of occupation would be to become an agent.

After reviewing the talents that I saw last night, I would like to offer my services as an agent to the 1969 dinner party, and I would like to advise that I will serve for 20 per cent commission, not 10 per cent like most people. I would like to ask the Chair to suggest to all of us that, perhaps, the present group which are thinking about it will accept my services as an agent and reinstitute a program for 1969 as a renewal to see what the voters do to us.

PRESIDENT BRODERICK. Thank you, Delegate Caron. We will have to negotiate with you on your fee, but I am sure we can use your services.

COUNSEL AND STAFF FOR COMMITTEE COMMENDED

PRESIDENT BRODERICK. The Chair will recognize Chairman Pelletier.

DELEGATE PELLETIER. Mr. President, before I present the final proposal which will come before this Convention, I would like to make the following motion:

The Committee on Style and Drafting wishes to acknowledge and commend the able and unique contributions of Mr. William Hackney and Mr. Andrew Farley, counsel for the committee. Without their industry and willingness to respond to all emergencies with energy and an unusual order of professional competence, the committee would have been unable to meet what has proved to be an almost impossible schedule.

Our sympathies go to Mr. Hackney whose mother passed away this last weekend and who hastened to return to be of assistance to the committee at a time when he was under severe strain from a loss which all of us understand and appreciate.

Mr. Andrew Farley has been steadily at work for the committee for the last 39 hours with only a three-hour break. This kind of demand should not be made on anyone, not even by a Constitutional Convention. We of the Style and Drafting Committee cannot adequately express our appreciation to Mr. Farley.

We would also acknowledge the invaluable assistance of Mr. Carter Buller and Mr. Arthur Frankston of the staff of the Judiciary Committee. They worked with us through the night and through yesterday so that this proposal could be before you.

We move that this Convention express its appreciation to these men for their services which go beyond what can be reasonably expected of any men.

RESOLUTION

DELEGATE PELLETIER requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 29, 1968.

Many of the essential operations of the Convention were not observed directly by the delegates and would normally go unnoticed. Yet, had it not been for the fine and competent staff of the Convention Drafting Bureau in preparing the many proposals, amendments, amendments to amendments, revisions and revisions to revisions, our deliberations could not have been so expeditiously processed.

Each of the following members of the Convention Drafting Bureau are to be congratulated for their individual contribution to the success of the Convention: Frank Garber, Esquire; Anthony Gianforti, Esquire; Milton Weisman, Esquire; John Rehr, Esquire; Robert A. Weinert, Esquire; John Hartman, Esquire; Robert L. Cable, Esquire; Robert Spitzer, Esquire; Joe Hill; Alice P. Drayer; Dorothy Barnes; Mary Kaminski; Alice Ogden; Cecile N. Norton; Carol L. Elser; Lillian E. Roberts; Dorothy Jacoby; Dorothy Martin; Ellen Woods; Dorothy Volas and Kathy Crane; therefore be it

RESOLVED, That the Pennsylvania Constitutional Convention of 1967-1968 express its gratitude to the staff of the Convention Drafting Bureau; and be it further

RESOLVED, That copies of this resolution be transmitted to each of the above-named members of the staff.

CORRECTIONS TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair again recognizes Delegate Pelletier in connection with the report on Proposal No. 7.

DELEGATE PELLETIER. I would, Mr. President, on behalf of the Committee on Style and Drafting, present to you Committee Proposal No. 7. This is on the final order of business on the various committee proposals that have been brought before us.

The Committee on Style and Drafting worked with the co-chairmen of the Committee for the Judiciary, Governor Scranton, Delegate Amsterdam, and very early a decision was made that no changes should be made between the schedule and the body of the article, and I think this decision has been followed. We have tried not to make any substantive changes, and those changes which have been made have been made with the concurrence of Governor Scranton and Delegate Amsterdam. Necessarily working under pressure, some items were missed, and I would like to call to your attention a sheet of corrections which you should have at your desk.

If you have them, we will turn to the Committee Proposal, and I will call the corrections to your attention:

STYLE AND DRAFTING

Corrections in Proposal as Introduced

Proposal No. 7—Marked Copy

Page 3, line 4—1st word: substitute "was" for "were".
Page 3, line 18—change comma to period after "court".
Page 3, line 20—change "if" to "in the event".
Page 4, line 17—insert comma after "justices of the peace".
Page 5, line 2—insert comma after "branch".
Page 6, line 5—insert comma after "courts".
Page 7, line 5—change the second "of" to "or".
Page 7, line 15—change the word "A" to "an initial".
Page 7, line 18—change "Subsection (b)" to "Section 13 (b)" and insert "either" after "apply".
Page 7, line 20—change the semicolon to a comma, strike

"nor shall such provisions apply" and insert "or" in place thereof.

Page 7, line 21—insert "for retention election" after "declaration".

Page 7, line 22—insert period after "Section 15 (b)" and strike "or".

Page 7, line 23—change "Subsection (b)" to "Section 13 (b)", strike "which vacancies" and substitute "the vacancy".

Page 7, line 24—change "Subsection (a)" to "Section 13 (a)".

Page 8, line 20—change "section 13 (b)" to "Section 13 (d)"

Page 9, line 18—change "not" to "or".

Page 9, line 23—Delete "who has been" after "judge"; delete "or who has been" after "elected"; and substitute "under section 13 (a),".

Page 9, line 24—change "Section 13 (b)" to "Section 13 (d)".; and after "Section 13 (d)" insert "or retained under this Section 15 (b)".

Page 10, line 2—insert "under Section 13 (a)" after "election".

Page 10, line 3—change "Section 13 (b)" to "Section 13 (d)" and immediately thereafter add "if applicable".

Page 10, lines 10 and 11—strike "as provided herein" and insert "under Section 13 (b) or under Section 13 (d) if applicable".

Page 11, line 16—after "duties," insert "and".

Now, you also have, I think, a clean Section 13 (c), which has been distributed to you, and I am advised that the following changes are to be made in the clean copy so that it will read as set forth in the marked copy.

It is my understanding that there are also two amendments or two suggested changes which, if the approval of the Convention is given, will be added to this article to fill in a couple of gaps, and they will come from members. I think one is coming from Judge Woodside and the other is coming from, I think, Delegate Amsterdam, and they will be before you very shortly.

Let me say that this proposal I have brought before you is a baby which has gone through severe trials on being born. As a matter of fact, as I watched it before the Judiciary Committee it seemed to me that it became a high forceps case. Then it almost died with the verbiage created by discussion on the floor, and it is now again before you. I hope it does not start to cry too lustily this morning. I recall, I think, an admonition of Justice Cook, who, as you remember, carried on the battle with King James, and some place I think he said that matters of the law should not be profaned by the tongue of the layman. So that in discussing the details of this article, the Committee would like to call on the members of the legal profession to carry on this discussion, if questions are raised.

PRESIDENT BRODERICK. The Chair wishes to state that we are on Proposal No. 7, Printer's No. 32.

The question before the Convention is, will the Convention agree to advance this Proposal No. 7, Printer's No. 32, to final passage, and as has been the custom, I point out at this time that this is the last opportunity to amend this proposal. Before any amendment may be received, for consideration, the delegate must obtain the consent of a majority of the delegates present.

I now recognize Delegate Huggins.

DELEGATE HUGGINS. Mr. President, I think there is an error in the clean copy on page 5 in Section 12 (b).

It reads, "Judges of the traffic court and justices of the peace in the City of Philadelphia shall be members of the bar."

I believe, Mr. President, in the original copy this meant that judges of the traffic court and justices of the peace throughout the Commonwealth, and the way it is written here it is saying that it is only in the City of Philadelphia. I think this is not correct.

PRESIDENT BRODERICK. I just want to call at this time on Chairman Pelletier and ask him if he will reply to that observation.

DELEGATE PELLETIER. I would like to ask Delegate Shapiro if he would reply to that.

DELEGATE SHAPIRO. The clean copy, I believe, varies from the text as prepared on page 6. It is a transposition in the clean copy which does not correspond to Printer's No. 32 at page 6.

DELEGATE WILMARTH. Mr. President, there are some of us without a clean copy of No. 32, and we seem to be unable to get any.

PRESIDENT BRODERICK. Delegate Wilmarth, the one I have has a clean copy attached, but we will see that you get one.

DELEGATE SHAPIRO. I think you will find the clean copy in the back of Printer's No. 32.

DELEGATE WILMARTH. Printer's No. 32 seems to be hit and miss around here.

PRESIDENT BRODERICK. We will see if we cannot get you a clean copy immediately.

DELEGATE PELLETIER. Mr. President, which one prevails, the back copy or the clean copy? I think it is right in the back copy.

PRESIDENT BRODERICK. The marked copy is the official copy, but I think the delegates should make the correction in their copies.

DELEGATE PELLETIER. All right. Then it should be changed to conform to the clean copy as it is in the back copy.

PRESIDENT BRODERICK. Yes.

DELEGATE SCRANTON. Is that now clear to everybody?

On page 5 of the clean copy, on line 2, it should read to conform with the marked copy, Subsection (b) "Judges of the traffic court in the City of Philadelphia and justices of the peace shall be members of the bar."

PRESIDENT BRODERICK. Let me ask Delegate Wilmarth, have you obtained your copy as yet? Do you have a clean copy back there?

DELEGATE SOLOMON. We do not have them yet.

PRESIDENT BRODERICK. We printed a limited number of these for the reason that these corrections were anticipated, and we are going to have, of course, corrected copies, but they will not be ready for many, many hours. We do not want to hold up any proceedings waiting for corrected copies, and we would appreciate it if you would work with this now. I want to make sure, however, that all the delegates have both the clean and the corrected copy in their possession. Frankly, there were 200 of them printed which we thought would be ample for the 163 delegates. If anyone has an extra one or two copies, please pass one back to Delegate Solomon, because I do not want those people out there in deep center field to be neglected on the last day.

PRESIDENT BRODERICK. The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. I move you that we advance Proposal No. 7, Printer's Nos. 32, 31, 30, 29, 28 and 27 to final consideration.

DELEGATE JIROLANIO. Mr. President.

PRESIDENT BRODERICK. I am sorry, Delegate Solomon, but I have to say that Delegate Jirolanio had the floor and I asked him to yield when we were carrying on this administrative discussion. I will recognize you but I will have to first recognize my friend over here, Delegate Jirolanio.

RECESS

DELEGATE JIROLANIO. Mr. President, the proposal we have before us is of extreme importance. Many of us have just seen it before us now for the first time in its entirety. I believe that because of the importance of this proposal to the people of the Commonwealth of Pennsylvania a recess should be called for about a half hour until the members of this Convention can look over the proposal thoroughly and come back and recommend if there are any changes, before we advance the proposal in question and pass it to third reading. It is important for everybody to know what we have. We cannot get a proposal like this and be asked to pass it right away.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I would like to second Delegate Jirolanio's motion and ask that we return here at 10:30 this morning in order that we may have ample time to sit down and read this over.

PRESIDENT BRODERICK. Unless the Chair hears objection, we will be in recess until exactly 10:30 a.m., because we do have a big day. The purpose of this recess is to study, read and consider Proposal No. 7 in the anticipation of it being advanced to final passage.

AFTER RECESS

PRESIDENT BRODERICK. The time for recess having expired, the Convention will now come to order.

The Chair recognizes Chairman Pelletier.

DELEGATE PELLETIER. Mr. President, I believe Judge Woodside has an amendment which he would like to offer, which fills in an omission which must be taken care of.

MOTION FOR CONSENT TO OFFER AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

I want to state again, before we hear from Delegate Woodside, that in order to receive an amendment the delegate must obtain the consent of the majority of the delegates present.

DELEGATE WOODSIDE. Mr. President, I am going to ask permission of the delegation to present an amendment to the proposal which involves a matter which I am sure was overlooked. It was brought to the attention of the Chairman of the Judiciary Committee and the Chairman of Style and Drafting and several others who have been dealing with the subject, and they all agree that the correction should be made. In order that you may understand what the amendment does and why it is necessary, I merely state that we have provided in the proposal that all judges shall hereafter be elected at the municipal election in an odd numbered year. Every judge in the Commonwealth has already been elected in an odd numbered year with the exception of a few judges on the Supreme Court and several on the Superior Court.

The judges on the Supreme Court who have been elected in an even numbered year will serve out their 21-year term, at which time they will all be over 70 years of age and will not be eligible for reelection so they are not affected. Neither are any of the judges of the common pleas and orphans' court, because all of them have always been elected at a municipal election. But, providing that a judge shall serve for a term of 10 years and then providing that his vacancy shall be filled in a municipal election, produces an inconsistency whereby the term ends on an even numbered year and, of course, it would continue on that way forever, so you must do something about correcting that provision.

Therefore, I am asking permission to present an amendment which amends the schedule in Section 2, page 16, line 19, by inserting after "court," the following, in the section dealing with the Superior Court and the Superior Court alone. "The present terms of all judges of the Superior Court which would otherwise expire on the first Monday of January in an odd-numbered year shall be extended to expire in the even-numbered year next following."

Mr. President, I do not consided it a personal matter and nobody to whom I have talked considers it so and I am therefore asking permission to introduce the amendment.

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to receive this amendment to Proposal No. 7 by Delegate Woodside? You have already received a copy of the amendment. Is there to be any discussion or debate in connection with it, or are you ready for the question?

PRESIDENT BRODERICK. Delegate Shapiro has asked for recognition, and the Chair now recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I ask Judge Woodside whether he has considered the provisions of Article 3, Section 27, and would he want to make some minor change here to cover that situation? Article 3, Section 27, provides that no law shall extend the term of any public officer after his election or appointment. It would seem to me that he might want to specifically refer to that in his amendment.

DELEGATE WOODSIDE. Mr. President, we could not do it by statute. I feel confident we can do that by constitutional amendment in a situation such as this.

DELEGATE SHAPIRO. I am not questioning on whether we can do it. I wonder if you want to change the wording of the amendment in order to make it clear it is intended to do that.

DELEGATE WOODSIDE. Mr. President, I do not think it is necessary on that particular point.

PRESIDENT BRODERICK. May I ask, are we ready for the question? Does anyone wish to debate?

The question is, will the Convention agree to receive an amendment to Proposal No. 7 from Delegate Woodside?

Unless I hear objection, I will unlock the voting machine. We will unlock the voting machine and proceed to vote. All those voting "aye" will vote to receive the amendment of Delegate Woodside. Those voting "nay" will vote to reject it. I want to remind the delegates that they are not now voting for or against the amendment. They are voting for the consent.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—140

Aberman	Curran	Kelly	Rea
Allison	Desmond	Krill	Redick
Amsterdam	Devlin	Laputka	Reynolds
Aurentz	Dumbauld	Leach	Roberts
Bagenstose	Erwin	Lee, L.	Rovner
Baldrige	Fagan	Leinbach	Ruth
Baldus	Fawcett	Leonard	Sahli
Baldwin	Fay	Levin	Scales
Banes	Feather	Manderino	Scarlett
Barron	Filson	Mangery	Scranton
Barry	Fineman	Markley	Sebastian
Bashoff	Forster	Mattioni	Shapiro
Benedict	Gabreski	McGeary	Sharp
Benfield	Gerber	McGlynn	Shettig
Bloom	Goldman	Meyer	Shively
Braham	Goldstein	Michael	Shoemaker
Brennan	Gouger	Michener	Shrager
Broderick	Gray	Miller, D.	Silverman
Brown	Griffith	Miller, R.	Solomon
Buck	Hannum	Moorhead	Stout
Bunting	Harding	More	Sprogell
Burkholder	Hatter	Morton	Strickler
Camardella	Henderson	Murray	Swope
Cain	Heyburn	Nelson	Tate
Caputo	Himes	O'Donnell	Thomson
Caron	Hocker	Orban	Thornburgh
Casey	Hook	Orbin	Tomasello
Clark	Horne	Otto	Tully
Clinger	Hostetler	Pasquerilla	Waldron
Conley	Huggins	Pelletier	Welsh
Corey	Irvis	Percey	Westerberg
Cortese	Johnson	Popil	Whittum
Cosetti	Kauffman	Pott	Wilcox
Croop	Keller, J.	Powell	Wilmarth
Cunningham	Keller, M.	Rappaport	Woodside

NAYS—0

NOT VOTING—23

Butera	Fortney	Lee, K.	Scott
Dailey	Gehrlein	Musselman	Stroup
Donaldson	Jirolanio	Pechan	Van Sant
Donolow	King	Prendergast	Warman
Fleming	Kline	Quiles	Woodring
Fohl	Lane	Richter	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

WOODSIDE AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE WOODSIDE offered the following amendment which was read by the clerk:

Amend Schedule, Sec. 2, page 16, line 19, by inserting after "Court.": The present terms of all judges of the Superior Court which would otherwise expire on the first Monday of January in an odd-numbered year shall be extended to expire in the even-numbered year next following.

On the question,
Will the Convention agree to the Woodside amendment?

PRESIDENT BRODERICK. Delegate Woodside and fellow delegates, the question now before the House is, will the Convention agree to the amendment now being presented by Delegate Woodside?

DELEGATE WOODSIDE. Mr. President, I assumed all I needed to do here was offer the amendment at this time and ask that it be adopted.

PRESIDENT BRODERICK. At this stage, does anyone wish to discuss the amendment pro or con?

Delegate Hook, did you wish to be recognized?

DELEGATE HOOK. Mr. President, I ask Delegate Amsterdam whether his Committee considered this language?

DELEGATE AMSTERDAM. Mr. President, perhaps the gentleman better bring me up on the language he is talking about.

DELEGATE HOOK. Mr. President, this is the amendment as offered by Judge Woodside to the committee proposal.

DELEGATE AMSTERDAM. Mr. President, we considered it at some length. When I say the committee, the committee considered it a half dozen different times and it has since been considered in various groups, so it has been before us continuously. This cures an inconsistency, because there was a provision in Article 5 which a number of people, including general counsel for the convention, felt to be inconsistent. This cures the inconsistency and still makes very clear the Legislature shall continue.

PRESIDENT BRODERICK. Will Delegate Amsterdam yield? I think we are talking about the amendment in connection with the terms of the judges in the Superior Court.

The Chair recognizes Chairman Scranton.

DELEGATE SCRANTON. Mr. President, the committee did not get into this matter at all. Judge Woodside found out about it last night and asked us about it last night and a number of us said that we thought it was the right thing to do, because otherwise somebody would have to determine what the Superior Court members and those being elected this year would do about their terms. We have not had a committee meeting, if that is what you are talking about.

DELEGATE HOOK. Mr. President, is it the Delegate's opinion that this matter should be approved by the delegate body?

DELEGATE SCRANTON. Yes, Mr. President, everybody in the committee agrees, but there has not been a committee meeting.

PRESIDENT BRODERICK. We are ready for the question. We will unlock the voting machine and all those voting "yea" will vote in favor of the Woodside amendment and those voting "nay" will vote to reject it.

On the question recurring,
Will the Convention agree to the Woodside amendment?

The roll was recorded as follows:

YEAS—143

Aberman	Desmond	Kelly	Rea
Allison	Devlin	Krill	Redick
Amsterdam	Dumbauld	Laputka	Reynolds
Aurentz	Erwin	Leach	Roberts
Bagenstose	Fagan	Lee, L.	Rovner
Baldrige	Fawcett	Leinbach	Ruth
Baldus	Fay	Leonard	Sahli
Baldwin	Feather	Levin	Scales
Banes	Filson	Manderino	Scarlett
Barron	Fineman	Mangery	Scranton
Barry	Forster	Markley	Sebastian
Bashoff	Gabreski	Mattioni	Shapiro
Benedict	Gehrlein	McGeary	Sharp
Benfield	Gerber	McGlynn	Shettig
Bloom	Goldman	Meyer	Shively
Braham	Goldstein	Michael	Shoemaker
Brennan	Gouger	Michener	Shrager
Broderick	Gray	Miller, D.	Solomon
Brown	Griffith	Miller, R.	Sprogell
Buck	Hannum	Moorhead	Stout
Bunting	Harding	More	Strickler
Burkholder	Hatter	Morton	Swope
Cain	Henderson	Murray	Tate
Camardella	Heyburn	Nelson	Thomson
Caputo	Himes	O'Donnell	Thornburgh
Caron	Hocker	Orban	Tomascik
Casey	Hook	Orbin	Tully
Clark	Horne	Otto	Van Sant
Clinger	Hostetler	Pasquerilla	Waldron
Conley	Huggins	Pelletier	Welsh
Corey	Irvis	Percey	Westerberg
Cortese	Jirolanio	Popil	Whittum
Cosetti	Johnson	Pott	Wilcox
Croop	Kauffman	Powell	Wilmarth
Cunningham	Keller, J.	Prendergast	Woodside
Curran	Keller, M.	Rappaport	

NAYS—0

NOT VOTING—20

Butera	Fohl	Lee, K.	Scott
Dailey	Fortney	Musselman	Silverman
Donaldson	King	Pechan	Stroup
Donolow	Kline	Quiles	Warman
Fleming	Lane	Richter	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the Woodside amendment was agreed to.

MOTION FOR CONSENT TO OFFER SECOND WOODSIDE AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. Mr. President, I believe Judge Woodside has another amendment to offer.

DELEGATE WOODSIDE. Mr. President, this amendment was not my suggestion but came from the staff, feeling there was an inconsistency on page 5, line 4, section 10(c). It was suggested by them that we might on page 5, line 4, strike the word "alter"; and insert "affect the right of the General Assembly to determine" and it goes on to read "the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose." There was a feeling of the staff that there may be some inconsistency in some of the language that is contained in sub-Section (c) of Section 10 before this point. It was the intent of the committee and the rest of us, I think, that the General Assembly should have the right to determine jurisdiction and, in order to clarify that matter, it was felt that this language should be put into it and this is the language that was finally agreed upon by those who were examining and dealing with it.

PRESIDENT BRODERICK. The question before the Convention at this time is, will the Convention agree to receive an amendment to Proposal No. 7 from Delegate Woodside? A copy of the amendment, I believe, you received, is that correct? Everyone has copies.

The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, since there does not seem to be any objection to this motion, I will move the question.

PRESIDENT BRODERICK. We will now unlock the voting machine. All those giving their consent will vote "yea," those who are opposed may vote "nay."

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—139

Aberman	Devlin	Krill	Redick
Allison	Dumbauld	Laputka	Reynolds
Amsterdam	Erwin	Leach	Roberts
Aurentz	Fagan	Lee, L.	Rovner
Bagenstose	Fawcett	Leinbach	Sahli
Baldrige	Fay	Leonard	Scales
Baldus	Feather	Levin	Scarlett
Baldwin	Filson	Manderino	Scranton
Banes	Forster	Mangery	Sebastian
Barron	Gabreski	Markley	Shapiro
Barry	Gehrlein	Mattioni	Sharp
Bashoff	Gerber	McGeary	Shettig
Benedict	Goldman	McGlynn	Shively
Benfield	Goldstein	Meyer	Shoemaker
Bloom	Gouger	Michael	Shrager
Braham	Gray	Michener	Silverman
Brennan	Griffith	Miller, D.	Solomon
Broderick	Hannum	Miller, R.	Sprogell
Brown	Harding	Moorhead	Stout
Buck	Hatter	More	Strickler
Burkholder	Henderson	Morton	Swope
Cain	Heyburn	Murray	Tate
Camardella	Himes	Nelson	Thomson
Caputo	Hocker	O'Donnell	Thornburgh
Caron	Hook	Orban	Tomascik
Casey	Horne	Orbin	Tully
Clark	Hostetler	Otto	Van Sant
Conley	Huggins	Pelletier	Waldron
Corey	Irvis	Percey	Welsh
Cortese	Jirolanio	Popil	Westerberg
Cosetti	Johnson	Pott	Whittum
Croop	Kauffman	Powell	Wilmarth
Cunningham	Keller, J.	Prendergast	Wilcox
Curran	Keller, M.	Rappaport	Woodside
Desmond	Kelly	Rea	

NAYS—2

Bunting	Ruth

NOT VOTING—22

Butera	Fleming	Lee, K.	Richter
Clinger	Fohl	Musselman	Scott
Dailey	Fortney	Pasquerilla	Stroup
Donaldson	King	Pechan	Warman
Donolow	Kline	Quiles	Woodring
Fineman	Lane		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

WOODSIDE AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE WOODSIDE offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 10), page 5, line 4, by striking out "ALTER" and inserting: affect the right of the General Assembly to determine

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. I might add that the question now before the Convention is, will the Convention agree to the amendment?

DELEGATE WOODSIDE. Mr. President, I do not wish to offer anything else at this time. There is nothing more to say.

PRESIDENT BRODERICK. Does anyone wish to be heard, either pro or con, in connection with this amendment? Has there been a sufficient explanation? We are ready for the question. We now unlock the voting machine and all those voting "yea" will vote to support the Woodside amendment, those voting "nay" will vote to reject it.

On the question recurring,
Will the Convention agree to the Woodside amendment?

The roll was recorded as follows:

YEAS—137

Aberman	Dumbauld	Laputka	Rea
Allison	Erwin	Leach	Redick
Amsterdam	Fagan	Lee, L.	Reynolds
Aurentz	Fay	Leinbach	Roberts
Bagenstose	Feather	Leonard	Rovner
Baldrige	Filson	Levin	Sahli
Baldus	Fineman	Manderino	Scales
Baldwin	Forster	Mangery	Scarlett
Banes	Gabreski	Markley	Scranton
Barron	Gehrlein	Mattioni	Shapiro
Barry	Gerber	McGeary	Sharp
Bashoff	Goldman	McGlynn	Shettig
Benedict	Goldstein	Meyer	Shively
Benfield	Gouger	Michael	Shoemaker
Bloom	Gray	Michener	Shrager
Braham	Griffith	Miller, D.	Silverman
Brennan	Hannum	Miller, R.	Solomon
Broderick	Harding	Moorhead	Sprogell
Brown	Hatter	More	Stout
Buck	Henderson	Morton	Strickler
Burkholder	Heyburn	Murray	Swope
Cain	Himes	Nelson	Tate
Camardella	Hocker	O'Donnell	Thomson
Caputo	Hook	Orban	Thornburgh
Caron	Horne	Orbin	Tomascik
Casey	Hostetler	Otto	Tully
Clark	Huggins	Pasquerilla	Van Sant
Conley	Irvis	Pelletier	Waldron
Corey	Jirolanio	Percey	Welsh
Cortese	Kauffman	Popil	Westerberg
Cunningham	Keller, J.	Pott	Whittum
Curran	Keller, M.	Powell	Wilcox
Croop	Kelly	Prendergast	Wilmarth
Desmond	Krill	Rappaport	Woodside
Devlin			

NAYS—2

Bunting	Ruth

NOT VOTING—24

Butera	Fawcett	Kline	Richter
Clinger	Fleming	Lane	Scott
Cosetti	Fohl	Lee, K.	Sebastian
Dailey	Fortney	Musselman	Stroup
Donaldson	Johnson	Pechan	Warman
Donolow	King	Quiles	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION FOR CONSENT TO OFFER AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell who wishes to ask consent of this body to present an amendment.

The question is, will the Convention agree to receive an amendment to Proposal No. 7 from Delegate O'Donnell?

DELEGATE O'DONNELL. Mr. President, first, on a matter of personal privilege, I wish to thank Judge Braham for his kind remarks earlier today. They reminded me of something which confronted me when I arrived here today. One of our delegates told me he defended me in an argument last night. He said that a fellow delegate claimed that I was not fit to throw to the dogs and he said I was. In any event, Judge Braham, when he made his observation, pointed out to me that he had overlooked a quotation from Lord Byron which he had intended to make and place on the record and he having overlooked it, I will place it on the record. And this is Lord Byron as quoted by Judge Braham: "This is as fine a group of men as ever cut a throat or scuttled a ship."

The amendment being offered here for which consent of this body is asked is merely correctional and one which arose in the course of the Style and Drafting Committee's activities and is simply intended to make certain that there is no conflict in Article 5 here proposed with the other articles of the Pennsylvania Constitution which are not within the call of the Convention. The appointive power of the Governor in judicial officers is with the advice and consent of two-thirds of the members elected to the Senate. In the printing the words "the members elected to" were inadvertently overlooked and we are merely correcting that deficiency.

PRESIDENT BRODERICK. The question again before us, will we agree to receive this amendment from Delegate O'Donnell?

Does anyone wish to be heard, pro or con? If not, we will put the question.

The Chair recognizes Delegate Barron.

DELEGATE BARRON. I respectfully request that the members of this delegate body look carefully at the alleged correction. If my reading of the present printer's number is correct, I do not find any such error or omission from this copy or prior copies. I find no reference to members elected.

DELEGATE O'DONNELL. Mr. President, I did not mean to suggest that this has been deleted from other copies. I merely say that the purpose of this is to make certain that the present Article 5 agrees with the rest of the Constitution of Pennsylvania. That is all. That is the only oversight to which I referred.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I would like to ask Delegate O'Donnell a question, if I may.

PRESIDENT BRODERICK. I am sure he will stand for interrogation.

DELEGATE RAPPAPORT. Mr. President, I do this with some trepidation. When you say "elective," do you mean someone who has received an official certificate of election and has been sworn in? I am concerned about the problem of York County.

DELEGATE O'DONNELL. Mr. President, I am merely repeating the precise words which are now in the Pennsylvania Constitution. That is all. I am not trying to interpret them. I am merely trying to be certain that Article 5, as here proposed, does not conflict with the appointive powers of the Governor as detailed in the Executive article of the Constitution and that is all.

DELEGATE RAPPAPORT. Mr. President, in other words, this language would not interfere with the ruling made by our president at another place that "elective" means someone who has received a certificate of election, is that correct?

DELEGATE O'DONNELL. Mr. President, the interpretation placed on this will be the identical interpretation placed on every other executive appointment, whatever that interpretation happens to be.

DELEGATE RAPPAPORT. I thank the gentleman.

PRESIDENT BRODERICK. The Chair recognizes Delegate Manderino.

DELEGATE MANDERINO. Mr. President, was there not at some point an opinion expressed by counsel on this matter and something inserted? Maybe it was at this point or some other point on this very issue. Is my recollection at fault here?

PRESIDENT BRODERICK. May I ask the Chairmen of the Judiciary Committee, Chairman Amsterdam or Chairman Scranton, if they know of any opinion in connection with this matter?

DELEGATE MANDERINO. Mr. President, I was speaking on the floor of the Convention, it seems to me the point came up and there was a recommendation by Convention counsel to insert some words. The same point had been discussed. I do not recall whether it occurred, or not.

PRESIDENT BRODERICK. May I ask the counsel to the Convention if he would step up here one second.

Counsel says that you are correct in your recollection. An opinion was given that two-thirds of the Senate did not mean the same as two-thirds of the members elected to the Senate.

DELEGATE RAPPAPORT. Mr. President, what does that mean? I would like to ask, what does that mean in the context of your ruling at another place?

PRESIDENT BRODERICK. Delegate Rappaport, I do not think it would be applicable here. I will be glad to have the counsel for the Judiciary Committee and counsel for the Convention state an opinion to the committee which they can announce to you.

DELEGATE RAPPAPORT. Mr. President, the point I am trying to make is, does this language put into the Constitution the substance of your ruling, or does it, in fact, change your ruling?

PRESIDENT BRODERICK. I hate to disillusion Delegate Rappaport, but it was not the Chair that made any ruling in this connection. It was the body, that ruled because it was a Constitutional question. The Chair did not, personally, make a ruling. I will be glad, in this instance, to have counsel for the Convention and counsel for the committee give an opinion as to what the meaning is of these words.

DELEGATE RAPPAPORT. Mr. President, could we have that opinion before we are asked to vote?

PRESIDENT BRODERICK. Yes, indeed.

DELEGATE RAPPAPORT. Thank you, Mr. President.

DELEGATE MANDERINO. Mr. President, in the meantime, I would like to speak in favor of the amendment inasmuch as if two-thirds of the Senate does not mean a constitutional two-thirds of those elected, it would apparently mean two-thirds of those present and voting, and I do not think that was the intent at any time.

That would mean that a simple majority really of the total membership elected could approve this, and I think the two-thirds, when it was being discussed, was two-thirds of the members elected. The amendment would make that clearer, Mr. President.

PRESIDENT BRODERICK. Delegate Manderino, I believe your statement is in conformity to the opinion that counsel will give. We will wait.

The Chair recognizes Delegate Solomon.

DELEGATE SOLOMON. Would the question be in order?

PRESIDENT BRODERICK. The question would be in order just as soon as the opinion is announced. This should not take any time, because we are waiting for either Chairman Scranton or Chairman Amsterdam to state the opinion.

DELEGATE SOLOMON. We are in our last moments and certainly there is little there now that is not irretrievable. They say a perfectionist is one who does a great deal of things and one who takes infinite pains. Now, the book says he also gives them to everyone else. We would like to move along. We urge you to.

PRESIDENT BRODERICK. I certainly agree with the delegate and I share his desire to move promptly, but I again ask, have counsel for the Convention and counsel for the committee been able to give an opinion to the Chairman of the Judiciary Committee?

CLARENCE WOOD WELCOMED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Reynolds.

DELEGATE REYNOLDS. I have a guest here I want to introduce while we are waiting. He is a young man just returned from the armed forces in Germany and he is my foster son. My wife and I raised him from a kid. He wants to be introduced, he has been telling me he disagrees with the press. He feels that we have done a good job here. I would like you to meet Clarence Wood, who is now a patient in the hospital after having been discharged.

PRESIDENT BRODERICK. We are very happy to have you with us. I might add we are looking for more supporters like you.

DELEGATE REYNOLDS. Thank you very much.

PRESIDENT BRODERICK. The Chair inquires again, do we have an opinion for the Chairman of the Judiciary Committee?

The Chair now recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. We have conferred with counsel for the Convention and counsel for the committee, and they confirmed the fact that the language which is suggested by Delegate O'Donnell is consistent with the other portions of the Constitution and consistent with the changes which we made from time to time, some of which have now disappeared from Article 5 as we have set it up, and that is to provide for two-thirds of those elected to the Senate; which I understand is what Delegate O'Donnell is

suggesting at this time. This would be entirely consistent with the balance of the Constitution.

PRESIDENT BRODERICK. Does anyone wish to be heard pro or con?

We are ready for the question.

The question is, will the Convention agree to receive this amendment, and we will now unlock the voting machine.

All those voting "yea" will vote to accept the amendment from Delegate O'Donnell, those voting "nay" will refuse the consent.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—135

Aberman	Fagan	Leach	Redick
Allison	Fawcett	Lee, L.	Reynolds
Amsterdam	Fay	Leinbach	Roberts
Aurentz	Feather	Leonard	Rovner
Bagenstose	Filson	Levin	Ruth
Baldus	Fineman	Manderino	Sahli
Baldwin	Forster	Mangery	Scales
Banes	Gabreski	Markley	Scarlett
Barry	Gehrlein	Mattioni	Scranton
Bashoff	Gerber	McGeary	Sebastian
Benedict	Goldman	McGlynn	Shapiro
Benfield	Gouger	Meyer	Sharp
Bloom	Gray	Michael	Shettig
Braham	Griffith	Michener	Shively
Brennan	Hannum	Miller, D.	Shoemaker
Broderick	Harding	Miller, R.	Shrager
Brown	Hatter	Moorhead	Silverman
Buck	Henderson	More	Solomon
Burkholder	Heyburn	Murray	Sprogell
Cain	Himes	Nelson	Stout
Caputo	Hocker	O'Donnell	Strickler
Caron	Hook	Orban	Swope
Casey	Horne	Orbin	Tate
Clark	Hostetler	Otto	Thomson
Conley	Huggins	Pasquerilla	Thornburgh
Corey	Jirolanio	Pelletier	Tully
Cosetti	Johnson	Percey	Van Sant
Croop	Kauffman	Popil	Waldron
Cunningham	Keller, J.	Pott	Welsh
Curran	Keller, M.	Powell	Westerberg
Camardella	Kelly	Prendergast	Whittum
Desmond	King	Quiles	Wilcox
Dumbauld	Krill	Rappaport	Woodside
Erwin	Laputka	Rea	

NAYS—5

Baldrige	Bunting	Morton	Wilmarth
Barron			

NOT VOTING—23

Butera	Donolow	Kline	Scott
Clinger	Fleming	Lane	Stroup
Cortese	Fohl	Lee, K.	Tomascik
Dailey	Fortney	Musselman	Warman
Devlin	Goldstein	Peehan	Woodring
Donaldson	Irvis	Richter	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

O'DONNELL AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,

Will the Convention agree to the proposal on third consideration?

DELEGATE O'DONNELL offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 13), page 7, line 12, by inserting after "of" where it appears the second time: the members elected to

PRESIDENT BRODERICK. Are we ready for the question?

Does anyone wish to be heard pro or con; if not, we will unlock the voting machine? The question before the Convention is, will the Convention agree to the amendment being offered by Delegate O'Donnell? All those voting "yea" vote to support the amendment, those voting "nay" vote to reject the amendment.

The question recurs,
Will the Convention agree to the amendment offered by Delegate O'Donnell?

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldman. For what purpose does the gentleman rise?

DELEGATE GOLDMAN. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GOLDMAN. I wish to be recorded as voting "aye."

PRESIDENT BRODERICK. You will be recorded as having voted "aye," since the vote has not yet been announced.

The roll was recorded as follows:

YEAS—135

Aberman	Devlin	King	Rea
Allison	Dumbauld	Krill	Redick
Aurentz	Erwin	Laputka	Reynolds
Baldus	Fagan	Leach	Roberts
Baldwin	Fawcett	Lee, L.	Rovner
Bagenstose	Fay	Leinbach	Ruth
Banes	Feather	Leonard	Sahli
Barry	Filson	Levin	Scales
Bashoff	Fineman	Manderino	Scarlett
Benedict	Forster	Mangery	Sebastian
Benfield	Gabreski	Markley	Shapiro
Bloom	Gehrlein	Mattioni	Sharp
Braham	Gerber	McGlynn	Shively
Brennan	Goldstein	Meyer	Shoemaker
Broderick	Gouger	Michael	Shrager
Brown	Gray	Michener	Silverman
Buck	Griffith	Miller, D.	Sprogell
Bunting	Hannum	Miller, R.	Stout
Burkholder	Harding	Moorhead	Strickler
Cain	Hatter	More	Stroup
Camardella	Henderson	Murray	Swope
Caputo	Heyburn	Nelson	Tate
Caron	Himes	O'Donnell	Thomson
Casey	Hocker	Orban	Thornburgh
Clark	Hook	Orbin	Tomascik
Clinger	Horne	Otto	Tully
Conley	Hostetler	Pasquerilla	Van Sant
Corey	Huggins	Pelletier	Waldron
Cortese	Jirolanio	Percey	Welsh
Cosetti	Johnson	Popil	Westerberg
Croop	Kauffman	Pott	Whittum
Cunningham	Keller, J.	Powell	Wilcox
Curran	Keller, M.	Prendergast	Woodside
Desmond	Kelly	Quiles	

NAYS—7

Baldrige	McGeary	Rappaport	Wilmarth
Barron	Morton	Shettig	

NOT VOTING—21

Amsterdam	Fohl	Lane	Scott
Butera	Fortney	Lee, K.	Scranton
Dailey	Goldman	Musselman	Solomon
Donaldson	Irvis	Pechan	Warman
Donolow	Kline	Richter	Woodring
Fleming			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION FOR CONSENT TO RECEIVE AMENDMENT

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to receive an amendment to Proposal No. 7 from Delegate Jirolanio?

The Chair now recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I am really pleased to have with me on this amendment the Hon. Gus Amsterdam and the former and great Governor of the Commonwealth of Pennsylvania, Delegate Scranton, who have agreed that the amendment that we are now proposing is of necessity and needful for the people of the Commonwealth of Pennsylvania, and especially for the City of Brotherly Love in Philadelphia where they must be protected to the utmost ability of this Convention. I ask you to vote for this 100 per cent.

PRESIDENT BRODERICK. On the question of consent, no one wishes to be heard, and we are ready for the question, is that correct?

Would you now unlock the voting machine, and the question is, will the Convention agree to receive an amendment from Delegate Jirolanio?

On the question,
Will the Convention agree to the motion?

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to the Jirolanio amendment.

The Chair now recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I move the question and ask everybody to vote for the amendment.

PRESIDENT BRODERICK. Therefore, we will unlock the voting machine, and the question is, will the Convention agree to the amendment offered by Delegate Jirolanio. All those voting "yea" vote to support the amendment, those voting "nay" vote to reject it.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Jirolanio?

The roll was recorded as follows:

YEAS—139

Aberman	Erwin	Laputka	Rea
Allison	Fagan	Leach	Redick
Amsterdam	Fawcett	Lee, L.	Roberts
Aurentz	Fay	Leinbach	Rovner
Bagenstose	Feather	Leonard	Ruth
Baldrige	Filson	Levin	Sabli
Baldus	Fineman	Manderino	Scales
Baldwin	Fohl	Mangery	Scarlett
Banes	Forster	Markley	Sebastian
Barron	Gabreski	Mattioni	Shapiro
Barry	Gehrlein	Meyer	Sharp
Bashoff	Gerber	McGeary	Shettig
Benedict	Goldman	McGlynn	Shively
Benfield	Goldstein	Michael	Shoemaker
Bloom	Gouger	Michener	Shrager
Braham	Gray	Miller, D.	Silverman
Brennan	Griffith	Miller, R.	Solomon
Broderick	Hannum	Moorhead	Sprogell
Brown	Harding	More	Stout
Buck	Hatter	Morton	Strickler
Burkholder	Henderson	Murray	Stroup
Cain	Heyburn	Nelson	Swope
Camardella	Himes	O'Donnell	Tate
Caputo	Hocker	Orban	Thomson
Caron	Hook	Orbin	Thornburgh
Casey	Horne	Otto	Tomascik
Clark	Huggins	Pasquerilla	Tully
Conley	Jirolanio	Pelletier	Van Sant
Corey	Johnson	Percey	Waldron
Cortese	Kauffman	Popil	Welsh
Cosetti	Keller, J.	Pott	Westerberg
Croop	Keller, M.	Powell	Whittum
Curran	Kelly	Prendergast	Wilmarth
Desmond	King	Quiles	Woodside
Dumbauld	Krill	Rappaport	

NAYS—1

Bunting

NOT VOTING—23

Butera	Donolow	Lane	Scott
Clinger	Fleming	Lee, K.	Scranton
Cunningham	Fortney	Musselman	Warman
Dailey	Hostetler	Pechan	Wilcox
Devlin	Irvis	Reynolds	Woodring
Donaldson	Kline	Richter	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

JIROLANIO AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE JIROLANIO offered the following amendment which was read by the clerk:

Amend Schedule, Sec. 16, page 25, line 8, by inserting after "de novo": including the right to trial by jury

The roll was recorded as follows:

YEAS—142

Aberman	Fawcett	Leach	Redick
Allison	Fay	Lee, L.	Reynolds
Aurentz	Feather	Leinbach	Roberts
Bagenstose	Filson	Leonard	Rovner
Baldrige	Fineman	Levin	Ruth
Baldus	Fohl	Manderino	Sabli
Baldwin	Forster	Mangery	Scales
Banes	Gabreski	Markley	Scarlett
Barron	Gehrlein	Mattioni	Sebastian
Barry	Gerber	McGeary	Shapiro
Bashoff	Goldman	McGlynn	Sharp
Benedict	Goldstein	Meyer	Shettig
Benfield	Gouger	Michael	Shively
Bloom	Gray	Michener	Shoemaker
Braham	Griffith	Miller, D.	Shrager
Brennan	Hannum	Miller, R.	Silverman
Broderick	Harding	Moorhead	Solomon
Buck	Hatter	More	Sprogell
Burkholder	Henderson	Morton	Stout
Cain	Heyburn	Murray	Strickler
Camardella	Himes	Nelson	Stroup
Caputo	Hocker	O'Donnell	Swope
Caron	Hook	Orban	Tate
Casey	Horne	Orbin	Thomson
Clark	Hostetler	Otto	Thornburgh

Conley	Huggins	Pasquerilla	Tomascik
Corey	Irvis	Pelletier	Tully
Cortese	Jirolanio	Percey	Van Sant
Cosetti	Johnson	Popil	Waldron
Croop	Kauffman	Pott	Welsh
Curran	Keller, J.	Powell	Westerberg
Desmond	Keller, M.	Prendergast	Whittum
Devlin	Kelly	Quiles	Wilcox
Dumbauld	King	Rappaport	Wilmarth
Erwin	Krill	Rea	Woodside
Fagan	Laputka		

NAYS—1

Bunting

NOT VOTING—20

Amsterdam	Dailey	Kline	Richter
Brown	Donaldson	Lane	Scott
Butera	Donolow	Lee, K.	Scranton
Clinger	Fleming	Musselman	Warman
Cunningham	Formey	Pechan	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION TO INSERT CHANGES

PRESIDENT BRODERICK. The Chair now recognizes Chairman Pelletier.

DELEGATE PELLETIER. Mr. President, Delegate Thornburgh has two more suggested changes.

DELEGATE THORNBURGH. Thank you, Chairman Pelletier.

Mr. President, I have waited long and hard through two months to have a chance to make some constructive contribution to the Judiciary Article. Last night I conferred with the moguls of the Bar Association, and they instructed me that the first thing this morning I was to attempt to do was to slide something past you, so here goes. I want all the lawyers to consider this very carefully and be able to catch the nuances of these changes that I am proposing.

On page 8, line 24, we are going to change, if we can slide it past you, "election" to "selection."

Now, watch this one as well. Now you see it, now you do not. On page 30, line 30, change "20" to "11."

These are, in fact, purely errors of transcribing, and I would move that they be accepted as typographical errors.

PRESIDENT BRODERICK. Would you repeat that last change, please, Delegate Thornburgh?

DELEGATE THORNBURGH. On page 30, line 30, the number "20" should be changed to "11."

It was a matter of getting, in the heat of battle, the section numbers in the schedule to jibe with the section numbers in the amendment.

PRESIDENT BRODERICK. Now, you have had changes suggested to you or recommended by the committee, first by Chairman Pelletier and the last two by Delegate Thornburgh.

DELEGATE PELLETIER. Mr. President, may I move the suggested changes by the Committee on Style and Drafting, and ask that they be approved now by the Convention?

PRESIDENT BRODERICK. Unless we hear objection, we will assume that—

DELEGATE PELLETIER. As an equal proponent of the Bar Association's programs advanced before the Convention, and as an equal ally of Delegate Thornburgh's, I concur completely with the advancement of those suggestions.

PRESIDENT BRODERICK. Does anyone object?

The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. If we may accept this as an act of regeneration of Delegate Thornburgh and his particular group, I move the question.

On the question,
Will the Convention agree to the motion?
It was agreed to.

MOTION FOR CONSENT TO OFFER AMENDMENT

PRESIDENT BRODERICK. I understand we have one more amendment which is in the process of being prepared.

DELEGATE PELLETIER. Delegate Amsterdam is ready to present the final amendment, I believe.

DELEGATE AMSTERDAM. Hope springs eternal. The amendment, sir, is being duplicated at the moment. May we have a recess for about two minutes?

DELEGATE ABERMAN. Mr. President, I have no amendment. I have some interrogation of Delegate Amsterdam.

DELEGATE AMSTERDAM. I will be glad to stand for interrogation. By that time it may be that the papers will be ready.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Aberman for interrogation.

DELEGATE ABERMAN. Mr. President, in the hopes of not requiring an amendment, I would ask that the co-chairman of the Judiciary Committee submit to an interrogation, and I think we can avoid the necessity for an amendment.

I refer the gentleman to page 24 of the clean copy to the Judiciary Article, starting on line 19, which would be sub-Section (y).

I would like to address a few questions to you relating to this particular section of the schedule. I refer first to that portion which reads "The offices of the prothonotary and register of wills in the City of Philadelphia shall no longer be considered constitutional offices under this article, . . ."

Was it the intention of this Committee to reverse that portion of the reasoning contained in the case of Lenox vs. Clark as found in 372 Pa. 355 at pages 370 and 371?

DELEGATE AMSTERDAM. Mr. President, the only effect, and then I hope this will answer your question, intended was that the constitutional protection which had been heretofore given to those positions of the register of wills and the prothonotary in the City of Philadelphia would no longer be continued because of the fact that Article 5, as it heretofore existed, was to be eliminated entirely.

DELEGATE ABERMAN. Mr. President, agreeing with that, it was the further intention of the committee to prevent any possible conflict with the provisions of this schedule, and the Local Government proposal, which is known in our minutes as Proposal No. 6, which has already been passed to the Arrangement and Submission Committee, and he would agree there is no intent in this schedule to conflict with that particular one?

DELEGATE AMSTERDAM. Mr. President, none whatsoever.

DELEGATE ABERMAN. I would ask if he would agree Mr. President, that the evidence of this consistency might be found in the words continuing immediately thereafter that their powers and function shall continue as of the present.

DELEGATE AMSTERDAM. That is correct, Mr. President.

DELEGATE ABERMAN. And I further ask you, then, that the consideration of the method of their election is being deemed to be continued under Article 9, as is repeated in that Local Government proposal.

DELEGATE AMSTERDAM. That is correct, Mr. President.

DELEGATE ABERMAN. Although the word "but" is used to introduce this, it was not intended by that word "but" to deem any possible negation of the Local Government proposal?

DELEGATE AMSTERDAM. No, it certainly was not.

DELEGATE ABERMAN. Further, by the use of the word "until" it was clearly understood that the existing condition appertaining to the Home Rule Charter of Philadelphia would be continued until some point in the future?

DELEGATE AMSTERDAM. That is correct.

I believe the colloquy between one or two of the delegates at the time the language was included at the end of (y) would indicate that, also.

DELEGATE ABERMAN. I would now refer to the language which you just had reference to which I would like to place upon the record, because we have all agreed at this point that there are two meanings which are susceptible from the words "by a referendum in the manner provided by law."

We are agreed, I would assume, that the present state of the law is continued, by the "present state of the law" I would mean that an act of the General Assembly which would provide a referendum would remain a possibility, as it now is a possibility.

DELEGATE AMSTERDAM. Mr. President, I am not sure that that is so. My understanding was that where we provided for a referendum, in the manner provided by law, I had asked Delegate Cortese whether he, in his amendment, had intended that in order to make a change it would be necessary to use the portions of the Philadelphia Home Rule Charter which provided for the amendment of that charter, and that would, in turn, require an ordinance of the City Council followed by a referendum in the City of Philadelphia.

DELEGATE ABERMAN. I quite agree; and that was the second part of my interrogation.

I will refer to the existing provisions of the Home Rule enabling legislation, I should say enabling the constitutional article, as found in our reenacted local government proposal, which provides that the General Assembly shall have the means creating the amendments relating to election and appointment.

DELEGATE AMSTERDAM. Right.

DELEGATE ABERMAN. That is the existing state of the law?

DELEGATE AMSTERDAM. That is correct, Mr. President.

DELEGATE ABERMAN. Therefore, these words do contain the existing state of the law on that portion?

DELEGATE AMSTERDAM. Yes, they certainly do.

DELEGATE ABERMAN. If at some point in the future, and I would hope that the Commonwealth would adopt the local government article, we know that there is contained in the local government article a reference to a referendum and a reference to initiative by the local home rule unit; we have adopted that proposal heretofore.

DELEGATE AMSTERDAM. Yes, sir.

DELEGATE ABERMAN. Therefore, an additional meaning will arise upon the adoption of the local government article by the people, which would provide for an initiative either by the City Council of Philadelphia or the electorate of the City of Philadelphia in the manner provided within the local government article?

DELEGATE AMSTERDAM. That is right, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shoemaker.

DELEGATE SHOEMAKER. I would like, Mr. President, to clear up Section 10 (b), and I would request permission to interrogate Delegate Amsterdam.

PRESIDENT BRODERICK. Chairman Amsterdam, I am sure, will stand for interrogation.

DELEGATE SHOEMAKER. Chairman Amsterdam, referring you to Section 10, sub-Section (b), the language there refers to the Supreme Court appointing a court administrator and subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts and justices of the peace.

I would ask for the record, so that this might not be misconstrued, whether or not under that section the Supreme Court could, for instance, appoint a clerk, to a justice of the peace, or a commissioner, or a similar officer, who would act in the office of the justice of the peace for the purpose of conducting the business of that office?

DELEGATE AMSTERDAM. It certainly could. It puts it within the control and administration of the Supreme Court.

DELEGATE SHOEMAKER. Would that also mean that the staff of the court of common pleas in the administration of the court of common pleas in the county court could be appointed directly by the Supreme Court?

DELEGATE AMSTERDAM. If the rules of the Supreme Court so provided, there would be no question about it.

DELEGATE SHOEMAKER. In other words, the entire staff of officers, commissioners, clerks, and all other officers, not elected under other provisions of the law, could be appointed directly by the Supreme Court?

DELEGATE AMSTERDAM. Either directly by the Supreme Court or in accordance with the rules set up by the Supreme Court for the proper administration of the court system, yes, sir.

PRESIDENT BRODERICK. Delegate Hook, did you wish to be recognized?

DELEGATE HOOK. Mr. President, yes, I do. I have one or two questions for Delegate Pelletier, and also one or two questions for Delegate Amsterdam.

I would like to ask Delegate Pelletier, first, two or three questions on interrogation.

Doctor, on Printer's No. 32, on the first page, on line 11,

you have made a certain change that has given some doubt to a group of us who met during the recess. You have taken the language "justice of the peace and such other courts as may be provided by law" and you have changed this language and have used and "such other courts as may be provided by law and justices of the peace." You have reversed this, and we feel that this may create a problem. I have some doubt about it. Why did the Style and Drafting Committee make this change?

DELEGATE PELLETIER. I indicated in the beginning that in the area of law the layman should proceed with caution. As I understand the reason for making this change, and the attorneys on the Committee can check me on this, is that up to "and justices of the peace," one is talking about courts, justices of the peace you are talking about individuals, and the committee felt that one should enumerate courts and then move on to justices of the peace. I do not think there was any intent to change any substance here, but simply in terms of language to keep courts together and then refer to individuals.

DELEGATE HOOK. Delegate Pelletier, in my estimation—I may be out of order here—I feel that the justices of the peace were to be considered as the courts as such part of the unified system, and this is in my mind reversing the intent of the delegate body here, in that the justices of the peace were to be considered a court as such.

DELEGATE PELLETIER. I think you will have to ask one of the attorneys, either Delegate Amsterdam or Governor Scranton about that.

DELEGATE SCRANTON. What was the question?

DELEGATE PELLETIER. The question is on page 1, whether by putting justices of the peace at the end there has been some change there. I suggested that the change was made because by "justices of the peace" we were referring to individuals, and the remainder of the article was referring to courts.

DELEGATE SCRANTON. I am in no position to answer it.

DELEGATE AMSTERDAM. Mr. President, it was considered for the purpose of Style and Drafting that it was desirable to put all the language with regard to the courts in one place and put it first, and then put the justices of the peace at the end of each one of those paragraphs that applies to both courts and justices of the peace. No change of a substantial nature whatsoever was intended, and we are reasonably sure that none was effected. It was purely a change of wording in order to make it consistent and read better throughout the constitutional provision.

DELEGATE SCRANTON. Please look through the rest of the provision and you will find that—maybe you can find one with which it is not true—in almost every one we separated out the justices of the peace, because, as you know, under many of the amendments which were approved here on this floor, they did different things with the justices of the peace than they did with the other courts, and we simply wanted to start out that way and carry it all the way through. There is no substantive change at all.

DELEGATE HOOK. Mr. President, this is what I wanted stated on the floor of the Convention so that the intent was shown. I believe your amendment is ready, Delegate Amsterdam. I would like to reserve the right to interrogate Delegate Amsterdam after the amendment is distributed.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Thank you very much.

Mr. President, I believe an amendment is now being handed out that has the names of Delegate Amsterdam and Delegate Scranton on it. I wonder whether it has been handed up to the Chair?

PRESIDENT BRODERICK. Yes, we have that amendment, and are you ready to present it?

DELEGATE AMSTERDAM. We are, yes.

PRESIDENT BRODERICK. Then the question is, will the Convention agree to receive an amendment to Proposal No. 7 from Chairman Amsterdam?

DELEGATE AMSTERDAM. May I say a word about it, Mr. President?

PRESIDENT BRODERICK. You may.

DELEGATE AMSTERDAM. The Committee on Style and Drafting on page 11, line 24, struck out three words "which shall be," so that the line which read "Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court" would read instead "Justices of the peace shall be governed by rules or canons prescribed by the Supreme Court." The change was supposed to be purely a stylistic change.

A number of the "lawyers" were of the opinion that there had been mandated upon the Supreme Court a duty to set up rules and canons by which the justices of the peace would be governed, and they felt that taking those words out might change the mandate so that the Supreme Court would either do so or not do so. This was not consistent with what had been intended and, therefore, after further discussion with the Committee on Style and Drafting, it was decided that those words must be put back in in order to prevent a substantive change, and the first part of this amendment is to put those words back in.

PRESIDENT BRODERICK. Please proceed. We now have the Amsterdam amendment.

DELEGATE AMSTERDAM. The second part of the amendment is on an entirely different proposition. We have suggested that Section 16 which is on page 26, line 3, have inserted words "Persons now specially admitted to practice before the county court may be permitted to practice before the family court division of the court of common pleas and the municipal court." This affects Philadelphia only. There are in Philadelphia, a number of practitioners who have been specially admitted to practice before the county court. They are not permitted to practice before any of the other courts and it was feared, since the county court itself is being discontinued, that the right of these persons to practice would be terminated. It is intended simply to be sure that these persons who have practiced in these specialized areas may continue to practice in those areas in the future.

There are relatively few persons that are affected. However, it was felt that they ought not to be singled out and hurt, which may have been the case if this grandfather clause had not been included.

We are recommending that to be done at this time, in order that these people not be unnecessarily hurt.

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to receive an amendment from Delegate Amsterdam. The Amsterdam amendment which was just explained and copies of which are on your desks. Is there anyone that wishes to be

heard pro or con in connection with the consent? We are ready for the question. Those voting "yea" will vote to grant consent to Delegate Amsterdam to present this amendment, all those voting "nay" will be, in effect, withholding their consent.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—139

Aberman	Fagan	Leach	Rovner
Amsterdam	Fawcett	Leinbach	Ruth
Bagenstose	Fay	Leonard	Sahli
Baldus	Feather	Levin	Scale
Baldwin	Filson	Manderino	Scarlett
Banes	Fineman	Mangery	Scranton
Barron	Fohl	Mattioni	Sebastian
Barry	Forster	McGeary	Shapiro
Bashoff	Gabreski	McGlynn	Sharp
Benedict	Gehrlein	Meyer	Shettig
Benfield	Gerber	Michael	Shively
Bloom	Goldman	Michener	Shoemaker
Braham	Goldstein	Miller, D.	Shrager
Brennan	Gouger	Miller, R.	Silverman
Broderick	Gray	Moorhead	Solomon
Brown	Griffith	More	Sprogell
Buck	Hannum	Morton	Stout
Burkholder	Harding	Murray	Strickler
Butera	Hatter	Nelson	Stroup
Cain	Henderson	Orban	Swope
Camardella	Heyburn	Orbin	Tate
Caputo	Himes	Otto	Thomson
Caron	Hocker	Pasquerilla	Thornburgh
Casey	Hook	Peiletier	Tomascik
Clark	Horne	Percey	Tully
Conley	Hostetler	Popil	Van Sant
Corey	Huggins	Pott	Waldron
Cortese	Jirolanio	Powell	Warman
Cosetti	Johnson	Prendergast	Welsh
Croop	Kauffman	Quiles	Westerberg
Cunningham	Keller, J.	Rappaport	Whittum
Desmond	Kelly	Rea	Wilcox
Devlin	King	Redick	Wilmarth
Dumbauld	Krill	Reynolds	Woodside
Erwin	Laputka	Roberts	

NAYS—2

Baldrige	Bunting

NOT VOTING—22

Allison	Donolow	Lane	O'Donnell
Aurentz	Fleming	Lee, K.	Pechan
Clinger	Fortney	Lee, L.	Richter
Curran	Irvis	Markley	Scott
Dalley	Keller, M.	Musselman	Woodring
Donaldson	Kline		

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Allison. For what purpose does the gentleman rise?

DELEGATE ALLISON. I rise for a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE ALLISON. Will you please record my vote as "yea."

PRESIDENT BRODERICK. Yes. We will record you as voting "yea."

AMSTERDAM-SCRANTON AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATES AMSTERDAM and SCRANTON offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 17), page 11, line 24, by striking out "which shall be" and inserting: which shall be

Amend Schedule, Sec. 16, page 26, line 3, by inserting after "schedule.": Persons now specially admitted to practice before the county court may be permitted to practice before the family court division of the court of common pleas and the municipal court.

On the question,
Will the Convention agree to the amendment?

PRESIDENT'S WIFE WELCOMED TO CONVENTION

PRESIDENT BRODERICK. Before recognizing Chairman Amsterdam to speak on his amendment, I would like at this time to say the Chair noticed a little while ago a very beautiful girl who came into the balcony up there and I sent a page up to find out who it was, and it was my wife, Mrs. Broderick.

I just want you to know, it is very nice to have you with us and your husband has been doing a great job.

DELEGATE AMSTERDAM. Mr. President, I am going to do a great job, because my wife might come here some day.

PRESIDENT BRODERICK. Of course, I just want you to know that she will not believe it because I said it.

You may proceed.

DELEGATE AMSTERDAM. Mr. President, I believe that the explanation that was given at the time we asked for permission to put the amendment in was quite detailed. Unless there are questions, I suggest anyone who has a comment might be given an opportunity to do so, then we can proceed to a vote.

PRESIDENT BRODERICK. The Chair recognizes Delegate Laputka.

DELEGATE LAPUTKA. I would like Delegate Amsterdam or any of the lawyers who would reply to my interrogation to give some information regarding the qualifications of those who are allowed to practice before the so-called county court. I have never heard of this before and I would like some information on it.

DELEGATE AMSTERDAM. The qualifications differ in many instances. Sometimes the qualifications, I suppose, is to be a friend of the members of the court. In any event, these are persons that the court upon application has granted permission to practice before that court and there are no special qualifications set up. There are a very small number of men. I am told that it is in the number of a half dozen and that these men do practice law before those courts, because they have become specialized in the

particular things they have been doing. This is, in effect, a family court and these are specialists in certain areas of the family court practice which they have been doing for many years. They are, in effect, lawyers whose practice is limited to a very small area that takes them into this court, and only in the City of Philadelphia.

What we were trying to do, simply, is to not prevent their livelihood from continuing. We are not trying to give them any rights and we are not trying to put additional people in this category. All we want to do is protect those that are already serving in that capacity, so their livelihood will not be destroyed.

DELEGATE LAPUTKA. Did I understand the gentleman to say these members of the bar are lawyers and not lay people?

DELEGATE AMSTERDAM. No, they are not necessarily members of the bar. These are persons who in some instances have been clerks and who have worked in that court and have acquired a tremendous know-how in the particular area in which they are practicing, and the court has felt that because of their particular knowledge and their ability they should be allowed to practice before them in specialized situations.

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. I would like to interrogate Delegate Amsterdam.

PRESIDENT BRODERICK. You may proceed.

DELEGATE ORBAN. Have these gentlemen taken the bar exam?

DELEGATE AMSTERDAM. No, they have not.

DELEGATE ORBAN. Does this provision include men who have taken the bar exam and failed it, and then were admitted by your local court?

DELEGATE AMSTERDAM. I would not know whether these were among those persons who have failed to pass the bar exam. I would not know that, sir.

DELEGATE ORBAN. Does the gentleman not think this is giving some special concessions to people who have not gone to law school as over against people who have gone to law school and simply failed the examination by a very small margin?

DELEGATE AMSTERDAM. It is an exception to the normal situation, there is no question about it. But these are persons who have been doing this for a great number of years with the approval of the court. They have been specially admitted, not by lawyers, but by the judges of this court to practice before this court, and we are simply saying that their livelihood and their right to practice is not to be affected by what we do. We are not trying to set up a category. We are not trying to have any additional persons admitted in that way.

DELEGATE ORBAN. Is it possible for a person of that type to be admitted before the court under the present system?

DELEGATE AMSTERDAM. It was possible because they were admitted. I think under the new system the Supreme Court may have to rule to prevent this from happening in the future.

PRESIDENT BRODERICK. The Chair recognizes Delegate Fineman.

DELEGATE FINEMAN. I want to say that there are only approximately a half dozen men in the City of Philadelphia who fit into this qualification or category. These are older practitioners who have been practicing before the county court for 25, or 35, or even 40 years, and were admitted on special motion by the court after demonstrating to the court some semblance of qualification, either in the form of having served a clerkship for many years in a practitioner's law office or having gone to law school, but for one reason or another not taken the bar examination, and thus were not qualified to be admitted as an ordinary practitioner is admitted. These are older men practicing for a long period of time. I think it would be unfair to suddenly deprive them of the right to make a living. We have to keep in mind this amendment only qualifies them to practice in the family court division of the common pleas court. They now have the right to practice negligence law in cases involving a sum of not in excess of $5,000, and that is being taken away from them because the family court division does not have jurisdiction over trespass actions.

In a sense, we are curtailing some of their practice, but we are leaving them with some rights to make a living, and I hope this assembly would adopt this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Shrager.

DELEGATE SHRAGER. Will Delegate Amsterdam stand for further interrogation?

PRESIDENT BRODERICK. He will. Please proceed.

DELEGATE SHRAGER. In order that this unique privilege cannot possibly be extended to others, would you accept the following phrase:

"Only those persons now specially admitted to practice."

The words "only those" before the word "persons" is what I refer to.

DELEGATE AMSTERDAM. I am wondering whether you are trying to mandate a prohibition against the court in the future if it deems desirable and proper to do so to admit "specially." It would seem to me that your language does that. I wonder whether you want to really put that kind of prohibition on the courts.

DELEGATE SHRAGER. That is exactly what I want to do, because I think Delegate Orban made it crystal clear there are men who have taken the bars and, because they failed by one point, they are not permitted to practice before the family court, while the court would have the right, on motion, to admit persons not learned in the law to practice before them. Also, the intent of this entire body seems to be that we did not want persons who were not learned in the law to be practicing before the courts.

DELEGATE AMSTERDAM. This matter was brought to our attention by Delegate Fineman. He sees no objection to having the limitation that was suggested, so why do we not put it in, unless someone objects to it.

DELEGATE SHRAGER. Thank you.

DELEGATE AMSTERDAM. I take it they do not, so we will assume it is all right.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Manderino.

DELEGATE MANDERINO. I have no objections to the intent being expressed, but I think, substantively, we may be saying more than we intend to. It would then read, "only those persons now specially admitted to practice before the county court may be permitted to practice before the family court." It could be read to exclude

everyone from ever practicing before the family court or the common pleas except those persons. I do not think that is the intent.

DELEGATE SHRAGER. It is not the intent.

DELEGATE MANDERINO. I know, but that is what the words would do. We would be saying only those persons now specially admitted may practice in the family court or in the court of common pleas.

DELEGATE AMSTERDAM. There is no question about it, and all I was going to suggest was that the language be reset so it can be brought back to us as promptly as possible in order to insure that we have done exactly what we intend.

DELEGATE MANDERINO. May I ask a question of Delegate Amsterdam?

PRESIDENT BRODERICK. You may proceed.

DELEGATE MANDERINO. Mr. President, we have in the Commonwealth, in other counties men who have been admitted specially in the county courts, court of common pleas, etc. Am I correct that in other portions of this Constitution where we now have consolidated, we just have the court of common pleas where we had other courts before, and that there is no intent to affect the rights of attorneys who have been admitted to these other courts now that they are being consolidated into one common pleas court? If they have been admitted locally, they will continue to have all of their rights as attorneys of law in those courts?

DELEGATE AMSTERDAM. That is correct. The problem only came up in Philadelphia because this court's existence was effectively terminated.

AMENDMENT WITHDRAWN

PRESIDENT BRODERICK. May I ask Chairman Amsterdam, who is talking on this amendment now, if the words are going to be changed, as we have several other amendments, can we withdraw this amendment?

DELEGATE AMSTERDAM. May I withdraw it at this time.

PRESIDENT BRODERICK. Thank you.

The Chair recognizes Delegate Tate.

DELEGATE TATE. I have some questions I would like to ask Delegate Amsterdam which might result in some further word changes. Could I ask a few questions at this point?

PRESIDENT BRODERICK. May I suggest this:

This amendment will come back and these word changes you could discuss to clarify this language will be rewritten and presented again. We have several other amendments now to take up.

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman.

DELEGATE KAUFFMAN. May I suggest that since this amendment has to be redrafted, anyhow, that the two parts of it be separated? One part of it, the first, is simply inserting words back in which should not have been taken out and it is not new at all, whereas the second part of it is something new and I do not think they ought to be mixed together.

PRESIDENT BRODERICK. Delegate Amsterdam, would you agree to that?

DELEGATE AMSTERDAM. We will do that, sir.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Shoemaker. For what purpose does the gentleman rise?

DELEGATE SHOEMAKER. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE SHOEMAKER. In an explanation given to me a few moments ago by Chairman Amsterdam, I was advised—and surprised at the interpretation—and I wanted to see whether or not I might prepare some minor amendment to clear that problem up. I found there is no staff to proceed or prepare an amendment, and I wonder if suddenly it has come to pass that we are not in a position to prepare an amendment here on this floor, but have to go over to the fifth floor of the Capitol to do this.

PRESIDENT BRODERICK. No. We have had for many, many days now, a complete staff right here to prepare amendments, the staff of the drafting service, as well as the secretaries, and amendments can be prepared right here.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman. For what purpose does the gentleman rise?

DELEGATE KAUFFMAN. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KAUFFMAN. Mr. President, before we proceed to the consideration of the next amendment, may I ask a question of someone on Style and Drafting or someone from the Judiciary Committee?

PRESIDENT BRODERICK. Will the Chairman of Style and Drafting, Chairman Pelletier, please answer a question of Delegate Kauffman?

Proceed.

DELEGATE KAUFFMAN. Mr. President, on page 19, line 15, is a provision abolishing the office of justice of the peace, alderman and magistrate, despite the fact that we do have a provision creating the office of justice of the peace in the main part of the article. I wonder if someone would explain to me why there is seemingly, at least, a discrepancy between the article and the schedule.

DELEGATE AMSTERDAM. I would like to ask Delegate Thornburgh to reply to this question, Mr. President.

DELEGATE THORNBURGH. Mr. President, I think the confusion here is over the fact that we are really talking about two different kinds of justices of the peace.

There are the present justices of the peace, whose offices will, in fact, be abolished, but simultaneously the office of justice of the peace under the new article will be created so that in each magisterial district a justice of the peace will assume office, but the current and larger number of justices of the peace which now hold office will have their respective offices abolished.

They will be eligible under the terms of the new article to seek election as justices of the peace in their magisterial districts, but they will no longer continue. The office they presently hold will no longer continue after the establish-

ment of the new magisterial district at the completion of their terms.

This whole Section 12 on page 19 is, in effect, a grandfather clause for those persons presently serving as aldermen, justices of the peace or magistrates.

DELEGATE KAUFFMAN. I think that makes the record clear and I thank Delegate Thornburgh for the explanation.

MOTION ON CONSENT TO OFFER AMENDMENT

PRESIDENT BRODERICK. Now I believe Delegate Shapiro has an amendment.

The question is, will the Convention agree to receive an amendment from Delegate Shapiro?

DELEGATE SHAPIRO. Mr. Chairman, this is the caboose on the Jirolanio train.

Delegate Jirolanio has offered an amendment which this body has accepted to specifically refer to the right of trial by jury in criminal matters in a trial de novo on appeal from the community court in Philadelphia.

Two paragraphs further down we deal with civil claims which are first tried in the municipal court of Philadelphia and then given a right to appeal for a trial de novo to a trial division of the court of common pleas.

In view of the fact that we have specifically included the right to trial by jury in criminal matters, if we fail to do so in connection with civil matters, the implication would appear that we did not intend to grant a jury trial. I, therefore, offer this amendment to include the exact same language in the paragraph dealing with civil matters as we have now included in the paragraph dealing with criminal matters.

PRESIDENT BRODERICK. The question before the Convention is, will the Convention agree to receive such an amendment from Delegate Shapiro?

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—114

Aberman	Devlin	Leonard	Ruth
Allison	Erwin	Manderino	Sahli
Bagenstose	Feather	Mattioni	Scales
Baldus	Filson	McGeary	Scarlett
Baldwin	Fineman	McGlynn	Sebastian
Banes	Fohl	Meyer	Shapiro
Barron	Forster	Michael	Shettig
Barry	Gabreski	Miller, D.	Shively
Bashoff	Gehrlein	Miller, R.	Shoemaker
Benedict	Gerber	Moorhead	Silverman
Benfield	Goldman	More	Solomon
Braham	Gouger	Morton	Strickler
Broderick	Griffith	Murray	Stroup
Brown	Hannum	Nelson	Swope
Buck	Hatter	O'Donnell	Tate
Bunting	Henderson	Orban	Thomson
Burkholder	Heyburn	Orbin	Thornburgh
Cain	Himes	Otto	Tomascik
Camardella	Hocker	Pelletier	Tully
Caputo	Hook	Percey	Van Sant
Caron	Horne	Popil	Waldron
Casey	Jirolanio	Pott	Warman
Clark	Kauffman	Prendergast	Welsh
Clinger	Kelly	Quiles	Westerberg
Conley	King	Rappaport	Whittum
Corey	Krill	Rea	Wilcox
Cunningham	Leach	Redick	Wilmarth
Curran	Lee, L.	Richter	Woodside
Desmond	Leinbach		

NAYS—6

Aurentz	Bloom	Huggins	Irvis
Baldrige	Fagan		

NOT VOTING—43

Amsterdam	Fay	Lane	Reynolds
Brennan	Fleming	Laputka	Roberts
Butera	Fortney	Lee, K.	Rovner
Cortese	Goldstein	Levin	Scott
Cosetti	Gray	Mangery	Scranton
Croop	Harding	Markley	Sharp
Dailey	Hostetler	Michener	Shrager
Donaldson	Johnson	Musselman	Sprogell
Donolow	Keller, J.	Pasquerilla	Stout
Dumbauld	Keller, M.	Pechan	Woodring
Fawcett	Kline	Powell	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

SHAPIRO AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Shapiro.

DELEGATE SHAPIRO. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE SHAPIRO offered the following amendment which was read by the clerk:

Amend Schedule, Sec. 16, page 25, line 17, by inserting after "de novo": including the right to trial by jury

PRESIDENT BRODERICK. Delegate Shapiro, you are now recognized, if you wish to make any further statements in connection with your amendment.

DELEGATE SHAPIRO. The only further statement I have to make is that every member of the Judiciary Committee and every member of Style and Drafting with whom I had an opportunity to discuss the matter—and Senator Jirolanio himself—have approved the offering of this amendment.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Bunting.

DELEGATE BUNTING. Mr. President, may I ask Delegate Shapiro a question?

PRESIDENT BRODERICK. Yes, sir.

Delegate Shapiro, Delegate Bunting wishes to question you.

DELEGATE BUNTING. Mr. President, I would like to ask Delegate Shapiro if the original intent in both sub-Section (iii) and sub-Section (v) was to have a right of jury trial as it came out of Style and Drafting?

DELEGATE SHAPIRO. I believe, first, if I may, I think the intention of the Judiciary Committee was clearly to allow a right of trial by jury and the Style and Drafting Committee felt that right did exist as the language was presented. But you have now amended the language and this merely is an amendment to conform one paragraph to another so that there is no implication that in one case the right of trial by jury is intended and in the other case no such right is intended.

DELEGATE BUNTING. Am I correct that we thought we had trial by jury reserved for both instances before the amendment?

DELEGATE SHAPIRO. We did think we had that, Mr. President, yes.

DELEGATE BUNTING. Since the amendment has come in, we need the amendment in both places in order to continue trial by jury.

DELEGATE SHAPIRO. That is correct.

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. Mr. President, I would like to ask Delegate Shapiro a few questions.

PRESIDENT BRODERICK. You may proceed.

DELEGATE BLOOM. Does this mean in small claims, where it is brought up from the justice of the peace, as we have in our county, to the court of common pleas that they would be entitled to trial by jury?

DELEGATE SHAPIRO. This amendment does not deal with anything except trials de novo on appeal from the municipal court in Philadelphia.

DELEGATE BLOOM. Only in Philadelphia?

DELEGATE SHAPIRO. Yes.

DELEGATE BLOOM. I am satisfied as long as it is only in Philadelphia.

PRESIDENT BRODERICK. Delegate Aberman, did you wish to be recognized?

DELEGATE ABERMAN. The copy that is on my desk says "page 25, line 17." I thought we were talking about page 23, line 19.

DELEGATE SHAPIRO. I did not say anything about page 23.

DELEGATE ABERMAN. The section relating to Philadelphia commences on page 20.

DELEGATE SHAPIRO. You may be looking at the clean copy.

PRESIDENT BRODERICK. Are you now satisfied?

DELEGATE ABERMAN. If he is satisfied.

PRESIDENT BRODERICK. Delegate Woodside?

DELEGATE WOODSIDE. Mr. President, I would like to ask Delegate Shapiro in what cases this would give a right to a trial by jury which is not provided for now in the Bill of Rights, which provides that the trial by jury shall be as heretofore. The "heretofore" is dating back prior to 1776 when we permit, in some cases, a trial by jury down to $8.00.

DELEGATE SHAPIRO. So far as I know, this will not give any right to trial by jury in any case that does not now exist except insofar as we might have removed that right of trial by jury by adding language in line 8 of page 25 and neglecting to do so in line 17 of page 25.

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I would like to interrogate Delegate Shapiro on this amendment.

PRESIDENT BRODERICK. He will stand for interrogation.

DELEGATE HOOK. Mr. President, in Philadelphia is there in use the arbitration system?

DELEGATE SHAPIRO. There is.

DELEGATE HOOK. In these particular cases, does the arbitration act of 1836, as Delegate Cortese cited the other day, guarantee the right of trial by jury?

DELEGATE SHAPIRO. If you are talking about appeals from arbitration, I would say yes.

DELEGATE HOOK. In this particular amendment you are not referring to these arbitration cases, is this correct?

DELEGATE SHAPIRO. That is correct. I am referring only to civil claims originally tried in the municipal court in Philadelphia.

DELEGATE HOOK. Are the majority of the small claims tried by this system in Philadelphia?

DELEGATE SHAPIRO. We do not have this system in Philadelphia at present. We have magistrate courts with jurisdictions only up to $100.

DELEGATE HOOK. This would be an innovation in the present system, then.

DELEGATE SHAPIRO. The municipal court, with jurisdiction up to $500 in civil cases, would be an innovation in Philadelphia.

DELEGATE HOOK. That is all at this time.

PRESIDENT BRODERICK. Are we ready for the question?

The question is, will the Convention agree to the amendment being offered by Delegate Shapiro?

The question recurs,

Will the Convention agree to the amendment offered by Delegate Shapiro?

The roll was recorded as follows:

YEAS—121

Aberman	Cosetti	King	Reynolds
Allison	Croop	Krill	Richter
Aurentz	Cunningham	Laputka	Rovner
Bagenstose	Desmond	Leach	Ruth
Baldrige	Devlin	Leinbach	Sahli
Baldus	Erwin	Leonard	Scales
Baldwin	Fagan	Manderino	Scarlett
Banes	Fay	Mangery	Shapiro
Barron	Feather	Markley	Sharp
Bashoff	Filson	Mattioni	Shively
Benedict	Fineman	McGeary	Shoemaker
Benfield	Fohl	McGlynn	Shrager
Bloom	Forster	Michael	Silverman
Braham	Gabreski	Miller, D.	Solomon
Brennan	Gehrlein	Miller, R.	Strickler
Broderick	Goldstein	Moorhead	Stroup
Brown	Griffith	More	Swope
Buck	Hannum	Morton	Tate
Bunting	Hatter	Murray	Thomson
Burkholder	Heyburn	Orban	Thornburgh
Butera	Hilnes	Otto	Tomascik
Cain	Hocker	Pasquerilla	Tully
Camardella	Hook	Pelletier	Van Sant
Caputo	Horne	Percey	Waldron
Caron	Hostetler	Popil	Warman
Casey	Irvis	Pott	Welsh
Clark	Jirolanio	Powell	Westerberg
Clinger	Kauffman	Quiles	Whittum
Conley	Keller, M.	Rea	Wilcox
Corey	Kelly	Redick	Wilmarth
Cortese			

NAYS—7

Huggins	Meyer	O'Donnell	Woodside
Lee, L.	Nelson	Sebastian	

NOT VOTING—35

Amsterdam	Fortney	Kline	Rappaport
Barry	Gerber	Lane	Roberts
Curran	Goldman	Lee, K.	Scott
Dailey	Gouger	Levin	Scranton
Donaldson	Gray	Michener	Shettig
Donolow	Harding	Musselman	Sprogell
Dumbauld	Henderson	Orbin	Stout
Fawcett	Johnson	Pechan	Woodring
Fleming	Keller, J.	Prendergast	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION FOR CONSENT TO RECEIVE AMENDMENT

PRESIDENT BRODERICK. We are ready for the next amendment. The next amendment is one being offered by Delegate Casey. The question is, will the Convention agree to receive an amendment from Delegate Casey?

The Chair now recognizes Delegate Casey for an explanation.

DELEGATE CASEY. Mr. President, the purpose of offering this amendment is to make it clear. If the delegates will refer to page 26 of the schedule, beginning at line 28, in the section dealing with the referendum by which a community court can be established in Philadelphia, the purpose of this amendment is to make clear that if the referendum is approved by the people of Philadelphia the community court will then be in effect and the members of that court will derive their tenure from the provisions of sub-Section (z) beginning on line 25 and continuing in the succeeding lines, notwithstanding the fact that sub-Section (v) beginning on line 6 of page 26 gives to the members of the municipal court the right to complete one term and a succeeding term.

This amendment makes it clear and is intended to clarify the point that if a community court is established in Philadelphia the members of the municipal court and the traffic court at that time will be eligible to complete only that term that they are then serving and no succeeding term, and that thereafter the provisions of Article VII with regard to community courts, including the provision that all judges thereof must be learned in the law, will apply to the community court of Philadelphia.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—117

Allison	Cunningham	Krill	Redick
Aurentz	Desmond	Leach	Reynolds
Bagenstose	Devlin	Lee, L.	Richter
Baldus	Erwin	Leinbach	Roberts
Baldwin	Fagan	Leonard	Rovner
Banes	Fawcett	Levin	Ruth
Barron	Fay	Manderino	Sahli
Bashoff	Feather	Mangery	Scales
Benfield	Filson	Markley	Scarlett
Bloom	Fineman	Mattioni	Sebastian
Braham	Fohl	McGeary	Shapiro
Brennan	Gabreski	McGlynn	Sharp
Broderick	Gehrlein	Meyer	Shively
Brown	Goldstein	Michael	Shrager
Buck	Hannum	Michener	Silverman
Bunting	Hatter	Miller, D.	Strickler
Burkholder	Heyburn	Miller, R.	Stroup
Butera	Himes	Moorhead	Swope
Cain	Hocker	More	Tate
Camardella	Hook	Murray	Tomascik
Caputo	Horne	Orbin	Tully
Caron	Hostetler	Otto	Waldron
Casey	Huggins	Pasquerilla	Warman
Clark	Irvis	Pelletier	Welsh
Clinger	Jirolanio	Percey	Westerberg
Conley	Kauffman	Popil	Whittum
Corey	Keller, M.	Powell	Wilcox
Cortese	Kelly	Pott	Wilmarth
Cosetti	King	Quiles	Woodside
Croop			

NAYS—7

Aberman	Nelson	Orban	Thomson
Baldrige	O'Donnell	Shoemaker	

NOT VOTING—39

Amsterdam	Fortney	Kline	Scott
Barry	Gerber	Lane	Scranton
Benedict	Goldman	Laputka	Shettig
Curran	Gouger	Lee, K.	Solomon
Dailey	Gray	Morton	Sprogell
Donaldson	Griffith	Musselman	Stout
Donolow	Harding	Pechan	Thornburgh
Dumbauld	Henderson	Prendergast	Van Sant
Fleming	Johnson	Rappaport	Woodring
Forster	Keller, J.	Rea	

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

CASEY AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE CASEY offered the following amendment which was read by the clerk:

Amend Schedule, Sec. 16, page 26, line 28, by striking out "MAY" and inserting: Notwithstanding the provisions of subsection (v) of this section, may

The question recurs,
Will the Convention agree to the amendment offered by Delegate Casey?

The roll was recorded as follows:

YEAS—124

Aberman	Croop	King	Rappaport
Allison	Cunningham	Krill	Redick
Aurentz	Desmond	Laputka	Reynolds
Bagenstose	Devlin	Leach	Roberts
Baldrige	Erwin	Lee, L.	Rovner
Baldus	Fagan	Leinbach	Ruth
Baldwin	Fawcett	Leonard	Sahli
Banes	Fay	Levin	Scales
Barron	Feather	Manderino	Scarlett
Barry	Filson	Mangery	Sebastian
Bashoff	Fineman	Markley	Shapiro
Benfield	Fohl	Mattioni	Sharp
Bloom	Gabreski	McGeary	Shively
Braham	Gehrlein	McGlynn	Shrager
Brennan	Gerber	Meyer	Silverman
Broderick	Goldstein	Michael	Solomon
Brown	Hannum	Michener	Strickler
Bunting	Hatter	Miller, D.	Stroup
Burkholder	Heyburn	Miller, R.	Swope
Butera	Himes	Moorhead	Tate
Cain	Hocker	More	Tomascik
Camardella	Hook	Murray	Tully
Caputo	Horne	Orbin	Van Sant
Caron	Hostetler	Otto	Waldron
Casey	Huggins	Pasquerilla	Warman
Clark	Irvis	Pelletier	Welsh
Clinger	Jirolanio	Percey	Westerberg
Conley	Kauffman	Popil	Whittum
Corey	Keller, J.	Pott	Wilcox
Cortese	Keller, M.	Powell	Wilmarth
Cosetti	Kelly	Quiles	Woodside

NAYS—3

Nelson	O'Donnell	Orban

NOT VOTING—36

Amsterdam	Forster	Kline	Scott
Benedict	Fortney	Lane	Scranton
Buck	Goldman	Lee, K.	Shettig
Curran	Gouger	Morton	Shoemaker
Dailey	Gray	Musselman	Sprogell
Donaldson	Griffith	Pechan	Stout
Donolow	Harding	Prendergast	Thomson
Dumbauld	Henderson	Rea	Thornburgh
Fleming	Johnson	Richter	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION FOR CONSENT TO RECEIVE AMENDMENT

PRESIDENT BRODERICK. This next amendment is an amendment being offered by Delegate Shoemaker.

The Chair recognizes Delegate Shoemaker and the question is, will the Convention consent to receiving an amendment from Delegate Shoemaker?

DELEGATE SHOEMAKER. Mr. President, this is a clarification amendment, I think.

I was surprised awhile ago when I asked Delegate Amsterdam the implications of Section 10 (b) and he stated on the record—and I would certainly hope those of you who were involved in county government and the administration of the lower courts will pay attention to this because I think it is very important to you—the explanation that 10 (b) as it is written on page 4 of the proposal would allow the Supreme Court to appoint anyone they wanted to assist in the administration of all levels of court, but was not limited to the administration. It went deeper than that.

I asked could the Supreme Court appoint tipstaffs to the county court judges and the answer was, yes. I asked whether or not that meant they could appoint administrative or judicial officers of justices of the peace such as commissioners, or other type functionaries, and the answer was, yes.

I asked whether or not this meant that they could appoint any and all staff to the common pleas court, and the answer was, yes.

I gathered from that that a stenographer, court reporter or any other person that is hired or appointed by the county court or the JP Court, the whole patronage system for whatever it is worth in the administration of justice, would then fall under the Supreme Court and they can supersede anything else.

This would also mean, of course, I presume, that the county officials would have to pay the bills of this staff.

In other words, if the judge in the local court asked for six tipstaffs and the county commissioners did not want to pay for but one or two, or whatever, they could go back to the Supreme Court and say give me six tipstaffs. The Supreme Court could appoint them and the county commissioners pay the bill.

I do not think this was the intention and I ask to receive permission to debate the amendment.

PRESIDENT BRODERICK. Does anyone else wish to be heard? Are we ready for the question?

The Chair recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Would the sponsor consent to be interrogated?

PRESIDENT BRODERICK. I am sure he would. Proceed with your questions.

DELEGATE O'DONNELL. Delegate Shoemaker, if I read Proposal No. 7 and your amendment together, Proposal No. 7 now reads that the Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts and justices of the peace.

Now, as amended by you, if I am correct, and I would ask you to tell me whether I am correct, it would now read that the Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper administration of the unified judicial system. Am I correct?

DELEGATE SHOEMAKER. That is the way it is written, Delegate O'Donnell.

DELEGATE O'DONNELL. What, then, is the difference between what you are attempting to accomplish and what the committee has recommended?

DELEGATE SHOEMAKER. Delegate O'Donnell, let me first apologize for the haste with which this was prepared. It certainly is not as clear as I would like to make it.

However, the answers that were given to me by Delegate Amsterdam when I inquired into the meaning of Section 10 (b) indicated that the language "proper disposition of the business of all courts and justices of the peace" was broader than the administration of the unified judicial system.

I have no objection and intend that the language that I would supplant here would limit itself to the administration of the judicial system, but would not go into the actual conduct of the inner workings such as court reporters, and tipstaffs, and all the other functionaries that do not directly relate to the general administration of the unified system.

This would be the intention behind my language. Maybe it is not as clear as I would have made it, but that was my intention.

DELEGATE O'DONNELL. If I then understand your point, you wanted to bring about a result that would prevent the Supreme Court from involving itself with court officers below that of judge.

DELEGATE SHOEMAKER. That is correct.

DELEGATE O'DONNELL. Do you think you have accomplished it in any way whatever?

DELEGATE SHOEMAKER. If the meaning of my supplanted language is not clear, I would be more than happy to have your suggestion as to how that end might be accomplished. I certainly would accede to your flow of words.

DELEGATE O'DONNELL. Mr. President, if I may have the floor for a moment.

This Judiciary Committee, if it agreed on anything, the one thing on which it unanimously agreed was that there is a terrible court backlog situation in many, many areas of Pennsylvania. If the Judiciary Committee agreed on any one item, that one item was that we clearly wanted to see to the prompt and proper disposition of the business of courts. I would protest strongly against that being taken out of this Constitution, because that is precisely what the Judiciary Committee wanted to accomplish more than anything else in the world.

DELEGATE SHOEMAKER. Mr. President, if I can ask Delegate O'Donnell a question:

Was it the intention of the Judiciary Committee that the court tipstaffs, court reporters, stenographers, and law clerks to judges all be appointed, or permissibly appointed, by the Supreme Court? Was that the Judiciary Committee's intention?

DELEGATE O'DONNELL. No. That is not accomplished in this amendment. You may be interested to know

that the court reporters and the officers of that character are employees of the various counties or cities wherein they are located. There is not a thing in the entire Judiciary Article which suggests, permits, or even implies that the Supreme Court can involve itself in that kind of business.

DELEGATE SHOEMAKER. Mr. President, in that case, since there is now a clear dispute between Chairman Amsterdam's reply to my interrogation and Delegate O'Donnell's interpretation of this language, I would request from the Chair and counsel a clear interpretation of the meaning of Section 10 (b) so that I would know whether or not it is necessary to amend it.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gouger.

DELEGATE GOUGER. May I interrogate Delegate Scranton?

PRESIDENT BRODERICK. Yes, you may proceed.

DELEGATE GOUGER. Delegate Scranton, in your considered judgment, does this amendment add anything to the resolution or to the proposal as it now stands?

DELEGATE SCRANTON. In my considered judgment, and I do not mean this personally, I think it is a complete waste of time.

DELEGATE GOUGER. Mr. President, time is running on. Do you have any commitments? May I move the question or do you have commitments that would prohibit that?

PRESIDENT BRODERICK. No. You may move the question. The question has been moved by Delegate Gouger.

Do you wish to be heard on this, Delegate Shoemaker?

DELEGATE SHOEMAKER. I would only like an answer to the inquiry that I directed to the Chair. If the meaning of this is as Delegate O'Donnell stated it, I will withdraw the amendment. If the meaning is as stated by Delegate Amsterdam, then I will not withdraw it.

PRESIDENT BRODERICK. Is Delegate Amsterdam here?

DELEGATE AMSTERDAM. Yes.

PRESIDENT BRODERICK. Delegate Amsterdam, would you please answer Delegate Shoemaker's inquiry?

DELEGATE AMSTERDAM. Yes, sir.

DELEGATE SHOEMAKER. I asked for a ruling of the Chair to resolve the differences to the questions answered.

I asked Delegate Amsterdam previously, and correct me if I am wrong, Delegate Amsterdam, whether or not the language in Section 10 (b) did not mean that the Supreme Court could appoint tipstaffs to the judges in the county courts. You said, yes, is that still your answer?

DELEGATE AMSTERDAM. My answer is still, yes. However, I see no reason why counsel should not give the opinion that is requested.

That is my personal judgment, because I believe that in a unified system where the Supreme Court appoints administrators, even though that may be for the business of the court, it may be desirable to set up a proper system for the hiring of people to see that the business is handled expeditiously and, if that is done, it would seem to me, that that is a perfectly proper function of the court.

On the other hand, I see no problems with it. It is something that can be done in any well run organization, and I wonder what Delegate Shoemaker is worrying about. Is he really worried that the Supreme Court is going to come down to his district and hire a secretary? Is he honestly worried about that?

DELEGATE SHOEMAKER. Delegate Amsterdam, I am certainly concerned about the transfer of powers from the legislative and administrative branches of the government to the judiciary. It does not matter what county I am from and what my politics are, I think we need this clear distinction—

DELEGATE AMSTERDAM. Mr. President—

DELEGATE SHOEMAKER. May I finish?

That the codes of the Commonwealth, the law of the Commonwealth, provide that the county is responsible for the paying of bills of these people, and I suggest that if the interpretation, as you make it, is correct, then there is a conflict between this provision and the provisions of existing law.

PRESIDENT BRODERICK. Counsel to the Convention and counsel to the Judiciary Committee are right there now conferring with Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, we now have counsel's opinion, and it is that the business of the court means the business of the court and, generally speaking, that means that which the court is set up to do, namely, the judicial business. He is unable, I believe, to rule on whether a particular secretary who is authorized by law to be there may have her job to some degree affected by the administrative powers of the Supreme Court.

Certainly, nobody here has said that the legislative right to set up positions and to continue or discontinue positions is in any way affected by this article, and we certainly never intended that it should be. That question was not asked.

DELEGATE SHOEMAKER. The question, Delegate Amsterdam, is who controls the appointment power, not setting up the court system, not setting up what jobs are intended for the court, but who fills those jobs, the Supreme Court or the local branch or the justices of the peace?

DELEGATE AMSTERDAM. Delegate Shoemaker, I thought you had indicated that some reply that I made meant that the court rather than the legislature would set up these jobs and might have to find the money to pay for them. That certainly was never intended and, if I gave you any such idea, I want to erase it from your mind immediately.

DELEGATE SHOEMAKER. Then do I gather from your answer, so that the record is clear and I am satisfied, sir, that what you mean to say is that the court administrative system as defined in 10 (b) means that the job definition, job description, and so forth, would be prescribed by this under 10 (b), but the actual filling of those jobs and the paying for the jobs would come under the laws that now exist in the county or are presently existing in law?

DELEGATE AMSTERDAM. It never was intended to be changed by what we did, and I have no doubt that the words do not change that.

MOTION WITHDRAWN

PRESIDENT BRODERICK. The Chair just wants to say:

Therefore, I understand that under those circumstances

Delegate Shoemaker would be willing to withdraw the motion to amend.

DELEGATE SHOEMAKER. That is quite correct, Mr. President. Under those circumstances, I am pleased to withdraw this, but that was not my prior understanding.

PRESIDENT BRODERICK. Thank you.

We will consider the motion withdrawn.

The Chair will recognize Delegate Braham.

DELEGATE BRAHAM. Mr. President, I believe there is a view that should be considered, and to that end I suggest that there might be a Section 10 (c) (1) to this effect:

The business of the courts of common pleas shall be in charge of those courts administered by the president judge aided by such staff as the court may require and select, subject to the general rules and supervision of the Supreme Court.

PRESIDENT BRODERICK. Are you suggesting that as an amendment?

DELEGATE BRAHAM. Yes.

PRESIDENT BRODERICK. Of course, may I say that under our amendment procedure, if you are suggesting one, you can take it up right here with Solicitor Balaban and discuss it with the committee.

DELEGATE BRAHAM. I did not know, I thought it might receive some summary treatment as the preceding one did. If it does not meet with the ideas of some of the delegates of the body, I will not press it at the present time, but this is a matter that was brought up from time to time in the Judicial Article, and I was never satisfied that it was quite thoroughly considered.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gouger.

DELEGATE GOUGER. Mr. President, you have a motion. I move the question. It was contingent only upon Delegate Shoemaker receiving an answer from counsel. He has received it, and I again move you the question.

PRESIDENT BRODERICK. Delegate Gouger, I just want to point out we have no question before us. The amendment has been withdrawn, and we are in good shape. I do thank you, and I share your desire to move ahead expeditiously.

DELEGATE GOUGER. On behalf of the added nitpickers, thank you.

MOTION TO SUSPEND RULES

PRESIDENT BRODERICK. The Chair now recognizes Delegate Solomon.

DELEGATE SOLOMON. Mr. President, I am sure that at least three learned volumes will be prepared by the members of this Convention six or seven years terminating our business here today for amendments to the Judiciary Article. I would wish to test the sense of this Convention by proposing to amend the rules and stating to the Chair that we would like to have Proposal No. 7 moved to the third reading, the change of the rule being that we be permitted to move it to the third reading without having this matter go to Style and Drafting. We would save four and five hours. I think we have had enough. I think all things must come to an end. We have had about twelve days of amendments to the Judicial Article. I really appeal to you. We are not going to get out.

PRESIDENT BRODERICK. We have a motion to suspend the rules on the floor, and I would just like to say, Delegate Solomon, I think that motion is timely. I just want to point out to you that we had two amendments that were offered by Chairman Amsterdam and they were withdrawn to be reprepared. I understand we have one more.

DELEGATE AMSTERDAM. That is it.

PRESIDENT BRODERICK. I understand that is it. There are only two that we have left then.

MOTION TO FINALLY LIMIT AMENDMENTS

DELEGATE AMSTERDAM. Governor Scranton, I believe, has some comment on that, Mr. President.

PRESIDENT BRODERICK. Let me just get a count.

Fellow delegates, I certainly agree with Delegate Solomon that we do have to get on with our business and terminate the amending process some time, or we will never finish tonight. Now, let me give you a count as to what we have here.

DELEGATE SCRANTON. May I do it, Mr. President?

PRESIDENT BRODERICK. Certainly.

DELEGATE SCRANTON. There are, to the best of my knowledge, three amendments left.

One is breaking down the amendment that Delegate Amsterdam put in into two amendments, the first of which was putting back in the word "shall," and something or other—I forget what the words are—which there was no objection to, as far as I know, from anybody.

The second one was with regard to those few Philadelphians who practice at the moment in court and the court is being changed, and now it has been proposed by a number of people who came racing up to the desk that this is important to other persons who practice in certain courts around the State, and they are attempting to reframe that to make sense for everybody.

The third one is one that has been raised by more members of the committee and they feel strongly that the Style and Drafting Committee took something very important out and they want it put back in again with regard to compensation.

Now, those are the only three that I know about.

May I make this comment which I have made quietly many times, and now I will make it publicly:

Throughout the entire Constitution the four substantive articles that you have tentatively approved, you have tentatively approved three of them, and with ours, if you pass same, there will be, I am sure, as there is in all constitutions, many things that either the Legislature or the courts, particularly the Supreme Court, will have to either change or rule upon, because there has never been a constitution that this has not been true of, and if you think that we are so magnificently clairvoyant that we can come up with the answers to every little thing in here, I just want to say to you that I do not agree. I do not think we are that good. No constitutional convention has ever been that good, and I sincerely hope that everybody else will now refrain from adding any other little things that they just do not happen to like or they think one word is wrong, or another word is right, or something else, because, quite frankly, I am sure that both the Legislature and the Supreme Court are going to have to make some of these changes, anyway, as they always do in all constitutions. If it would be in order, and if nobody has any other conceptions in mind at this moment, I would be glad

to move, sir, that we have no further amendments other than the three that I have outlined.

PRESIDENT BRODERICK. Are you putting that in the form of a motion?

DELEGATE SCRANTON. I will put it in the form of a motion.

PRESIDENT BRODERICK. It has been moved by Chairman Scranton.

DELEGATE BALDRIGE. I second the motion.

PRESIDENT BRODERICK. And it has been seconded by Delegate Baldrige, that after the consideration of the three amendments that we now have on the desk no further amendments be accepted.

On the question,
Will the Convention agree to the motion?
It was agreed to.

MOTION FOR CONSENT TO RECEIVE AMENDMENT

PRESIDENT BRODERICK. The question is: Will the Convention agree to receive an amendment from Chairman Amsterdam?

Chairman Amsterdam, will you please present your amendment?

DELEGATE AMSTERDAM. Mr. President, this is the amendment that I spoke about earlier where Style and Drafting had inadvertently taken out three words on line 24 of page 11 on the assumption that it was not a matter of substance. For fear that it may be, we are simply putting these words back and I have explained, I think in detail, why. I believe there was no problem and I, therefore, suggest we go to a prompt vote on it.

PRESIDENT BRODERICK. We will unlock the voting machine and the question is, will the Convention agree to receive this amendment from Chairman Amsterdam? All those voting yea, vote to give their consent.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—131

Aberman	Desmond	Lee, L.	Richter
Allison	Devlin	Leinbach	Roberts
Amsterdam	Erwin	Leonard	Rovner
Aurentz	Fagan	Levin	Ruth
Bagenstose	Fawcett	Mangery	Sahli
Baldrige	Fay	Markley	Scales
Baldus	Feather	Mattioni	Scarlett
Baldwin	Filson	McGeary	Scranton
Barry	Fineman	McGlynn	Sebastian
Bashoff	Fohl	Meyer	Shapiro
Benedict	Forster	Michael	Sharp
Benfield	Gabreski	Miller, D.	Shively
Bloom	Gehrlein	Miller, R.	Shoemaker
Braham	Goldstein	Moorhead	Shrager
Brennan	Gouger	More	Silverman
Broderick	Griffith	Morton	Strickler
Brown	Hatter	Murray	Stroup
Bunting	Henderson	Nelson	Swope
Burkholder	Heyburn	O'Donnell	Tate
Butera	Himes	Orban	Thomson
Cain	Hook	Orbin	Thornburgh
Camardella	Hocker	Otto	Tomascik
Caputo	Horne	Pasquerilla	Tully
Caron	Hostetler	Percey	Van Sant
Casey	Huggins	Popil	Waldron
Clark	Irvis	Pott	Warman
Clinger	Jirolanio	Powell	Welsh
Conley	Kauffman	Prendergast	Westerberg
Corey	Keller, J.	Quiles	Whittum
Cortese	Kelly	Rappaport	Wilcox
Cosetti	King	Rea	Wilmarth
Croop	Krill	Redick	Woodside
Cunningham	Laputka	Reynolds	

NAYS—0

NOT VOTING—32

Banes	Fleming	Keller, M.	Pechan
Barron	Fortney	Kline	Pelletier
Buck	Gerber	Lane	Scott
Curran	Goldman	Leach	Shettig
Dailey	Gray	Lee, K.	Solomon
Donaldson	Hannum	Manderino	Sprogell
Donolow	Harding	Michener	Stout
Dumbauld	Johnson	Musselman	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative, and the motion was agreed to.

AMSTERDAM AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE AMSTERDAM offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 17), page 11, line 24, by striking out "which shall be" and inserting: which shall be

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. This is with the consent of Delegate Amsterdam. It reinstates language that is taken out from Section 18. We feel that this language is substantive, because there may arise a situation where a judge is suspended and he takes an appeal, or there is some other question about suspension.

DELEGATE KAUFFMAN. We have not voted on the last amendment yet? We just voted to accept it.

PRESIDENT BRODERICK. I want you to know we just obtained the consent to present this amendment.

DELEGATE KAUFFMAN. I am sorry, this is another amendment.

PRESIDENT BRODERICK. Chairman Amsterdam, do you wish to be heard in connection with your amendment?

DELEGATE AMSTERDAM. The question.

PRESIDENT BRODERICK. Unlock the voting machine.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Amsterdam?

The roll was recorded as follows:

YEAS—134

Aberman	Cunningham	Lee, L.	Reynolds
Allison	Desmond	Leinbach	Richter
Amsterdam	Erwin	Leonard	Roberts
Aurentz	Fagan	Levin	Rovner
Bagenstose	Fawcett	Manderino	Ruth
Baldrige	Fay	Mangery	Sahli
Baldus	Feather	Markley	Scales
Baldwin	Filson	Mattioni	Scarlett
Banes	Fineman	McGeary	Scranton
Barron	Fohl	McGlynn	Sebastian

Barry	Forster	Meyer	Shapiro
Bashoff	Gabreski	Michael	Sharp
Benedict	Gehrlein	Miller, D.	Shettig
Benfield	Gerber	Miller, R.	Shively
Bloom	Goldstein	Moorhead	Shoemaker
Braham	Gouger	More	Shrager
Brennan	Griffith	Morton	Silverman
Broderick	Hannum	Murray	Solomon
Brown	Hatter	Nelson	Strickler
Bunting	Henderson	O'Donnell	Stroup
Burkholder	Heyburn	Orban	Swope
Butera	Himes	Orbin	Tate
Cain	Hocker	Otto	Thomson
Camardella	Hook	Pasquerilla	Tomasclk
Caputo	Horne	Percey	Thornburgh
Caron	Hostetler	Popii	Tully
Casey	Huggins	Pott	Warman
Clark	Irvis	Powell	Welsh
Clinger	Jirolanio	Prendergast	Westerberg
Conley	Kauffman	Quiles	Whittum
Corey	Keller, J.	Rappaport	Wilcox
Cortese	Kelly	Rea	Wilmarth
Cosetti	Krill	Redick	Woodside
Croop	Laputka		

NAYS—1

Van Sant

NOT VOTING—28

Buck	Fleming	King	Pechan
Curran	Fortney	Kline	Pelletier
Dailey	Goldman	Lane	Scott
Devlin	Gray	Leach	Sprogell
Donaldson	Harding	Lee, K.	Stout
Donolow	Johnson	Michener	Waldron
Dumbauld	Keller, M.	Musselman	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative, and the amendment was agreed to.

MOTION FOR CONSENT TO RECEIVE AMENDMENT

PRESIDENT BRODERICK. The question is, will the Convention agree to accept another amendment from Chairman Amsterdam?

DELEGATE AMSTERDAM. Mr. President. My name is being put on a lot of amendments this morning. I want you to know these are amendments that are requested by various members of the body in order to make clarification, in order to put back language which we originally had with the agreement of Style and Drafting.

In this case, Delegate Barry would like to speak about the amendment and I think he can do it better than I can.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. Mr. President, this language was taken out by Style and Drafting. We think it is a substantive change and we ask that it be reinstated. Delegate Curran and myself as co-chairmen of the sub-committee recommend this, and it is with the consent of Delegate Amsterdam and Governor Scranton.

We feel if there is an order by the Supreme Court for suspension or removal of a judge, this states, the suspension or removal shall take effect as of the date of that order. It provides the salary shall cease from the date of that order. This is not taken care of by language in the retirement section. We feel it should specifically be stated in this section on the Judicial Inquiry and Review Board. It is a substantive change. The entire committee that we were able to consult agrees.

PRESIDENT BRODERICK. Is there any who wish to speak against this?

We will unlock the voting machine. The question is, will you agree to receive this amendment? Those voting "yea," will agree to receive it and those voting "nay" do not give their consent.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—128

Aberman	Curran	Laputka	Redick
Allison	Desmond	Lee, L.	Reynolds
Aurentz	Erwin	Leinbach	Richter
Bagenstose	Fagan	Leonard	Roberts
Baldrige	Fawcett	Levin	Rovner
Baldus	Fay	Manderino	Sahli
Baldwin	Feather	Mangery	Scales
Banes	Filson	Mattioni	Scarlett
Barron	Fineman	McGeary	Sebastian
Barry	Fohl	McGlynn	Shapiro
Bashoff	Forster	Meyer	Sharp
Benedict	Gabreski	Michael	Shettig
Benfield	Gehrlein	Miller, D.	Shively
Bloom	Gerber	Miller, R.	Shrager
Braham	Gouger	Moorhead	Shoemaker
Brennan	Griffith	More	Silverman
Broderick	Hannum	Morton	Solomon
Brown	Hatter	Murray	Stout
Burkholder	Henderson	Nelson	Strickler
Butera	Heyburn	O'Donnell	Stroup
Cain	Himes	Orban	Swope
Camardella	Hocker	Orbin	Tate
Caputo	Hook	Otto	Thomson
Caron	Horne	Pasquerilla	Tomaselk
Casey	Hostetler	Percey	Tully
Clark	Huggins	Popil	Van Sant
Clinger	Irvis	Pott	Warman
Conley	Jirolanio	Powell	Welsh
Corey	Kauffman	Prendergast	Westerberg
Cosetti	Keller, J.	Quiles	Whittum
Croop	Kelly	Rappaport	Wilcox
Cunningham	Krill	Rea	Wilmarth

NAYS—2

Bunting Ruth

NOT VOTING—33

Amsterdam	Fortney	Kline	Pelletier
Buck	Goldman	Lane	Scott
Cortese	Goldstein	Leach	Scranton
Dailey	Gray	Lee, K.	Sprogell
Devlin	Harding	Markley	Thornburgh
Donaldson	Johnson	Michener	Waldron
Donolow	Keller, M.	Musselman	Woodring
Dumbauld	King	Pechan	Woodside
Fleming			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

AMSTERDAM AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE AMSTERDAM offered the following amendment which was read by the clerk:

Amend Sec. 1 (Sec. 18), page 13, line 24, by striking out "ARTICLE." and inserting: article. Upon an order for suspension or removal, the justice or judge shall be sus-

pended or removed from office, and his salary shall cease from the date of such order.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Amsterdam?

The roll was recorded as follows:

YEAS—130

Aberman	Desmond	Leinbach	Redick
Allison	Dumbauld	Leonard	Reynolds
Amsterdam	Erwin	Levin	Richter
Aurentz	Fagan	Manderino	Roberts
Bagenstose	Fawcett	Mangery	Rovner
Baldrige	Fay	Markley	Sahli
Baldus	Feather	Mattioni	Scales
Baldwin	Fineman	McGeary	Scarlett
Banes	Fohl	McGlynn	Sebastian
Barron	Forster	Meyer	Shapiro
Barry	Gabreski	Michael	Sharp
Bashoff	Gehrlein	Michener	Shettig
Benedict	Gerber	Miller, D.	Shively
Benfield	Gouger	Miller, R.	Shoemaker
Bloom	Griffith	Moorhead	Shrager
Braham	Hannum	More	Silverman
Brennan	Hatter	Morton	Solomon
Broderick	Henderson	Murray	Stout
Brown	Heyburn	Nelson	Strickler
Burkholder	Himes	O'Donnell	Stroup
Butera	Hocker	Orban	Swope
Cain	Hook	Orbin	Tate
Camardella	Horne	Otto	Thomson
Caputo	Hostetler	Pasquerilla	Tomascik
Caron	Huggins	Percey	Tully
Casey	Irvis	Popil	Van Sant
Clark	Jirolanio	Pott	Warman
Clinger	Kauffman	Powell	Welsh
Conley	Keller, J.	Prendergast	Westerberg
Corey	Kelly	Quiles	Whittum
Cosetti	Krill	Rappaport	Wilcox
Croop	Laputka	Rea	Wilmarth
Cunningham	Lee, L.		

NAYS—2

Bunting	Ruth

NOT VOTING—31

Buck	Fleming	King	Scott
Cortese	Fortney	Kline	Scranton
Curran	Goldman	Lane	Sprogell
Dailey	Goldstein	Leach	Thornburgh
Devlin	Gray	Lee, K.	Waldron
Donaldson	Harding	Musselman	Woodring
Donolow	Johnson	Pechan	Woodside
Filson	Keller, M.	Pelletier	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION TO MAKE CORRECTIONS

DELEGATE SCRANTON. Mr. President, we still have one more. It has not been finished, but it is being framed by Senator Stroup and some others. Dr. Pelletier has one announcement which will clean something up.

PRESIDENT BRODERICK. We are happy to recognize Chairman Pelletier.

DELEGATE PELLETIER. We find that in the pressure of events yesterday, we made an error which we recognized ourselves here on page 11. We changed "compensation" to "salary," and it should not have been done, so we would like permission to return it to the original committee wording.

PRESIDENT BRODERICK. Page 11, line 8.

DELEGATE PELLETIER. So it would read, "no compensation" and strike "salary" on line 9. Salary was inserted by us and compensation was removed. This was a mistake on our part.

On the question,

Will the Convention agree to the corrections?

It was agreed to.

DELEGATE O'DONNELL. As you so well put it, I would like you to know that I have to own up to personal responsibility for this error. It was mine, and mine alone. I was the one that mistakenly changed the word "compensation" to "salary," and I am sorry for it.

ADDRESS BY DELEGATE SCRANTON

DELEGATE SCRANTON. Mr. President, I am sorry to take up your time, but since we are waiting for the drafting bureau to come up with whatever the last amendment is, it is not wasting your time.

In the course of the last few weeks, there have been a great many comments made, some in jest, and some not so much in jest, on this floor and, likewise, in the press and other places about the Judicial Article. I would like to comment to you briefly about this.

I made a pretty thorough investigation of what the Judiciary Articles say in the other constitutions of the United States. I point out to you that although there has been a tremendous amount of emphasis on the floor here and also in the committee and, therefore, of course, in the media, because so much time was taken on this one subject, which is the selection of judges, and a good deal of the comment has been going back and forth and in and out on this subject, that we may be overlooking the fact there is a tremendous amount in this article which is tremendously forward-looking.

For example, the setup of the unified judicial system is as good as any in the United States, and there are very few.

Secondly, I say to you that rarely in any constitutional convention that I have seen, has a reform been made with more flexibility and yet with more immediate impact, so that it can wear well, and endure well and change as it goes along than the reform that is made in this particular article with regard to the minor judiciary and I congratulate you on it. I think it is a very fine piece of work.

The Judicial Inquiry and Review Board, there is only one other like it in the United States and, if this goes through, it is a tremendous step forward for the people of Pennsylvania, as well as for the judges of same. It protects the judges and at the same time it makes changes where changes are necessary in the finest kind of way.

Last but by no means least, we have changed the retirement process as you know, and yet made it possible for anyone after the age of 70 years to continue to act as a judge. We all know there are many such judges who do it very competently and very well and whom we need in this Commonwealth of ours to carry on in a good judicial system. I say to you in no uncertain terms that as we end this today, if we do, if we pass this particular article, and I suggest to you, that you compare it and compare it closely with our present system in this State or, for that matter, with the system in any other state of the Union, you have something to be extremely proud of and you have every reason to lift your heads high and to walk proudly for what you have done. I want you to know I

personally appreciate it, but, far more, I am sure the people of Pennsylvania will when they see it working which is the real test.

RESOLUTION

DELEGATE AURENTZ requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 29, 1968

The standing Committee on Local Government having now completed its substantive duties with respect to Local Government proposals would indeed be remiss if it failed to give recognition to the members of the staff assigned to the committee to assist it in performing its duties.

First, the committee wishes to express its gratitude to Fred Hershey, Committee Staff Director, Attorney Abe Frumkin, Staff Researchers, Gertrude Trautman, Francis Bishop, Carl Skinner, William Graffius, Sandra Friedman, Louis Paone and Woodrow Zeitlen, all of whom devoted many hours of their time collecting and preparing research material for the committee so that it could make intelligent decisions on proposals to be reported from our committee. These individuals are part of the reason that our committee was able to function so smoothly.

Second, the committee wishes to give recognition to Regina Gear who was assigned as our Secretary to our committee and the following Secretaries: Elva Boyer, Doris Shewitz and Donna Byron.

The committee wishes to give special thanks and recognition to Miss Gear for her dedication and highly efficient and competent work for the Local Government Committee; therefore be it

RESOLVED, That the Constitutional Convention of Pennsylvania congratulate Regina Gear, the above-named research staff and the secretaries to the committee and express its gratitude to them for a task well done; and be it further

RESOLVED, That a copy of this resolution be prepared for the research staff members as a token of the convention's appreciation.

WIFE AND FRIENDS OF DELEGATE BANES WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Banes.

DELEGATE BANES. It was a pleasure indeed to have yesterday with us from the City of McKeesport, Elizabeth Township, my wife and along with her Mr. and Mrs. Eugene Teslovic.

DAUGHTERS OF DELEGATE FAY WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins.

DELEGATE HUGGINS. In front of me sits a man who has been known to the delegation here as a "Mr. Can Do." I want you to know, Mr. President, if I might use this phrase, that he "can do" because there are three delightful girls here, daughters of Delegate Frank Fay, and they are Mary Ann, Theresa and Frances. Susie is missing, but I think we can certainly welcome those three.

PRESIDENT BRODERICK. Will the Fay girls please stand?

I want you to know that I have already told those young ladies what a great job Delegate Fay has been doing.

WIFE OF DELEGATE CASEY WELCOMED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, my wife, Ellen, is seated in the rear of the chamber and I would appreciate it very much if you would introduce her to the members of the Convention.

PRESIDENT BRODERICK. That would be a real privilege and pleasure. Where are you, Ellen?

There she is. I just want you to know that I do not have to tell you that your husband has been doing a good job, because you know it and we all do. I want to say at this time that he has been a wonderful and great vice-president and his cooperation with me has been just absolutely magnificent and I appreciate that.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Reynolds. For what purpose does the gentleman rise?

DELEGATE REYNOLDS. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE REYNOLDS. I would like to make one inquiry.

Now that we have passed the Judicial Article—

PRESIDENT BRODERICK. That is our big problem.

DELEGATE REYNOLDS. I mean, passed the last amendment—

I would like to know, now that Delegate Richter has had his resolution passed to make all of the non-lawyers lawyers, what court we are going to practice in and how soon we can start.

PRESIDENT BRODERICK. That is the amendment they are preparing now.

PARENTS OF DELEGATE FEATHER WELCOMED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Feather.

DELEGATE FEATHER. I would like to introduce my parents sitting in the balcony on the right, Mr. and Mrs. John Feather.

PRESIDENT BRODERICK. Please stand so we can greet you.

COUNSEL TO STYLE AND DRAFTING COMMITTEE COMMENDED

PRESIDENT BRODERICK. The Chair now recognizes Delegate Aberman.

DELEGATE ABERMAN. Mr. President, I would like to spread on the record—unfortunately, I do not see them

here, but I think this entire delegation owes a great vote of thanks to two gentlemen. I am sure if I mentioned their names, most of you would not be able to identify them. These are the two gentlemen who served as counsel to the Style and Drafting Committee and have performed a job which, from my view as a lawyer spending most of his time drafting documents, is one of the most incredible jobs I have ever seen in my life. They have worked night and day for the last seven or eight days. They worked in association with the chief scrutiner of the constitutional convention, Delegate O'Donnell, in many instances, but at the same time the amount of work and the technical capability that they brought to their job is something that, from the Style and Drafting point of view, you would not be finishing in the manner that you are but for these two gentlemen. I think we would be sadly remiss unless the names of Mr. Andrew Farley and Mr. William Hackney were specifically put into this record so that everyone will acknowledge that but for their duties and but for the excellent and high caliber of their performance the work that has been accomplished here would not have been done.

I would ask that this be placed in the minutes.

PRESIDENT BRODERICK. It will be placed in the record and I might add that I think we had a resolution—

DELEGATE ABERMAN. They were not in that resolution.

PRESIDENT BRODERICK. Oh, they were not in that resolution.

Did you wish to amend that resolution, then?

DELEGATE PELLETIER. They were in that resolution.

PRESIDENT BRODERICK. I thought I heard their names, but this is an additional tribute that will appear in the record.

WIFE OF DELEGATE SILVERMAN WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Silverman.

DELEGATE SILVERMAN. I would like to introduce my wife Janet to the Convention. She is sitting in the back.

PRESIDENT BRODERICK. Janet, will you stand? We are very happy that your good husband has been with us and there is no doubt that he has done a great job.

ADDRESS BY DELEGATE WOODSIDE

PRESIDENT BRODERICK. The Chair recognizes Delegate Woodside.

DELEGATE WOODSIDE. Mr. President, if you are not ready to proceed with another matter, I prepared a speech about two months ago that I have not had a chance to give yet.

Most of it is not necessary any more, but there are a few things I would like to say at this time if the Convention has a few minutes to listen to me. Is it all right now?

PRESIDENT BRODERICK. It is not only all right now, but I will ask the Convention to give their undivided attention to whatever it is you are going to say.

DELEGATE WOODSIDE. Mr. President, it was 47 years ago that I walked up the hill to this building with trepidation to start a political career as a page boy in the Senate. I want to say, parenthetically, that the walk from the Penn Harris Hotel up here is a lot steeper today than it was then. It has gotten steeper every year.

Since that time, I served our Commonwealth in three branches of government and in all three official Constitutional revision groups. Whether I observed well may be questioned, but that I had a rare opportunity to observe I am sure could not be questioned.

In consideration of this, and the deference that is sometimes given to men with gray hair, I would appreciate it if you would just let me make a few observations.

First, I would like to say not so much to the delegates as to the press, and, through them, to the public, that in my opinion, there is no field of governmental activity where there has been such devotion to duty as by those who have dealt with Constitutional provisions.

It was true of the Constitutional Revision Commission of 1959 and it certainly has been true of both the delegates and the staff in this Convention.

I felt that among all the names that have been mentioned here, there has been one that has been overlooked. That is General William A. Schnader. One of the good delegates just came back to me and showed me a resolution that he had prepared concerning General Schnader. I am certainly happy that the same thought came to him that came to me because there is no one in the Commonwealth of Pennsylvania who is more responsible for Constitutional revision than the former Attorney General, William A. Schnader.

It was he, more than any other person, who devised first the idea of amending the Constitution not section by section, as our commission in 1959 thought it should be done, but by amending article by article. Most of the Constitution was amended in this manner. Because of this, we came here with a limited call to deal with specific matters which had not been put into the Constitution by recent amendments.

General Schnader, more than anyone else in the Commonwealth, is responsible for the new Constitution. I think we should pay him a tribute as a result of that and I am happy that a resolution will subsequently be introduced giving him due recognition for the tremendous service which he has rendered to this Commonwealth in this respect.

It is not the only thing he has done for this Commonwealth and this country. He, more than any other person is responsible for the commercial code.

Pennsylvania was the first State to adopt it. It was adopted while I was serving as Attorney General, but it was adopted primarily through the efforts of William A. Schnader.

As a matter of fact, he was the one, more than any other person, who brought about the work that was done on it for a period of over ten years by the Commission on Uniform State laws.

So I say that it would be a great tragedy if we were to adjourn without paying a tribute to William A. Schnader for what he has done for this Commonwealth.

I do not discount the important work done by the members of this Convention and by others in revising the Constitution prior hereto by amendments. There were many other people who contributed in many important ways.

I want to put in the record, also, the names of the commission on which I had the privilege of serving as chairman because those members and staff too worked long and faithfully just as the delegates and our staff worked. That Commission worked exceedingly hard for a period

of over a year in developing a report which I hope was helpful to this Convention.

I had the privilege of being Chairman of that Commission and, therefore, I get more credit for the work of that Commission than I really deserve, because everyone in that group worked hard and faithfully throughout.

One of the great men on that Commission was the former Chief Justice, Horace Stern. Others who contributed to that report were: General Milton G. Baker, the Honorable Genevieve Blatt, Matthew A. Crawford, Esq., the Honorable Richardson Dilworth, who although Mayor of Philadelphia at the time, attended every meeting, Dean Jefferson B. Fordham of the Law School of the University of Pennsylvania. Also, the late George R. Lamade, Mrs. Mitchell McCarthy, our own fellow delegate, Dean M. Nelson McGeary, and Mrs. Robert L. McGeehan, who many will remember for her presentation before this Judiciary Committee at this Convention, Philip Price, Esq., the late Honorable Oscar J. Tallman, a former Pennsylvania State Senator, the Honorable Edward W. Tompkins, and the Secretary of the Commission, the Honorable Robert D. Fleming, our fellow delegate and president pro tempore of the Senate. Three of us, Senator Fleming, Dean McGeary and I, had the privilege of serving on both the Commission and in this Convention.

You will note, too, William A. Schnader was the Chairman of the Committee appointed by Governor Scranton. That Committee also did a tremendous amount of work in revising our report and making suggestions valuable to the Convention.

I would like to say one other word, if I may. It may be a long word but there is one more thought that I would like to leave with this Convention:

I agree with what Governor Scranton said concerning the Fifth Article. I have not the slightest doubt that when this Article is adopted, as I hope it will be, this Commonwealth will have the greatest judicial system in America.

I do feel, however, that we may not have given the judges of this Commonwealth the credit that they deserve for some of the things which they have already done in developing our judicial system.

Therefore, I would like to say just a few things about the judicial system as we have it today.

We and the public have been exhorted for some time to make changes in the method of selecting judges. In the process, many people have been led to suspect our judges and condemn our judicial system, and thus to conclude that both are worse than they are. I feel compelled to attempt to dispel certain misapprehensions concerning our judges and our judicial system. Judges have a tradition of not defending themselves. With few exceptions, attacks upon them go unanswered.

Unlike the other two branches of government, the judiciary has no publicity agents to relate its good points. If it had, the public would have a different impression of our courts of record. Pennsylvania has never suffered from the type of judicial horrors that forced changes in New Jersey and Illinois and Missouri and other states. For example, in Pennsylvania we do not have a Supreme Court sitting in rows and composed in part of laymen as did New Jersey until recently; we do not have judges practicing law as did New Jersey and Illinois—a system inviting "legalized bribery;"—we do not have scores and scores of different courts each with their independent and separate jurisdictions as did Illinois; Pennsylvania judges have not been subjected to retribution by a legislature which disagreed with their decisions as happened in the state of Missouri; our trials are not delayed by days of examination of jurors as in California, or by the submission of hundreds of questions to a jury as in some of the southern states. The vacancies on Pennsylvania courts do not remain unfilled for years because of political haggling as do federal judicial posts. Pennsylvania does not have the numerous problems arising out of appeal courts sitting in panels that the federal government and many states have. And Pennsylvania has for fifty years administered the assignment and transfer of judges in the manner used by Illinois for the last four years.

In comparison to most judicial systems, including the Federal system, we have a good judicial system. Not perfect, but one which is much better than most, and with the improvements made in the Judicial Article, I have no doubt that, as suggested by Governor Scranton, we will have the greatest system in the country.

I would like to leave two thoughts with you about judges. Much has been said about the laziness of judges. I have served on two courts with 15 different judges and in my 21 years of experience on those two courts I did not find one single judge who was not willing and anxious and able to carry his full load of judicial work, and who did not actually carry his full load of judicial work.

I want to say one other thing. The judges of the Commonwealth of Pennsylvania, some people think, have an excellent retirement system. They do, but they pay well for it. I just was shown a check of one of the judges in Pennsylvania, and with the deductions that were taken for his retirement, his social security and his withholding tax, the check amounted to less than 55 per cent of his salary. The judges are contributing very handsomely towards their retirement system.

I have talked too long, I know, but I have felt these matters keenly and I felt they should be made a part of the record, and called to the attention of the delegates.

I appreciate your permitting me at this time and under these circumstances to talk so long. I thank you.

RESOLUTION

DELEGATE LEACH requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 29, 1968

It is indeed fitting and appropriate that this Constitutional Convention pause to recognize the outstanding contributions made by William A. Schnader, Esquire, formerly Attorney General of the Commonwealth of Pennsylvania, in helping to bring about this convention to rewrite a portion of our basic law.

He was the recipient of the Gold Medal of the American Bar Association and the Justice Award of the American Judicature Society; two of the highest awards made in the United States for contributions to improvement of the law and the administration of justice.

In 1961 he became one of the leading champions for modernizing and changing the Constitution of

the Commonwealth of Pennsylvania and through his efforts and authorship, twelve "article by article" amendments which, if adopted, would have modernized the entire Constitution, were recommended by committees of the Pennsylvania Bar Association. These amendments constituted the "Project Constitution" package.

In 1963 he was named chairman of a special committee on Project Constitution a position he still holds. This committee was created for the purpose of promoting the adoption of Project Constitution by the General Assembly and approval by the electors of this Commonwealth.

He also chaired the Governor's Commission on Constitutional Revision created by Governor Scranton in December 1963.

An octogenarian, his keen mind, directness of purpose and energy are most remarkable; therefore be it

RESOLVED, That this Constitutional Convention does hereby extend to William A. Schnader its gratitude and demonstrates to him its appreciation for his contributions made to the improvement of the basic law of Pennsylvania; and be it further

RESOLVED, That a copy of this resolution be transmitted to William A. Schnader.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Ruth. For what purpose does the gentleman rise?

DELEGATE RUTH. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE RUTH. Mr. President, I have just a short point of personal privilege on behalf of the Right Rev. Delegate Huntley Higgins and myself. We wish to indicate to you and this body that certain material persented last evening to this Convention is being transcribed and, if it is not available prior to adjournment sine die, we ask your permission to submit it to you or place it in the record nunc pro tunc.

PRESIDENT BRODERICK. Permission is granted.

THANKS EXTENDED TO "A MODERN CONSTITUTION FOR PENNSYLVANIA, INC."

PRESIDENT BRODERICK. The Chair recognizes Delegate Tate.

DELEGATE TATE. Mr. President, I have just a short word while we are giving thanks to those who have made major contributions to the success of this constitutional convention. I would like to place on the record my personal thanks, and I hope the thanks of every delegate here, for the untiring and long work over the many months and many years of an organization dedicated solely to constitutional modernization, viz., A Modern Constitution for Pennsylvania, Incorporated, whose President, Richard Bond, has worked for many, many months and years on this project, and on whose board of directors has served three of the delegates in this convention, Delegate Amsterdam, Delegate Gray and Delegate Heyburn.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Kauffman. For what purpose does the gentleman rise?

DELEGATE KAUFFMAN. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE KAUFFMAN. I would like to make a suggestion, Mr. President, that you give some consideration to this before we adjourn today.

This morning Delegate Goldstein introduced a resolution calling for annual meetings of the delegates to this Convention, and I suggest that it might be appropriate to set up some machinery pursuant to which those meetings could be arranged and set up.

PRESIDENT BRODERICK. I think it is an excellent suggestion, and the Chair would request that you meet with Delegate Goldstein and prepare such machinery.

MOTION FOR CONSENT TO OFFER AMENDMENT

PRESIDENT BRODERICK. I want to say this:

I see that there are other delegates waiting to be recognized. I would like to suggest that we get onto this amendment, because it is a question of getting the changes printed. I want Delegate Brennan, Delegate Goldstein,—Delegate Michener, too, was standing at the microphone. As soon as we arrive at the next point of inactivity, we will certainly recognize you and Delegate Barron, too.

I want to say that the question is, will the Convention agree to receive another amendment from Chairman Amsterdam?

The Chair recognizes Chairman Amsterdam.

DELEGATE AMSTERDAM. Mr. President, the amendment which we are now going to ask the Convention to be permitted to be placed before it is signed by Senator Stroup, by Delegate Fineman and by Delegate Shrager. Therefore, I would say it, at least, had bipartisan support. This is the amendment we discussed earlier whereby any persons now especially admitted to practice may continue to practice either in the court of common pleas, if that continues in existence, or in a division of the court of common pleas, or in the municipal court of the City of Philadelphia, where substantially the same person could have practiced in the same way heretofore. In other words, because of the changes of the courts, particularly in Philadelphia County, we have had to say that the substantial practice being continued in the court is what determines the right of an especially admitted person to continue to act as an attorney.

That, Mr. Chairman, is the amendment and we would hope that the Convention, since this is the last amendment to the Judiciary Article, would approve this unanimously.

PRESIDENT BRODERICK. Now, first of all, is there anyone else who wishes to be heard? If not we will put the question.

We will open up the voting machine, and the first question is, will the Convention agree to receive this amendment?

All those voting "yea" will vote the consent to receive

the amendment from Delegate Amsterdam, those voting "nay" would, in effect, be refusing their consent.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—131

Aberman	Desmond	Krill	Reynolds
Amsterdam	Devlin	Lee, L.	Roberts
Aurentz	Dumbauld	Leinbach	Rovner
Bagenstose	Erwin	Leonard	Ruth
Baldrige	Fagan	Leach	Sahli
Baldus	Fawcett	Levin	Scales
Baldwin	Fay	Manderino	Scarlett
Banes	Feather	Mangery	Scranton
Barron	Filson	Markley	Sebastian
Barry	Fineman	Mattioni	Sharp
Bashoff	Fohl	McGeary	Shettig
Benedict	Forster	McGlynn	Shively
Benfield	Gabreski	Meyer	Shrager
Bloom	Gehrlein	Michael	Silverman
Braham	Gerber	Michener	Solomon
Brennan	Goldstein	Miller, D.	Sprogell
Brown	Gouger	Miller, R.	Stout
Buck	Griffith	More	Strickler
Burkholder	Hatter	Morton	Stroup
Cain	Henderson	Murray	Swope
Camardella	Heyburn	Orban	Thomson
Caputo	Himes	Orbin	Thornburgh
Caron	Hocker	Otto	Tomascik
Casey	Hook	Pasquerilla	Tully
Clark	Horne	Pelletier	Van Sant
Clinger	Hostetler	Percey	Waldron
Conley	Huggins	Popil	Warman
Corey	Irvis	Pott	Welsh
Cortese	Jirolanio	Prendergast	Westerberg
Cosetti	Kauffman	Quiles	Wilcox
Croop	Keller, J.	Rappaport	Wilmarth
Cunningham	Kelly	Rea	Woodside
Curran	King	Redick	

NAYS—7

Bunting	Nelson	Shoemaker	Whittum
Laputka	O'Donnell	Tate	

NOT VOTING—25

Allison	Fortney	Keller, M.	Pechan
Broderick	Goldman	Kline	Powell
Butera	Gray	Lane	Richter
Dailey	Hannum	Lee, K.	Scott
Donaldson	Harding	Moorhead	Shapiro
Donolow	Johnson	Musselman	Woodring
Fleming			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

AMSTERDAM AMENDMENT TO PROPOSAL No. 7

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE AMSTERDAM offered the following amendment which was read by the clerk:

Amend Schedule, page 31, by adding after line 5: Section 29. Persons Specially Admitted by Local Rules.—Any person now specially admitted to practice may continue to practice in the court of common pleas or in that division of the court of common pleas and the municipal court in the City of Philadelphia which substantially includes the practice for which such person was previously specially admitted.

PRESIDENT BRODERICK. The Chair will now recognize Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I want to pay special tribute to those whose names were succeeded by a red light, because they were among the delegates who felt they were not thoroughly in accord with this amendment, but they abstained from rising to talk against it. I think a special vote of thanks ought to be given to them because, although they are not thoroughly in accord, they have gone along with the majority very gracefully.

I ask that we vote on the amendment at this time.

PRESIDENT BRODERICK. Is there any objection?

The question is, will the Convention agree to the amendment now being offered by Delegate Amsterdam?

All those voting "yea" will vote to support the amendment, those voting "nay" will vote to reject it.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Amsterdam?

The roll was recorded as follows:

YEAS—123

Aberman	Croop	Kelly	Redick
Amsterdam	Cunningham	King	Reynolds
Aurentz	Curran	Krill	Roberts
Bagenstose	Desmond	Leach	Rovner
Baldrige	Devlin	Lee, L.	Sahli
Baldus	Erwin	Leinbach	Scales
Baldwin	Fagan	Leonard	Scarlett
Banes	Fawcett	Levin	Sebastian
Barron	Fay	Manderino	Shapiro
Barry	Feather	Mangery	Sharp
Bashoff	Filson	Markley	Shettig
Benedict	Fineman	Mattioni	Shively
Benfield	Forster	McGlynn	Silverman
Bloom	Gabreski	Meyer	Solomon
Braham	Gehrlein	Michael	Sprogell
Brennan	Gerber	Miller, D.	Stout
Broderick	Goldstein	Miller, R.	Strickler
Brown	Gouger	Moorhead	Stroup
Buck	Griffith	More	Swope
Burkholder	Hatter	Morton	Thomson
Butera	Henderson	Murray	Thornburgh
Cain	Heyburn	Orbin	Tomascik
Camardella	Himes	Otto	Tully
Caputo	Hocker	Pasquerilla	Van Sant
Caron	Horne	Percey	Waldron
Casey	Hostetler	Popil	Warman
Clark	Huggins	Pott	Westerberg
Clinger	Irvis	Prendergast	Wilcox
Conley	Jirolanio	Quiles	Wilmarth
Cortese	Kauffman	Rappaport	Woodside
Cosetti	Keller, J.	Rea	

NAYS—17

Bunting	Michener	Pelletier	Shoemaker
Dumbauld	Nelson	Richter	Tate
Hook	O'Donnell	Ruth	Welsh
Laputka	Orban	Scranton	Whittum
McGeary			

NOT VOTING—23

Allison	Fohl	Johnson	Pechan
Corey	Fortney	Keller, M.	Powell
Dailey	Goldman	Kline	Scott
Donaldson	Gray	Lane	Shrager
Donolow	Hannum	Lee, K.	Woodring
Fleming	Harding	Musselman	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION TO SUSPEND RULES

PRESIDENT BRODERICK. At this time that is our last amendment and let me just state that what we have before us is to determine a matter of procedure.

It was earlier suggested by Delegate Solomon that we have a vote on suspending the rules for the purpose of moving immediately to advance this proposal, Proposal No. 7, to final passage. It has also been suggested that it could be handled, perhaps, in another way, and again I am going to leave it to this body to determine that, and that would be that we would proceed immediately to take up the report of Arrangement, Submission and Address to the People during the period, that is, when this Article VII would be reprinted.

I am advised that the printing time will be three hours, which means that it is now 1:30, and I assume that you delegates feel, and I feel, that it would be nice to have a bite of lunch, because we are going to be here for several more hours at least. The question is, shall we go to lunch now, shall we come back and hear from Arrangement, Submission and Address to the People, and then move for final passage on Proposal No. 7, or shall we now suspend the rules and, without seeing the final product, move it on to final passage? I am going to recognize Delegate Solomon.

DELEGATE SOLOMON. Mr. President, this requires 109 votes, and I am pleased that we will consider it, and I hope that we will consider it now. I make again the motion that we suspend the rules under Rule 5 moving Proposal No. 7, what was Printer's copy No. 32, to the third reading without the requirement of submission to Style and Drafting.

PRESIDENT BRODERICK. Let me restate the motion so there is no doubt as to what it means. I want to explain what it means in time. It means that we wait until this comes back from the printer, which would be in three hours.

The motion is to suspend sub-Section 12 of Rule 26, and sub-Section 12 says, "In the event the proposal of the Committee on Style and Drafting is amended on third consideration, a vote on final passage shall not be taken thereon, but said proposal shall automatically be reprinted and recommitted to the Committee on Style and Drafting in the same manner and with the same effect as a proposal advanced from second to third consideration."

That is a motion, and I want to state that Style and Drafting has indicated that it will not remain in their hands for any time, and that is the question now before the Convention on the motion that has been made and seconded.

We will now recognize Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, for the first time, I guess, at this Convention I have to disagree with Delegate Solomon.

This Judiciary Article has been, I think, and I must agree with Governor Scranton, one of the finest accomplishments of this Convention. I would hate to see this Convention suspend its rules for the first time in this Convention on the very last day on such a very important item. We are going to have to be here, anyway, to receive the report, the final report on Address and Submission to the People, and we spent so much time and so many hours of the morning and, like everyone else, I am very anxious to go home, too, but it will be only an extra hour or two to do this thing right and to follow the rules. I think it is in order, and I hope that we would follow that procedure, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Jirolanio.

DELEGATE JIROLANIO. Mr. President, originally I felt in the same mood as Delegate Solomon and I figured possibly the best thing to do was to suspend the rules, which I had in mind to do yesterday, but since the Chair has advised us that we are going to have enough work for the next couple of hours and, assuming that the Chair means well when it states that we will have the report in the next two or three hours, if that is so—

PRESIDENT BRODERICK. I did not use the word "two." I said three.

DELEGATE JIROLANIO. I figured by making it smaller you would then stir the committee and the proper agency to give us the proper material before that. If that is going to be so, then I would urge my good friend and brother, Delegate Solomon, to withdraw his motion so we can go on with the business and go out to eat.

MOTION WITHDRAWN

DELEGATE SOLOMON. Mr. President, if Senator Jirolanio feels that we do not have 109 votes—

DELEGATE JIROLANIO. You are right.

DELEGATE SOLOMON. And since he is the co-proponent of this motion to amend the rules, I will withdraw it.

I do hope that your three hours is three hours, or less, Mr. President.

PRESIDENT BRODERICK. I certainly hope that it will be less, but I am advised by the printers that the time it would take to print it up would be three hours.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson. For what purpose does the gentleman rise?

DELEGATE NELSON. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE NELSON. Until Proposal No. 7 has been finally adopted, it is not referred to the Committee on Arrangement, Submission and Address to the People. How long after it has been referred to us will we have to incorporate it into our work?

If it were passed now pursuant to Delegate Solomon's resolution, we could go to work on it immediately.

PRESIDENT BRODERICK. Delegate Nelson, it was my understanding, after conversations with you, that when you knew the substance of this proposal, that your committee report was in such shape that you could have it ready within about an hour. I think in view of the motion made by Chairman Scranton that we will not have any more amendments. I think that we can assume that you know the contents of Proposal No. 7, and I will, therefore, ask you whether you would not be ready to report when we return from lunch.

DELEGATE NELSON. As I understand it, Style and Drafting might now make some changes. We would have to proceed on the assumption that what we have now is what it is going to be, because our report would incorpo-

rate in at least two places the exact language of Proposal No. 7 as finally adopted, and our report would be inaccurate if any changes were made from this point on or, if for some reason, we cannot assume—

PRESIDENT BRODERICK. I want anybody in this body that is considering offering an amendment to raise their hands, because I understand that there will not be any changes made and, if I am wrong, please correct me.

DELEGATE NELSON. In other words, I think that Delegate Pasquerilla's criticism would apply equally as well to the work of our Committee, because we would have proceeded on an assumption which may not materialize.

PRESIDENT BRODERICK. This is something I will let the body decide.

Delegate Pasquerilla, I ask you to yield and then I will recognize Delegate Strickler.

DELEGATE STRICKLER. Mr. President, I think this would be rather dangerous, because we have to put in the exact wording in connection with many of these things in the arrangement of the articles, and it would have to be printed and, if we do this now, it will be very inadequate. Certainly we could not present it in final form.

PRESIDENT BRODERICK. The Chair recognizes Chairman Pelletier.

DELEGATE PELLETIER. I have been accused of dictatorship on several occasions, but perhaps we could settle this if the Committee on Style and Drafting would meet over here and, if I could take a vote, I think I can assure you that we will not touch it, if they are willing. Personally, I would assure the Convention, as far as I am concerned, I would not touch another comma, but, if you want, I will get the Committee over here and take a vote.

PRESIDENT BRODERICK. Frankly, my discussions have been based on that assurance that you would not touch a comma, but I think it would be excellent because it should, if that is the procedure, go through your committee.

DELEGATE PELLETIER. All right. Do you want me to gather the committee now?

PRESIDENT BRODERICK. Let us be at ease while he gathers his committee.

May I talk to Chairman Nelson a second?

DELEGATE PELLETIER. Would the Committee gather on the far side of the chamber?

REPORT OF COMMITTEE ON STYLE AND DRAFTING

PRESIDENT BRODERICK. The Chair recognizes Delegate Pelletier.

DELEGATE PELLETIER. The Committee is ready to report. We will not touch anything.

Mr. President, I stand in place and read the following report:

> The Honorable,
> The Delegates Assembled,
> Pennsylvania Constitutional Convention
>
> Mesdames and Sirs:
>
> The Committee on Style and Drafting is pleased to submit this abbreviated report. As the Delegates are aware, the Committee returned Committee Proposal No. 7 relating to the Judiciary late last evening. The purpose of this report following that submission pursuant to Rule 22 is to insure that the Convention's record properly indicates that the Committee discharged its responsibilities.
>
> At the outset, the Committee wishes to acknowledge the assistance of Frank Garber, Esquire and Alice Drayer, both of the Legislative Reference Bureau. Without their unstinting cooperation all day yesterday and for half the night last night, the marked copy of Proposal No. 7 would not have been available. We also wish to note on the record that the many young ladies of the Legislative Reference Bureau who typed and proofed copy throughout the night, though nameless, deserve our deepest appreciation. In this same regard, our Counsel and the Committee acknowledge the long hours of discussion and writing spent by Counsel to the substantive committee, Carter Buller, and Arthur Frankston, that committee's research director.
>
> Due to the pressure of time with respect to the Convention's desire that this proposal be returned on third consideration as soon as possible, we wish to advise that the most concentrated efforts were devoted to the body of the proposed article; this Committee's consideration of the schedule was deliberately limited to serious matters of grammatical expression and rearrangement of sections to insure more logical presentation. This explanation is offered not as excuse, but solely to insure that the Delegates are aware that this Committee does not concur in the necessity for detailed schedules which are "legislative" in character. The circumstances of the moment as well as the practicalities of life required that we acquiesce in the substantive committee's judgment on this point.
>
> As the Committee has reported previously, we consider hereafter the significant matters of drafting.
>
> 1. In every instance a conscious attempt was made to reenforce, in the manner of expression throughout the article and schedule, the concept of a "unified judicial system." Thus, at Section 1, the listing of courts precedes the statement of the justice of the peace. Having established that identification, the Committee thereafter referred to courts and justices of the peace in the unified judicial system.
>
> 2. The arrangement of the sections within the article was also considered and some sections rearranged. For example, following the several sections relating to the jurisdiction of the several courts in the unified judicial system, the Committee inserted the sections relating to the definition of judicial districts and to the concept of judicial administration.
>
> 3. The sections relating to election or appointment of judicial officers were rearranged and detailed section references inserted. While the Committe would agree that extensive cross-references in a constitutional document is not the best stylistic approach, the sense of the Committee was that

these sections were so detailed that clearly identified cross-references within the section and to other sections were mandatory.

4. We would note our preference that the section relative to the referendum on the question of a qualifications commission be included in the schedule. However, after consideration by the committee and consultation with the Co-Chairmen of the substantive committee, it was agreed that doing so would unnecessarily delay returning this Proposal to the Convention on third consideration calendar.

5. Undoubtedly some question will be raised respecting the Committee's decision to acquiesce in the inclusion of a detailed description of the organization and functions of a judicial inquiry and Review Board. The Committee concurs in the judgment of the substantive committee. This greater concern for detail is necessitated by the fact that the concept here contained is new to the Commonwealth. As a result, it is necessary that the wishes of the Convention be explicit. Once the concept has found acceptance and has functioned for a period of time, the detailed explanation can be amended out of the Constitution.

6. As the Committee has recommended in previous reports, we note with appreciation the promptness with which the Judiciary Committee met to act upon certain ambiguities and unresolved issues. Thus it was possible that this Committee could continue its deliberations in conjunction with sub-committees to the substantive committee, reviewing proposed language at the same time the standing committee was making a determination on the substantive matters involved.

7. Finally the Committee, in the brief time available for consideration and working from marked copy, sought to insure uniformity in expression, clarity by the judicious use of punctuation, and brevity of expression. We regret the necessity of so many correctional amendments this morning, but the Committee's recommendations were submitted on marked copy and time would not permit the usual repeated review sessions necessary to insure that the human errors in marking and transcription had been deleted.

Respectfully submitted,

COMMITTEE ON STYLE AND DRAFTING

By: /s/ LAWRENCE L. PELLETIER
and
Co-Chairman

RECESS

PRESIDENT BRODERICK. That is a very fine report.

I have just had a conversation here with Chairman Nelson, and if this procedure is agreeable to this body, we can follow it. If it is not, it is still in your hands, and that is this:

We would take now about one hour for lunch. We would come back and we would hear from the Committee on Arrangement, Submission and Address to the People. We would discuss it, and I am sure that before we are ready to vote on Arrangement, Submission and Address to the People, we will then have the final bill ready from Article VII, and we will take that through to final passage, and then we go back and adopt the Arrangement, Submission and Address to the People report to the people.

DELEGATE GOLDSTEIN. Mr. President, I so move that we accept your recommendation and that we recess until 2:45 p.m., if anybody comes in with an amendment, we are going to give him a self-executing hang rope.

PRESIDENT BRODERICK. If that is agreeable, we will stand recessed until 2:45 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The Convention will now come to order, the time for recess having expired.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Bunting. For what purpose does the gentleman rise?

DELEGATE BUNTING. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

I suggest and certainly hope the delegates, until we get at least closer to our objective, will keep their points of personal privileges as short as possible because we must get on. I do recognize you, Delegate Bunting.

DELEGATE BUNTING. Mr. President, I wanted to set the Convention straight on two things. I was not just voting a straight dissent.

I did not rise for that purpose. I want to comment on our friend Pandora. When her box was opened the first time, her evil spirits flew out. When it was opened the second time, she saw a beautiful gem and that was supposed to symbolize hope. I think that is our position today, the box that was prevalent last night. Hope is what we have as well as faith, and confidence and a lot of energy for going forward.

REPORTS OF COMMITTEE ON ARRANGEMENT, SUBMISSION AND ADDRESS TO THE PEOPLE

PRESIDENT BRODERICK. The Chair will now recognize the Chairman of the Committee on Arrangement, Submission and Address to the People, pursuant to the understanding we had before the luncheon recess. I will repeat again, when we reach that point in the presentation where Proposal No. 7 is back from the printer's, we will then, with your permission, break in for the adoption of Proposal No. 7.

The Chair recognizes Chairman Nelson.

DELEGATE NELSON. Mr. President, I read in place two of three recommendations of the Committee on Arrangement, Submission and Address to the People.

PRESIDENT BRODERICK. We have No. 3?

DELEGATE NELSON. No. 2 and No. 3. No. 1 is on Arrangement and that will have to await the body's action.

PRESIDENT BRODERICK. Has No. 2 been distributed?

DELEGATE NELSON. Yes.

PRESIDENT BRODERICK. Everybody has one but me. Could I have No. 2? I have it. Thank you.

The Chair again recognizes Chairman Nelson.

DELEGATE NELSON. Mr. President. I think we should take up No. 2, having to do with the ballot questions, and this may be the most controversial of our recommendations. With the permission of the Chair, I will yield to Delegate Buck, who is Chairman of our submission group for a statement on the question.

PRESIDENT BRODERICK. The Chair recognizes Delegate Buck.

DELEGATE BUCK. Mr. President. As I understand it, we are now going to confine ourselves to Recommendation No. 2.

DELEGATE NELSON. Recommendation No. 2, that is the two-page recommendation.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1967-1968

RECOMMENDATION NO. 2

of the

COMMITTEE ON ARRANGEMENT, SUBMISSION AND ADDRESS TO THE PEOPLE

— — —

The Committee on Arrangement, Submission and Address to the People recommends that the ballot questions, which shall bring before the electorate the recommendations of the Convention, be as follows:

I.

Shall Proposals 1 and 2 on LEGISLATIVE APPORTIONMENT adopted by the Constitutional Convention, providing for 50 Senators and 203 Representatives, and for a Commission to apportion the Legislature after each decennial census, be approved?

II.

Shall Proposals 3 and 4 on STATE FINANCE adopted by the Constitutional Convention, providing for a limit on borrowing based on tax revenues, budgeting, financial planning, auditing and related matters, be approved?

III.

Shall Proposal 5 on TAXATION adopted by the Constitutional Convention, permitting certain tax exemptions, incentives and benefits, retaining certain tax benefits, providing for reimbursement of local taxing authorities under certain conditions and related matters, be approved?

IV.

Shall Proposal 6 on LOCAL GOVERNMENT, adopted by the Constitutional Convention, providing for home rule for all units of local government, optional forms of government, uniform procedures for merger, consolidation and boundary change, intergovernmental cooperation and area governments, local finance and debt limits, apportionment and related matters, be approved?

V.

Shall Proposal 7 on the JUDICIARY adopted by the Constitutional Convention, establishing a unified judicial system, prescribing qualifications of justices, judges and justices of the peace, providing for the election, tenure, removal, discipline and retirement of judges, prohibiting certain activities by judges, and related matters be adopted?

Respectfully submitted,

By: JAMES W. NELSON
By: WILLIAM H. GRAY, JR.
Co-Chairmen, Committee on Arrangement, Submission and Address to the People

DELEGATE BUCK. Mr. President, speaking on behalf of the Committee on Arrangment, Submission and Address to the People, we would like to report that the questions as contained in Recommendation No. 2 represent the unanimous recommendation to the best of my knowledge, information and belief of the Committee on Arrangement, Submission and Address to the People.

By way of introduction, I would like to say this, that in framing these question, and you will notice that there are five of them that are to appear on the ballot, we have used a single question for Proposals Nos. 1 and 2 on Legislative Apportionment; for Proposal No. 6 on Local Government, and Proposal No. 7 on the Judiciary; we placed Proposals Nos. 3 and 4 on State Finance into a separate question that appears as II on the recommendation and Proposal No. 5 of the Committee on Taxation, that appears as Question III.

It was the opinion of the committee that the appropriate manner in which to present the various proposals to the people of Pennsylvania for approval was in the form of the four questions with the report of the Committee on Finance broken into two questions.

I might say this by way of explanation. We are limited to not more than 75 words per question, and by reason of the size of the voting machines we were informed that we could not place more than nine questions on the voting machine. So we decided that Question I dealing with Legislative Apportionment under the Act calling this limited Constitutional Convention was required to be placed before the voters in one question.

Insofar as Question IV dealing with Local Government and Question V dealing with the Judiciary, because of the interrelationship of these various sections of those two respective articles, it was the opinion of the Committee that Proposal No. 6 on Local Government, and Proposal No. 7 on the Judiciary should be placed on the ballot as single questions.

With reference to the form of the question which begins "Shall Proposals 1 and 2," and then follows consecutively, "Shall Proposals 3 and 4," "Shall Proposal 5," "Shall Proposal 6" and "Shall Proposal 7." The reason we make specific reference to the proposals is because you will recall that in the Constitutional Referendum question that

the people of our State voted on last November, the question read in substance, "Shall a Constitutional Convention be called to prepare for submission to the electorate," proposals for the revision of the subject matter of the various articles that we have dealt with.

In order to avoid any litigation that might arise in regard to whether or not the people of Pennsylvania have approved the various proposals made by this Convention, it was decided to specifically refer in each question to each proposal, so that when the electorate votes upon the respective proposals there will be no question about what they have approved or disapproved.

I would like, however, to give the members of our assembly an opportunity to review the questions as we have prepared them, and I might say this, too, in framing these questions we have tried to include sufficient description within each question to at least apprise the voter as he enters the voting booth in regard to the content of each proposal, so that you will notice on Question I, "Shall Proposals 1 and 2 on Legislative Apportionment adopted by the Constitutional Convention, providing for 50 Senators and 203 Representatives, and for a Commission to apportion the Legislature after each decennial census, be approved."

If there is anybody that feels that they wish to improve upon that question, or have any questions they would like to ask about it, we would be very happy to answer them.

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. There are two typographical errors that I would like to note. Question I, the fourth line, "apportion" should be "reapportion."

In the last question to follow the format, on the very last word of Question V it should be "approved" rather than "adopted."

DELEGATE BUCK. Thank you.

PRESIDENT BRODERICK. Could we have that just once more so everyone could get them, including the Presiding Officer?

DELEGATE NELSON. Question I, line 4, "Commission to reapportion" rather than "apportion."

PRESIDENT BRODERICK. Yes.

DELEGATE NELSON. Question V, the very last word should be "approved" rather than "adopted" to follow the form of the other questions.

PRESIDENT BRODERICK. Thank you.

Have all the delegates been able to make those corrections?

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Rovner. For what purpose does the gentleman rise?

DELEGATE ROVNER. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE ROVNER. Mr. President, may I ask one question?

PRESIDENT BRODERICK. You may proceed.

DELEGATE ROVNER. In each one of the questions, II, III, IV and V, the last sentence states, "and related matters, be approved." Why was not that same language used in No. I?

DELEGATE BUCK. I do not think it was omitted for any specific purpose, and I am sure there would be no objection to adding, "and related matters."

DELEGATE ROVNER. I think it should be in, in order to keep it uniform.

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. Mr. President, the phrase that has been used in all questions except I, "and related matters," is the carry-all provision that covers the substantive matters that the question could not possibly list in detail.

In Question I all of the substantive matters are covered in the descriptive material and there is no need for the related matters in that question. Does that take care of your question, Delegate Rovner?

DELEGATE ROVNER. I think it ought to be uniform. I think it would be wise to keep it in there so there cannot be any questions afterwards.

PRESIDENT BRODERICK. Does anyone else wish to be heard in connection with this matter?

Yes, Delegate Forster.

DELEGATE FORSTER. If there are any other related matters in those two articles, then we should use it, but we could find none.

PRESIDENT BRODERICK. The Chair recognizes Delegate Croop.

DELEGATE CROOP. I do not think there are any other matters. We covered the entire subject and to use language that would indicate that there were related matters would be very much in error, in my opinion. As it is now written, it addresses itself to the entire subject matter and, therefore, there could be no related matter. It is properly written.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Wilmarth. For what purpose does the gentleman rise?

DELEGATE WILMARTH. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE WILMARTH. We were mandated to this Convention for four articles, four proposals really in the heart of the people. We have now divided into five, the division has come in State Finance and Taxation. I wonder if the committee has adequately discussed what will happen when we go back with five proposals instead of four. We can readily understand the reason, we lived with this for three months, but I am a little afraid that this is going to be most difficult to explain and I would like to know if the committee did consider this.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Nelson to respond.

DELEGATE NELSON. Yes, this has been given considerable consideration. Under the act the legislative reapportionment proposals must consist of one question. We are not permitted more than one. Then the act says that so far as the other three areas are concerned, there must be at least one question. There is no prohibition against breaking them up. This seemed to be the feeling of the committee. They very definitely wanted the exemption proposal separated from the other, so that if one should

fall we would still have the other. It is logical. It is the one place where we could divide so that the remaining provisions would be self-sufficient if one fell. They were gotten up that way as three separate proposals. This is the reason for our handling it that way.

DELEGATE WILMARTH. I agree this is very logical. I am not disputing the minds of the committee.

However, I am concerned that I have learned over the years it all depends on where you sit. We have been sitting here for three months, and I certainly realize the importance of this, but when we go back to the voters in April with five proposals when we were mandated with four, I am somewhat concerned that there will be confusion unless we have more press, more television, and more work on this committee than I can foresee at the moment.

DELEGATE NELSON. I would like to correct an impression that we had four questions. We were to consider four areas. There was no limitation on the number of questions. The fact is that we are going to the people, not with five proposals, but with seven proposals, and they would be so advertised by the Secretary of the Commonwealth.

DELEGATE WILMARTH. I, in no sense, dispute this. I am only looking at it as someone out in the field who still has the figure 4 in their mind, and I am so concerned that this may be most confusing. I agree with the committee. This is not my point, my point is that I hope we have considered what will happen when we go to sell this.

MOTION TO ADOPT RECOMMENDATIONS Nos. 2 and 3

PRESIDENT BRODERICK. The Chair now recognizes Delegate Goldman.

DELEGATE GOLDMAN. Mr. President, I have gone through these Questions II and III the same as the other delegates have. My own opinion on it is that they are very good and they have been broken down very well. I believe Question II provides for budgeting and borrowing and tax raising questions. Question III has to do with exemptions and benefits, which may well be an entirely different and unrelated matter from Question II.

I think the Committee on Arrangement, Submission and Address to the People has done a very remarkable job on this. I talked to the delegates about it a few days ago. I think this has been done very well. I would recommend it be accepted as submitted to us.

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. In answer to the problem that Delegate Wilmarth raises, I would disagree with him that the public has any concept of four in mind. I venture to say we could talk to the electorate and they do not have any number in mind. Unfortunately, perhaps, not too much interest.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Percey. For what purpose does the gentleman rise?

DELEGATE PERCEY. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE PERCEY. Mr. President, do I understand that we are now going to be asked to vote on this to approve it or disapprove it?

PRESIDENT BRODERICK. It is the understanding of the Chair that we are going to vote on approving and adopting this report.

DELEGATE PERCEY. I would like to inquire, Mr. President, whether it would be appropriate at this time for me to explain how I am going to vote or to wait until after the vote is taken?

PRESIDENT BRODERICK. Yes, I think it is in order at this time, if you would care to do so.

DELEGATE PERCEY. Thank you, Mr. President. (5)

On Tuesday Delegate Michener was quite concerned about a vote on the Judiciary Committee voting for one section of which he disapproved and voting for the entire article. I would like to make my position clear in relationship to the same problem Delegate Michener had.

This is my personal feeling, if this Convention was presented with a challenge by the voters of the Commonwealth, in my personal opinion I think in many respects the Convention has failed to meet that challenge and, as proposed by the Committee on Arrangement, Submission and Address to the People, I oppose, personally, as it is broken down by the committee, Question I, Question III and Question V. To translate that into our old numbers of proposals, I oppose Proposals 1, 2, 5 and 7.

I intend to vote "yes" to have this submitted to the voters, because I feel that I am as much responsible for the document as anyone else, but I do not want to deceive my fellow delegates into thinking I am going to go out and work for these proposals and these recommendations. I oppose them here and I will oppose them in the voting booth in April. I think the majority of the delegates of this Convention do not agree with me, but I am sure they respect my disagreement with the document, just as much as I respect their agreement, and I just wanted to make my position clear on the proposals and the submission to the people.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Otto.

DELEGATE OTTO. I second Delegate Goldman's motion.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry. For what purpose does the gentleman rise?

DELEGATE BARRY. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BARRY. May I ask, on a point of procedure, whether we will approve the format of each question or will we approve them as a group?

PRESIDENT BRODERICK. Unless it would be the desire of this Convention to break them down, it would certainly seem to me we would expedite matters if we approved this report No. 2, which includes the questions. This is what the Chair had in mind, but there is no doubt in my mind, also, that we could break this down if it was the desire of the body.

DELEGATE BARRY. May I express my disagreement with the format of Question III? As I understand Proposal 5, it concerns tax exemptions and does not concern

incentives or benefits. During the last primary at the time we were authorized to hold a Constitutional Convention, there were some questions on the ballot relating to certain matters and they were phrased in a fashion like this:

Shall the obsolete provision of so and so be abolished? This, in effect, was almost begging the question. It seems to me it is demeaning for us to beg the question in this fashion and to talk about incentives and benefits. I say this not only because I disagree with Proposal 5 that they are incentives and benefits, but, even if I did agree, I do not think they have to be so phrased. At a minimum it should say, retaining certain tax exemptions and regulating further tax exemptions, rather than sayng tax exemptions and incentives and benefits, which not even the proposal itself in its language stated. The proposal stated regulating exemptions from taxation and providing for taxation of real property of public utilities. I do not think we ought to demean ourselves by begging the question and asking for that type of answer from the electorate.

PRESIDENT BRODERICK. The Chair recognizes Delegate Buck.

DELEGATE BUCK. I might say in answer to that comment that we did feel that the use of the words "permitting certian tax exemptions, incentives and benefits" applied to Section 2 of Committee Proposal No. 5 that specifically provides for tax exemptions and then it also provides for certain incentives in the form of limited tax exemptions for limited periods of time to non-profit corporations in the interest of industrial development, also, in order to encourage the rehabilitation by private enterprise of certain deteriorated areas and also providing for special incentives to encourage residential construction.

So the Committee in using the phrase "permitting certain tax exemptions, incentives and benefits" was specifically referring to those sections of Proposal 5 and, then, when they mentioned retaining certain tax benefits, we were specifically referring to the provision that was placed in the proposal dealing with certain benefits to disabled veterans and, then, when we made reference to provision for reimbursement of local taxing authorities under certain conditions, we were making specific reference to the return of the gross receipts taxes and also to reimbursing communities for loss of real estate taxes in the event some special provision was made by the Legislature for the needy and the aged. So, at least, so far as our Committee was concerned, the use of those words were specifically related to the provisions of Proposal 5 to which we thought the use of our terminology applied.

PRESIDENT BRODERICK. The Chair would now like to recognize Delegate Michener.

DELEGATE MICHENER. Mr. President, certainly the wording of Article III on Proposal 5 is, so far as present poll-taking methods is concerned, an invitation to defeat. It seems to me that this is pretty badly rigged against the proposal of the Committee simply from the point of view of words. In other words, I could have written this and said, "Shall Proposal 5 on Taxation provide exemptions for our wounded heroes," and the whole set of the thing would be favorable. This seems to me to be so worded almost as if to betray the fact that the wording of it was intended to insure the defeat.

DELEGATE BUCK. Mr. President, I can assure you the wording was not designed to accomplish that result and I also would like to mention that we specifically considered including a reference to the fact that we were providing for certain tax benefits for veterans, but felt that maybe that was the wrong way to approach it, so we decided to abandon the use of that kind of an appeal and confine ourselves strictly to trying to summarize, in the best way we knew how, just exactly what the provisions of Proposal 5 were seeking to accomplish.

When we used the words, "permitting certain tax exemptions, incentives and benefits," we were specifically referring to those things in Proposal 5 that accomplish that and, when we referred to retaining certain tax benefits, although we could have brought in "for the benefit of veterans," we decided that maybe that was an improper word to use and then, of course, when we refer to the reimbursement of local taxing authorities, we were referring to the gross receipts taxes that may come back and to the reimbursement for loss, or real estate taxes. We certainly do not want this question to be phrased in such a way that it will defeat No. 5. If someone has a suggestion as to how we can improve it, we would be delighted to receive it.

DELEGATE MICHENER. I wonder whether Chairman Woodring and Chairman Leonard approved of this. I am speaking only as a grammarian, because it is prejudicial as it stands.

PRESIDENT BRODERICK. May the Chair at this time make a suggestion? Do you think we could expedite this if we voted on each question at a time, one at a time?

DELEGATE BUCK. It is beginning to appear that way, Mr. President.

PRESIDENT BRODERICK. Yes, it is.

DELEGATE BUCK. I was hopeful we could present the five.

PRESIDENT BRODERICK. That was my original hope, but there seems to be some controversy about at least one of the questions.

DELEGATE BUCK. We certainly like to avoid controversy.

PRESIDENT BRODERICK. The Chair recognizes Delegate Rappaport.

DELEGATE RAPPAPORT. Mr. President, I had the pleasure of discussing all of these questions with Delegate Buck, Delegate Nelson and Delegate Forster. I had disagreed with their original approach to this as just really having section numbers which I objected to in putting the Internal Revenue Code on the ballot, and I felt we should have some identifying phrases. While I disagree with one or two of them that they had used, I think, by and large, they have done a fine job. It is not often that I have agreed with those three delegates during the course of this Convention. Mr. President, I would, therefore, move the question on all five.

PRESIDENT BRODERICK. As I understand, the motion now before us by Delegate Rappaport, seconded by Delegate Jirolanio, is that we move the question on all five and that we vote on five as a unit.

I see Delegate Leonard wishes recognition.

DELEGATE LEONARD. Mr. President, I would like, if we could vote on all of them except Question III and then come back to that. Give us a few minutes, and I think we may come up with some suggested words there.

DELEGATE RAPPAPORT. Might I suggest that anyone who is unhappy with any of the five of them would vote "nay" on my call of the question and then we will see how we stand.

PRESIDENT BRODERICK. I think if we had taken them one at a time we would be through them by now, but let us now recognize Delegate Scranton.

DELEGATE SCRANTON. I am sorry to be difficult, but since both co-chairmen of the Judiciary Committee do not like theirs either and we have a suggestion—

PRESIDENT BRODERICK. Well, we have a motion on the floor.

Delegate Rappaport, how do you feel about your motion?

DELEGATE RAPPAPORT. Mr. President, as I suggested, if there is anyone who is unhappy with any of them, he votes "nay" on my motion.

PRESIDENT BRODERICK. We have a motion on the floor. It has been moved and seconded.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE O'DONNELL. Is it possible to vote for all five when the Convention has not, in fact, made any recommendation yet on the Judiciary Article?

PRESIDENT BRODERICK. I will say this:

The Chair and the Parliamentarian recognize that you have a very good point.

DELEGATE BLOOM. I think we could save a lot of time if the Committee on Arrangement, Submission and Address to the People would confer with the co-chairmen of each of them to see if they were satisfied, or not. I do not know whether they have done so.

PRESIDENT BRODERICK. We have a motion on the floor, and I can tell you we will have to vote on that motion unless it is withdrawn.

The motion has been made by Delegate Rappaport, seconded by Delegate Jirolanio, that we vote on all five of the questions.

DELEGATE O'DONNELL. May I have an answer on my parliamentary inquiry? I do not think it has been answered.

PRESIDENT BRODERICK. Yes, you may. You have expressed a technical difficulty here that has a substantial basis in fact. We have not yet adopted Proposal No. 7.

DELEGATE O'DONNELL. I wonder if Delegate Rappaport would be good enough to amend his motion to include the four, because I do not think there is any problem about the form of the fifth question once the committee proposal is, in fact, carried to the floor.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Michener.

DELEGATE MICHENER. I remind the delegates that it was at precisely this point in the New York Convention that the whole thing went down the drain, because Anthony Travia, in a fit of petulance, insisted upon this part of submission to the people against the advice of the best men he had in the convention from the Republican side. He bowled his way through on it. He made some dreadful mistakes at this point, and the wonderful work that that group did at the expense of $12 million went down the drain. I, for the sake of a few minutes, do not want to see anything like that happen here.

PRESIDENT BRODERICK. The Chair recognizes Delegate Gouger.

DELEGATE GOUGER. That is all well and good. Now we get into the most beautiful opportunity for nit picking known to man. There is none of us that can say the same thing in precisely the same words. I respect Delegate Michener's skill in the use of words, but we have been having committee meetings and we would have welcomed any of these suggestions. All we are going to do is open this up and two hours from now we will be nit picking on whether to use this word or that word. On behalf of the committee, we have to be completely objective. This nonsense of trying to lead the voter to vote in favor of it, I think, is immoral. Now let us present it objectively and factually. This has been handled by men who truly know how to phrase questions, legal men, public relations men, and so on.

Again, Delegate Michener can probably express it more beautifully and in greater flowing prose, but this is going to be three hours from now. The question has been moved and I humbly submit to you gentlemen let us get on with the business.

PRESIDENT BRODERICK. So the delegates will know this, the question right now is debatable if anyone wants to debate it. The motion before the Convention is whether or not we vote on all five as a unit. That is the motion we vote on, all five as a unit.

DELEGATE JIROLANIO. Let us have the question.

PRESIDENT BRODERICK. We will open up the voting machine.

The question is, shall this Convention vote on this proposal Recommendation No. 2 as a unit in one vote? All those voting "yea" will vote that it shall be taken up as a unit, those voting "nay" will vote, in effect, that it be taken up otherwise; perhaps question by question.

On the question,
Will the Convention agree to the motion?

The roll was recorded as follows:

YEAS—54

Aberman	Henderson	Miller, R.	Sharp
Bagenstose	Heyburn	Moorhead	Shively
Bunting	Himes	Murray	Shoemaker
Croop	Horne	Nelson	Silverman
Cunningham	Hostetler	Orban	Solomon
Dumbauld	Huggins	Otto	Strickler
Feather	Jirolanio	Pelletier	Thomson
Fohl	Keller, J.	Percey	Tomascik
Forster	Keller, M.	Powell	Warman
Gebrlein	Kelly	Prendergast	Welsh
Gouger	Laputka	Quiles	Westerberg
Goldman	Markley	Rappaport	Whittum
Gray	McGeary	Roberts	Wilmarth
Griffith	McGlynn		

NAYS—85

Allison	Caron	Kauffman	Rea
Amsterdam	Casey	King	Redick
Aurentz	Clark	Krill	Reynolds
Baldrige	Clinger	Leach	Richter

Baldus	Corey	Lee, L.	Rovner
Baldwin	Cortese	Leinbach	Ruth
Banes	Cosetti	Leonard	Sahli
Barron	Curran	Manderino	Scales
Barry	Desmond	Mangery	Scarlett
Bashoff	Devlin	Mattioni	Scranton
Benedict	Erwin	Meyer	Sebastian
Benfield	Fagan	Michael	Shapiro
Bloom	Fawcett	Michener	Shettig
Braham	Fay	Miller, D.	Shrager
Brennan	Filson	More	Sprogell
Broderick	Gabreski	Morton	Stout
Brown	Goldstein	O'Donnell	Swope
Burkholder	Hannum	Orbin	Tate
Butera	Hatter	Pasquerilla	Tully
Cain	Hocker	Popil	Wilcox
Camardella	Hook	Pott	Woodside
Caputo			

NOT VOTING—24

Buck	Fleming	Kline	Scott
Conley	Fortney	Lane	Stroup
Dailey	Gerber	Lee, K.	Thornburgh
Donaldson	Harding	Levin	Van Sant
Donolow	Irvis	Musselman	Waldron
Fineman	Johnson	Peehan	Woodring

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

MOTION TO ADOPT QUESTION I RELATING TO PROPOSALS 1 and 2

DELEGATE FORSTER. Mr. President, now that we have voted against considering them as a unit, may I respectfully move the adoption of Question I relating to Proposals 1 and 2?

PRESIDENT BRODERICK. Is there a second to that motion?

DELEGATE GRAY. I second the motion.

PRESIDENT BRODERICK. The motion has been seconded by Delegate Gray.

Let me state the question. The question is, shall this Convention adopt Question I on Proposals 1 and 2 as framed in Recommendation No. 2 by the Committee on Arrangement, Submission and Address to the People?

Are we ready for the question?

THE CONVENTION. Yes.

On the question,

Will the Convention agree to adopt Question I on Proposals 1 and 2 as framed in Recommendation No. 2?

The roll was recorded as follows:

YEAS—137

Aberman	Desmond	Laputka	Reynolds
Allison	Devlin	Leach	Richter
Amsterdam	Erwin	Lee, L.	Roberts
Aurentz	Fagan	Leinbach	Rovner
Bagenstose	Fawcett	Leonard	Ruth
Baldrige	Fay	Levin	Sahli
Baldus	Feather	Manderino	Scales
Baldwin	Filson	Mangery	Scarlett
Banes	Forster	Markley	Scranton
Barron	Gabreski	Mattioni	Sebastian
Barry	Gehrlein	McGeary	Shapiro
Bashoff	Goldman	McGlynn	Sharp
Benedict	Goldstein	Meyer	Shettig
Benfield	Gouger	Miller, D.	Shively
Bloom	Gray	Miller, R.	Shoemaker
Braham	Griffith	Moorhead	Shrager
Brennan	Hannum	More	Silverman
Broderick	Hatter	Morton	Solomon
Brown	Henderson	Murray	Sprogell
Buck	Heyburn	Nelson	Stout
Bunting	Himes	O'Donnell	Strickler
Burkholder	Hocker	Orban	Swope
Butera	Hook	Orbin	Tate
Cain	Horne	Otto	Thomson
Camardella	Hostetler	Pasquerilla	Thornburgh
Caputo	Huggins	Pelletier	Tomasclk
Caron	Irvis	Popil	Tully
Casey	Jirolanio	Pott	Warman
Clark	Kauffman	Powell	Welsh
Corey	Keller, J.	Prendergast	Westerberg
Cortese	Keller, M.	Quiles	Whittum
Cosetti	Kelly	Rappaport	Wilcox
Croop	King	Rea	Wilmarth
Cunningham	Krill	Redick	Woodside
Curran			

NAYS—4

Dumbauld	Michael	Michener	Percey

NOT VOTING—22

Clinger	Fleming	Kline	Scott
Conley	Fohl	Lane	Stroup
Dailey	Fortney	Lee, K.	Van Sant
Donaldson	Gerber	Musselman	Waldron
Donolow	Harding	Peehan	Woodring
Fineman	Johnson		

The majority having voted in the affirmative, the question was determined in the affirmative and the question was adopted.

MOTION TO ADOPT QUESTION II

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. Mr. President, I respectfully move that we adopt Question II relating to Proposals 3 and 4.

DELEGATE GRAY. I second the motion.

PRESIDENT BRODERICK. It has been moved by Delegate Forster and seconded by Delegate Gray.

The question now before the Convention is, shall the Convention adopt Question II in connection with Proposals 3 and 4 as framed by the Committee on Arrangement, Submission and Address to the People?

Are we ready for the question?

On the question,

Will the Convention agree to adopt Question II?

The roll was recorded as follows:

YEAS—139

Aberman	Desmond	Leach	Redick
Allison	Devlin	Lee, L.	Reynolds
Amsterdam	Dumbauld	Leinbach	Richter
Aurentz	Erwin	Leonard	Roberts
Bagenstose	Fagan	Levin	Rovner
Baldrige	Fawcett	Manderino	Ruth
Baldus	Fay	Mangery	Sahli
Baldwin	Feather	Markley	Scales
Banes	Filson	Mattioni	Scarlett
Barron	Forster	McGeary	Scranton
Barry	Gabreski	McGlynn	Sebastian
Bashoff	Gehrlein	Meyer	Shapiro
Benedict	Goldman	Michael	Sharp
Benfield	Goldstein	Michener	Shettig
Bloom	Gouger	Miller, D.	Shively
Braham	Gray	Miller, R.	Shoemaker
Brennan	Griffith	Moorhead	Shrager
Broderick	Hannum	More	Silverman
Brown	Hatter	Morton	Solomon
Buck	Henderson	Murray	Sprogell
Bunting	Heyburn	Musselman	Stout
Burkholder	Himes	O'Donnell	Strickler
Butera	Hocker	Orban	Tate
Cain	Hook	Orbin	Thomson
Camardella	Horne	Otto	Thornburgh
Caputo	Hostetler	Pasquerilla	Tomasclk
Caron	Huggins	Pelletier	Tully
Casey	Jirolanio	Percey	Warman
Clark	Kauffman	Popil	Welsh
Corey	Keller, J.	Pott	Westerberg
Cortese	Keller, M.	Powell	Whittum
Cosetti	Kelly	Prendergast	Wilcox

Croop	King	Quiles	Wilmarth
Cunningham	Krill	Rappaport	Woodside
Curran	Laputka	Rea	

NAYS—1

Swope

NOT VOTING—23

Clinger	Fleming	Johnson	Scott
Conley	Fohl	Kline	Stroup
Dailey	Fortney	Lane	Van Sant
Donaldson	Gerber	Lee, K.	Waldron
Donolow	Harding	Nelson	Woodring
Fineman	Irvis	Pechan	

The majority having voted in the affirmative, the question was determined in the affirmative and the question was adopted.

REQUEST TO POSTPONE QUESTION III

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, I would like if you could move on beyond Question III, because I would like to submit an amendment to Question III.

MOTION TO ADOPT QUESTION IV

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. I would like to yield to Chairman Pasquerilla, and I would hope that he would move the adoption of Question IV relating to Local Government.

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. I move the adoption of Question IV, having had the opportunity to review it previously before it was submitted to this body, that is, Question IV, Proposal No. 6.

DELEGATE FORSTER. I will second the motion.

PRESIDENT BRODERICK. The motion has been made by Delegate Pasquerilla, seconded by Delegate Forster.

The question is, shall the Convention adopt Question IV on Proposal No. 6 as framed by the Committee on Arrangement, Submission and Address to the People?

On the question,
Will the Convention agree to adopt Question IV?

The roll was recorded as follows:

YEAS—140

Aberman	Desmond	Lee, L.	Reynolds
Allison	Devlin	Leinbach	Richter
Aurentz	Dumbauld	Leonard	Roberts
Bagenstose	Erwin	Levin	Rovner
Baldrige	Fagan	Manderino	Ruth
Baldus	Fawcett	Mangery	Sahli
Baldwin	Fay	Markley	Scales
Banes	Feather	Mattioni	Scarlett
Barron	Filson	McGeary	Scranton
Barry	Forster	McGlynn	Sebastian
Bashoff	Gabreski	Meyer	Shapiro
Benedict	Gehrlein	Michael	Sharp
Benfield	Goldman	Michener	Shettig
Bloom	Goldstein	Miller, D.	Shively
Braham	Gouger	Miller, R.	Shoemaker
Brennan	Gray	Moorhead	Shrager
Broderick	Griffith	More	Silverman
Brown	Hannum	Morton	Solomon
Buck	Hatter	Murray	Sprogell
Bunting	Henderson	Musselman	Stout
Burkholder	Heyburn	O'Donnell	Strickler
Butera	Himes	Orban	Swope
Cain	Hocker	Orbin	Tate
Camardella	Hook	Otto	Thomson
Caputo	Horne	Pasquerilla	Thornburgh
Caron	Hostetler	Pelletier	Tully
Casey	Huggins	Percey	Van Sant
Clark	Jirolanio	Popil	Waldron
Clinger	Kauffman	Pott	Warman
Corey	Keller, J.	Powell	Welsh
Cortese	Keller, M.	Prendergast	Westerberg
Cosetti	Kelly	Quiles	Whittum
Croop	King	Rappaport	Wilcox
Cunningham	Krill	Rea	Wilmarth
Curran	Leach	Redick	Woodside

NAYS—0

NOT VOTING—23

Amsterdam	Fleming	Johnson	Pechan
Conley	Fohl	Kline	Scott
Dailey	Fortney	Lane	Stroup
Donaldson	Gerber	Laputka	Tomascik
Donolow	Harding	Lee, K.	Woodring
Fineman	Irvis	Nelson	

The majority having voted in the affirmative, the question was determined in the affirmative and the question was adopted.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Goldstein. For what purpose does the gentleman rise?

DELEGATE GOLDSTEIN. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GOLDSTEIN. Mr. President, am I in order to make a motion now at this time?

PRESIDENT BRODERICK. Yes. I think that would be in order at this time, Delegate Goldstein.

MOTION TO AMEND RESOLUTION

DELEGATE GOLDSTEIN. Mr. President, I would like to thank the delegates who supported the resolution which I proposed this morning.

Now I would like to make a motion to draft Delegate Bruce Kauffman as our first chairman for the purpose of making arrangements for the 1969 constitutional anniversary affair, and as Vice-Chairman Dick Gerber, and I will offer my service to them in regard to this affair.

I further propose that each year at our anniversary the delegates elect a new president and a new vice-president.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. It is my opinion that we can only have one president of this Constitutional Convention, and I would ask if the maker of the resolution would change his resolution to say the chairman is to make the arrangements?

DELEGATE GOLDSTEIN. I agree with you, Delegate Pasquerilla. We will make it the chairman and vice-chairman.

PRESIDENT BRODERICK. This is in the form of a resolution, is that right?

DELEGATE GOLDSTEIN. It is in the form of a motion.

PRESIDENT BRODERICK. In the form of a motion?

You have a motion on the floor, therefore, to amend your resolution of this morning?

DELEGATE GOLDSTEIN. That is right.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Orban.

DELEGATE ORBAN. That is Frank A. Orban for the benefit of the stenographer.

I would like to ask Delegate Goldstein what services he will offer.

PRESIDENT BRODERICK. You know, I was a little worried when he was electing a new president right away, too.

DELEGATE GOLDSTEIN. I will be more than glad to offer my services for anything the chairman would like me to do, except my professional services.

On the question,

Will the Convention agree to the amendment to the resolution?

It was agreed to.

PRESIDENT BRODERICK. We will consider your resolution amended, and the remarks will be placed on the record.

DELEGATE GOLDSTEIN. Thank you, Mr. President.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Murray. For what purpose does the gentleman rise?

DELEGATE MURRAY. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE MURRAY. Senor el Presidente,

El Delegado de Philadelphia, Senor Herman Key-Les Pide un Permiso Par El Mes de Abril, Para la Election'e de la Cande'tura de la Casa Represente' a la Camera de Pennsylvania. Gratsias Amigos Deligatos.

PRESIDENT BRODERICK. I just want you to know that as soon as that is translated—

DELEGATE MURRAY. Mr. President, we had a little trouble the other day with the stenographers down front, and the translation of that would be that the delegate from Philadelphia, Delegate Herman Quiles, asked for permission of leave of absence for the month of April in order that he may run for election for the House of Representatives for the State of Pennsylvania. Gracios, friendly delegates.

PRESIDENT BRODERICK. Very good.

The Chair now recognizes Delegate Quiles.

DELEGATE QUILES. Thank you very much, Delegate Murray.

PRESIDENT BRODERICK. Delegate Gray, did you wish to be recognized?

DELEGATE GRAY. If I may, sir, Mr. President.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Scranton.

DELEGATE GRAY. I would have to yield first, Mr. President.

PRESIDENT BRODERICK. I am sorry.

DELEGATE GRAY. I would be glad to yield to the Governor, but you did not even recognize me.

PRESIDENT BRODERICK. I momentarily had forgotten, Delegate Gray, that you had the microphone.

Do you yield to Delegate Scranton?

DELEGATE GRAY. You know, this gives me a real rare pleasure. Governor Scranton, do you have something serious to discuss?

DELEGATE SCRANTON. It is not very long. May I do it?

DELEGATE GRAY. But is it of a serious nature?

DELEGATE SCRANTON. Yes.

DELEGATE GRAY. Well, I do not have something serious, so you may talk.

DELEGATE SCRANTON. It was not clear to me when—I think it was Delegate O'Donnell who asked whether Question number 5 from Delegate Nelson's committee could be approved before you approve of our entire article. Can it or can it not? We are almost ready with the language.

PRESIDENT BRODERICK. Let me just state this:

The Chair will say that it can be approved, unless we hear objection from the delegates.

DELEGATE SCRANTON. All right. We will be ready right away.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Gray. For what purpose does the gentleman rise?

DELEGATE GRAY. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE GRAY. First, I want to say as co-chairman of this committee, and as a non-working co-chairman, that you were very kind to place me on this committee with such distinguished people.

Now, I would like you to know before we adjourn today that Lieutenant Governor Strickler was a most helpful person;

Then there was this gentleman over here by the name of Herman Buck, who was a very, very constructive and valuable member of the committee;

Then there was this distinguished public relations official of the Armstrong Cork Company, Delegate Forster, who did a tremendous job on this committee.

I want to say, finally, not because he has given me $150 to buy him two tickets to the heavyweight championship fight on Monday night, but I want you to know that this man, Jim Nelson, is an unusual person. You see, he is a man who has sat here on this floor for the three months we have been here. He has not run his mouth a lot, and he is a Phi Beta Kappa, but he has worn his Phi Beta Kappa key on the inside, and to me that is important.

COMMITTEE APPOINTED TO ESCORT GOVERNOR TO CONVENTION

PRESIDENT BRODERICK. The Chair at this time would like to appoint a committee composed of Vice President Casey, Vice President Orban and Secretary Michener, and ask if they will go to escort our surprise guest, the Governor of the State of Pennsylvania, and ask him to come in.

CONVENTION FAREWELL ADDRESS BY GOVERNOR RAYMOND P. SHAFER

PRESIDENT BRODERICK. Fellow delegates, it is my extreme privilege and pleasure to present to you the Governor of this great Commonwealth, Raymond P. Shafer. (Applause.)

GOVERNOR SHAFER. Mr. Lieutenant Governor and President of this Convention, distinguished delegates to this Convention, and my fellow Pennsylvanians:

Almost three months ago to this day, you began for Pennsylvania one of her most critical, though short, journeys through history.

Part of that journey ends today as you depart this Hall of Democracy to resume your daily responsibilities as citizens.

Whether it ends successfully now depends on the people who brought you here with a mandate to shake the status quo.

You were assigned the responsibility to change for the people their Constitution so they could govern themselves better in our modern, complex society—a responsibility that also required that you keep intact the delicate balance of Democratic principles that have made and kept us free.

Your mandate for change was as clear and resounding as the once great ring of the Bell that signaled from Pennsylvania soil the beginning of the World's most significant Revolution in the way men and women govern themselves.

Your task was awesome, but inevitable. For it was your honor—one that does not come in many lifetimes—to be called into Convention to propose changes that will affect the lives of all Pennsylvanians during this Century.

I come before you today, as Governor, to bid you farewell as you close this page in our History and to thank you for a job well done.

What you have achieved was not easy. The conflicting forces in the Democratic process filled the debate and interplay of this Convention as they must when citizens come together to determine their responsibilities to each other.

Some of you have experienced for the first time both the excitement and the frustrations that are a part of this process.

You have learned how extremely important it is for citizens to become involved in public affairs if we are to continue building the finest society possible—a society in which our basic law sets forth the principle that all citizens be given an equal opportunity to live their lives fully and freely.

And for those among us who are not completely satisfied with specific recommendations adopted by the majority in this Convention, it is important to remember that our personal preferences should not obscure the real accomplishments that were made here.

I am convinced that when Pennsylvanians look at the full measure of your achievement, they will find that you have proposed for them the changes they so vitally sought and need to make democracy work better in a world that is growing skeptical of its effectiveness.

In the broadest terms, you have served the people well.

When they called you into Convention, for the first time in almost a Century, they said, in effect: "We want changes in our Constitution to assure us that every man and woman will be equally represented in the making of laws in our Legislature."

You responded by proposing a change that will make certain there is a self-enforcing periodic reapportionment of the General Assembly to assure equal representation. And that is the essential change we sought.

The people told you they wanted a better system of financing State Government—that they wanted to be rid of the unrealistic debt limitation our Constitution places on modern government.

You responded by proposing a more realistic debt limit that gives protection to our taxpayers while it provides us with a sounder way of financing our programs for people.

The people said to you: "We want a streamlined local government that is able to respond more effectively and decisively to our common needs."

Your local government proposal—which will work the quiet and major revolution in local government if adopted—will strengthen our communities and their ability to respond to the enormous problems of the late 20th Century America. It will give Pennsylvania the potential for the finest local government in the Nation.

Finally, the people asked you to reform the way justice is administered to them at all levels of the law—a reform that was your greatest challenge in a day when order under law is meeting its sternest test.

What you now propose offers the citizens of Pennsylvania one of the finest judicial reform plans among the states, through a unified court system that provides significant changes from the minor judiciary up.

In sum, you have put together revisions for our government that, together with the seven amendments adopted last May, will give Pennsylvania the kind of Constitution she must have to accomplish the people's business as we speed ahead into the 21st Century.

There will be those, I am certain, who will attempt to persuade the people that they should not adopt your proposals because you have not gone far enough, or that you have gone too far, or that you have not produced what they personally wanted.

To have your total effort fall to their opposition would be the highest and saddest folly of this Century for Pennsylvania and her future.

I ask each of you to leave here today committed to telling the people about your achievements and why it is so essential to them that they adopt your proposed reforms.

I know of no higher duty and responsibility

you now have than to see this job through to its historic end at the polls in April.

I personally pledge the kind of campaign to have the people of this Commonwealth adopt your proposal that we conducted with bipartisan cooperation last year to have this Convention called.

I am personally prepared to begin today to conduct such a campaign.

I also am extremely pleased to tell you that our distinguished former Governor William W. Scranton, who served this Convention so loyally, and former Governor George M. Leader will be the Honorary Chairmen of a Constitutional Campaign Committee as they were last year.

I also call on the great Pennsylvania communications industry—its reporters, editors, broadcasters—to help us clearly tell the people about the significance of your work here.

This industry's dedication to the cause of good government, which was a major reason for winning the confidence of the people in calling this Convention, can now help us achieve our final goal.

This is a goal that all concerned Pennsylvanians can support because it is not just a Republican, or Democratic, or independent's goal.

And in line with that, I compliment each of you for holding obvious partisanship, which spelled disaster for other states' constitutional conventions, to a minimum in your proceedings.

Lieutenant Governor Broderick and the leaders of this Convention are to be given the highest praise for the dignity and fairness with which they conducted the business of this Convention.

I am confident that this bipartisanship will carry over to the polls in April.

And, now, as you leave, I am certain you take with you the knowledge and pride that you were part of an historic event that will not be measured in days, but in decades.

Your dedication has brought about proposals for meaningful reforms in which the people place their faith and trust. You have given our State an opportunity to wear a new mantle of leadership in our Republic.

It is now up to the people to seize that opportunity for themselves and their children.

Thank you and goodbye.

COMMITTEE TO ESCORT GOVERNOR FROM HOUSE TO EXECUTIVE OFFICES

PRESIDENT BRODERICK. I ask the committee to escort Governor Shafer back to his quarters.

ANNOUNCEMENT BY THE CHAIR

PRESIDENT BRODERICK. Please be seated. While you are getting back to your seats, I just want you to know I received a note that was passed to me from over in the press section that said, "If you delegates really want to hear and see what was done in this Convention for the past three months, you will attend the Gridiron Dinner being sponsored by the Pennsylvania Legislative Correspondents Association on March 13th. Signed by the President Saul Kohler."

RESOLUTION

DELEGATE ORBAN requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 29, 1968

One of the hardest working committees of this Convention has only come into the limelight during the last few weeks.

Because of the nature of its work and the fact that it could not begin to properly function until after the various proposals were sent to it, the Committee on Style and Drafting was faced with a tremendous task. There is no question that this committee, as evidenced by the fine reports that it has presented, has performed its work in an excellent manner and with deliberate speed and dispatch.

The co-chairmen, Delegate Pelletier and Johnson, and all the members of the committee should be congratulated; therefore be it

RESOLVED, That the Constitutional Convention extend its heartfelt thanks and appreciation for the excellent manner in which the Committee on Style and Drafting handled the tasks assigned to them.

AMENDMENT TO STAFF RESOLUTION

PRESIDENT BRODERICK. The Chair recognizes Delegate Otto.

DELEGATE OTTO. Mr. President, yesterday this body approved a resolution in which we praised the staff of The Reporter, our official newspaper. Here I found inadvertently I left out a name and this is an important name because it is the artist of the newspaper, Marie Swengel. If the body approves it, I would like the name added.

PRESIDENT BRODERICK. I am sure that that can be done. Is there any objection to the amendment of that resolution? The Chair hears none so we will place it in the record and see that the resolution is amended.

DELEGATE OTTO. Thank you.

RESOLUTION

DELEGATE BRENNAN requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 29, 1968

The standing Committee on Taxation and State Finance has terminated its labors on behalf of the Convention, with the successful completion and final passage of Proposals Three, Four and Five. It is appropriate therefore, that we now give recognition to the members of the staff assigned to the Committee who have so ably assisted it in performing its duties.

Our Committee Staff Director, Mitchell J. Hunt, who was loaned to the Convention by the Eastern Division of the Pennsylvania Economy League, and who will return to his duties as Supervisor

of County Branches of that estimable organization after the Convention, deserves special commendation for the able and devoted service which he has performed for the Committee.

Marx S. Leopold, Esquire, Research Assistant to the Subcommittee on State Debt, a member of the Pennsylvania Bar and former member of the staff of Congressman James M. Quigley, rendered excellent service to his subcommittee and to the Committee as a whole.

Jacob A. Myers, a graduate of Dickinson College who interned for Congressman George Goodling, and who, following the Convention, will be joining the Pennsylvania Economy League State Branch, was Research Assistant to the Subcommittee on Sinking Fund and Budget, and in that capacity proved to be a loyal, patient and enthusiastic staff member.

David William Thomas, a student at Alderson-Broaddus College, is a Research Assistant assigned to the Committee, performed his duties for the entire Committee in an able and courteous manner.

Mention should also be made of the secretarial staff members assigned to the Committee. Donna Clark, Mary Shertzer, JoAnn M. Garofalo, Joanne Books and Alice Zeidler, gave many hours of careful and competent assistance to the Committee and its members.

Mention must also be made of the service to the Committee given by Gerald H. Goldberg, Esquire, who acted in the dual capacity of Legal Counsel to the Committee and as Research Counsel to the Subcommittee on Taxation. As a former Chairman of the State Sales Tax Board of Review, and writer and lecturer in the field of State Taxation, Mr. Goldberg was well qualified for his duties.

The Committee on Taxation and State Finance desires to express its appreciation to and regard for all of the staff members hereinabove named; therefore be it

RESOLVED, That the Constitutional Convention of Pennsylvania congratulate Mitchell J. Hunt and all of the above named staff members, and express its gratitude to them for a task well done; and be it further

RESOLVED, That a copy of this resolution be prepared for Mitchell J. Hunt and the other staff members herein named, as a token of the appreciation of the Convention.

RECOMMENDATION No. 2 OF THE COMMITTEE ON ARRANGEMENT, SUBMISSION AND ADDRESS TO THE PEOPLE

POTT-LEONARD AMENDMENT

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, I now present an amendment to Committee Proposal No. 5.

On the question recurring,
Will the Convention agree to Recommendation No. 2 of the Committee?

DELEGATES POTT and LEONARD offered the following amendment which was read by the clerk:

Amend Recommendation, Ballot Question III, page 1, lines 3 and 4 of III, by striking out "incentives and benefits, retaining certain tax benefits,"

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. We have only eliminated seven words in the middle part of the paragraph, so the question will now read, "Shall Proposal 5 on Taxation adopted by the Constitutional Convention, permitting certain tax exemptions," and striking out the balance of that line and the first three words of the next line, "providing for reimbursement of local taxing authorities under certain conditions and related matters, be approved?"

PRESIDENT BRODERICK. May I suggest, Chairman Leonard, that if you could read that language again and refer to exactly where it was stricken out, our delegates would be able to correct it. Those delegates that do not have copies of the amendment will be able to correct the language.

DELEGATE LEONARD. We are merely deleting certain words following, "Shall Proposal 5 on Taxation adopted by the Constitutional Convention, permitting certain tax exemptions," and striking out the balance of that line and the first three words on the next line, "providing for reimbursement of local taxing authorities under certain conditions and related matters, be approved?"

PRESIDENT BRODERICK. Does anyone wish to be heard either for or against this amendment?

DELEGATE GOUGER. I would like to ask Chairman Leonard to tell us why he wants these removed.

PRESIDENT BRODERICK. I am sure Chairman Leonard will respond to your question.

DELEGATE LEONARD. Mr. President, this is for simplicity. We believe the words in the sentence "incentives, benefits, retaining certain tax benefits" confuses more than it adds, so we have eliminated that for the benefit of brevity and clarity; we hope.

PRESIDENT BRODERICK. The Chair recognizes Delegate Barry.

DELEGATE BARRY. This removes the objections I had when I spoke against the original wording of the language and I, therefore, move the question.

PRESIDENT BRODERICK. It has been moved by Delegate Barry and seconded by Delegate Miller.

I think we must vote on the amendment first. The question before the House is, shall the amendment being offered by Delegate Leonard be adopted, and we will now unlock the voting machine. All those voting "yea" will vote to adopt the amendment. Those voting "nay" will vote to reject the amendment.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Leonard?

The roll was recorded as follows:

YEAS—126

Aberman	Desmond	King	Redick
Allison	Devlin	Krill	Reynolds

Amsterdam	Erwin	Laputka	Richter
Aurentz	Fagan	Leach	Roberts
Bagenstose	Fawcett	Lee, L.	Rovner
Baldrige	Fay	Leinbach	Ruth
Baldus	Feather	Leonard	Sahli
Banes	Filson	Levin	Scales
Barron	Fineman	Manderino	Scarlett
Barry	Fohl	Mangery	Scranton
Bashoff	Forster	Markley	Sebastian
Benedict	Gabreski	Mattioni	Shapiro
Benfield	Gerber	McGeary	Sharp
Bloom	Goldman	McGlynn	Shettig
Braham	Goldstein	Meyer	Shively
Brennan	Gray	Michael	Shrager
Broderick	Griffith	Michener	Silverman
Brown	Hannum	Miller, D.	Strickler
Burkholder	Hatter	Miller, R.	Swope
Cain	Henderson	Moorhead	Tate
Camardella	Heyburn	More	Thomson
Caputo	Himes	Morton	Thornburgh
Caron	Hocker	Murray	Tomascik
Casey	Hook	Orbin	Tully
Clark	Horne	Otto	Van Sant
Clinger	Hostetler	Pasquerilla	Waldron
Corey	Huggins	Popil	Warman
Cortese	Irvis	Pott	Westerberg
Cosetti	Jirolanio	Powell	Wilcox
Croop	Kauffman	Prendergast	Wilmarth
Cunningham	Keller, J.	Rea	Woodside
Curran	Kelly		

NAYS—13

Buck	Gouger	Orban	Sprogell
Bunting	Nelson	Pelletier	Stout
Dumbauld	O'Donnell	Percey	Whittum
Gehrlein			

NOT VOTING—24

Baldwin	Fleming	Lane	Scott
Butera	Fortney	Lee, K.	Shoemaker
Conley	Harding	Musselman	Solomon
Dailey	Johnson	Pechan	Stroup
Donaldson	Keller, M.	Quiles	Welsh
Donolow	Kline	Rappaport	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MOTION TO ADOPT QUESTION III

DELEGATE FORSTER. I move the adoption of Question III relating to Proposal No. 5 on Taxation, as amended.

PRESIDENT BRODERICK. It has been moved by Delegate Forster, seconded by Delegate Bagenstose, that the Convention adopt Question III, as amended, in connection with Proposal No. 5 as made by the Committee on Arrangement, Submission and Address to the People.

The question recurs,

Will the Convention agree to adopt Question III, as amended?

The roll was recorded as follows:

YEAS—139

Aberman	Devlin	Laputka	Richter
Allison	Dumbauld	Leach	Roberts
Amsterdam	Erwin	Lee, L.	Rovner
Aurentz	Fagan	Leinbach	Ruth
Bagenstose	Fawcett	Leonard	Sahli
Baldus	Fay	Levin	Scales
Baldrige	Feather	Manderino	Scarlett
Banes	Filson	Mangery	Scranton
Barron	Fohl	Markley	Sebastian
Barry	Forster	Mattioni	Shapiro
Bashoff	Gabreski	Meyer	Sharp
Benedict	Gehrlein	McGeary	Shettig
Benfield	Gerber	McGlynn	Shively
Bloom	Goldman	Michener	Shoemaker
Braham	Goldstein	Miller, D.	Shrager
Brennan	Gouger	Miller, R.	Silverman
Broderick	Gray	Moorhead	Sprogell
Brown	Griffith	More	Stout
Buck	Hannum	Morton	Strickler
Bunting	Hatter	Murray	Stroup
Burkholder	Henderson	Nelson	Swope
Cain	Heyburn	O'Donnell	Tate
Camardella	Himes	Orban	Thomson
Caputo	Hocker	Orbin	Thornburgh
Caron	Hook	Otto	Tomascik
Casey	Horne	Pasquerilla	Tully
Clark	Hostetler	Pelletier	Van Sant
Clinger	Huggins	Popil	Waldron
Corey	Irvis	Pott	Warman
Cortese	Jirolanio	Powell	Westerberg
Cosetti	Kauffman	Prendergast	Whittum
Croop	Keller, J.	Rappaport	Wilcox
Cunningham	Kelly	Rea	Wilmarth
Curran	King	Redick	Woodside
Desmond	Krill	Reynolds	

NAYS—1

Percey

NOT VOTING—23

Baldwin	Fineman	Kline	Quiles
Butera	Fleming	Lane	Scott
Conley	Fortney	Lee, K.	Solomon
Dailey	Harding	Michael	Welsh
Donaldson	Johnson	Musselman	Woodring
Donolow	Keller, M.	Pechan	

The majority having voted in the affirmative, the question was determined in the affirmative and the question was adopted.

RESOLUTION

DELEGATE RUTH requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 29, 1968

WHEREAS, The Judiciary Committee's proposal has reasonably withstood extended amendments even though subjected to more debate expanded over nine convention days and many nights, than any other proposal; and

WHEREAS, The full Judiciary Committee recognizes its proposal couldn't have withstood such unprecedented onslaught without the unselfish time and effort expended beyond any reasonable expectation by certain dedicated individuals, therefore be it

RESOLVED, That the Convention thanks the Judiciary Committee and wishes to commend and congratulate its General Counsel, Carter Buller, Professor Arthur Frankston, Gene Urey, Harold Jacobs, and attractive and most competent Betty Clements, Secretary to the Committee Chairman, the Sub-committee secretaries, Marcia Mazia, Judy Gamble, Nancy Smith, Darlene Ruth, Pauline Cambell and other staff members for work beyond the call of duty.

QUESTION V

PRESIDENT BRODERICK. We have one more question and the remaining question is Question V in connection with the Judiciary.

Let me ask the question. Is there an amendment to it? Delegate Scranton is pointing to Delegate Amsterdam.

AMSTERDAM AMENDMENT TO QUESTION V

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I now present an amendment to Recommendation No. 2 of the Committee on Arrangement, Submission and Address to the People.

On the question recurring,
Will the Convention agree to Recommendation No. 2 of the Committee?

DELEGATE AMSTERDAM offered the following amendment which was read by the clerk:

Amend Recommendation, Ballot Question V, page 2, lines 3 to 8 of V, by striking out "prescribing qualifications of" in 3rd line and all of 4th to 8th lines and inserting: providing directly, or through Supreme Court rules, for the qualifications, selection, tenure, removal, discipline and retirement of, and prohibiting certain activities by justices, judges, and justices of the peace, and related matters be approved?

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Amsterdam.

DELEGATE AMSTERDAM. Mr. President, I believe that the amendment which we are recommending has been passed out and we are recommending this as a result of discussions which we have had with members of the Committee on Arrangement, Submission and Address to the People. I believe that the change will be satisfactory to them.

The amendment is intended to advise the electorate either directly or through Supreme Court rules the matters of qualification, selection and tenure, removal and discipline, as well as retirement, and prohibited activities, which are applicable equally to justices of the peace as well as they are to justices and judges. In other words, the Judiciary Article provides for justices of the peace in Section 18 (k), that the Supreme Court shall prescribe rules of procedure for the suspension, removal, discipline and compulsory retirement of justices of the peace and the other items are with regard to the justices of the peace and are directly provided for in the Judiciary Article and it is for that reason we have asked that that be noted, so that the public will know when they are voting on Article V that this is covered.

PRESIDENT BRODERICK. We now recognize Chairman Nelson.

DELEGATE NELSON. Mr. President, I, personally, have no objection to the change and, unless some member of the committee rises to indicate the contrary, I think we can all assume that no member of the committee objects to the change.

I move the adoption of the amendment.

DELEGATE BAGENSTOSE. I second the motion.

PRESIDENT BRODERICK. Ready for the question?

Unlock the voting machine.

The question. Will the Convention adopt the amendment to Question V on Recommendation No. 2 of the Committee on Arrangement, Submission and Address to the People?

All those voting "yea" will vote to support the amendment, those voting "nay" vote to reject it.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Amsterdam?

The roll was recorded as follows:

YEAS—119

Allison	Curran	Kauffman	Rea
Amsterdam	Desmond	Keller, J.	Reynolds
Aurentz	Devlin	Kelly	Richter
Bagenstose	Dumbauld	King	Roberts
Baldrige	Erwin	Krill	Rovner
Baldus	Fagan	Laputka	Sahli
Banes	Fawcett	Leach	Scales
Barron	Fay	Lee, L.	Scarlett
Barry	Feather	Leinbach	Scranton
Bashoff	Filson	Leonard	Sebastian
Benedict	Fohl	Levin	Sharp
Benfield	Forster	Manderino	Shettig
Bloom	Gabreski	Mangery	Shively
Braham	Gehrlein	Markley	Shoemaker
Brennan	Goldman	McGlynn	Shrager
Broderick	Goldstein	Meyer	Silverman
Brown	Gray	Michener	Strickler
Burkholder	Griffith	Miller, D.	Stroup
Butera	Hannum	Miller, R.	Swope
Cain	Hatter	Moorhead	Tate
Camardella	Henderson	More	Thomson
Caputo	Heyburn	Morton	Thornburgh
Caron	Himes	Murray	Tomascik
Casey	Hocker	Orbin	Tully
Clark	Hook	Otto	Waldron
Corey	Horne	Pasquerilla	Warman
Cortese	Hostetler	Popil	Westerberg
Cosetti	Huggins	Pott	Wilcox
Croop	Irvis	Prendergast	Wilmarth
Cunningham	Jirolanio	Rappaport	

NAYS—15

Buck	Michael	Percey	Stout
Bunting	Nelson	Powell	Whittum
Mattioni	O'Donnell	Shapiro	Woodside
McGeary	Orban	Sprogell	

NOT VOTING—29

Aberman	Fleming	Kline	Redick
Baldwin	Fortney	Lane	Ruth
Clinger	Gerber	Lee, K.	Scott
Conley	Gouger	Musselman	Solomon
Dailey	Harding	Quiles	Van Sant
Donaldson	Johnson	Pechan	Welsh
Donolow	Keller, M.	Pelletier	Woodring
Fineman			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

PRESIDENT BRODERICK. The question before the Convention is: Shall the Convention adopt Question V, as amended, in connection with Proposal No. 7 as framed by the Committee on Arrangement, Submission and Address to the People?

Does anyone wish to be heard?

DELEGATE CROOP. I move that we adopt it.

DELEGATE BLOOM. Seconded.

PRESIDENT BRODERICK. Ready for the question?

We, therefore, unlock the voting machine and the question again before the Convention is: Shall the Convention adopt Ballot Question V, as amended, in connection with Proposal No. 7? All those voting "yea" vote in favor of the adoption of the question, as amended, those voting "nay" vote to reject it.

The question recurs,
Will the Convention agree to Ballot Question V?

The roll was recorded as follows:

YEAS—124

Aberman	Cunningham	Keller, J.	Rappaport
Allison	Curran	Kelly	Rea
Amsterdam	Desmond	King	Redick
Aurentz	Dumbauld	Krill	Reynolds
Bagenstose	Erwin	Laputka	Richter
Baldrige	Fagan	Leach	Roberts
Baldus	Fawcett	Lee, L.	Rovner
Banes	Fay	Leinbach	Sahli
Barron	Feather	Leonard	Scales
Barry	Filson	Levin	Scranton
Bashoff	Fohl	Manderino	Sebastian
Benedict	Forster	Mangery	Sharp
Benfield	Gabreski	Markley	Shettig
Bloom	Gehrlein	McGeary	Shively
Braham	Goldman	McGlynn	Shrager
Brennan	Goldstein	Meyer	Silverman
Broderick	Gouger	Michener	Stout
Brown	Gray	Miller, D.	Strickler
Buck	Hannum	Moorhead	Stroup
Bunting	Hatter	More	Swope
Burkholder	Henderson	Morton	Tate
Butera	Heyburn	Murray	Thomson
Cain	Himes	Nelson	Thornburgh
Camardella	Hocker	O'Donnell	Tomascik
Caputo	Hook	Orban	Tully
Caron	Horne	Orbin	Van Sant
Casey	Hostetler	Otto	Waldron
Clark	Huggins	Pasquerilla	Warman
Corey	Irvis	Popil	Westerberg
Cortese	Jirolanio	Pott	Wilcox
Croop	Kauffman	Prendergast	Wilmarth

NAYS—9

Mattioni	Powell	Shoemaker	Whittum
Michael	Shapiro	Sprogell	Woodside
Percey			

NOT VOTING—30

Baldwin	Fineman	Kline	Quiles
Clinger	Fleming	Lane	Ruth
Conley	Fortney	Lee, K.	Scarlett
Cosetti	Gerber	Miller, R.	Scott
Dalley	Griffith	Musselman	Solomon
Devlin	Harding	Pechan	Welsh
Donaldson	Johnson	Pelletier	Woodring
Donolow	Keller, M.		

The majority having voted in the affirmative, the question was determined in the affirmative and Ballot Question V was adopted.

RECOMMENDATION No. 3

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. Now, Mr. President, at this time we would like to move on to Recommendation No. 3, if we may. This is the Address to the People. The explanation of recommendations in that area will be taken care of by Delegate Forster, who is the ad hoc chairman of the Address subcommittee.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1967-1968

RECOMMENDATION NO. 3

of the

COMMITTEE ON ARRANGEMENT, SUBMISSION AND ADDRESS TO THE PEOPLE

— — —

1. The Committee on Arrangement, Submission and Address to the People recommends that the Constitutional Convention adopt an Address to the People in the form hereto attached.

2. The Committee on Arrangement, Submission and Address to the People further recommends that the Address to the People and copies of a condensed version thereof be printed and distributed as directed by the Committee on Administration and Finance.

Respectfully submitted,

By: JAMES W. NELSON
By: WILLIAM H. GRAY, JR.

Co-Chairmen, Committee on Arrangement, Submission and Address to the People

THIS IS SUGGESTED LAYOUT AND TYPE STYLE FOR THE PROPOSAL AND SUMMARY AND EXPLANATION SECTION OF THE ADDRESS TO THE PEOPLE.

SECTION II

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1

Section eighteen of article two of the Constitution of Pennsylvania is amended and four new sections are added after said section, to read:

Section 18

The General Assembly at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into senatorial and representative districts agreeably to the provisions of the two next preceding sections.

Commentary:

The board of county commissioners of any county may appoint at any time a charter board of not more than nine members, and shall appoint a charter board within thirty days after receipt of a petition signed by five per cent of the qualified voters of the county or by ten thousand voters, whichever is less. If additional charter board members are nominated by petitions signed by three per cent of the qualified voters of the county or by three thousand voters, whichever is less, which shall be delivered to the board of county commissioners within sixty days after the charter board shall have been appointed, then the board of county commissioners shall call a special election not less than thirty nor more than ninety days after receipt of the petitions unless a regular election falls within the designated period. The appointees of the board of county commissioners and those nominated by petitions shall be placed on

the ballot in alphabetical order without party designation. The voters shall be entitled to cast votes for, and elect, a number of nominees equal to the number of charter board members originally selected by the board of county commissioners and those so elected shall constitute the charter board.

PROPOSALS
FOR
PENNSYLVANIA'S CONSTITUTION

AS
ADOPTED
BY
THE
CONVENTION

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1967-1968

COMMONWEALTH OF PENNSYLVANIA

(STATE SEAL)

PROPOSALS FOR REVISION

OF

THE CONSTITUTION OF PENNSYLVANIA

ADOPTED BY

THE CONSTITUTIONAL CONVENTION OF 1967-68

AND

TO BE SUBMITTED TO THE PEOPLE

FOR

APPROVAL OR REJECTION ON APRIL 23, 1968

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ADDRESS TO THE PEOPLE OF PENNSYLVANIA

This address presents the proposals for constitutional revision adopted by the limited Constitutional Convention which will be submitted to the voters of Pennsylvania for ratification on April 23, 1968.

The proposals amend, replace or supplement Articles and Sections of the present Constitution, as amended, in four subject areas. As set forth in Act No. 2 which was ratified by the people to call the Convention, these four subject areas are: (1) Legislative Apportionment; (2) Taxation and State Finance; (3) Local Government, and (4) Judicial Administration, Organization, Selection and Tenure.

The Convention directed that this address be prepared and distributed so that the citizens of the Commonwealth would have full opportunity to study and evaluate the proposals before voting on them.

The important decision facing the voters is whether to complete the task of modernizing Pennsylvania's basic law by ratifying these proposals—or to leave the task only partially completed by rejecting them.

Our present Constitution was drafted in 1872 and 1873 against a background of corruption and special-interest legislation. Before the turn of the century, a number of its provisions were outmoded and it was beginning to hamper the government's ability to meet the needs of the people under changing social and economic conditions. Since 1900, the demand for revision steadily increased but six times over this same period the voters rejected calls for open Constitutional Conventions.

Early in this decade, it was decided to accomplish modernization of the Constitution by the gradual process of amendment. Twelve amendments were drafted to effect the needed updating of the basic law. In the period from 1964 to 1967, the Legislature twice adopted nine of these amendments.

Two of these nine were ratified by the people in 1966, and the other seven were approved in the May, 1967, Primary Election. These nine amendments made sweeping changes in many Articles and Sections of the Constitution. In fact, they did the entire job of modernizing except for the four subject areas assigned to the limited Constitutional Convention when its call was approved by the voters in May of 1967.

Act No. 2 directed the election of 150 delegates to the Convention and designated 13 ex-officio delegates, making a total of 163. Three delegates were elected from each of the fifty Senatorial Districts of the State in the Municipal Election of November 7, 1967. The 13 ex-officio delegates included the Lieutenant Governor and the Majority and Minority leadership of the Senate and House of Representatives.

Two alternative methods of nominating delegates were provided in the Act. The first, and most generally used, was nomination by political party. County Committees of each party were empowered to nominate two candidates in each Senatorial District. The second method permitted individuals to get on the ballot by filing petitions

signed by at least 500 electors residing in their Senatorial Districts.

In the November Election, each elector was entitled to vote for two candidates for delegate from his Senatorial District. The three candidates receiving the highest number of votes were certified as delegates to the Convention. This method made possible minority party representation in each district.

Act No. 2 not only limited the subject areas the Convention could consider, but also laid down other restrictions.

First, it set a three-month life for the Convention, beginning December 1, 1967, and adjourning sine die February 29, 1968.

Second, it specifically prohibited the Convention from making any recommendation that clearly permits or prohibits the imposition of a graduated income tax.

Third, it prohibited the Convention from changing in any manner that portion of the Constitution which specifies that all taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax.

Fourth, it prohibited the Convention from altering the restriction that the Motor License Fund should be used solely for public highways, bridges and air navigation facilities.

In addition, Act No. 2 specified that in presenting Convention recommendations to the electorate in April of 1968, proposed changes should be submitted separately with no less than one question for each article, and a separate question for the amendment on legislative apportionment.

A Preparatory Committee headed by Lieutenant Governor Raymond J. Broderick and the officers of both Houses of the General Assembly held preconvention public hearings on the subjects to be considered by the Convention and prepared, with the assistance of qualified authorities in the fields denoted, nine reference manuals that were used extensively by the delegates in their study and deliberations.

Official convening of the Pennsylvania Constitutional Convention of 1967-1968 occurred in the Hall of the House of Representatives of the Capitol in Harrisburg, December 1, 1967. The delegates were certified by the Secretary of the Commonwealth and the oath of office was administered by the Chief Justice of the Supreme Court of Pennsylvania.

The Convention organized by the election of the following officers: Lieutenant Governor Raymond J. Broderick, President; Former State Senator Robert P. Casey, First Vice President; Frank A. Orban, Jr., Second Vice President; and James A. Michener, Secretary.

After two working days, the Convention adopted its rules and within a week eight major committees and sixteen sub-committees were appointed. The major committees were: Legislative Apportionment; Judiciary; Local Government; Taxation and State Finance; Style and Drafting; Rules; Administration and Finance, and Arrangement, Submission and Address to the People. These committees met daily following the plenary sessions of the Convention.

To assist the delegates in their work, a staff under the direction of John W. Ingram, made up of administrators, legal counsel, researchers, technical experts, secretaries, clerks and pages was appointed by the Convention.

During December, after the Convention had organized, delegate proposals were received and public hearings held. Delegates submitted 209 proposals which were referred to the appropriate committees and sub-committees where they were carefully studied, analyzed and discussed. Many features of these delegate proposals were contained in the final committee proposals which were subsequently offered to the Convention. Public hearings were held by each of the substantive committees to augment the information gained from the pre-convention hearings conducted by the Preparatory Committee.

During the first half of January, sub-committees completed their deliberations and prepared their reports and recommendations to the full standing committees. The last half of the month was devoted to exhaustive debate and amendment of the proposals by the full committees, leading to the eventual adoption of the formal committee proposals for presentation to the Convention.

Seven such committee proposals were given to the Convention on or before February 2, 1968. They were: Proposals Nos. 1 and 2, Legislative Apportionment; Proposals Nos. 3, 4 and 5, Taxation and State Finance; Proposal No. 6, Local Government, and Proposal No. 7, The Judiciary.

Each of these proposals was in turn debated and amended by the full Convention. After first and second consideration each proposal was sent to the Style and Drafting Committee for careful screening, to be checked for substantive matters omitted and to be sure the ideas were expressed in clear, concise language, and arranged in logical sequence. After being returned to the Convention by this Committee, the proposal was placed on third consideration and was finally adopted by the Convention.

The seven proposals adopted by the Convention are presented in full text with a summary and explanation in the second section of this address document, beginning on Page 7. The Articles and Sections of the present Constitution they are designed to replace are to be found in the Appendix, beginning on Page 41.

The adopted proposals, together with the questions framed by the Convention for submission to the electors, will be certified by the President and Secretary of the Convention to the Secretary of the Commonwealth by March 7, 1968 in order that proper arrangements can be made for the 1968 Primary Election.

The adopted proposals now to be offered to the voters of Pennsylvania are the end product of thousands of hours of research, study and debate by 163 delegates who came to the Convention from every part of the State, with broad diversity of

backgrounds and possessing personal or regional viewpoints, but with the over-riding determination to write provisions that would be in the best interest of the Commonwealth and its people.

Delegates to the Convention do not contend that they have drafted ideal or perfect proposals, for that would have been impossible to accomplish. Rather, they take the more practical view that these new provisions are sound and will be acceptable to the great majority of Pennsylvanians. Further, they firmly believe these proposals will not only complete the task of modernizing the Constitution but also give Pennsylvania a basic law that is flexible and forward-looking—well suited to the challenges of the years ahead.

The decision is now in the hands of the people. In this regard the powers of the people are eloquently set forth in Article 1, Section 2, of our Constitution which reads:

> "All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper."

Shall modernization of our Constitution be completed or left only partially completed? This is the basic question the people will be called upon to answer in voting on these proposals April 23.

BALLOT QUESTIONS

The questions which will appear on the ballot in the Primary Election April 23, 1968 will be as follows:

I

Shall Proposals 1 and 2 on LEGISLATIVE APPORTIONMENT, adopted by the Constitutional Convention, providing for 50 Senators and 203 Representatives, and for a Commission to reapportion the Legislature after each decennial census, be approved?	YES NO

II

Shall Proposals 3 and 4 on STATE FINANCE, adopted by the Constitutional Convention, providing for a limit on borrowing based on tax revenues, budgeting, financial planning, auditing and related matters, be approved?	YES NO

III

Shall Proposal 5 on TAXATION, adopted by the Constitutional Convention, permitting certain tax exemptions, providing for reimbursement of local taxing authorities under certain conditions and related matters, be approved?	YES NO

IV

Shall Proposal 6 on LOCAL GOVERNMENT, adopted by the Constitutional Convention, providing for home rule for all units of local government, optional forms of government, uniform procedures for merger, consolidation and boundary change, intergovernmental cooperation and area governments, local finance and debt limits, apportionment, and related matters, be approved?	YES NO

V

Shall Proposal 7 on the JUDICIARY, adopted by the Constitutional Convention, establishing a unified judicial system, providing directly, or through Supreme Court rules, for the qualifications, selection, tenure, removal, discipline and retirement of, and prohibiting certain activities by justices, judges, and justices of the peace, and related matters, be approved?	YES NO

PRESENTATION of PROPOSALS
and
SUMMARY and EXPLANATION

LEGISLATIVE APPORTIONMENT

BALLOT QUESTION 1

Shall Proposals 1 and 2 on LEGISLATIVE APPORTIONMENT, adopted by the Constitutional Convention, providing for 50 Senators and 203 Representatives, and for a Commission to reapportion the Legislature after each decennial census, be approved?	YES NO	

PROPOSAL NO. 1

A PROPOSAL

Amending the Constitution of Pennsylvania providing for apportionment of legislative districts.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Sections sixteen and seventeen of article two of the Constitution of Pennsylvania are amended to read:

Section 16. Legislative Districts.—The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

SCHEDULE

The foregoing amendment to article two of the Constitution of Pennsylvania if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

PROPOSAL NO. 2

A PROPOSAL

Amending the Constitution of Pennsylvania providing for apportionment of legislative districts.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section eighteen of article two of the Constitution of Pennsylvania is amended to read:

SUMMARY and EXPLANATION

The composition of the General Assembly remains the same.

The Commonwealth will be divided into fifty (50) Senatorial Districts and two hundred three (203) Representative Districts. Each Senatorial District will elect one Senator, and each Representative District will elect one Representative.

No county, city, town, borough, township or ward shall be divided in forming such districts unless absolutely necessary.

(Proposal No. 2—Cont.)

Section 17. Legislative Reapportionment Commission.—(a) In each year following that in which the Federal decennial census is officially reported as required by Federal law, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth. The commission shall act by a majority of its entire membership.

(b) The commission shall consist of five members: four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman selected as hereinafter provided. No later than the fourth Monday in January of the year following the year in which the Federal decennial census is officially reported as required by Federal law, the four members shall be certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections.

The four members within forty-five days after their certification shall select the fifth member, who shall serve as chairman of the commission, and shall immediately certify his name to such elections officer. The chairman shall be a citizen of the Commonwealth other than a local, State or Federal official holding an office to which compensation is attached.

If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within thirty days thereafter shall appoint the chairman as aforesaid and certify his appointment to such elections officer.

Any vacancy in the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) No later than ninety days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer. The commission shall have thirty days after filing the preliminary plan to make corrections in the plan.

Any person aggrieved by the preliminary plan shall have the same thirty-day period to file exceptions with the commission in which case the commission shall have thirty days after the date the exceptions were filed to prepare and file with such elections officer a revised reapportionment plan. If no exceptions are filed within thirty days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(d) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing

The duty of reapportioning the General Assembly is delegated to a five-member Legislative Reapportionment Commission to be constituted following each Federal decennial census.

The Commission will consist of the Majority and Minority Leaders of the Senate and the House of Representatives and a fifth member selected by them. The fifth member shall be the Chairman of the Commission. The Chairman may not hold any public office to which compensation is attached.

(Proposal No. 2—Cont.)

the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this section 17.

(f) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine, but no part thereof shall be paid until a preliminary plan is filed. If a preliminary plan is filed but the commission fails to file a revised or final plan within the time prescribed, the commission members shall forfeit all right to compensation not paid.

(g) If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed by this section, unless the time be extended by the Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

(h) Any reapportionment plan filed by the commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportioned districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts.

SCHEDULE

The foregoing amendment to article two of the Constitution of Pennsylvania if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

STATE TAXATION AND FINANCE

BALLOT QUESTION II

Shall Proposals 3 and 4 on STATE FINANCE, adopted by the Constitutional Convention, providing for a limit on borrowing based on tax revenues, budgeting, financial planning, auditing and related matters, be approved?	YES	
	NO	

PROPOSAL NO. 3

A PROPOSAL

Amending the Constitution of Pennsylvania further providing for Commonwealth indebtedness.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Article eight of the Constitution of Pennsylvania is amended by adding after section six two new sections to read:

Section 7. Commonwealth Indebtedness.—(a) No debt shall be incurred by or on behalf of the Commonwealth except by law and in accordance with the provisions of this section.

(1) Debt may be incurred without limit to suppress insurrection, rehabilitate areas affected by man-made or natural disaster, or to implement unissued authority approved by the electors prior to the adoption of this article.

(2) The Governor, State Treasurer and Auditor General, acting jointly, may (i) issue tax anticipation notes having a maturity within the fiscal year of issue and payable exclusively from revenues received in the same fiscal year, and (ii) incur debt for the purpose of refunding other debt, if such refunding debt matures within the term of the original debt.

(3) Debt may be incurred without limit for purposes specifically itemized in the law authorizing such debt, if the question whether the debt shall be incurred has been submitted to the electors and approved by a majority of those voting on the question.

(4) Debt may be incurred without the approval of the electors for capital projects specifically itemized in a capital budget, if such debt will not cause the amount of all net debt outstanding to exceed one and three-quarters times the average of the annual tax revenues deposited in the previous five fiscal years as certified by the Auditor General. For the purposes of this subsection, debt outstanding shall not include debt incurred under clauses (1) and (2) (i), or debt incurred under clause (2) (ii) if the original debt would not be so considered, or debt incurred under sub-

SUMMARY and EXPLANATION

Proposal 3 is intended to establish a realistic limit on the borrowing authority of the Legislature. The limit is set at 1.75 times the average yearly tax collections over a five-year period. This eliminates the necessity of resorting to the device of creating authorities to finance capital expenditures. Authority and other debt which is self-liquidating and debt approved by the voters in a referendum are excluded from the debt limit, as

(Proposal No. 3—Cont.)

section (3) unless the General Assembly shall so provide in the law authorizing such debt.

(b) All debt incurred for capital projects shall mature within a period not to exceed the estimated useful life of the projects as stated in the authorizing law, and when so stated shall be conclusive. All debt, except indebtedness permitted by clause (2) (i), shall be amortized in substantial and regular amounts, the first of which shall be due prior to the expiration of a period equal to one-tenth the term of the debt.

(c) As used in this section, debt shall mean the issued and outstanding obligations of the Commonwealth and shall include obligations of its agencies or authorities to the extent they are to be repaid from lease rentals or other charges payable directly or indirectly from revenues of the Commonwealth. Debts shall not include either (1) that portion of obligations to be repaid from charges made to the public for the use of the capital projects financed, as determined by the Auditor General, or (2) obligations to be repaid from lease rentals or other charges payable by a school district or other local taxing authority, or (3) obligations to be repaid by agencies or authorities created for the joint benefit of the Commonwealth and one or more other State governments.

(d) If sufficient funds are not appropriated for the timely payment of the interest upon and installments of principal of all debt, the State Treasurer shall set apart from the first revenues thereafter received applicable to the appropriate fund a sum sufficient to pay such interest and installments of principal, and shall so apply the money so set apart. The State Treasurer may be required to set aside and apply such revenues at the suit of any holder of Commonwealth obligations.

Section 2. Section nine of the article is amended to read:

Section 8. Commonwealth Credit Not to be Pledged.—The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.

Section 9. Municipal Debt Not to be Assumed by Commonwealth.—The Commonwealth shall not assume the debt, or any part thereof, of any county, city, borough, incorporated town, township or any similar general purpose unit of government unless such debt shall have been incurred to enable the Commonwealth to suppress insurrection or to assist the Commonwealth in the discharge of any portion of its present indebtedness.

SCHEDULE

The existing sections four, five, eleven, twelve, thirteen, sixteen, seventeen, twenty-one, twenty-two and twenty-three of article eight of the Constitution of Pennsylvania are hereby repealed.

Effective when the last bonds have been issued under their authority, sections twenty-four and twenty-five of article eight of the Constitution of Pennsylvania are hereby repealed.

is debt incurred to suppress insurrection or rehabilitation areas affected by disaster.

Payment of principal and interest of all debt of the Commonwealth is guaranteed by a requirement that revenues be set apart for the purpose.

Any debt incurred for capital improvements must be amortized over a period of time which does not exceed the useful life of the improvement.

PROPOSAL NO. 4

A PROPOSAL

Amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Article eight of the Constitution of Pennsylvania is amended by adding after section nine a new section to read:

Section 10. Audit.—The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.

Any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the function of auditing that transaction after its occurrence.

Section 2. Article eight of the Constitution of Pennsylvania is amended by adding after section eleven three new sections to read:

Section 12. Governor's Budgets and Financial Plan.—Annually, at the times set by law, the Governor shall submit to the General Assembly:

(a) A balanced operating budget for the ensuing fiscal year setting forth in detail (i) proposed expenditures classified by department or agency and by program and (ii) estimated revenues from all sources. If estimated revenues and available surplus are less than proposed expenditures, the Governor shall recommend specific additional sources of revenue sufficient to pay the deficiency and the estimated revenue to be derived from each source;

(b) A capital budget for the ensuing fiscal year setting forth in detail proposed expenditures to be financed from the proceeds of obligations of the Commonwealth or of its agencies or authorities or from operating funds; and

(c) A financial plan for not less than the next succeeding five fiscal years, which plan shall include for each such fiscal year:

(i) Projected operating expenditures classified by department or agency and by program, in reasonable detail, and estimated revenues, by major categories, from existing and additional sources, and

(ii) Projected expenditures for capital projects specifically itemized by purpose, and the proposed sources of financing each.

Section 13. Appropriations.—(a) Operating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues and surplus available in the same fiscal year.

SUMMARY and EXPLANATION

Under Proposal 4, the General Assembly must limit appropriations in a fiscal year to the revenues that are available for each fiscal year and must approve a capital budget for the next fiscal year.

The Governor must prepare annually a financial plan for at least a five-year period to disclose proposed programs, costs and revenues.

The Sinking Fund requirement is eliminated and the General Assembly is required to use any surplus at the end of the fiscal year in balancing the budget for the following year.

The financial affairs of the Commonwealth are subjected to audits made in accordance with generally accepted auditing standards. The functions of pre-audit and post-audit may not be performed by the same officer or department.

(Proposal No. 4—Cont.)

(b) The General Assembly shall adopt a capital budget for the ensuing fiscal year.

Section 14. Surplus.—All surplus of operating funds at the end of the fiscal year shall be appropriated during the ensuing fiscal year by the General Assembly.

SCHEDULE

The following schedule is adopted: Sections ten, twelve, thirteen and fourteen of article eight shall take effect as soon as possible, but no later than July 1, 1970.

BALLOT QUESTION III

Shall Proposal 5 on TAXATION, adopted by the Constitutional Convention, permitting certain tax exemptions, providing for reimbursement of local taxing authorities under certain conditions and related matters, be approved?	YES	
	NO	

PROPOSAL NO. 5

A PROPOSAL

Amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. Section one of article eight of the Constitution of Pennsylvania is amended and a new section is added after said section, to read:

Section 1. Uniformity of Taxation.—All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Section 2. Exemptions and Special Provisions. —(a) The General Assembly may by law exempt from taxation:

(i) Actual places of regularly stated religious worship;

(ii) Actual places of burial, when used or held by a person or organization deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith;

(iii) That portion of public property which is actually and regularly used for public purposes;

(iv) That portion of the property owned and occupied by any branch, post or camp of honorably discharged servicemen or servicewomen which is actually and regularly used for benevolent, charitable or patriotic purposes; and

(v) Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution

SUMMARY AND EXPLANATION

The provisions of the Constitution relating to exemption of certain classes of property from State and local taxation, including property of public utilities, are further defined by Proposal 5. In lieu of local taxation, a portion of the gross receipts tax imposed by the State upon public utilities will be allocated to local governments on a fair and equitable basis.

The requirement that all taxes shall be uniform upon the same classes of subjects and shall be levied and collected under general laws is retained. Also retained is the provision that gasoline taxes be earmarked for the motor license fund.

The General Assembly may permit special tax exemptions for needy citizens which local taxing authorities may grant if they so desire. The General Assembly may mandate such exemptions from real estate taxes only if they provide for local governments to be reimbursed for any losses suffered as a result of any such additional exemptions.

The General Assembly may also provide for exemptions or special taxing provisions to be

(Proposal No. 5—Cont.)

which is actually and regularly used for the purposes of the institution.

(b) The General Assembly may, by law:

(i) Establish standards and qualifications for private forest reserves, and make special provision for the taxation thereof;

(ii) Establish as a class or classes of subjects of taxation the property or privileges of persons who, because of age, disability, infirmity or poverty are determined to be in need of tax exemption or of special tax provisions, and for any such class or classes, uniform standards and qualifications. The Commonwealth, or any other taxing authority, may adopt or employ such class or classes and standards and qualifications, and except as herein provided may impose taxes, grant exemptions, or make special tax provisions in accordance therewith. No exemption or special provision shall be made under this clause with respect to taxes upon the sale or use of personal property, and no exemption from any tax upon real property shall be granted by the General Assembly under this clause unless the General Assembly shall provide for the reimbursement of local taxing authorities by or through the Commonwealth for revenue losses occasioned by such exemption;

(iii) Establish standards and qualifications by which local taxing authorities may make uniform special tax provisions applicable to a taxpayer for a limited period of time to encourage improvement of deteriorating property or areas by an individual, association or corporation, or to encourage industrial development by a non-profit corporation; and

(iv) Make special tax provisions on any increase in value of real estate resulting from residential construction. Such special tax provisions shall be applicable for a period not to exceed two years.

(c) Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double or quadruple amputees, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein.

Section 2. Sections one B, two, eighteen, twenty-four and twenty-five of article eight of the Constitution of Pennsylvania are renumbered three, five, eleven, fifteen and sixteen respectively, and section three of article eight of the Constitution of Pennsylvania is amended to read:

Section 6. Taxation of Corporations.—The power to tax corporations and corporate property shall not be surrendered or suspended by any contract applicable for a limited period of time, generally at the option of local taxing authorities, to encourage rehabilitation of deteriorating areas, and promoting industrial and housing development.

Existing Sections 1b, 2, 3, 18, 24, and 25 of Article VIII are retained verbatim, except they are renumbered as Sections 3, 5, 6, 11, 15, and 16 respectively. (See Appendix pages 43-50.)

(Proposal No. 5—Cont.)

or grant to which the Commonwealth shall be a party.

Section 3. Article eight of the Constitution of Pennsylvania is amended by adding after section three, a new section, to read:

Section 4. Public Utilities.—The real property of public utilities is subject to real estate taxes imposed by local taxing authorities. Payment to the Commonwealth of gross receipts taxes or other special taxes in replacement of gross receipts taxes by a public utility and the distribution by the Commonwealth to the local taxing authorities of the amount is herein provided shall, however, be in lieu of local taxes upon its real property which is used or useful in furnishing its public utility service. The amount raised annually by such gross receipts or other special taxes shall not be less than the gross amount of real estate taxes which the local taxing authorities could have imposed upon such real property but for the exemption herein provided. This gross amount shall be determined in the manner provided by law. An amount equivalent to such real estate taxes shall be distributed annually among all local taxing authorities in the proportion which the total tax receipts of each local taxing authority bear to the total tax receipts of all local taxing authorities, or in such other equitable proportions as may be provided by law.

Notwithstanding the provisions of this section, any law which presently subjects real property of public utilities to local real estate taxation by local taxing authorities shall remain in full force and effect.

SCHEDULE

Sections one and two shall take effect as soon as possible, but no later than July 1, 1970. Section four shall take effect July 1, 1970, unless the General Assembly earlier provides enabling legislation in accordance therewith.

LOCAL GOVERNMENT

BALLOT QUESTION IV

Shall Proposal 6 on LOCAL GOVERNMENT, adopted by the Constitutional Convention, providing for home rule for all units of local government, optional forms of government, uniform procedures for merger, consolidation and boundary change, intergovernmental cooperation and area governments, local finance and debt limits, apportionment and related matters, be approved?	**YES**	
	NO	

PROPOSAL NO. 6

A PROPOSAL

Amending the Constitution of Pennsylvania providing for local government in Pennsylvania.

SUMMARY AND EXPLANATION

(Proposal No. 6—Cont.)

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. The Constitution of Pennsylvania is amended by adding a new article to read:

ARTICLE IX
LOCAL GOVERNMENT

Section 1. Local Government.—The General Assembly shall provide by general law for local government within the Comonwealth. Such general law shall be uniform as to all classes of local government regarding procedural matters.

Section 2. Home Rule.—Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.

All units of local government are given the right to adopt a home rule charter under guidelines to be determined by the General Assembly.

Should the General Assembly fail to act within four years, any unit of local government may adopt a home rule charter by majority vote of the electorate in a referendum, and upon adoption of such a charter, will be entitled to exercise any power not denied to it by the Constitution, the General Assembly or its own charter.

Section 3. Optional Plans.—Municipalities shall have the right and power to adopt optional forms of government as provided by law. The General Assembly shall provide optional forms of government for all municipalities. An optional form of government shall be presented to the electors by initiative, by the governing body of the municipality, or by the General Assembly. Adoption or repeal of an optional form of government shall be by referendum.

The General Assembly is also required to provide optional forms of government for all municipalities. One optional form of government preserved to counties is a modified version of the present form of county government in which the offices of coroner and surveyor are removed as Constitutional offices; county treasurers will be permitted to succeed themselves; appointed public defenders are made county officers; residence requirements for appointed county officers are now statutory; all county officers are to be compensated solely by salary; and vacancies in the offices of county commissioner and county auditor will be filled as provided by the General Assembly instead of by the court of common pleas. Constitutional offices other than coroner and surveyor are retained.

Section 4. County Government.—County officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law.

County officers, except for public defenders who shall be appointed as shall be provided by law, shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies shall be filled in such a manner as may be provided by law.

County officers shall be paid only by salary as provided by law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the Commonwealth, or as otherwise provided by law.

Three county commissioners shall be elected in each county. In the election of these officers each

(Proposal No. 6—Cont.)

qualified elector shall vote for no more than two persons, and the three persons receiving the highest number of votes shall be elected.

Provisions for county government in this section shall apply to every county except a county which has adopted a home rule charter or an optional form of government. One of the optional forms of county government provided by law shall include the provisions of this section.

Section 5. Intergovernmental Cooperation.—A municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other governmental units including other municipalities or districts, the Federal government, any other state or its governmental units, or any newly created governmental unit.

The proposal allows any units of local government to cooperate with or delegate to, either voluntarily or through initiative and referendum, any other governmental unit, including a State or the Federal government; permits the General Assembly to provide for the government of areas involving more than one municipality, and provides for the granting of powers by the General Assembly to governmental units functioning on an intergovernmental or area-wide basis.

Section 6. Area Government.—The General Assembly shall provide for the establishment and dissolution of government of areas involving two or more municipalities or parts thereof.

Section 7. Area-wide Powers.—The General Assembly may grant powers to area governments or to municipalities within a given geographical area in which there exists intergovernmental cooperation or area government and designate the classes of municipalities subject to such legislation.

Section 8. Consolidation, Merger or Boundary Change.—Uniform Legislation. The General Assembly shall, within two years following the adoption of this article, enact uniform legislation establishing the procedure for consolidation, merger or change of the boundaries of municipalities.

The General Assembly is given two years to adopt uniform merger, consolidation and boundary laws. Annexation of territory of a contiguous unit is permitted upon approval by a majority vote of the electors of each of the local units involved, without the approval of the governing body subject to the right of the General Assembly to provide additional methods for boundary changes.

Initiative. The electors of any municipality shall have the right, by initiative and referendum, to consolidate, merge and change boundaries by a majority vote of those voting thereon in each municipality, without the approval of any governing body.

Study. The General Assembly shall designate an agency of the Commonwealth to study consolidation, merger and boundary changes, advise municipalities on all problems which might be connected therewith, and initiate local referendum.

An agency will be designated by the General Assembly to study and advise municipalities on consolidation, merger and boundary changes and to initiate local referenda.

Legislative Power. Nothing herein shall prohibit or prevent the General Assembly from providing additional methods for consolidation, merger or change of boundaries.

Section 9. Appropriation for Public Purposes.—The General Assembly shall not authorize any municipality or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual. The General Assembly may provide standards by which municipalities or school districts may give financial assistance or lease property to public service, industrial or commercial enterprises if it shall find that such assist-

Provision is made for the General Assembly to establish standards pursuant to which any municipality may give financial assistance to public service, industrial, or commercial enterprises if necessary for the health, safety or welfare of the Commonwealth or any municipality. Existing rights of municipalities are preserved.

(Proposal No. 6—Cont.)

ance or leasing is necessary to the health, safety or welfare of the Commonwealth or any municipality or school district. Existing authority of any municipality or incorporated district to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual, is preserved.

Section 10. Local Government Debt.—Subject only to the restrictions imposed by this section, the General Assembly shall prescribe the debt limits of all units of local government including municipalities and school districts. For such purposes, the debt limit base shall be a percentage of the total revenue, as defined by the General Assembly, of the unit of local government computed over a specific period immediately preceding the year of borrowing. The debt limit to be prescribed in every such case shall exclude all indebtedness (1) for any project to the extent that it is self-liquidating or self-supporting or which has heretofore been defined as self-liquidating or self-supporting, or (2) which has been approved by referendum held in such manner as shall be provided by law. The provisions of this paragraph shall not apply to the City or County of Philadelphia.

Debt limits will be established by the General Assembly for all units of local government based on a percentage of revenue.

Financing of local projects through Authorities will continue to be permitted, and neither self-liquidating indebtedness nor debt approved by the voters in a referendum will be included within the debt limitation.

Any unit of local government, including municipalities and school districts, incurring any indebtedness, shall at or before the time of so doing adopt a convenant, which shall be binding upon it so long as any such indebtedness shall remain unpaid, to make payments out of its sinking fund or any other of its revenues or funds at such time and in such annual amounts specified in such covenant as shall be sufficient for the payment of the interest thereon and the principal thereof when due.

Added security will be provided for bondholders through a binding covenant to pay from first tax revenues in place of the current requirement that an annual tax be levied.

Section 11. Local Reapportionment.—Within the year following that in which the Federal decennial census is officially reported as required by Federal law, and at such other times as the governing body of any municipality shall deem necessary, each municipality having a governing body not entirely elected at large shall be reapportioned, by its governing body or as shall otherwise be provided by uniform law, into districts which shall be composed of compact and contiguous territory as nearly equal in population as practicable, for the purpose of describing the districts for those not elected at large.

Each local governing body to the extent that the members are not elected at large, will be required to reapportion itself within one year following certification of each Federal decennial census into districts that are compact, contiguous and as nearly equal in population as practicable.

Section 12. Philadelphia Debt.—The debt of the City of Philadelphia may be increased in such amount that the total debt of said city shall not exceed thirteen and one-half percent of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding three percent upon such average assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law.

Debt limitations and governmental structure of the City of Philadelphia are unchanged.

(Proposal No. 6—Cont.)

In ascertaining the debt-incurring capacity of the City of Philadelphia at any time, there shall be deducted from the debt of said city so much of such debt as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in construction, purchase or condemnation of any public utility, or part thereof, or facility therefor, if such public improvement or public utility, or part thereof, or facility therefor, whether separately, or in connection with any other public improvement or public utility, or part thereof, or facility therefor, may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, shall be as now prescribed, or which may hereafter be prescribed by law.

In incurring indebtedness for any purpose the City of Philadelphia may issue its obligations maturing not later than fifty years from the date thereof, with provision for a sinking fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said City of Philadelphia for the purpose of the construction or improvement of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred.

No debt shall be incurred by, or on behalf of, the County of Philadelphia.

Section 13. Abolition of County Offices in Philadelphia.—(a) In Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law.

(b) Local and special laws, regulating the affairs of the City of Philadelphia and creating offices or prescribing the powers and duties of officers of the City of Philadelphia, shall be valid notwithstanding the provisions of section thirty-two of article three of this Constitution.

(c) All laws applicable to the County of Philadelphia shall apply to the City of Philadelphia.

(d) The City of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the County of Philadelphia.

(e) The provisions of section two of this article shall apply with full force and effect to the functions of the county government hereafter to be performed by the city government.

(f) Upon adoption of this amendment all

(Proposal No. 6—Cont.)

county officers shall become officers of the City of Philadelphia, and until the General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution and the laws of the Commonwealth in effect at the time this amendment becomes effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

Section 14. Definitions.—As used in this article, the following words shall have the following meanings:

"Municipality" means a county, city, borough, incorporated town, township or any similar general purpose unit of government which shall hereafter be created by the General Assembly.

"Initiative" means the filing with the applicable election officials at least ninety days prior to the next primary or general election of a petition containing a proposal for referendum signed by electors comprising five percent of the number of electors voting for the office of Governor in the last gubernatorial general election in each municipality or area affected. The applicable election official shall place the proposal on the ballot in a manner fairly representing the content of the petition for decision by referendum at said election. Initiative on a similar question shall not be submitted more often than once in five years. No enabling law shall be required for initiative.

"Referendum" means approval of a question placed on the ballot, by initiative or otherwise, by a majority vote of the electors voting thereon.

Section 2. Sections seven, eight, ten, fifteen and nineteen of article eight; section one of article thirteen; sections one, two, three, four, five, six, seven and eight of article fourteen and sections one, two, three, four and five of article fifteen are repealed.

SCHEDULE

This new article and the repeal of existing sections shall take effect on the date of approval by the electorate, except that the following sections shall take effect on the effective date of legislation adopted pursuant to the sections or the date indicated below, whichever shall first occur.

The first, third and fourth paragraphs of section eight shall take effect two years after the effective date. The second sentence of section one, the fourth sentence of section two, all of section three, the third paragraph of section four, and the first paragraph of section ten shall take effect four years after the effective date. The second sentence of section one and the first paragraph of section eight on Uniform Legislation shall be construed so as to be consistent with the jurisdiction of this Convention.

JUDICIARY

BALLOT QUESTION V ✓

Shall Proposal 7 on the JUDICIARY, adopted by the Constitutional Convention, establishing a unified judicial system, providing directly or through Supreme Court rules, for the qualifications, selection, tenure, removal, discipline and retirement of, and prohibiting certain activities by justices, judges, and justices of the peace, and related matters, be approved?	YES	
	NO	

PROPOSAL NO. 7

A PROPOSAL

Repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA HEREBY PROPOSES AS FOLLOWS:

Section 1. The Constitution of Pennsylvania is amended by adding after article four, a new article to read:

ARTICLE
THE JUDICIARY

Section 1. Unified Judicial System.—The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

Section 2. Supreme Court.—The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth;

(b) shall consist of seven justices, one of whom shall be the Chief Justice; and

(c) shall have such jurisdiction as shall be provided by law.

Section 3. Superior Court.—The Superior Court shall consist of seven judges, one of whom shall be the President Judge, and its jurisdiction shall be as provided by law.

Section 4. Commonwealth Court.—The Commonwealth Court shall be a State-wide court, and shall consist of the number of judges and have such jurisdiction as shall be provided by law. One of its judges shall be the president judge.

Section 5. Courts of Common Pleas.—There shall be one court of common pleas for each judicial district (a) having such divisions and consisting of such number of judges as shall be provided by law, one of whom shall be the president judge; and

SUMMARY and EXPLANATION

This proposal creates for the first time in Pennsylvania a completely unified judicial system.

All courts of the Commonwealth—the Superior Court, a State-wide court to be known as the Commonwealth Court, Courts of Common Pleas, Community Courts where adopted, the Municipal and Traffic Courts in the City of Philadelphia, and such other courts as may be provided by the General Assembly, Justices of the Peace—are made subject to the supervision and administrative control of the Supreme Court. The Supreme Court is authorized to appoint a Court Administrator and such subordinates as may be necessary to aid it in the supervision and control of the unified judicial system.

The number of members of the Supreme and Superior Courts will continue to be seven members for each.

Common Pleas Courts shall have such number of judges as the General Assembly shall from time to time determine.

Judges of existing separate Orphans' Courts will become judges of an Orphans' Court Division of the Court of Common Pleas.

The jurisdiction of the several courts and of the justice of the peace is left to the determination of the General Assembly.

(Proposal No. 7—Cont.)

(b) having unlimited original jurisdiction in all cases except as may otherwise be provided by law.

Section 6. Community Courts; Philadelphia Municipal Court and Traffic Court.—(a) In any judicial district a majority of the electors voting thereon may approve the establishment or discontinuance of a community court. Where a community court is approved, one community court shall be established; its divisions, number of judges and jurisdiction shall be as provided by law.

(b) The question whether a community court shall be established or discontinued in any judicial district shall be placed upon the ballot in a primary election by petition which shall be in the form prescribed by the officer of the Commonwealth who under law shall have supervision over elections. The petition shall be filed with that officer and shall be signed by a number of electors equal to five percent of the total votes cast for all candidates for the office occupied by a single official for which the highest number of votes was cast in that judicial district at the last preceding general or municipal election. The manner of signing such petitions, the time of circulating them, the affidavits of the persons circulating them and all other details not contained herein shall be governed by the general laws relating to elections. The question shall not be placed upon the ballot in a judicial district more than once in any five-year period.

(c) In the City of Philadelphia there shall be a municipal court and a traffic court. The number of judges and the jurisdiction of each shall be as provided by law. These courts shall exist so long as a community court has not been established or in the event one has been discontinued under this section.

Section 7. Justices of the Peace; Magisterial Districts.—(a) In any judicial district, other than the City of Philadelphia, where a community court has not been established or where one has been discontinued there shall be one justice of the peace in each magisterial district. The jurisdiction of the justice of the peace shall be as provided by law.

(b) The General Assembly shall by law establish classes of magisterial districts solely on the basis of population and population density and shall fix the salaries to be paid justices of the peace in each class. The number and boundaries of magisterial districts of each class within each judicial district shall be established by the Supreme Court or by the courts of common pleas under the direction of the Supreme Court as required for the efficient administration of justice within each magisterial district.

Section 8. Other Courts.—The General Assembly may establish additional courts or divisions of existing courts, as needed, or abolish any statutory court or division thereof.

Section 9. Right of Appeal.—There shall be a

Citizens of the Commonwealth are guaranteed a right of appeal from a court not of record to a court of record, and from a court of record or administrative agency to a court of record or an appellate court in all cases.

The electorate of each judicial district is given the option of adopting a Community Court with judges learned in the law to replace the present minor judiciary system in the judicial district and be organized into appropriate divisions to be established by the General Assembly. Upon adoption of a Community Court, the members of the minor judiciary in that judicial district would serve out the balance of their terms. Their offices would then be abolished and their judicial functions would thereafter be performed by the Community Court.

In Philadelphia there will be a Municipal Court and a Traffic Court for minor cases.

In judicial districts not adopting a Community Court, the Justice of the Peace system will continue with substantial reforms. Members of the minor judiciary will be compensated by salaries, greatly reduced in number and subjected to judicial supervision by the Supreme Court. In addition, if they are not members of the bar of the Supreme Court, they will be required to complete a course of training and pass an examination. The General Assembly is empowered to establish classes of Magisterial Districts on the basis of population and population density with one justice of the peace to serve in each district. Boundaries of the Magisterial Districts will be set by the courts. The terms of office of all justices and judges are fixed at ten years. Municipal Court and Traffic Court judges in Philadelphia and justices of the peace will serve terms of six years.

(Proposal No. 7—Cont.)

right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

Section 10. Judicial Administration.—(a) The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace, including authority to temporarily assign judges and justices of the peace from one court or district to another as it deems appropriate.

(b) The Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts and justices of the peace.

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the judicial branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

The power is given to the Supreme Court to prescribe rules of practice and conduct not only for the courts and justices of the peace, but also for all officers serving process or enforcing orders, judgments and decrees.

(d) The Chief Justice and president judges of all courts with seven or less judges shall be the justice or judge longest in continuous service on their respective courts; and in the event of his resignation from this position the justice or judge next longest in continuous service shall be the Chief Justice or president judge. The president judges of all other courts shall be selected for five-year terms by the members of their respective courts, except that the president judge of the traffic court in the City of Philadelphia shall be appointed by the Governor. A Chief Justice or president judge may resign such position and remain a member of the court. In the event of a tie vote for office of president judge in a court which elects its president judge, the Supreme Court shall appoint as president judge one of the judges receiving the highest number of votes.

In courts with seven or less members the justice or judge with the longest continuous service will be Chief Justice or president judge. In other courts members of the court will select the president judge for a five-year term.

(e) Should any two or more justices or judges of the same court assume office at the same time, they shall cast lots forthwith for priority of com-

(Proposal No. 7—Cont.)

mission, and certify the results to the Governor who shall issue their commissions accordingly.

Section 11. Judicial Districts; Boundaries.—The number and boundaries of judicial districts shall be changed by the General Assembly only with the advice and consent of the Supreme Court.

The boundaries and number of judicial districts may not be changed by the General Assembly without approval by the Supreme Court.

Special provisions are made to provide for local problems in Philadelphia and Pittsburgh.

Section 12. Qualifications of Justices, Judges and Justices of the Peace.—(a) Justices, judges and justices of the peace shall be citizens of the Commonwealth. Justices and judges, except the judges of the traffic court in the City of Philadelphia, shall be members of the bar of the Supreme Court. Justices and judges of state-wide courts, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within the Commonwealth. Other judges and justices of the peace, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within their respective districts, except as provided in this article for temporary assignments.

(b) Judges of the traffic court in the City of Philadelphia and justices of the peace shall be members of the bar of the Supreme Court or shall complete a course of training and instruction in the duties of their respective offices and pass an examination prior to assuming office. Such courses and examinations shall be as provided by law.

Section 13. Election of Justices, Judges and Justices of the Peace; Vacancies.—(a) Justices, judges and justices of the peace shall be elected at the municipal election next preceding the commencement of their respective terms of office by the electors of the Commonwealth or the respective districts in which they are to serve.

Justices, judges and justices of the peace will be elected at municipal elections.

At the Primary Election in 1969 the electorate of the Commonwealth will be given an opportunity to adopt a plan for the appointment of justices and judges of state-wide courts by the Governor from a list of 10 to 20 names submitted to him by a Judicial Qualifications Commission composed of four non-lawyer electors appointed by the Governor and three non-judge members of the bar appointed by the Supreme Court.

(b) A vacancy in the office of justice, judge or justice of the peace shall be filled by appointment by the Governor. If the vacancy occurs during the session of the Senate, the appointment shall be with the advice and consent of two-thirds of the members elected to the Senate, except in the case of justices of the peace which shall be by a majority. If the vacancy occurs during sine die adjournment of the Senate such appointment shall not require the advice and consent of the Senate. The person so appointed shall serve for an initial term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs.

Vacancies in the office of justice, judge or justice of the peace will be filled by appointment of the Governor with the approval of the Senate if the vacancy occurs while the Senate is in session, and without the approval of the Senate if the vacancy occurs while the Senate is adjourned. Appointments to the office of justice of the peace will require the approval of a majority of the Senate, while appointments of justices and judges will require a two-thirds majority.

(c) The provisions of section thirteen (b) shall not apply either in the case of a vacancy to be filled by retention election as provided in section fifteen (b). In case of a vacancy created by failure of a justice or judge to file a declaration for retention election as provided in section fifteen (b). In case of a vacancy occurring at the expiration of an appointive term under section thirteen (b), the vacancy shall be filled by election as provided in section thirteen (a).

Justices, judges and justices of the peace appointed by the Governor to fill a vacancy will hold office for a term ending on the first Monday of January following the next municipal election more than ten months after the hap-

(d) At the primary election in 1969, the electors of the Commonwealth may elect to have the

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justices and judges of the Supreme, Superior, Commonwealth and all other state-wide courts appointed by the Governor from a list of persons qualified for the offices submitted to him by the Judicial Qualifications Commission. If a majority vote of those voting on the question is in favor of this method of appointment, then whenever any vacancy occurs thereafter for any reason in such court, the Governor shall fill the vacancy by appointment in the manner prescribed in this subsection. Such appointment shall not require the consent of the Senate.

(e) Each justice or judge appointed by the Governor under section thirteen (d) shall hold office for an initial term ending the first Monday of January following the next municipal election more than twenty-four months following the appointment.

Section 14. Judicial Qualifications Commission. —(a) Should the method of judicial selection be adopted as provided in section thirteen (d), there shall be a Judicial Qualifications Commission, composed of four non-lawyer electors appointed by the Governor and three non-judge members of the bar of the Supreme Court appointed by the Supreme Court. No more than four members shall be of the same political party. The members of the commission shall serve for terms of seven years, with one member being selected each year. The commission shall consider all names submitted to it and recommend to the Governor not fewer than ten nor more than twenty of those qualified for each vacancy to be filled.

(b) During his term, no member shall hold a public office or public appointment for which he receives compensation, nor shall he hold office in a political party or political organization.

(c) A vacancy on the commission shall be filled by the appointing authority for the balance of the term.

Section 15. Tenure of Justices, Judges and Justices of the Peace.—(a) The regular term of office of justices and judges shall be ten years and the regular term of office for judges of the municipal court and traffic court in the City of Philadelphia and of justices of the peace shall be six years. The tenure of any justice or judge shall not be affected by changes in judicial districts or by reduction in the number of judges.

(b) A justice or judge elected under section thirteen (a), appointed under section thirteen (d) or retained under this section fifteen (b) may file a declaration of candidacy for retention election with the officer of the Commonwealth who under law shall have supervision over elections on or before the first Monday of January of the year preceding the year in which his term of office expires. If no declaration is filed, a vacancy shall exist upon the expiration of the term of office of such justice or judge, to be filled by election under section thirteen (a) or by appointment under section thirteen (d) if applicable. If a justice or judge files a declaration, his name shall be submitted to the electors for re-election on a non-partisan ballot, leaving it to the electorate to determine whether his record merits retention in office.

pening of such vacancy except that a justice or judge appointed to a vacancy in a state-wide court from a list submitted to the Governor by a Judicial Qualifications Commission, if this plan for selection of state-wide judges is adopted by the electorate at the Primary Election in 1969, will hold office for a term ending on the first Monday of January following the next municipal election more than twenty-four months after his appointment.

Any justice or judge who has been elected to office will be entitled to have his name submitted to the electors for re-election on a

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mitted to the electors without party designation, on a separate judicial ballot or in a separate column on voting machines, at the municipal election immediately preceding the expiration of the term of office of the justice or judge, to determine only the question whether he shall be retained in office. If a majority is against retention, a vacancy shall exist upon the expiration of his term of office, to be filled by appointment under section thirteen (b) or under section thirteen (d) if applicable. If a majority favors retention, the justice or judge shall serve for the regular term of office provided herein, unless sooner removed or retired. At the expiration of each term a justice or judge shall be eligible for retention as provided herein, subject only to the retirement provisions of this article.

Section 16. Compensation and Retirement of Justices, Judges and Justices of the Peace.—(a) Justices, judges and justices of the peace shall be compensated by the Commonwealth as provided by law. Their compensation shall not be diminished during their terms of office, unless by law applying generally to all salaried officers of the Commonwealth.

(b) Justices, judges and justices of the peace shall be retired upon attaining the age of seventy years. Former and retired justices, judges and justices of the peace shall receive such compensation as shall be provided by law. No Compensation shall be paid to any justice, judge or justice of the peace who is suspended or removed from office under section eighteen of this article or under article six.

All justices and judges hereafter elected or appointed will be required to retire at the age of 70 years, but former and retired justices and judges may be with their consent assigned post-retirement service by the Supreme Court.

(c) A former or retired justice or judge may, with his consent, be assigned by the Supreme Court on temporary judicial service as may be prescribed by rule of the Supreme Court.

Section 17. Prohibited Activities.—(a) Justices and judges shall devote full time to their judicial duties, and shall not engage in the practice of law, hold office in a political party or political organization, or hold an office or position of profit in the government of the United States, the Commonwealth or any municipal corporation or political subdivision thereof, except in the armed service of the United States or the Commonwealth.

Justices and judges will be required to devote full time to their official duties and may not engage in certain prohibited activities. Justices of the peace will be required to conduct their activities according to rules or canons of ethics to be prescribed by the Supreme Court.

(b) Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court.

(c) No justice, judge or justice of the peace shall be paid or accept for the performance of any judicial duty or for any service connected with his office, any fee, emolument or perquisite other than the salary and expenses provided by law.

(d) No duties shall be imposed by law upon the Supreme Court or any of the justices thereof or the Superior Court or any of the judges thereof, except such as are judicial, nor shall any of them

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exercise any power of appointment except as provided in this Constitution.

Section 18. Suspension, Removal, Discipline and Compulsory Retirement.—(a) There shall be a Judicial Inquiry and Review Board having nine members as follows: three judges of the courts of common pleas from different judicial districts and two judges of the Superior Court, all of whom shall be selected by the Supreme Court; and two non-judge members of the bar of the Supreme Court and two non-lawyer electors, all of whom shall be selected by the Governor.

(b) The members shall serve for terms of four years, provided that a member, rather than his successor, shall continue to participate in any hearing in progress at the end of his term. A vacancy on the board shall be filled by the respective appointing authority for the balance of the term. The respective appointing authority may remove a member only for cause. No member shall serve more than four consecutive years; he may be reappointed after a lapse of one year. Annually the members of the board shall elect a chairman. The board shall act only with the concurrence of a majority of its members.

(c) A member shall not hold office in a political party or political organization. Members, other than judges, shall be compensated for their services as the Supreme Court shall prescribe. All members shall be reimbursed for expenses necessarily incurred in the discharge of their official duties.

(d) Under the procedure prescribed herein, any justice or judge may be suspended, removed from office or otherwise disciplined for violation of section seventeen of this article, misconduct in office, neglect of duty, failure to perform his duties, or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute and may be retired for disability seriously interfering with the performance of his duties.

(e) The board shall keep informed as to matters relating to grounds for suspension, removal, discipline, or compulsory retirement of justices or judges. It shall receive complaints or reports, formal or informal, from any source pertaining to such matters, and shall make such preliminary investigations as it deems necessary.

(f) The board, after such investigation, may order a hearing concerning the suspension, removal, discipline or compulsory retirement of a justice or judge. The board's orders for attendance of or testimony by witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings.

(g) If, after hearing, the board finds good cause therefor, it shall recommend to the Supreme Court the suspension, removal, discipline or compulsory retirement of the justice or judge.

(h) The Supreme Court shall review the record of the board's proings on the law and facts and many permit the introduction of additional evidence. It shall order suspension, removal, dis-

There will be a Judicial Inquiry and Review Board composed of three Common Pleas Court judges selected by the Supreme Court, two Superior Court Judges selected by the Supreme Court, and two lawyers and two laymen appointed by the Governor, to investigate misconduct in office, neglect of duty, or other conduct which prejudices the administration of justice. In addition, any justice or judge may be retired for disability that seriously interferes with his duties. The Board may make recommendations to the Supreme Court for final decision on whether suspension, removal, discipline or compulsory retirement is in order.

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cipline or compulsory retirement, or wholly reject the recommendation, as it finds just and proper. Upon an order for compulsory retirement, the justice or judge shall be retired with the same rights and privileges were he retired under section sixteen of this article. Upon an order for suspension or removal, the justice or judge shall be suspended or removed from office, and his salary shall cease from the date of such order. All papers filed with and proceedings before the board shall be confidential but upon being filed by the board in the Supreme Court, the record shall lose its confidential character. The filing of papers with and the giving of testimony before the board shall be privileged.

(i) No justice or judge shall participate as a member of the board or of the Supreme Court in any proceeding involving his suspension, removal, discipline or compulsory retirement.

(j) The Supreme Court shall prescribe rules of procedure under this section.

(k) The Supreme Court shall prescribe rules of procedure for the suspension, removal, discipline and compulsory retirement of justices of the peace.

(l) A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section eighteen shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.

(m) A justice or judge who shall file for nomination for or election to any public office other than a judicial office shall forfeit automatically his judicial office.

No justice or judge may become a candidate for any non-judicial public office without forfeiting his judicial office.

(n) This section is in addition to and not in substitution for the provisions for impeachment for misbehavior in office contained in article six. No justice, judge or justice of the peace against whom impeachment proceedings are pending in the Senate shall exercise any of the duties of his office until he has been acquitted.

Section 2. Article five of the Constitution of Pennsylvania is repealed in its entirety, and those provisions of Schedules No. 1 and No. 2 are repealed to the extent they are inconsistent with this article and attached schedule.

SCHEDULE TO JUDICIARY ARTICLE

This schedule is a part of this judiciary article, and it is intended that the provisions contained herein shall have the same force and effect as those contained in the numbered sections of the article.

This article and schedule, unless otherwise stated herein, shall become effective on January 1, 1969. In this schedule where the word "now" quoted appears it speaks from the date of adoption of this schedule; where the word "present" appears it speaks from the effective date hereof.

Courts Other Than in the City of Philadelphia and Allegheny County

Section 1. The Supreme Court.—The Supreme

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Court shall exercise all the powers and, until otherwise provided by law, jurisdiction now vested in the present Supreme Court and, until otherwise provided by law, the accused in all cases of felonious homicide shall have the right of appeal to the Supreme Court.

Section 2. The Superior Court.—Until otherwise provided by law, the Superior Court shall exercise all the jurisdiction now vested in the present Superior Court. The present terms of all judges of the Superior Court which would otherwise expire on the first Monday of January in an odd-numbered year shall be extended to expire in the even-numbered year next following.

Section 3. Commonwealth Court.—The Commonwealth Court shall come into existence on January 1, 1970. Notwithstanding anything to the contrary in this article, the General Assembly shall stagger the initial terms of judges of the Commonwealth Court.

Section 4. The Courts of Common Pleas.—Until otherwise provided by law, the several courts of common pleas shall exercise the jurisdiction now vested in the present courts of common pleas. The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, and orphans' courts are abolished and the several courts of common pleas shall also exercise the jurisdiction of these courts. Orphans' courts in judicial districts having separate orphans' courts shall become orphans' court divisions of the courts of common pleas and the court of common pleas in those judicial districts shall exercise the jurisdiction presently exercised by the separate orphans' courts through their respective orphans' court division.

Section 5. Orphans' Court Judges.—In those judicial districts having separate orphans' courts, the present judges thereof shall become judges of the orphans' court division of the court of common pleas and the present president judge shall become the president judge of the orphans' court division of the court of common pleas for the remainder of his term without diminution in salary.

Section 6. Courts of Common Pleas in Multi-County Judicial Districts.—Courts of common pleas in multi-county judicial districts are abolished as separate courts and are hereby constituted as branches of the single court of common pleas established under this article in each such judicial district.

Section 7. Community Courts.—In a judicial district which establishes a community court, a person serving as a justice of the peace at such time:

(a) May complete his term exercising the jurisdiction provided by law and with the compensation provided by law, and

(b) Upon completion of his term, his office is abolished and no judicial function of the kind heretofore exercised by a justice of the peace shall

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thereafter be exercised other than by the community court.

Justices, Judges and Justices of the Peace

Section 8. Justices, Judges and Justices of the Peace.—Notwithstanding any provision in the article, a present justice, judge or justice of the peace may complete his term of office.

Section 9. Associate Judges.—The office of associate judge not learned in the law is abolished, but a present associate judge may complete his term.

Section 10. Retention Election of Present Justices and Judges.—A present judge who was originally elected to office and seeks retention in the 1969 municipal election and is otherwise eligible may file his declaration of candidacy by February 1, 1969.

Section 11. Selection of President Judges.—Except in the City of Philadelphia, section ten (d) of the article shall become effective upon the expiration of the term of the present president judge, or upon earlier vacancy.

Magistrates, Aldermen and Justices of the Peace and Magisterial Districts Other Than in the City of Philadelphia

Section 12. Magistrates, Aldermen and Justices of the Peace.—An alderman, justice of the peace or magistrate:

(a) May complete his term, exercising the jurisdiction provided by law and with the method of compensation provided by law prior to the adoption of this article;

(b) Shall be deemed to have taken and passed the examination required by this article for justices of the peace if he has completed one full term of office before creation of a magisterial district, and

(c) At the completion of his term, his office is abolished.

(d) Except for officers completing their terms, after the first Monday in January, 1970, no judicial function of the kind heretofore exercised by these officers, by mayors and like officers in municipalities shall be exercised by any officer other than the one justice of the peace elected or appointed to serve in that magisterial district.

Section 13. Magisterial Districts.—So that the provisions of this article regarding the establishment of magisterial districts and the instruction and examination of justices of the peace may be self-executing, until otherwise provided by law in a manner agreeable to this article, the following provisions shall be in force:

(a) The Supreme Court or the courts of common pleas under the direction of the Supreme Court shall fix the number and boundaries of magisterial districts of each class within each judicial district by January 1, 1969, and these magisterial districts, except where a community court has been adopted, shall come into existence on Janu-

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ary 1, 1970, the justices of the peace thereof to be elected at the municipal election in 1969. These justices of the peace shall retain no fine, costs or any other sum that shall be delivered into their hands for the performance of any judicial duty or for any service connected with their offices, but shall remit the same to the Commonwealth, county, municipal subdivision, school district or otherwise as may be provided by law.

(b) Classes of magisterial districts.

(i) Magisterial districts of the first class shall have a population density of more than five thousand persons per square mile and a population of not less than sixty-five thousand persons.

(ii) Magisterial districts of the second class shall have a population density of between one thousand and five thousand persons per square mile and a population of between twenty thousand persons and sixty-five thousand persons.

(iii) Magisterial districts of the third class shall have a population density of between two hundred and one thousand persons per square mile and a population of between twelve thousand persons and twenty thousand persons.

(iv) Magisterial districts of the fourth class shall have a population density of between seventy and two hundred persons per square mile and a population of between seven thousand five hundred persons and twelve thousand persons.

(v) Magisterial districts of the fifth class shall have a population density of under seventy persons per square mile and a population of between four thousand persons and seven thousand five hundred persons.

(c) Salaries of justices of the peace.

The salaries of the justices of the peace shall be as follows:

(i) In first class magisterial districts, twelve thousand dollars per year,

(ii) In second class magisterial districts, ten thousand dollars per year,

(iii) In third class magisterial districts, eight thousand dollars per year,

(iv) In fourth and fifth class magisterial disdistricts, five thousand dollars per year.

(v) The salaries here fixed shall be paid by the State Treasurer and for such payment this article and schedule shall be sufficient warrant.

(d) Course of training, instruction and examination. The course of training and instruction and examination in civil and criminal law and procedure for a justice of the peace shall be devised by the Department of Public Instruction, and it shall administer this course and examination to insure that justices of the peace are competent to perform their duties.

Section 14. Magisterial Districts.—Effective immediately upon establishment of magisterial districts and until otherwise prescribed the civil and criminal procedural rules relating to venue shall apply to magisterial districts; all proceedings before aldermen, magistrates and justices of the peace shall be brought in and only in a mag-

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isterial district in which occurs an event which would give rise to venue in a court of record; the court of common pleas upon its own motion or on application at any stage of proceedings shall transfer any proceeding in any magisterial district to the justice of the peace for the magisterial district in which proper venue lies.

Prothonotaries and Clerks Other Than in the City of Philadelphia

Section 15. Prothonotaries, Clerks of Courts, Clerks of Orphans' Courts.—Until otherwise provided by law, the offices of prothonotary and clerk of courts shall become the offices of prothonotary and clerk of courts of the court of common pleas of the judicial district, and in multi-county judicial districts of their county's branch of the court of common pleas, and the clerk of the orphans' court in a judicial district now having a separate orphans' court shall become the clerk of the orphans' court division of the court of common pleas, and these officers shall continue to perform the duties of the office and to maintain and be responsible for the records, books and dockets as heretofore. In judicial districts where the clerk of the orphans' court is not the register of wills, he shall continue to perform the duties of the office and to maintain and be responsible for the records, books and dockets as heretofore until otherwise provided by law.

The City of Philadelphia

Section 16. Courts and Judges.—Until otherwise provided by law: (a) the court of common pleas shall consist of a trial division, orphans' court division and family court division.

(b) The judges of the court of common pleas shall become judges of the trial division of the court of common pleas provided for in this article and their tenure shall not otherwise be affected.

(c) The judges of the county court shall become judges of the family court division of the court of common pleas and their tenure shall not otherwise be affected.

(d) The judges of the orphans' court shall become judges of the orphans' court division of the court of common pleas and their tenure shall not otherwise be affected.

(e) As designated by the Governor, twenty-two of the present magistrates shall become judges of the municipal court and six shall become judges of the traffic court, and their tenure shall not otherwise be affected.

(f) One of the judges of the court of common pleas shall be president judge and he shall be selected in the manner provided in section ten (d) of this article. He shall be the administrative head of the court and shall supervise the court's judicial business.

(g) Each division of the court of common pleas shall be presided over by an administrative judge, who shall be one of its judges and shall be elected

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for a term of five years by a majority vote of the judges of that division. He shall assist the president judge in supervising the judicial business of the court and shall be responsible to him. Subject to the foregoing, the judges of the court of common pleas shall prescribe rules defining the duties of the administrative judges. The president judge shall have the power to assign judges from each division to each other division of the court when required to expedite the business of the court.

(h) Until all members of the municipal court are members of the bar of the Supreme Court, the president judge of the court of common pleas shall appoint one of the judges of the municipal court as president judge for a five-year term or at the pleasure of the president judge of the court of common pleas. The president judge of the municipal court shall be eligible to succeed himself as president judge for any number of terms and shall be the administrative head of that court and shall supervise the judicial business of the court. He shall promulgate all administrative rules and regulations and make all judicial assignments. The president judge of the court of common pleas may assign temporarily judges of the municipal court who are members of the bar of the Supreme Court to the court of common pleas when required to expedite the business of the court.

(i) The Governor shall appoint one of the judges of the traffic court as president judge for a term of five years or at the pleasure of the Governor. The president judge of the traffic court shall be eligible to succeed himself as president judge for any number of terms, shall be the executive and administrative head of the traffic court, and shall supervise the judicial business of the court, shall promulgate all administrative rules and regulations, and shall make all judicial assignments.

(j) The exercise of all supervisory and administrative powers detailed in this section sixteen shall be subject to the supervisory and administrative control of the Supreme Court.

(k) The prothonotary shall continue to exercise the duties of that office for the trial division of the court of common pleas and for the municipal court.

(l) The clerk of quarter sessions shall continue to exercise the duties of that office for the trial division of the court of common pleas and for the municipal court.

(m) That officer serving as clerk to the county court shall continue to exercise the duties of that office for the family division of the court of common pleas.

(n) The register of wills shall serve ex officio as clerk of the orphans' court division of the court of common pleas.

(o) The court of common pleas shall have unlimited original jurisdiction in all cases except those cases assigned by this schedule to the municipal court and to the traffic court. The court

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of common pleas shall have all the jurisdiction now vested in the court of common pleas, the court of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' court, and county court. Jurisdiction in all of the foregoing cases shall be exercised through the trial division of the court of common pleas except in those cases which are assigned by this schedule to the orphans' court and family court divisions of the court of common pleas. The court of common pleas through the trial division shall also hear and determine appeals from the municipal court and traffic court.

(p) The court of common pleas through the orphans' court division shall exercise the jurisdiction hertofore exercised by the orphans' court.

(q) The court of common pleas through the family court division of the court of common pleas shall exercise jurisdiction in the following matters:

(i) Domestic Relations: desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings for custody of children; divorce and annulment and property matters relating thereto.

(ii) Juvenile Matters: dependent, delinquent and neglected children and children under eighteen years of age, suffering from epilepsy, nervous or mental defects, incorrigible, runaway and disorderly minors eighteen to twenty years of age and preliminary hearings in criminal cases where the victim is a juvenile.

(iii) Adoptions and Delayed Birth Certificates.

(r) The municipal court shall have jurisdiction in the following matters:

(i) Committing magistrates' jurisdiction in all criminal matters.

(ii) All summary offenses, except those under the motor vehicle laws.

(iii) All criminal offenses for which no prison term may be imposed or which are punishable by a term of imprisonment of not more than two years, and indictable offenses under the motor vehicle laws for which no prison term may be imposed or punishable by a term of imprisonment of not more than three years. In these cases, the defendant shall have no right of trial by jury in that court, but he shall have the right of appeal for trial de novo including the right to trial by jury to the trial division of the court of common pleas. Until there are a sufficient number of judges who are members of the bar of the Supreme Court serving in the municipal court to handle such matters, the trial division of the court of common pleas shall have concurrent jurisdiction over such matters, the assignment of cases to the respective courts to be determined by rule prescribed by the president judge of the court of common pleas.

(iv) Matters arising under The Landlord and Tenant Act of 1951.

(v) All civil claims involving less than five hundred dollars. In these cases, the parties shall have

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no right of trial by jury in that court but shall have the right of appeal for a trial de novo including the right to trial by jury to the trial division of the court of common pleas, it being the purpose of this subsection to establish an expeditious small claims procedure whereby it shall not be necessary for the litigants to obtain counsel. This limited grant of civil jurisdiction shall be coextensive with the civil jurisdiction of the trial division of the court of common pleas.

(vi) As commissioners to preside at arraignments, fix and accept bail, issue warrants and perform duties of a similar nature.

The grant of jurisdiction under clauses (iii) and (v) of this subsection may be exercised only by those judges who are members of the bar of the Supreme Court.

(s) The traffic court shall have exclusive jurisdiction of all summary offenses under the motor vehicle laws.

(t) The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, the county court, the orphans' court and the ten separate courts of common pleas are abolished and their jurisdiction and powers shall be exercised by the court of common pleas provided for in this article through the divisions established by this schedule.

(u) The office of magistrate, the board of magistrates, and the present traffic court are abolished.

(v) Those judges appointed to the municipal court in accordance with subsection (e) of this section who are not members of the bar of the Supreme Court shall be eligible to complete their present terms and to be elected to and serve for one additional term, but not thereafter.

(w) The causes, proceedings, books, dockets and records of the abolished courts shall become those of the court or division thereof to which, under this schedule, jurisdiction of the proceedings or matters concerned has been transferred, and that court or division thereof shall determine and conclude such proceedings as if it had assumed jurisdiction in the first instance.

(x) The present president judges of the abolished courts and chief magistrates shall continue to receive the compensation to which they are now entitled as president judges and chief magistrate until the end of their present terms as president judges and chief magistrate respectively.

(y) The offices of prothonotary and register of wills in the City of Philadelphia shall no longer be considered constitutional offices under this article, but their powers and functions shall continue as at present until these offices are covered in the Home Rule Charter by a referendum in the manner provided by law.

(z) If a community court is established in the City of Philadelphia, a person serving as a judge of the municipal or traffic court at that time:

(i) Notwithstanding the provisions of subsec-

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tion (v) of this section, may complete his term exercising the jurisdiction provided by law and with the compensation provided by law; and

(ii) At the completion of his term, his office is abolished and no jurisdiction of the kind exercised by those officers immediately after the effective date of this article and schedule shall thereafter be exercised other than by the community court.

Allegheny County

Section 17. Courts.—Until otherwise provided by law:

(a) The court of common pleas shall consist of a trial division, an orphans' court division and a family court division; the courts of oyer and terminer and general jail delivery and quarter sessions of the peace, the county court, the orphans' court, and the juvenile court are abolished and their present jurisdiction shall be exercised by the court of common pleas. Until otherwise provided by rule of the court of common pleas and, except as otherwise provided in this schedule, the court of common pleas shall exercise the jurisdiction of the present court of common pleas and the present county court through the trial division. Until otherwise provided by rule of the court of common pleas, the jurisdiction of the present orphans' court, except as otherwise provided in this schedule, shall be exercised by the court of common pleas through the orphans' court division.

(b) Until otherwise provided by rule of the court of common pleas, the court of common pleas shall exercise jurisdiction in the following matters through the family court division:

(i) Domestic Relations: Desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings, including habeas corpus, for custody of children; divorce and annulment and property matters relating thereto.

(ii) Juvenile Matters: All matters now within the jurisdiction of the juvenile court.

(iii) Adoptions and Delayed Birth Certificates.

Section 18. Judges.—Until otherwise provided by law, the present judges of the court of common pleas shall continue to act as the judges of that court; the present judges of the county court shall become judges of the court of common pleas; the present judges of the orphans' court shall become judges of the orphans' court division of the court of common pleas; the present judges of the juvenile court shall become judges of the family court division of the court of common pleas.

Section 19. President Judges.—The present president judge of the court of common pleas may complete his term as president judge; the present president judge of the orphans' court shall be the president judge of the orphans' court division of the court of common pleas for the remainder of his term as president judge, and the present presi-

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dent judge of the county court shall be the president judge of the family court division of the court of common pleas for the remainder of his term as president judge, all these without diminution of salary as president judge. The president judge of the trial division shall be selected pursuant to section twenty of this schedule.

Section 20. President Judges; Court Divisions.—Until otherwise provided by law, the trial division, the orphans' court division and the family court division of the court of common pleas shall each be presided over by a president judge, who shall be one of the judges of such division and shall be elected for a term of five years by a majority vote of the judges of that division. He shall assist the president judge of the court of common pleas in supervising the judicial business of the court and shall be responsible to him. Subject to the foregoing, the judges of the court of common pleas shall prescribe rules defining the duties of the president judges. The president judge of the court of common pleas shall have the power to assign judges from one division to another division of the court when required to expedite the business of the court. The exercise of these supervisory and administrative powers, however, shall be subject to the supervisory and administrative powers of the Supreme Court.

The City of Pittsburgh

Section 21. Inferior Courts.—Upon the establishment of magisterial districts pursuant to this article and schedule, and unless otherwise provided by law, the police magistrates, including those serving in the traffic court, the housing court and the city court shall continue as at present. Such magistrates shall be part of the unified judicial system and shall be subject to the general supervisory and administrative authority of the Supreme Court. Such magistrates shall be subject to the provisions of this article and schedule regarding educational requirements and prohibited activities of justices of the peace.

Causes, Proceedings, Books and Records

Section 22. Causes, Proceedings, Books and Records.—All causes and proceedings pending in any abolished court or office of the justice of the peace shall be determined and concluded by the court to which jurisdiction of the proceedings has been transferred under this schedule and all books, dockets and records of any abolished court or office of the justice of the peace shall become those of the court to which, under this schedule, jurisdiction of the proceedings concerned has been transferred.

Commission and Board

Section 23. Judicial Qualifications Commission.—The selection of the first members of the Judicial Qualifications Commission provided for in section fourteen (a) of this article shall be made

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as follows: The Governor shall appoint the four non-lawyer members for terms of, respectively, one year, three years, five years and seven years, no more than two of whom shall be members of the same political party. The Supreme Court shall appoint the three non-judge members of the bar of the Supreme Court of Pennsylvania for terms, respectively, of two years, four years and six years, no more than two of whom shall be members of the same poltical party.

Section 24. Judicial Inquiry and Review Board.—The selection of the first members of the Judicial Inquiry and Review Board shall be made as follows: one judge of the Superior Court, one non-judge member of the bar of the Supreme Court, and one non-lawyer member shall be selected for two-year terms; one judge of the Superior Court, one non-judge member of the bar of the Supreme Court, and one non-lawyer member shall be selected for four-year terms; one judge of the court of common pleas shall be selected for a term of two years, one for a term of three years, and one for a term of four years.

General Provision

Section 25. Dispensing with Trial by Jury.—Until otherwise provided by law, the parties, by agreement filed, may in any civil case dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases.

Section 26. Writs of Certiorari.—Unless and until changed by rule of the Supreme Court, in addition to the right of appeal under section nine of this article, the judges of the courts of common pleas, within their respective judicial districts, shall have power to issue writs of certiorari to the municipal court in the City of Philadelphia, justices of the peace and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

Section 27. Judicial Districts.—Until changed in accordance with section eleven of this article, the number and boundaries of judicial districts shall remain as at present.

Section 28. Referendum.—The officer of the Commonwealth who under law shall have supervision over elections shall cause the question provided for in section thirteen (d) of this article to be placed on the ballot in the 1969 primary election throughout the Commonwealth.

Section 29. Persons Specially Admitted by Local Rules.—Any person now specially admitted to practice may continue to practice in the court of common pleas or in that division of the court of common pleas and the municipal court in the City of Philadelphia which substantially includes the practice for which such person was previously specially admitted.

The above Summary and Explanation is offered for the convenience of the people only and is not to be considered an official interpretation of the proposals to which it relates.

COMMITTEE ON ARRANGEMENT, SUBMISSION AND ADDRESS TO THE PEOPLE

William H. Gray, Jr., Co-Chairman
James W. Nelson, Co-Chairman

Donald W. Bagenstose	Harry T. Kelly
Herman M. Buck	Benjamin J. Levin
Robert J. Butera	Mildred D. Michael
A. Hugh Forster	John N. Roberts
A. J. Gehrlein	Leon W. Silverman
Matthew M. Gouger	Daniel B. Strickler
Charles P. Henderson	Edwin G. Warman
Weldon B. Heyburn	Charles H. Whittum, Jr.

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Thomas L. Fagan	Basil C. Scott
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Richard L. Huggins	Carleton T. Woodring
Louis L. Manderino	Robert E. Woodside

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Samuel C. Corey	William J. Lane
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Herbert Fineman	Roy W. Miller
Robert D. Fleming	Ralph E. Orbin, Sr.
Robert P. Fohl	Isadore A. Shrager
Philip L. Harding	Stanley G. Stroup
K. Leroy Irvis	J. Edward Waldron

STAFF

OF THE

PENNSYLVANIA CONSTITUTIONAL CONVENTION

John W. Ingram ..... Executive Director
Ralph D. Tive ..... Assistant Executive Director
Mark Gruell, Jr. ..... Parliamentarian
Thomas R. Balaban ..... Solicitor and Assistant Parliamentarian
Peter M. Coleman ..... Information Officer
Severino Stefanon ..... Administrative Consultant
Marvin Comisky ..... General Counsel
Goncer M. Krestal .. Assistant to General Counsel
Adam T. Bower .. Director of Convention Services
Anthony J. Petrosky ..... Director of Convention Operations
John H. Ferguson ..... Co-Director of Research
Harold Alderfer ..... Co-Director of Research
George Wolf ..... Historian
Frank P. Garber ..... Chief Drafting Attorney
John W. Gabriel .. Supervisor of Document Room

STAFF

Executive Office

Ingram, John W. ..... Executive Director
Tive, Ralph ..... Assistant Executive Director
Gruell, Mark ..... Parliamentarian
Coleman, Peter ..... Information Officer
Leherr, David ..... Asst. Information Officer
Griffiths, Gordon ..... Asst. Information Officer
Henninger, Jane H. ..... Asst. to Information Officer
Balaban, Thomas ..... Solicitor and Asst. Parliamentarian
Brown, Barbara K. ..... Office Manager
Stefanon, Severino ... Administrative Consultant
Doerschuk, Ernest E. ..... Librarian
Cessar, Richard J. ..... Administrative Assistant
Waters, Paul ..... Administrative Assistant
McCormack, Thomas ..... Admin. Asst. to 1st Vice President

COUNSEL AND RESEARCH DIVISIONS

Ferguson, John ..... Co-Director of Research
Alderfer, Harold ..... Co-Director of Research
Thomas, Myron W. ..... Administrative Assistant
Abraham, Mary Louise ..... Assistant Librarian

Legislative Apportionment Committee Staff

Counsel ..... Davis, Russ
Research Director ..... Zeger, Lawrence
Research Staff: Bockman, Irving B.; Davenport, Ronald; Feigenberg, Fred; Ominski, Max; Woodside, William; Mahady, Patrick.

Local Government Committee Staff

Counsel ..... Frumkin, Abe
Research Director ..... Hershey, Fred
Research Staff: Skinner, Carl; Trautman, Gertrude M.; Graffius, William; Paone, Louis; Freidman, Sandra; Bishop, Frances; Zeitlen, Woodrow.

Judiciary Committee Staff

Counsel ..... Buller, Carter
Research Director ..... Frankston, Arthur
Research Staff: O'Brien, Martin; Pitkow, Martin; Zack, Leonard; Jacobs, Harold; Knopf, Eugene; Urey, Gene R.

Taxation and Finance Committee Staff

Counsel ..... Goldberg, Gerard
Research Director ..... Hunt, Mitchell
Research Staff: Leopold, Max; Myers, Jacob; Thomas, David.

Arrangement, Submission and Address to the People Committee Staff

Co-Counsel ..... Farley, Andrew
Co-Counsel ..... Hackney, William P.
General Research Coordinator .....Urey, Gene R.
Research Staff: Davenport, Ronald; Myers, Jacob; Trautman, Gertrude M.

DRAFTING ATTORNEYS

Garber, Frank ..... Chief Drafting Attorney
Weinert, Robert ..... Drafting Attorney
Gianforti, Anthony ..... Drafting Attorney
Weisman, Milton ..... Drafting Attorney
Rehr, John J. ..... Drafting Attorney
Spitzer, Robert ..... Drafting Attorney
Hartman, John ..... Drafting Attorney
Cable, Robert ..... Drafting Attorney

Operations Division

Petrosky, Anthony ..... Director, Convention Operations
Stimmell, R. P. .... Chief Administrative Assistant
Smith, Sue ..... Chief Reporter
O'Neill, Agnes ..... Asst. Chief Reporter
Hepford, Allen ..... Chief Page
Montrose, James ..... Chief Sgt.-at-Arms

Services Division

Bower, Adam T. .... Director, Convention Services
Scheipe, Robert H. ..... Assistant to Director Convention Services
Zeiders, George ..... Chief Printer
Gabriel, John ..... Supervisor of Document Room
Bennett, Joseph ..... Chief Messenger
Grove, Nancy ..... Supervisor of Secretarial Pool
McNeil, Gertrude ..... Asst. Supervisor of Pool

ROSTER OF DELEGATES

OF THE

PENNSYLVANIA CONSTITUTIONAL CONVENTION

Name	Party Affiliation	Senatorial District	Occupation	Residence
Aberman, Alan I.	(D)	(2)	Attorney	Philadelphia
Allison, Gilbert J.	(D)	(29)	Clerk, House of Representatives	Tamaqua
Amsterdam, Gustave G.	(D)	(7)	Corporate Executive	Philadelphia
Aurentz, Marie C.	(D)	(43)	County Vice-Chairman	Pittsburgh
Bagenstose, Donald W.	(D)	(11)	Accountant and Insurance Agent	West Reading
Baldrige, Robert W.	(R)	(41)	Lawyer-Farmer	Clarksburg
Baldus, David C.	(D)	(38)	Attorney	Pittsburgh
Baldwin, John F.	(R)	(12)	Vice President of Dairy Co.	Upper Southampton
Banes, Gay B.	(D)	(45)	Attorney, Real Estate Broker	McKeesport
Barron, David M.	(R)	(33)	Lawyer	Lewistown
Barry, Francis A.	(D)	(45)	Attorney	Pittsburgh
Bashoff, Martin W.	(D)	(6)	Lawyer	Philadelphia
Benedict, Rachel P.	(R)	(36)	Housewife	Philadelphia
Benfield, Walter A.	(D)	(11)	Tax Collector, Real Estate	Alburtis
Bloom, I. C.	(R)	(46)	Attorney	Washington
Braham, W. Walter	(R)	(21)	Lawyer	New Castle
Brennan, T. Robert	(D)	(44)	Attorney	Pittsburgh
Broderick, Raymond J.*	(R)	ex officio	Attorney	Philadelphia
Brown, Buelah J.	(R)	(21)	Housewife	Butler
Buck, Herman M.	(R)	(32)	Attorney	Uniontown
Bunting, Holbrook M.	(D)	(26)	Attorney	Swarthmore
Burkholder, H. Clay	(D)	(13)	Lawyer	Lancaster
Butera, Robert J.*	(R)	ex officio	Attorney	Norristown
Cain, Herbert R., Jr.	(R)	(7)	Lawyer	Philadelphia
Camardella, Samuel	(D)	(5)	Union Representative	Philadelphia
Caputo, Eugene A.	(D)	(47)	Attorney	Ambridge
Caron, Richard J.	(R)	(48)	Textile Executive	Reading
Casey, Robert P.	(D)	(22)	Attorney	Scranton
Clark, Ralph A.	(R)	(18)	Former Chemical Co. Executive	Easton
Clinger, William F., Jr.	(R)	(25)	Attorney	Warren
Conley, John A.	(D)	(38)	Attorney	Pittsburgh
Corey, Samuel C.	(R)	(24)	Insurance Executive	Fort Washington
Cortese, Americo V.	(R)	(1)	Attorney	Philadelphia
Cosetti, Joseph L.	(D)	(42)	Economist-Businessman	Pittsburgh
Croop, Frank D.	(R)	(27)	Insurance Agent and Broker	Berwick
Cunningham, Fred E.	(D)	(35)	Division Manager, General Telephone Co.	Johnstown
Curran, Robert E., Jr.	(R)	(26)	Attorney	Media
Dailey, Edward M., Jr.	(D)	(23)	General Insurance Agent	Dushore
Desmond, James L.	(R)	(9)	Police Lieutenant	Eddystone

Name	Party Affiliation	Senatorial District	Occupation	Residence
Devlin, William J.	(R)	(6)	Chairman, Representative City Commission	Philadelphia
Donaldson, Lee A., Jr.*	(R)	ex officio	Lawyer	Allison Park
Donolow, Benjamin R.*	(D)	ex officio	Attorney	Philadelphia
Dumbauld, Peter T.	(D)	(30)	Merchant	Somerset
Erwin, Howard R.	(R)	(6)	Automobile Dealer	Philadelphia
Fagan, Thomas L.	(D)	(42)	President Teamsters Union —Local 249	Pittsburgh
Fawcett, Charlotte M.	(R)	(12)	Homemaker	Huntingdon Valley
Fay, Frank M.	(D)	(14)	Insurance Broker and Tax Consultant	Hazleton
Feather, Philip H.	(D)	(48)	Attorney	Annville
Filson, Robert B.	(D)	(41)	Attorney	Mayport
Fineman, Herbert*	(D)	ex officio	Attorney	Philadelphia
Fleming, Robert D.*	(R)	ex officio	Real Estate and Insurance Broker	Pittsburgh
Fohl, Robert P.	(R)	(40)	Commercial Research Analyst	Pittsburgh
Forster, A. Hugh	(R)	(13)	Director, Public Relations and Affairs	Lancaster
Fortney, Robert M.	(R)	(27)	Attorney	Shamokin
Gabreski, Max P.	(D)	(25)	Lawyer	Oil City
Gehrlein, A. J.	(D)	(49)	Treasurer of Erie County	Erie
Gerber, Richard	(D)	(17)	Attorney	Plymouth Meeting
Goldman, Harold H.	(R)	(37)	Attorney	Pittsburgh
Goldstein, Joseph	(R)	(5)	Funeral Director	Philadelphia
Gouger, Matthew M.	(D)	(33)	Business Executive and Farmer	Waynesboro
Gray, William H., Jr.	(D)	(3)	Minister	Philadelphia
Griffith, Georgette B.	(R)	(24)	Housewife	Oaks
Hannum, John B.	(R)	(19)	Attorney	Unionville
Harding, Philip L.	(D)	(9)	Technician Sunolin Chemical Company	Chester
Hatter, Leonard H.	(R)	(29)	Stenographic Reporter	Hegins
Henderson, Charles P.	(D)	(47)	Superintendent, Midland Public Schools	Industry
Heyburn, Weldon B.	(R)	(9)	Chairman, Executive Commission	Concordville
Himes, Thelma D.	(R)	(23)	Housewife	Williamsport
Hocker, Blaine C.	(R)	(15)	Retired	Harrisburg
Hook, James	(D)	(46)	Attorney	Waynesburg
Horne, Bryon K.	(R)	(48)	Headmaster	Lititz
Hostetler, H. Richard	(D)	(31)	Farmer-Salesman	Mifflintown
Huggins, Richard L.	(R)	(45)	Pastor	McKeesport
Irvis, K. Leroy*	(D)	ex officio	Attorney	Pittsburgh
Jirolanio, Justin D.	(D)	(18)	Attorney	Bethlehem
Johnson, Roy H.	(D)	(50)	College Professor	Greenville
Kauffman, Bruce W.	(R)	(17)	Attorney	Merion
Keller, John W.	(R)	(33)	Attorney	Waynesboro
Keller, Marvin V.	(R)	(10)	Contractor	Doylestown
Kelly, Harry T.	(D)	(8)	Sales Representative	Philadelphia
King, Julian F.	(D)	(2)	Attorney	Philadelphia
Kline, Ernest P.*	(D)	ex officio	Radio Newsman	Beaver Falls
Krill, Howard A.	(R)	(29)	Assistant to District Manager	Palmerton
Lane, William J.*	(D)	ex officio	Real Estate and Insurance	Brownsville
Laputka, Theodore R.	(R)	(14)	Attorney	Hazleton
Leach, Charles P., Sr.	(R)	(41)	Insurance Broker	New Bethlehem
Lee, Kenneth B.*	(R)	ex officio	Attorney	Eagles Mere
Lee, Lewis B.	(R)	(20)	Staff Assistant, Representative State Finance Commission	Uniondale
Leinbach, Thomas K.	(R)	(11)	Retired Hospital Administrator	Shillington
Leonard, Robert L.	(R)	(36)	C. P. A.	Philadelphia
Levin, Benjamin J.	(R)	(26)	Real Estate Broker	Media
Manderino, Louis L.	(D)	(32)	Professor of Law	Monessen
Mangery, Franklin A.	(R)	(39)	Electrician	Delmont

Name	Party Affiliation	Senatorial District	Occupation	Residence
Markley, Marian E.	(R)	(16)	Homemaker	Macungie
Mattioni, Dante	(D)	(8)	Attorney	Philadelphia
McGeary, M. Nelson	(R)	(34)	Dean, Graduate School, Penn State University	State College
McGlynn, Charles A.	(D)	(4)	Revenue Investigator	Philadelphia
Meyer, Edward H.	(R)	(4)	Realtor	Philadelphia
Michael, Mildred D.	(R)	(28)	Housewife-Teacher	Hanover
Michener, James A.	(D)	(10)	Writer	Pipersville
Miller, Dorothy	(D)	(43)	Clerk	Pittsburgh
Miller, Roy W.	(D)	(16)	C. P. A.	Allentown
Moorhead, Douglas M.	(R)	(49)	Retired	North East
Moore, Joseph M.	(R)	(8)	Attorney	Philadelphia
Morton, James D.	(R)	(44)	Attorney	Pittsburgh
Murray, Charles E., Jr.	(D)	(5)	Realtor	Philadelphia
Musselman, Floyd W.	(R)	(31)	Legislative Representative	Camp Hill
Nelson, James W.	(R)	(30)	Lawyer	Altoona
O'Donnell, William J. C.	(D)	(19)	Attorney	Phoenixville
Orban, Frank A., Jr.	(R)	(30)	Attorney	Somerset
Orbin, Ralph E., Sr.	(D)	(39)	Representative, United Steelworkers of America	Youngwood
Otto, Henry P.	(R)	(44)	Advertising	Pittsburgh
Pasquerilla, Frank J.	(R)	(35)	President, Crown Construction Company	Johnstown
Pechan, Albert R.*	(R)	ex officio	Dentist	Ford City
Pelletier, Lawrence L.	(R)	(50)	Educator	Meadville
Percey, James W.	(D)	(27)	Associate Professor of Political Science	Orangeville
Popil, Edward	(D)	(22)	Finance Secretary-Treasurer, Ukrainian Workingmen's Assc.	Scranton
Pott, George F.	(R)	(40)	Vice President, International Water Corporation	Pittsburgh
Powell, Jerry	(R)	(10)	Director, Electronic Data Processing	Levittown
Prendergast, James F.*	(D)	ex officio	Attorney	Easton
Quiles, German	(D)	(3)	Credit Manager	Philadelphia
Rappaport, Samuel	(D)	(1)	Lawyer	Philadelphia
Rea, Henry E., Jr.	(R)	(37)	Attorney	Pittsburgh
Redick, John J.	(D)	(37)	Construction Supervisor Inspector	Pittsburgh
Reynolds, Hobson R.	(R)	(3)	Funeral Director	Philadelphia
Richter, F. Garret	(R)	(38)	Richter Business Forms Co.	Pittsburgh
Roberts, John Nelson	(D)	(20)	Clergyman	Mountainhome
Rovner, Edward H.	(R)	(4)	Union Official	Philadelphia
Ruth, Gerald E.	(D)	(28)	Attorney	York
Sahli, Edward A.	(R)	(47)	Automobile Dealer	Beaver Falls
Scales, John N.	(D)	(39)	Attorney	Greensburg
Scarlett, John M.	(R)	(49)	Retired	Erie
Scott, Basil C.	(R)	(50)	Mayor	Sharon
Scranton, William W.	(R)	(22)	Businessman	Dalton
Sebastian, Robert M.	(R)	(2)	Lawyer	Philadelphia
Shapiro, David V.	(D)	(12)	Lawyer	Elkins Park
Sharp, Richard M.	(D)	(34)	Attorney	Philipsburg
Shettig, William D.	(D)	(35)	Attorney	Ebensburg
Shively, George W.	(R)	(34)	Principal Junior High School	Clearfield
Shoemaker, Daniel W.	(R)	(28)	Attorney	Dallastown
Shrager, Isadore A.	(D)	(7)	Lawyer	Philadelphia
Silverman, Leon W.	(D)	(1)	Lawyer	Philadelphia
Solomon, Joseph	(D)	(21)	Lawyer	New Castle
Sprogell, Barbara S.	(D)	(24)	Housewife	North Wales
Stout, William B.	(D)	(46)	Contractor	Bentleyville
Strickler, Daniel B.	(R)	(13)	Lawyer	Lancaster
Stroup, Stanley G.*	(R)	ex officio	Attorney	Bedford

Name	Party Affiliation	Senatorial District	Occupation	Residence
Swope, Guy J.	(D)	(15)	C. P. A.	Harrisburg
Tate, Mercer D.	(D)	(36)	Attorney	Philadelphia
Thomson, Harold A.	(R)	(19)	Insurance and Registered Professional Engineer	Malvern
Thornburgh, Richard L.	(R)	(43)	Attorney	Pittsburgh
Tomascik, Joseph G.	(D)	(14)	Attorney	Wilkes-Barre
Tully, Dorothy K.	(R)	(31)	Housewife	Camp Hill
Van Sant, John T.	(R)	(16)	Public Relations and Insurance	Allentown
Waldron, J. Edward	(R)	(42)	Reg. Dir. Adv. Bd., Problem of Older Worker-Public Relations	Pittsburgh
Warman, Edwin G.	(D)	(32)	Author and Publisher	Uniontown
Welsh, Thomas H.	(D)	(40)	Lawyer	Pittsburgh
Westerberg, Victor J.	(R)	(25)	Merchant	Kane
Whittum, Charles H.	(R)	(17)	Vice President, The First National Banking and Trust Co.	Wayne
Wilcox, Thomas E.	(R)	(23)	Attorney	Wellsboro
Wilmarth, Walter F.	(R)	(20)	Farmer	Kingsley
Woodring, Carleton T.	(D)	(18)	Judge, Court of Common Pleas	Easton
Woodside, Robert E.	(R)	(15)	Attorney	Millersburg

*Member of the Constitutional Convention Preparatory Committee

APPENDIX

ARTICLES AND SECTIONS OF THE CONSTITUTION OF 1874 THAT WILL BE REPEALED, REPLACED OR MODIFIED BY THE PROPOSALS OF THE CONSTITUTIONAL CONVENTION

ARTICLE II

THE LEGISLATURE

Senatorial District Apportionment

Section 16. The State shall be divided into fifty senatorial districts of compact and contiguous territory as nearly equal in populations as may be, and each district shall be entitled to elect one Senator. Each county containing one or more ratios of population shall be entitled to one Senator for each ratio, and to an additional Senator for a surplus of population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less than four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled to two or more Senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of Senators. No ward, borough or township shall be divided in the formation of a district. The senatorial ratio shall be ascertained by dividing the whole population of the State by the number fifty.

Representative District Apportionment

Section 17. The members of the House of Representatives shall be apportioned among the several counties, on a ratio obtained by dividing the population of the State as ascertained by the most recent United States census by two hundred. Every county containing less than five ratios shall have one representative for every full ratio, and an additional representative when the surplus exceeds half a ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representatives allotted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives.

Time of Apportionment

Section 18. The General Assembly at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into senatorial and representative districts agreeably to the provisions of the two next preceding sections.

ARTICLE VIII

TAXATION AND FINANCE

Uniformity of Taxation; Exemptions

Section 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, institutions of purely public charity and real and personal property owned, occupied, and used by any branch, post, or camp of honorably discharged soldiers, sailors, and marines; and the General Assembly may, by general laws, set up standards and qualifications for private forest reserves, and make special provision for the taxation thereof. Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double quadruple amputees, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein. Any taxing authority may exempt from occupational privilege taxes, persons deriving less than one thousand dollars per year from such occupation.

Reciprocal Exemptions

Section 1B. Taxation laws may grant exemptions or rebates to residents, or estates of residents, of other States which grant similar exemptions or rebates to residents, or estates of residents, of Pennsylvania.

Exemption from Taxation Restricted

Section 2. All laws exempting property from taxation, other than the property above enumerated shall be void.

Taxation of Corporations

Section 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

Limitation of State Debt

Section 4. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasions, suppress insurrection, defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed, in the aggregate at any one time, one million dollars: Provided, however, That the General Assembly, irrespective of any debt, may authorize the State to issue bonds, to the amount of one hundred millions of dollars, for the purpose of improving and rebuilding the highways of the Commonwealth.

State Loans Restricted to Purpose

Section 5. All laws, authorizing the borrowing of money by and on behalf of the State, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for the purpose specified and no other.

State Credit Not to Be Pledged

Section 6. The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association, nor shall the Commonwealth become a joint owner or stockholder in any company, association or corporation.

Municipalities Not to Become Stockholders

Section 7. The General Assembly shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

Section 8. The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as provided herein, and in section fifteen of this article, shall never exceed fifteen (15) per centum upon the assessed value of the taxable property therein nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding five (5) per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law. The debt of the city of Philadelphia may be increased in such amount that the total debt of said city shall not exceed thirteen and one-half (13½) per centum of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding three (3) per centum upon such average assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law. No debt shall be incurred by, or on behalf of, the county of Philadelphia

In ascertaining the debt-incurring capacity of the city of Philadelphia at any time, there shall be deducted from the debt of said city so much of such debt as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in construction, purchase, or condemnation of any public utility, or part thereof,

or facility therefor, if such public improvement or public utility, or part thereof, or facility therefor, whether separately, or in connection with any other public improvement or public utility, or part thereof, or facility therefor, may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, shall be as now prescribed, or which may hereafter be prescribed by the General Assembly.

In incurring indebtedness for any purpose the city of Philadelphia may issue its obligations maturing not later than fifty (50) years from the date thereof, with provision for a sinking fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said city of Philadelphia for the purpose of the construction or improvement of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of, the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred; and said city shall not be required to levy a tax to pay said interest and sinking fund charges as required by section ten of this article until the expiration of said period of one year after the completion of said work.

State Not to Assume Municipal Debts; Exceptions

Section 9. The Commonwealth shall not assume the debt, or any part thereof, of any city, county, borough or township, unless such debt shall have been contracted to enable the State to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the State in the discharge of any portion of its present indebtedness.

Municipalities Taxing Powers

Section 10. Any county, township, school district or other municipality incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

State Sinking Fund

Section 11. To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the General Assembly shall continue and maintain the sinking fund, sufficient to pay the accruing interest on such debt, and annually to reduce the principal thereof by a sum not less than two hundred and fifty thousand dollars; the said sinking fund shall consist of the proceeds of the sales of the public works or any part thereof, and of the income or proceeds of the sale of any stocks owned by the Commonwealth, together with other funds and resources that may be designated by law, and shall be increased from time to time by assigning to it any part of the taxes or other revenues of the State not required for the ordinary and current expenses of government; and unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in the extinguishment of the public debt.

Surplus Funds; Sinking Fund Investments

Section 12. The moneys of the State, over and above the necessary reserve, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything, except the bonds of the United States or of this State.

Reserve Funds; Monthly Statements

Section 13. The moneys held as necessary reserve shall be limited by law to the amount required for current expenses, and shall be secured and kept as may be provided by law. Monthly statements shall be published showing the amount of such moneys, where the same are deposited, and how secured.

Penalty for Misuse of Public Moneys

Section 14. The making of profit out of the public moneys or using the same for any purpose not authorized by law by any officer of the State, or member or officer of the General Assembly, shall be a misdemeanor and shall be punished as may be provided by law, but part of such punishment shall be disqualification to hold office for a period of not less than five years.

Exceptions to Municipal Indebtedness; Liquidation

Section 15. No obligations which have been heretofore issued, or which may hereafter be issued, by any county or municipality, other than Philadelphia, to provide for the construction or acquisition of waterworks, subways, underground railways or street railways, or the appurtenances thereof, shall be considered as a debt of a municipality, within the meaning of section eight of article nine of the Constitution of Pennsylvania or of this amendment, if the net revenue derived from said property for a period of five years, either before or after the acquisition thereof, or, where the same is constructed by the county or municipality, after the completion thereof, shall have been sufficient to pay interest and sinking-fund charges during said period upon said obligations, or if the said obligations shall be secured by liens upon the respective properties, and shall impose no municipal liability. Where municipalities or counties shall issue obligations to provide

for the construction of property, as herein provided, said municipalities or counties may also issue obligations to provide for the interest and sinking-fund charges accruing thereon until said properties shall have been completed and in operation for a period of one year; and said municipalities and counties shall not be required to levy a tax to pay said interest and sinking-fund charges, as required by section ten of article nine of the Constitution of Pennsylvania, until after said properties shall have been operated by said counties or municipalities during said period of one year. Any of the said municipalities or counties may incur indebtedness in excess of seven per centum, and not exceeding ten per centum, of the assessed valution of the taxable property therein, if said increase of indebtedness shall have been assented to by three-fifths of the electors voting at a public election, in such manner as shall be provided by law.

Soldiers' Bonus*

Section 16. In addition to the purposes stated in article nine, section four of this Constitution, the State may be authorized by law to create debt and to issue bonds, to the amount of fifty millions of dollars, for the payment of compensation to certain persons from this State who served in the Army, Navy, or Marine Corps of the United States during the war between the United States and Spain, between the twenty-first day of April, one thousand eight hundred and ninety-eight, and the thirteenth day of August, one thousand eight hundred and ninety-eight, or who served in the China Relief Expedition in the Philippines or Guam, between the twenty-first day of April, one thousand eight hundred and ninety-eight, and the fourth day of July, one thousand nine hundred and two, or who served in the Army, Navy, or Marine Corps of the United States during the World War, between the sixth day of April, one thousand nine hundred and seventeen and the eleventh day of November, one thousand nine hundred and eighteen.

Toll Bridges*

Section 16. In addition to the purposes stated in article nine, section four, of this Constitution, the General Assembly may provide, by law, for the issue of bonds, to the amount of ten millions of dollars, for the purpose of acquiring toll bridges, and may, by law, provide that, upon the acquisition of any such bridge, tolls may be charged for the use thereof, sufficient to pay the interest and sinking fund charges on such bonds and the cost of the maintenance of such bridges, until the bonds issued have been retired and such bridges are freed of tolls.

* Two Section sixteens in original copy

Authorization of State to Borrow Money

Section 17. The Governor, the Auditor General, and the State Treasurer, immediately upon the adoption of this amendment by the electors, may borrow an amount not exceeding twenty-five million dollars to defray the expenses of the State government for the biennium beginning June first, one thousand nine hundred thirty-three; provided the General Assembly, at its regular session of one thousand nine hundred and thirty-three, has authorized the borrowing of money for this purpose.

Gasoline Taxes and Motor License Fees Restricted

Section 18. All proceeds from gasoline and other motor fuel excise taxes, motor vehicle registration fees and license taxes, operators' license fees and other excise taxes imposed on products used in motor transportation after providing therefrom for (a) cost of administration and collection, (b) payment of obligations incurred in the construction and reconstruction of public highways and bridges shall be appropriated by the General Assembly to agencies of the State or political subdivisions thereof; and used solely for construction, reconstruction, maintenance and repair of and safety on public highways and bridges and air navigation facilities and costs and expenses incident thereto, and for the payment of obligations incurred for such purposes, and shall not be diverted by transfer or otherwise to any other purpose, except that loans may be made by the State from the proceeds of such taxes and fees for a single period not exceeding eight months, but no such loan shall be made within the period of one year from any preceding loan, and every loan made in any fiscal year shall be repayable within one month after the beginning of the next fiscal year.

Special Assessment for Transit Facilities in Philadelphia

Section 19. The city of Philadelphia, in constructing, for the benefit of the inhabitants thereof, transit subways, rapid transit railways, or other local transit facilities for the transportation of persons or property, shall have the power, in order the more justly to distribute the benefits and costs of such transit facilities, to levy special assessments against such properties, whether abutting or not abutting upon said transit facilities, as are or will be specially and particularly benefited by the construction or operation of such transit facilities; such power to be exercised in accordance with existing or with future laws or pursuant to statutes enacted prior to the adoption of this amendment but made effective by it. Such special assessments, when so levied, may be made payable presently when levied or in installments over a period of years, with or without interest, and shall immediately, when so levied, be deducted from any indebtedness incurred for such purposes in calculating the debt of such city. Such city may acquire by eminent domain either the fee or less estate or easements in land necessary for the construction or operation of such transit facilities or for the disposal of earth or material excavated in the construction thereof or for other incidental purposes; but this provision

shall not create any additional powers for the condemnation of any railroad or street railway in operation.

(PLEASE NOTE—Section 20 omitted in original)

Bonds Authorized for Special Purposes

Section 21. In addition to the purposes stated in article nine, section four of this Constitution, the Commonwealth may be authorized by law to create debt and to issue bonds to the amount of fifty million dollars ($50,000,000) for the construction of public buildings, highways, drainage and sanitary systems, anti-stream pollution and flood control projects for purposes of reforestation, and for the rehabilitation and hospitalization of war veterans.

Soldier's Bonus (World War II)

Section 22. In addition to the purposes stated in article nine, section four of this Constitution, the Commonwealth may be authorized by law to create debt and to issue bonds to the amount of $500,000,000 for the payment of compensation to certain persons from this Commonwealth who shall have served in the armed forces of the United States or of any of her allies during World War II, between the seventh day of December, one thousand nine hundred forty-one and the second day of September, one thousand nine hundred forty-five, for the service of such persons to their country, whether or not they be living when distribution shall be made, and if such persons shall be deceased when distribution shall be made, such deceased person's compensation shall be paid to his spouse, child, children or parents.

Korean Veterans' Bonus

Section 23. In addition to the purposes stated in article nine, section four of this Constitution, the Commonwealth may be authorized, by law, to create debt and to issue bonds to the amount of one hundred fifty million dollars ($150,000,000) for the payment of compensation to certain persons from this Commonwealth, who served in the armed forces of the United States or any of her allies during the Korean Conflict, between June twenty-fifth, one thousand nine hundred fifty, and July twenty-seventh, one thousand nine hundred fifty-three, for the service of such persons to their country, whether or not they are living when distribution is made, and if the person is deceased when distribution is made, the deceased person's compensation shall be paid to his spouse, child, children or parents.

The law authorizing the creation of the debt and the issuance of the bonds shall not take effect until revenue-raising measures are enacted, which the Senate and House of Representatives, by concurrent resolution, declare and deem sufficient to amortize the amount to be borrowed and paid. The revenue derived from such revenue-raising measures shall be used only for the payment of the debt created, as herein provided, and the measures shall provide for their termination when sufficient funds are accumulated to pay the debt.

Project "70"

Section 24. In addition to the purposes stated in article nine, section four of this Constitution, the Commonwealth may be authorized by law to create debt and to issue bonds to the amount of seventy million dollars ($70,000,000) for the acquisition of land for State parks, reservoirs and other conservation and recreation and historical preservation purposes and for participation by the Commonwealth with political subdivisions in the acquisition of land for parks, reservoirs and other conservation and recreation and historical preservation purposes, subject to such conditions and limitations as the General Assembly may prescribe.

Section 25. In addition to the purposes stated in article nine, section four of this Constitution, the Commonwealth may be authorized by law to create a debt and issue bonds in the amount of five hundred million dollars ($500,000,000) for a Land and Water Conservation and Reclamation Fund to be used for the conservation and reclamation of land and water resources of the Commonwealth, including the elimination of acid mine drainage, sewage, and other pollution from the streams of the Commonwealth, the provision of State financial assistance to political subdivisions and municipal authorities of the Commonwealth of Pennsylvania for the construction of sewage treatment plants, the restoration of abandoned strip-mined areas, the control and extinguishment of surface and underground mine fires, the alleviation and prevention of subsidence resulting from mining operations, and the acquisition of additional lands and the reclamation and development of park and recreational lands acquired pursuant to the authority of article nine, section twenty-four of this Constitution, subject to such conditions and liabilities as the General Assembly may prescribe.

NEW COUNTIES

Section 1. No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousand inhabitants; nor shall any county be formed of less area, or containing a less population; nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.

COUNTY OFFICERS

Enumerated; Treasurers Ineligible to Succeed Themselves

Section 1. County officers shall consist of sheriffs, coroners, prothonotaries, register of wills, recorder of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys and such others as may from time to time be established by law; and no

treasurer shall be eligible for the term next succeeding the one for which he may be elected.

Elections; Terms; Vacancies

Section 2. County officers shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies not otherwise provided for, shall be filled in such manner as may be provided by law.

Residence Requirements

Section 3. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Location of County Offices

Section 4. Prothonotaries, clerks of the courts, recorders of deeds, registers of wills, county surveyors and sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers.

Compensation of County Officers; Fees

Section 5. The compensation of county officers shall be regulated by law, and all county officers who are or may be salaried shall pay all fees which they may be authorized to receive, into the treasury of the county or State, as may be directed by law. In counties containing over one hundred and fifty thousand inhabitants all county officers shall be paid by salary, and the salary of any such officer and his clerks, heretofore paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him.

Accountability of Municipal Officers

Section 6. The General Assembly shall provide by law for the strict accountability of all county, township and borough officers, as well as for the fees which may be collected by them, as for all public or municipal moneys which may be paid to them.

County Commissioners and Auditors; Filling Vacancies

Section 7. Three county commissioners and three county auditors shall be elected in each county where such officers are chosen, in the year one thousand nine hundred and eleven and every fourth year thereafter; and in the election of said officers each qualified elector shall vote for no more than two persons, and the three persons having the highest number of votes shall be elected; any casual vacancy in the office of county commissioners or county auditor shall be filled, by the court of common pleas of the county in which such vacancy shall occur, by the appointment of and elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled.

Abolition of County Offices in Philadelphia

Section 8. (1) In Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law.

(2) Local and special laws, regulating the affairs of the city of Philadelphia and creating offices or prescribing the powers and duties of officers of the city of Philadelphia, shall be valid notwithstanding the provisions of section seven of article three of this Constitution.

(3) All laws applicable to the county of Philadelphia shall apply to the city of Philadelphia.

(4) The city of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the county of Philadelphia.

(5) The provisions of article fifteen, section one of the Constitution, shall apply with full force and effect to the functions of the county government hereafter to be performed by the city government.

(6) This amendment shall become effective immediately upon its adoption.

(7) Upon adoption of this amendment all county officers shall become officers of the city of Philadelphia, and until the General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution and the laws of the Commonwealth in effect at the time this amendment becomes effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

CITIES AND CITY CHARTERS

Home Rule

Section 1. Cities may be chartered whenever a majority of electors of any town or borough having a population of at least ten thousand shall vote at any general or municipal election in favor of the same. Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations, and regulations, as may be imposed by the Legislature. Laws also may be enacted affecting the organization and government of cities and boroughs, which shall become effective in any city or borough only when submitted to the electors thereof, and approved by a majority of those voting thereon.

Appropriations Must Precede Indebtedness

Section 2. No debt shall be contracted or liabil-

ity incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government.

City Sinking Fund

Section 3. Every city shall create a sinking fund, which shall be inviolably pledged for the payment of its funded debt.

Consolidation in Allegheny County

Section 4. The General Assembly is hereby authorized to provide for the consolidation of the county, poor districts, cities, boroughs and townships of the county of Allegheny, and the offices thereof, into a consolidated city and county, with the constitutional and legal capacity of a municipal corporation, to be known either as "Greater Pittsburgh" or "Metropolitan Pittsburgh" or "City of Pittsburgh (Metropolitan)," and to provide for a charter for its government, and to fix the name thereof in the charter. The said charter shall be submitted to the electors of said county, at a special or general election to be provided for therein. If the majority of the electors voting thereon in the county as a whole, and at least a majority of the electors voting thereon in each of a majority of the cities, boroughs and townships thereof, vote in the affirmative, the act shall take effect for the whole county.

If rejected, the said charter may be resubmitted by the county commissioners to the electors from time to time, but not oftener than once in two years, until adopted. Until a charter shall have been adopted as aforesaid, the General Assembly shall have the power to amend or modify the said charter, in which event the charter as amended or modified shall be submitted and resubmitted as aforesaid.

It shall be competent, subject to the police power of the State, for the Legislature to provide in said charter:

I. For the exercise by the consolidated city of all the powers and duties vested in the county of Allegheny, and the poor districts thereof, and such other powers appropriate to a municipality as may be specified therein, except such powers as are specifically reserved by this section to the municipal divisions herein provided for.

II. For the election of a board of commissioners, by districts and/or at large, by the electors of the consolidated city, the number to be fixed by the charter, in lieu of present county commissioners, in which board shall be vested all the powers of the consolidated city, except as otherwise provided in the charter.

III. For the organization of a government for the consolidated city, and for the appointment and/or election of any officers thereof, created by the Constitution, or otherwise, and to provide for their powers and duties.

IV. For the organization and reorganization of all courts, other than those of record, in the consolidated city, and for the appointment and/or election of the judges and officers thereof, and for the procedure thereof, including the right to provide that said court or courts be courts of record, which courts may exercise the jurisdiction, powers and rights of the magistrates, aldermen and justices of the peace, and such other jurisdiction and powers as may be conferred by law.

V. For the transfer to, and the assumption by, the consolidated city of the property and indebtedness of the county of Allegheny, and the poor districts thereof, and of such property and indebtedness of the cities, boroughs and townships thereof as relate to the powers and duties of said consolidated city, and to provide for an equitable adjustment and arrangement with respect thereto and for the payment of such indebtedness, and, for this purpose, any taxation therein, arising thereby, shall be uniform taxation within the meaning and intent of other provisions of the Constitution.

VI. For the assessment of property for taxation, the levying and collecting of taxes, and the payment of the cost of any public or municipal improvement, in whole or in part, by special assessment upon abutting and non-abutting property specially benefited thereby.

VII. For the creation, by the board of commissioners, of districts for the purpose of regulating the location, height, area, bulk and use of building and premises.

VIII. For the creation of indebtedness by the consolidated city within the limits now or hereafter imposed upon cities by other provisions of the Constitution. Such power to create indebtedness shall not impair the power of the municipal divisions, within the consolidated city, to create indebtedness within the limits now or hereafter imposed upon such municipalities by other provisions of the Constitution.

IX. For the creation, by the board of commissioners, of special districts for the purpose of carrying on or carrying out any public or municipal improvement, not for the exclusive benefit of any one municipal division; and for the payment of the cost and maintenance of such property or improvement, or any part thereof, special taxes may be levied throughout such special districts, respectively, separate and apart from the general consolidated city tax.

X. For the exercise of such powers by the consolidated city as may be necessary to enable it to carry on and carry out such municipal and metropolitan powers and functions as the General Assembly may deem advisable and expedient and for the general welfare of the said city and its inhabitants:

Provided, however, That it is the intent of this section that substantial powers be reserved to the cities, boroughs and townships situated in Allegheny County. To this end the charter shall provide for the continued existence of the said cities, boroughs and townships, as municipal divisions of the consolidated city, under their present names and forms of government, subject to the laws now or hereafter provided for government of mu-

nicipalities of their respective forms and classes and to the powers conferred upon the consolidated city by the charter, and with their present boundaries. Any two or more of said municipal divisions, or portions thereof, may, with the consent of a majority of the electors voting thereon in each of such divisions at any special or general election, be united to form a single municipal division. Wherever a portion of a municipal division is involved, the election shall be held in the entire municipal division of which the said portion is a part.

The said municipal divisions shall have and continue to have the following powers:

I. The constitutional and legal capacity of municipal corporations.

II. The power to levy and collect taxes and to incur indebtedness, subject to the limitations which are or may be imposed by law upon cities, boroughs, or townships of corresponding classification, for the purpose of carrying out any lawful power of said divisions.

III. The power to acquire, own, construct, maintain, operate or contract for all kinds of public property, works, improvements, utilities or services, which shall be within the municipal division and, where authorized by law, without the limits of the municipal division. Subject, however, to the right and power of the consolidated city to construct, acquire, maintain, and/or operate public works, improvements, utilities and services of all kinds, including through streets, highways and/or bridges, for the use and benefit of the consolidated city and its inhabitants.

IV. The power to maintain a local police force and local fire department, either paid or volunteer, with the necessary buildings, appurtenances and equipment therefor, which may be independent of or supplemental to the police force and fire department of the consolidated city.

V. All other powers not specifically granted by the charter to the consolidated city: Provided, however, That a municipal division may surrender, by a majority vote of the electors voting thereon at any general or special election, any of its powers to the consolidated city, subject to the acceptance thereof by the board of commissioners.

After a charter has been adopted as aforesaid, it may be amended as follows:

I. In matters which relate only to the powers of the consolidated city and which do not reduce the powers of any one or more of the municipal divisions thereof by the General Assembly: Provided, however, That any amendment which changes or modifies the form of government of the consolidated city, or the number of or manner of election of the commissioners thereof, shall not be effective until such amendment shall have been ratified by a majority of the electors of the consolidated city voting thereon at a general or special election, to be provided for in said amendment.

II. In matters which reduce the powers of any one or more of the municipal divisions of the consolidated city, such amendment, enacted by the General Assembly, shall not be effective until it shall have been ratified at a general or special election, to be provided for in said amendment, by a majority of the electors voting thereon in all of the municipal divisions affected thereby, and by a majority of the electors voting thereon in each of a majority of said municipal divisions so affected.

Acquisition of Land for Highway Construction

Section 5. The General Assembly may authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating highways or streets connecting with bridges crossing streams or tunnels under streams which form boundaries between this and any other state, but the additional land and property, so authorized to be taken, shall not be more than sufficient to form suitable building sites on such highways or streets. Nor shall the authority hereby conferred be exercised in connection with the laying out, widening, extending or relocating of any highway or street at a point more than three miles distant from the approach to any such bridge or tunnel. After so much of the land and property has been appropriated for such highways or streets as is needed therefor, the remainder may be sold or leased and any restrictions imposed thereupon which will preserve or enhance the benefit to the public of the property actually needed for the aforesaid public use.

ARTICLE V

THE JUDICIARY

Section 1. The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates' courts, and in such other courts as the General Assembly may from time to time establish.

Supreme Court; Term of Judges; Chief Justice

Section 2. The Supreme Court shall consist of seven judges, who shall be elected by the qualified electors of the State at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not be again eligible. The judge whose commission shall first expire shall be chief justice, and thereafter each judge whose commission shall first expire shall in turn be chief justice.

Jurisdiction and Powers of Supreme Court

Section 3. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have original jurisdiction in cases of injunction where

a corporation is a party defendant, of habeas corpus, of mandamus to courts of inferior jurisdiction, and of quo warranto as to all officers of the Commonwealth whose jurisdiction extends over the State, but shall not exercise any other original jurisdiction; they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is now or may hereafter be provided by law.

Common Pleas Courts

Section 4. Until otherwise directed by law, the courts of common pleas shall continue as at present established, except as herein changed; not more than four counties shall, at any time, be included in one judicial district organized for said courts.

Judicial Districts; Associate Judges

Section 5. Whenever a county shall contain forty thousand inhabitants it shall constitute a separate judicial district, and shall elect one judge learned in the law; and the General Assembly shall provide for additional judges, as the business of the said districts may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts as the General Assembly may provide. The office of associate judge not learned in the laws as abolished in counties forming separate districts; but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms.

Common Pleas Courts of Philadelphia and Allegheny Counties; Increasing the Number of Judges

Section 6. In the county of Philadelphia all the jurisdiction and powers now vested in the district courts and courts of common pleas, subject to such changes as may be made by this Constitution or by law, shall be in Philadelphia vested in five distinct and separate courts of equal and coordinate jurisdiction, composed of three judges each. The said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three, number four, and number five, but the number of said courts may be by law increased, from time to time, and shall be in like manner designated by successive numbers. The number of judges in any of said courts, or in any county where the establishment of an additional court may be authorized by law, may be increased, from time to time, and whenever such increase shall amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid. In Philadelphia all suits shall be instituted in the said courts of common pleas without designating the number of the said court, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by rules of court, and each court, to which any suit shall be thus assigned, shall have exclusive jurisdiction thereof, subject to change of venue, as shall be provided by law.

In the county of Allegheny all the jurisdiction and powers now vested in the several numbered courts of common pleas shall be vested in one court of common pleas, composed of all the judges in commission in said courts. Such jurisdiction and powers shall extend to all proceedings at law and in equity which shall have been instituted in the several numbered courts, and shall be subject to such changes as may be made by law, and subject to change of venue as provided by law.

The president judge of said court shall be selected as provided by law. The number of judges in said court may be by law increased from time to time. This amendment shall take effect on the first day of January succeeding its adoption.

Prothonotary of Philadelphia

Section 7. For Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts to be appointed by the judges of said courts, and to hold office for three years, subject to removal by a majority of the said judges; the said prothonotary shall appoint such assistants as may be necessary and authorized by said courts; and he and his assistants shall receive fixed salaries, to be determined by law and paid by said county; all fees collected in said office, except such as may be by law due to the Commonwealth, shall be paid by the prothonotary into the county treasury. Each court shall have its separate dockets, except the judgment docket which shall contain the judgments and liens of all the said courts, as is or may be directed by law.

Criminal Courts in Philadelphia and Allegheny Counties

Section 8. The said courts in the counties of Philadelphia and Allegheny, respectively, shall, from time to time, in turn detail one or more of their judges to hold the courts of Oyer and Terminer and the courts of Quarter Sessions of the Peace of said counties, in such manner as may be directed by law.

Duties of Common Pleas Judges

Section 9. Judges of the courts of common pleas learned in the law, shall be judges of the courts of oyer and terminer, quarter sessions of the peace and general jail delivery, and of the orphans' court, and within their respective districts shall be justices of the peace as to criminal matters.

Certiorari to Courts Not of Record

Section 10. The judges of the courts of common pleas, within their respective counties, shall have power to issue writs of certiorari to justices of the peace and other inferior courts not of record, and to cause their proceedings to be

brought before them, and right and justice to be done.

Justices of the Peace and Aldermen

Section 11. Except as otherwise provided in this Constitution, justices of the peace or aldermen shall be elected in the several wards, districts, boroughs or townships, by the qualified electors thereof, at the municipal election, in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of six years. No township, ward, district or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward or borough; no person shall be elected to such office unless he shall have resided within the township, borough, ward or district for one year next preceding his election. In cities containing over fifty thousand inhabitants, not more than one alderman shall be elected in each ward or district.

Magistrates' Courts in Philadelphia

Section 12. In Philadelphia there shall be established, for each thirty thousand inhabitants, one court, not of record, of police and civil causes, with jurisdiction not exceeding one hundred dollars; such courts shall be held by magistrates whose term of office shall be six years, and they shall be elected on general ticket at the municipal election by the qualified voters at large; and in the election of the said magistrates no voter shall vote for more than two-thirds of the number of persons to be elected when more than one are to be chosen; they shall be compensated only by fixed salaries, to be paid by said county; and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is now exercised by aldermen, subject to such changes, not involving an increase of civil jurisdiction or conferring political duties, as may be made by law. In Philadelphia the office of alderman is abolished.

Disposition of Fees

Section 13. All fees, fines and penalties in said courts shall be paid into the county treasury.

Appeal from Decisions of Courts Not of Record

Section 14. In all cases of summary conviction in this Commonwealth, or of judgment in suit for a penalty before a magistrate, or court not of record, either party may appeal to such court of record as may be prescribed by law, upon allowance of the appellate court or judge thereof upon cause shown.

Election of Judges; Term; Removal

Section 15. All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each House of the General Assembly.

The Chief Justice of the Supreme Court may designate and assign former judges, learned in the law, who are willing so to do, who have served at least one term and who have not been defeated for reelection, to the office of judge of any court of record, to temporarily sit in the courts of any judicial district for the disposal of business under such circumstances and subject to such qualifications and conditions as the General Assembly may prescribe.

Election of Supreme Court Judges

Section 16. Whenever two judges of the Supreme Court are to be chosen for the same term of service each voter shall vote for one only, and when three are to be chosen he shall vote for no more than two; candidates highest in vote shall be declared elected.

Priority of Judges' Commissions

Section 17. Should any two or more judges of the Supreme Court, or any two or more judges of the court of common pleas for the same district, be elected at the same time, they shall, as soon after the election as convenient, cast lots for priority of commission, and certify the result to the Governor, who shall issue their commissions in accordance therewith.

Compensation of Judges

Section 18. The judges of the Supreme Court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation, which shall be fixed by law, and paid by the State. They shall receive no other compensation, fees or perquisites of office for their services from any source, nor hold any other office of profit under the United States, this State or any other State.

Residences of Judges

Section 19. The judges of the Supreme Court, during their continuance in office, shall reside within this Commonwealth; and the other judges, during their continuance in office, shall reside within the districts for which they shall be respectively elected.

Chancery Powers of Common Pleas Courts

Section 20. The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts, subject to such changes as may be made by law, such chancery powers as are now vested by law in the several courts of common pleas of this Commonwealth, or as may hereafter be conferred upon them by law.

Limitations Upon Supreme Court

Section 21. No duties shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided. The court of nisi prius is hereby abolished, and no court of original jurisdiction to be presided over by any one or more of the judges of the Supreme Court shall be established.

Orphans' Courts; Auditing of Accounts; Registers' Courts Abolished

Section 22. In every county wherein the population shall exceed one hundred and fifty thousand, the General Assembly shall, and in any other county may, establish a separate orphans' court, to consist of one or more judges who shall be learned in the law, which court shall exercise all the jurisdictions and powers now vested in or which may hereafter be conferred upon the orphans' courts, and thereupon the jurisdiction of the judges of the court of common pleas within such county, in orphans' court proceedings, shall cease and determine. In any county in which a separate orphans' court shall be established, the register of wills shall be clerk of such court and subject to its directions, in all matters pertaining to his office; he may appoint assistant clerks, but only with the consent and approval of said court. All accounts filed with him as register or as clerk of the said separate orphans' court shall be audited by the court without expense to parties, except where all parties in interest in a pending proceeding shall nominate an auditor whom the court may, in its discretion, appoint. In every county orphans' courts shall possess all the powers and jurisdiction of a registers' court, and separate registers' courts are hereby abolished.

Style of Criminal Process; Prosecutions

Section 23. The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

Right of Appeal in Criminal Cases

Section 24. In all cases of felonious homicide, and in such other criminal cases as may be provided for by law, the accused after conviction and sentence, may remove the indictment, record and all proceedings to the Supreme Court for review.

Filling Vacancies in Courts of Record

Section 25. Any vacancy happening by death, resignation or otherwise, in any court of record, shall be filled by appointment by the Governor, to continue till the first Monday of January next succeeding the first general election, which shall occur three or more months after the happening of such vacancy.

Uniform Laws for Courts; Certain Courts Prohibited

Section 26. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform; and the General Assembly is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts.

Dispensing with Jury Trials in Civil Cases

Section 27. The parties, by agreement filed, may in any civil case dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases.

Section 28. The General Assembly may, by general law, provide that a course of training and education be completed by justices of the peace and aldermen hereafter selected who have not been admitted to practice law in this Commonwealth. The required course of training and education shall not exceed three months' duration, one month of which shall be taken after their election and prior to their assuming office. The remaining two months of training and education shall be taken immediately after assuming office. Their jurisdiction shall extend to summary offenses only prior to completion of the required course. Persons who have served as justices of the peace or aldermen prior to the adoption of this amendment shall not be required to take this course. The required course shall be at the cost of the Commonwealth.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Forster. You may proceed.

DELEGATE FORSTER. Mr. President, you have before you the proposed copy for the Address to the People. I call your attention to the first two recommendations of this third recommendation of our committee. We recommend that the Constitutional Convention adopt an Address to the People in the form hereto attached, and, second, we further recommend that the Address to the People and copies of a condensed version thereof be printed and distributed as directed by the Committee on Administration and Finance.

Now, a word of explanation concerning the copy of the complete booklet which you have. On the first page, it is an exhibit illustrating the kind and style of type that would be used in the main section of the Address where the full text of the finally adopted articles proposed by this Convention will appear on the left side of the page and a commentary in layman's language on the right side of the page.

The next page you have is the copy for the cover of the booklet. We attempted to reproduce by this reproduction machinery available here the design of that cover

and, unfortunately, it will not reproduce, so we are going to do the next best thing, that is, pass around from delegate to delegate the official layout so that you can see it. There will be one change in this layout and that is the size. The printing contract which the Committee on Administration and Finance has made with the printer called for a page size of seven inches by nine inches, which is the size of all the booklets, the instructional booklets you got in connection with this Convention, so that the address will fit in and be a part of a complete library and be the same size. This will necessitate some alteration in the design of the layout, you see, but not much. It will still be essentially the same.

The next page you have is the title page of the book. The next page gives the contents. You have then, following that, the Address to the People of Pennsylvania, which, in condensed version, sets forth what this Convention has done, why and how it did its work, and the essential questions that the people will be called on to decide in April.

Following that statement are the ballot questions which will now be changed to reflect the amendments made on them here today when they were adopted.

Following that section, we begin the actual presentation of the full articles with the summary and explanation thereof in the right-hand side. Here, again, in each section the ballot question will be revised to reflect the amendments made today in adopting those questions.

Following the summary and explanation section, we have the list of officers of the Convention; following is the list of all committees and subcommittees. Following is the list of all staff, and they are also shown not only by the major components of staff, but as assigned to committees; the next section is the alphabetical listing of all delegates with party affiliation, senatorial districts, occupation and residence.

May I say to you now it was an impossibility for us to get around to each of you individually to check the spelling of your name or the way it is shown but we want you to look at this copy now and if your name does not appear the way you want it, please report to me and we will see that it is properly changed to reflect it the way you wish it.

Now, one more comment:

The last section is the appendix which includes all of the articles and sections of the present Constitution that the newly proposed articles and sections are intended to replace from the present Constitution.

I have some changes to offer to this now. In the rapid scurry of trying to put this document together in a very short period of time, there were certain omissions. One is that the staff people working with Style and Drafting, that list was omitted. It will be added. In addition, the Assistant to the President of the Convention was omitted. Miss Bette Aversa. That will be added.

Now, we will respectively throw ourselves upon your mercy.

PRESIDENT BRODERICK. The Chair now recognizes Delegate McGeary.

DELEGATE McGEARY. Mr. President, I just wanted to congratulate the Committee. I think the most important part of this is pages 7 to 21, where there is a summary and explanation of all of our changes. I know many of you have not had a chance to look at it, but I have been taking time in the last hour to read that carefully and I think it is a wonderful job. It will help not only the voters, but will help us who will have to make a speech in the next few days and cannot remember what we have done.

Congratulations.

PRESIDENT BRODERICK. I certainly join in that, and I think the fellow delegates sincerely congratulate you for a job well done.

DELEGATE FORSTER. I think Delegate Nelson was the primary author of the commentary and, following what Delegate McGeary said, two officers of this Convention have already used these comments for a speech.

Mr. President, I understand there are some suggested changes in this copy from the delegates, and I do not know at this time the status of how we will handle it, whether we will handle it through the formal amending process or whether they could not expedite it by telling us and having us mark our copies accordingly as an amendment.

PRESIDENT BRODERICK. I think it will depend on how many amendments and the extent of them. Let us see who has suggestions to offer, and then we will make a decision together to see what our task is.

The Chair now recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, several members of the Local Government Committee have examined the pages on the commentary concerning local government together, and we have submitted an amendment to the Drafting Bureau which is now being prepared. It involves nine or ten changes to correct fairly minor inaccuracies. I understand Delegate Leonard has done the same thing and his suggested changes are being worked on now, also.

PRESIDENT BRODERICK. That would be a very excellent way to expedite any changes.

May I suggest, if the Judiciary Committee has any changes, they handle theirs in the same way, or Chairman Devlin in connection with Legislative Apportionment, if they want any changes.

The Chair now recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, this is really a splendid document and will be of great help, particularly to newspapers, editorial writers, and persons like that, particularly those of us who must make talks on it.

May I direct the committee's attention to page 10 where there is a problem that would not merit an amendment, but I would bring it to the attention of Delegate Forster and, perhaps, he could handle it personally. The third paragraph down on the right, the requirement that all taxes shall be uniform upon the same classes of subjects, etc., was the subject of great discussion in the period when we were authorizing this Convention, these two restrictions, and there were many people who felt that we could not be trusted to obey those restrictions.

It would be very helpful to me—maybe others—to newspapermen, also, if some phrase such as "the Convention meticulously observed the restriction not to," or something like that. Let us get some merit from this. We were meticulous through the help of our President and his staff to keep away from these two areas. I think this should be stated positively, because there were people who were afraid that we would not.

PRESIDENT BRODERICK. Did you have any comment on that, Delegate Nelson?

DELEGATE NELSON. Yes, one comment. This is meant to be factual boy scout language. I think what Secretary Michener has in mind might well be incorporated into the foreword, the Address to the People, rather than in this factual analysis. I am sure if he would draft a sentence we would be happy to insert it.

PRESIDENT BRODERICK. May I suggest we have our Secretary, Delegate Michener, draft such a sentence and we would see that it would get run off the machine as an amendment and take care of it.

Now the Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President, in line with our distinguished Secretary's observation, I believe that the people of Pennsylvania and its political leaders were intensely interested that we should not touch anything which might bring a graduated income tax into our State. I think this should also be specifically mentioned along with the gasoline taxes.

PRESIDENT BRODERICK. Thank you. Was that a suggestion to Secretary Michener for his amendment?

As I understand it, we are having amendments prepared.

We would like to get on with the business. Do not forget it is February 29th. For the benefit of the delegates who do not have watches on, according to the clock it is 5:28 p.m.

Will the Convention please come to order?

I think, fellow delegates, you would like another explanation as to where we are, what we have left and what our time schedule is, and then I will recognize Delegate Pasquerilla.

First of all, we have, I think, three amendments to this Recommendation No. 3. Could I have your attention, please, because I think you will want to hear this.

One of those amendments is now ready and about to be presented to you by Delegate Pasquerilla. The two others are being prepared. This process should not take us more than the next 10 or 15 minutes. Our holdup, of course, again, and I regret to say it, is on the printing and getting Article 7 in final form. The latest estimate that I received now—this is the one I gave earlier for 4:30—is now sometime between 7:00 and 7:30.

I will tell you what else we have to do. We have a ceremony set up as soon as we have concluded our business, and our business will be concluded when we finally pass No. 7 and finally accept the report of Arrangement, Submission and Address to the People.

We will then have our signing ceremony, which, frankly, I do not think will take more than 25 or 30 minutes, something like that.

So let us put it this way, when we finish this process, you may want to get a bite to eat and then come back at 7:30 with the understanding from 7:30 we should be finished definitely by 9:00 o'clock. Otherwise, we will sit around here and have these little waits in between. I do urge all the delegates to be present. In the signing ceremony we arranged for photographers to take the picture of each delegate. It is a good suggestion.

PASQUERILLA AMENDMENT TO RECOMMENDATION No. 3

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, I now present an amendment to Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People.

On the question recurring,

Will the Convention agree to Recommendation No. 3?

DELEGATE PASQUERILLA offered the following amendment which was read by the clerk:

Amend Recommendation, SUMMARY AND EXPLANATION, page 12, third paragraph, by removing the period after "government" in line two, and inserting: for all municipalities.

Amend Recommendation, SUMMARY AND EXPLANATION, page 13, first paragraph, by striking out "abolished;" in line 2 and inserting: now statutory;

Amend Recommendation, SUMMARY AND EXPLANATION, page 13, third paragraph, line 2, by inserting after "cooperate": with or delegate to,

Amend Recommendation, SUMMARY AND EXPLANATION, page 13, third paragraph, line 4, by striking out "with":

Amend Recommendation, SUMMARY AND EXPLANATION, page 13, third paragraph, line 5, by striking out "the State or" and inserting: a State or the

Amend Recommendation, SUMMARY AND EXPLANATION, page 14, first paragraph, by striking out all of first paragraph:

Amend Recommendation, SUMMARY AND EXPLANATION, page 14, second paragraph, line 4, by striking out "will be permitted only" and inserting: is permitted

Amend Recommendation, SUMMARY AND EXPLANATION, page 14, second paragraph, line 7, by inserting after "involved,": without the approval of the governing body,

Amend Recommendation, SUMMARY AND EXPLANATION, page 14, by inserting between third and fourth paragraphs a new paragraph to read: Provision is made for the General Assembly to establish standards pursuant to which any municipality may give financial assistance to public service, industrial or commercial enterprises if necessary for the health, safety or welfare of the Commonwealth or any municipality. Existing rights of municipalities are preserved.

Amend Recommendation, SUMMARY AND EXPLANATION, page 15, second paragraph, line 1, by inserting after "body": to the extent that

Amend Recommendation, SUMMARY AND EXPLANATION, page 15, second paragraph, lines 1 and 2, by striking out "of which":

Amend Recommendation, SUMMARY AND EXPLANATION, page 15, second paragraph, line 3, by striking out "apportion" and inserting: reapportion

Amend Recommendation, SUMMARY AND EXPLANATION, page 15, second paragraph, line 7, by striking out "substantially" and inserting: as nearly

Amend Recommendation, SUMMARY AND EXPLANATION, page 15, second paragraph, line 7, by removing the period after "population" and inserting: as practicable.

Amend Recommendation, SUMMARY AND EXPLANATION, page 15, third paragraph, lines 1 and 2, by striking out all of line 1 and "added" in line 2 and inserting: Added

Amend Recommendation, ROSTER OF DELEGATES, page 37, under the heading of "Occupation", last two lines,

by striking out "professor of Law" and inserting: Dean, Duquesne Law School

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Pasquerilla.

DELEGATE PASQUERILLA. Mr. President, under the Committee on Arrangement, Submission and Address to the People, who have, in my opinion, done a very outstanding job in such a short period of time. We do have some correctional language to insert which will comply more with the intent. There are two pages of corrections but perhaps the most important correction is on page 3 and it says:

"Amend roster of delegates, page 37, under the heading of occupation, the last two lines, strike out "Professor of Law" and insert "Dean of the Duquesne Law School."

Since it is not November, I cannot change Delegate Casey's new title, nor Judge Hannum's, nor mine.

PRESIDENT BRODERICK. The Chair now recognizes Chairman Nelson.

DELEGATE NELSON. We want it to be known that the occupation of our good Dean was considered at great length. The decision was that we would use the occupation at the time the Convention commenced, because we wondered what we would have done if some member had died during the Convention.

A DELEGATE. We would have buried him.

DELEGATE NELSON. We would not have marked him deceased, so we would have entered the occupation he was engaging in at the time—

PRESIDENT BRODERICK. I think the only one that can speak with authority on that is Delegate Goldstein.

PRESIDENT BRODERICK. If you want to make an explanation of any of your other amendments, would you proceed?

DELEGATE NELSON. The amendments are really self-explanatory. Once they are distributed on the desks, all that has to be done is to be fit into the language and there is nothing real serious about them. We felt that since it is going to be sent out to the people, that we should be absolutely sure that they are correct. I do not think we need to go through the 15 changes unless you so desire.

DELEGATE ALLISON. Do I understand this will be put up in book style?

PRESIDENT BRODERICK. That is my understanding. I would like Delegate Nelson to answer that.

The question was:

Is it going to be put in book style?

DELEGATE NELSON. The recommendation is that the copies be printed and the copies of the condensed version be printed and distributed as directed by the Committee on Administration and Finance.

DELEGATE ALLISON. Can these corrections be made without the formality of having this material in? You will have other corrections like the State seal, and other things, to be put in there.

PRESIDENT BRODERICK. My answer, if you are asking me, is that we want to get this report approved. I think it is important that we all approve what is in the report. If we have something done in committee, we will get home and find something in there we do not like.

WIFE AND FAMILY OF DELEGATE LEE WELCOMED

PRESIDENT BRODERICK. The Chair recognizes Delegate Lee.

DELEGATE LEE. May I rise for a point of privilege? I would like to introduce my wife, Linda, who just now joined us.

PRESIDENT BRODERICK. Would you stand up, please, Mrs. Lee?

PRESIDENT AND OFFICERS LAUDED AND COMMENDED BY DELEGATES

PRESIDENT BRODERICK. The Chair now recognizes Delegate Gray.

DELEGATE GRAY. Mr. President, while we are waiting for the distribution of these amendments, I would like to impose on this Convention to tell you what a swell guy you are. You had to praise yourself in the presence of your wife and, when the Governor came here we all stood up, but you have been the guy that did all the work and I want you to know that from the bottom of our hearts, whether we say so or not, we appreciate you. I do not want you to tell Jim Tate that I said this, you understand—and Delegate Amsterdam is not here, so he will not tell it back in Philadelphia, but we want you to know that you are a great man and I will ask everyone to join in with applause.

(Applause and standing ovation.)

PRESIDENT BRODERICK. I thank you very, very much, honestly, from the bottom of my heart.

I want to say just one thing, if I may. You know, I appreciate that, but you saw me standing up here, but every day I met with three of the nicest guys that I ever had the opportunity and pleasure to work with, and they were my fellow officers and I wish you would give the same applause to Bob Casey, Frank Orban and Jim Michener, and every one of you have been magnificent. They have been so cooperative and I cannot tell you how much I appreciate it, from the bottom of my heart.

While you are still standing up, I just want to say I mentioned my fellow officers and you know everybody has been mentioned in the resolutions, but the cooperation that I have gotten from Mark Gruell, Marvin Comisky and Tom Balaban, and I can go on up and down here, "Rags," and the whole crew they have been magnificient. If you thought I made any bad decisions, I did not make any, they made them all. Let us give them a big hand.

ADDRESS BY SECRETARY MICHENER

DELEGATE MICHENER. I would like to point out one thing which has brought great distinction to this Convention and it is an event which stands in great contrast to the Convention that was recently held to the north in which, by a series of very sad political accident, the judges who were delegates to the New York Convention fell into a dreadful dispute with the non-judge delegates and, if you remember, the Convention had to suspend for two days until a formula of apology was worked out in which the judges apologized for trying to dominate the Judiciary Article in a most indefensible way and the non-judge delegates had to apologize for calling the judges names which you can imagine. That did not happen in our Convention. We had in our body, seven of the finest men that

the legal profession of Pennsylvania provides. Instead of following the selfish and narrow task that was followed elsewhere, it was these men who spoke consistently to the broad interpretation, to the responsibility of the profession, to the necessity in the profession for order and for discipline and for removal for cause.

Instead of us having to fight the judges for the good things that we needed, our judges showed us the way to those good things and were consistent in standing with the very best that the legal profession in a state like ours can stand for.

We are very fortunate in having Judge Woodside as the head of one of the most important committees, of our deliberations, and, in having Judge Woodring, my good neighbor from the north as co-chairman of one of the difficult committees; in having Judge Shettig giving us his salty news of the smaller counties, of having Judge Hannum here to lend dignity to the office to which he is moving and to bring that dignity to our deliberations; in having Judge Fortney giving us his quiet solid advice.

I had the pleasure of attending many of the meetings of this Committee and to find these men so stalwart in defense of the things that you and I wanted and never at variance with us, was a great thing. To talk both in this hall and elsewhere with Judge Burkholder and to hear his wonderful remembrances of life in the judicial branch.

And above all, Judge Braham who would speak now and then on the problems of the legal profession. It was a pleasure to work with these men. I think we have been most fortunate in having the guidance and unselfishness of these men to bind us together in some of our most difficult decisions, and I think we owe them a round of applause for having shown us what the dignity of the bench really is.

RESOLUTION

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins.

DELEGATE HUGGINS. Mr. President, I stand in place and would like to read a resolution and would ask the action of this Constitutional Convention in this matter, if I may. I might say in the beginning, Mr. President, that we had hoped to hold this resolution to the last. I think, judging from the spontaneity of this Convention, we feel that, it has much more meaning now than it would have in the concluding moments.

DELEGATE HUGGINS requested and obtained unanimous consent by acclamation to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 29, 1968.

Leadership is a word that takes on many varied meanings. It can be defined as patience, and calm; as integrity and concern; as humor and flexibility; or it can be seen in the success of a united labor to complete a task with industry and valor. Leadership is varied in meaning, but is a gift that many covet, and one which few truly achieve.

True leadership is man's response to serve beyond self and is man's greatest natural fulfillment and can only be measured in terms of what his fellows see in his fortitude in the midst of stress. Great leadership is never exerted in selfishness of interests, or in the indulgence of individual gain. It is never born in moments of power, nor is it appreciated at the expense of those who value man's ability to lead man beyond the pale of ordinary human endeavors; therefore be it

RESOLVED, That we of this 1967-1968 Constitutional Convention do now, and for all time, praise the leadership exerted in this "date with history" by Raymond Broderick. Through his patient calm, his integrity of concern, for his humor and flexibility and for his industry and valor, we do now thank him, and ask God's blessing upon him in his future which is now marked by a star of leadership.

PRESIDENT BRODERICK. Can we now proceed with the business of this Convention? I appreciate that very, very, very much. I am now going to recognize Delegate Pasquerilla.

DELEGATE PASQUERILLA. Are there any questions by the delegates on the amendment to recommendations of the Local Government on the Committee on Arrangement, Submission and Address to the People? Have they not been all distributed?

PRESIDENT BRODERICK. May I ask Chairman Nelson if you have any comment by your Committee?

DELEGATE NELSON. The committee has no objection to these amendments.

PRESIDENT BRODERICK. I will unlock the voting machine. The question is, will the Convention accept the amendment now being offered by Delegate Pasquerilla to the report on Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People? Those voting "nay," vote to reject it.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Pasquerilla?

The roll was recorded as follows:

YEAS—131

Aberman	Devlin	Lee, L.	Richter
Amsterdam	Erwin	Leinbach	Roberts
Aurentz	Fagan	Leonard	Rovner
Bagenstose	Fawcett	Levin	Sahli
Baldrige	Fay	Manderino	Scales
Baldus	Feather	Mangery	Scarlett
Baldwin	Filson	Markley	Scranton
Banes	Fohl	Mattioni	Shapiro
Barry	Forster	McGeary	Sharp
Bashoff	Gabreski	McGlynn	Shettig
Benedict	Gerber	Meyer	Shively
Benfield	Goldman	Michener	Shoemaker
Bloom	Goldstein	Miller, D.	Shrager
Braham	Gouger	Miller, R.	Silverman
Brennan	Gray	Moorhead	Sprogell
Broderick	Griffith	More	Stout
Brown	Hannum	Morton	Strickler
Buck	Hatter	Murray	Stroup
Bunting	Henderson	Musselman	Swope
Burkholder	Himes	O'Donnell	Tate
Butera	Hocker	Orban	Thomson
Cain	Hook	Orbin	Thornburgh
Camardella	Horne	Otto	Tomasetk
Caputo	Hostetler	Pasquerilla	Tully
Caron	Huggins	Pelletier	Waldron
Casey	Irvis	Popil	Warman
Clark	Kauffman	Pott	Welsh
Corey	Keller, J.	Powell	Westerberg
Cortese	Kelly	Prendergast	Whittum
Cosetti	King	Rappaport	Wilcox
Croop	Krill	Rea	Wilmarth
Curran	Laputka	Redick	Woodside
Desmond	Leach	Reynolds	

NAYS—0

NOT VOTING—32

Allison	Donolow	Johnson	Percey
Barron	Fineman	Keller, M.	Quiles
Clinger	Fleming	Kline	Ruth
Conley	Fortney	Lane	Scott
Cunningham	Gehrlein	Lee, K.	Sebastian
Dailey	Harding	Michael	Solomon
Dumbauld	Heyburn	Nelson	Van Sant
Donaldson	Jirolanio	Pechan	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

CORRECTIONAL CHANGES TO RECOMMENDATION No. 3

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. I was informed by the Parliamentarian that the committee will be accorded the privilege of making some changes without going through the formal amending process because they are purely correctional and I would like to make two at this time.

PRESIDENT BRODERICK. Very good. After you state your change, the Chair will ask if there is any objection.

DELEGATE FORSTER. The first is in the Address to the People on page 1, the fifth paragraph, the last sentence which says, "Since 1900, the demand for revision steadily increased but six times over, this same period the voters rejected." Our face is red, that figure should be since "1890," instead of "1900." The first referendum I believe was 1891. I request permission to make that change.

PRESIDENT BRODERICK. Is there any objection? The Chair hears no objection.

MOTION THAT EXECUTIVE DIRECTOR BE FINAL ARBITER ON THE LISTING OF STAFF PERSONNEL IN THE ADDRESS TO PEOPLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Forster.

DELEGATE FORSTER. The next is really not a correction, although it may result in one. I would move, Mr. President, that this Convention authorize its Executive Director, Mr. Ingram, to be the final arbiter on the listing of staff personnel in the Address to the People. Since it was put together so quickly, we may have omitted names that should have been included, or we may have included some names that should not have been included, and I move the authority be given to him.

PRESIDENT BRODERICK. It has been moved that the Executive Director be given the authority to make corrections in the listing of staff personnel. That motion is seconded by Delegate Bloom.

On the question,
Will the Convention agree to the motion?
It was agreed to.

ADDRESS BY DELEGATE BENFIELD

DELEGATE BENFIELD. Mr. President, I have not been on the floor quite as much as some of you have. Therefore, I would like to have just a few minutes to comment on the thoughts of a layman at this Convention.

Since the beginning of recorded history and the assemblying of people, and the formation of public opinion, public opinion has been the determining force in some of our most tyrannical rules. Actually, we could take all of the laws off the statute books if we would but enforce the Ten Commandments, but, unfortunately, even in the time of the Hebrews this was not enough. They did commit murder, and public opinion had it that it was worse to kill a brother than a cousin, and it was worse to kill a cousin than a stranger. For that reason, even at that time, there were classifications and there were different grades of crime and punishment and, therefore, we had the complex laws.

Public opinion is the reason that we have this Convention. Public opinion felt that our complex laws should be changed. The public elected us as delegates to this Convention, but now, if the press leads public opinion, or if the press represents public opinion, I am wondering whether we are condemned for our work. However, I am sure that if each and every one of us delegates will forget the points that we do not agree with in this Convention, but, if we will emphasize the good that is in it, I am sure that the press will give us good results.

You know, even close to the end of the Continental Congress, George Washington said something that I think is quite fitting for us here. "This Constitution is not what I would write. It is not the Constitution that any one of you would write, but, it is a good compromise."

I see no real fault in it so, therefore, I am going to approve it. I hope that each and every one of you will approve it and go out and encourage the approval of it.

You know, even in the time of Lincoln, when Lincoln was 24 years old, he already worked toward the title of Honest Abe. At that time, he was Postmaster of Salem, Illinois, at an annual salary of $55.70. The post office was closed in 1836, but it took many years until the auditors came along to check the account. When they came, Lincoln was a struggling lawyer, not doing so well. But, when he was told by the agent of the Federal Government that he owed $17, he walked across the room to an old trunk. He unlocked the trunk, took out a yellow bag which was tied with a string, and opened it and there was the $17, never touched. "You know, I would never use anybody else's money but my own."

I hope that you attorneys keep this in mind when you set yourselves up as experts in constitutional law. I hope that you will not be like the mechanic. The doctor went to pick up his car which had just been repaired. When he was presented the bill, the doctor became very indignant. He said, "This is terrible. This bill is way too high. Why you are charging more to work on a car than we do to work on a human body." "Oh, sure," said the mechanic, "but don't forget, we must learn a new model every year and you work on the same body all the time."

Let us keep this in mind when we make fees, so that you do not become criticized the way the justices of the peace were. Bear this in mind, whether you are working on cars or whether you are working on the Constitution, or whether you are working for your own good.

You know, it now comes up to us that we must do the best we can. This reminds me of the hardened and convicted prisoner who was brought before the bar for sentencing. "You have been found guilty of 26 counts," said the Judge. "I sentence you to five years on each count." The prisoner realizing that 130 years was a long time to

serve, burst into tears. The judge, taking this as a sign of repentance, bent over the bench and said, "You know, I did not mean to be so harsh. I realize that this is going to be a hard time to serve, a long time to serve, maybe it is impossible. For that reason, you do not have to serve the full term. You just do as good as you can." Let us all do as good as we can in going out and selling this Constitution.

You know, during our deliberations we talked so much about judges, let us bear in mind that judges are made out of men. Making a person a judge by no means decreases his prejudice, nor in any way does it increase his intelligence. Actually, we all must learn new things in whatever work or whatever profession we do, or whatever we make our livelihood on, we must learn new things. It is now up to us. We are the experts. We are the masters. We know the Constitution. Let us be like the master in the verse, "The touch of the master's hand," which goes something like this. It was tattered and torn. The auctioneer thought it hardly worth his while to spend much time on that old violin, but he held it up with a smile and said, "Who will start the bidding? Who will give me a dollar, one dollar, two dollars, two dollars? Who will give me three dollars, three dollars? Then from far back in the room the gray-haired man came and picked up the bow, he wiped the dust off the old violin, tightened the strings and began to play music, pure and sweet like the carol angels sing. The music ceased and then the auctioneer with a low voice said, "Now, what am I bid for the old violin? One thousand, one thousand; two thousand, two thousand; two thousand dollars, who will make it three thousand? Three thousand, going, gone for three thousand dollars." The people cheered, but some shouted, "What change is there? We do not understand." Swiftly came the reply. "The touch of the master's hand."

Many a life is out of tune, battered and scarred with sin. People do not understand, and they would be auctioned cheap like the old violin, unless a dish of pottage, a glass of wine, was going. He was ready to go. He almost went, but just then came the master and no one could understand what changed his soul and what change there was in the wrath and the rod by the touch of the master's hand.

May we go out and sell this compromise which I am sure is good.

LEONARD AMENDMENTS TO RECOMMENDATION No. 3

PRESIDENT BRODERICK. The Chair recognizes Delegate Leonard.

DELEGATE LEONARD. Mr. President, I now present amendments to Recommendation No. 3.

On the question recurring,
Will the Convention agree to Recommendation No. 3?

DELEGATE LEONARD offered the following amendment which was read by the clerk:

Amend Recommendation, SUMMARY AND EXPLANATION, page 9, by inserting between 3rd and 4th paragraphs a new paragraph to read: The Governor must prepare annually a financial plan for at least a five year period to disclose proposed programs, costs and revenues.

Amend Recommendation, SUMMARY AND EXPLANATION, page 9, 4th paragraph, by striking out all of 4th paragraph and inserting a new paragraph to read: The Sinking Fund requirement is eliminated and the General Assembly is required to use any surplus at the end of the fiscal year in balancing the budget for the following year.

Amend Recommendation, SUMMARY AND EXPLANATION, page 9, 5th paragraph, lines 1 and 2, by striking out "every body funded" in line 1, and "or financially aided by the Commonwealth is" in line 2, and inserting: the Commonwealth are

Amend Recommendation, SUMMARY AND EXPLANATION, page 9, 5th paragraph, line 3, by striking out "audit." and inserting: audits made in accordance with generally accepted auditing standards.

Amend Recommendation, SUMMARY AND EXPLANATION, page 10, 4th paragraph, lines 1 to 6, by striking out all of lines 1 to 5 and "proviso, however, that local governments be" in line 6, and inserting: The General Assembly may provide special tax exemptions for needy citizens which local taxing authorities may grant if they so desire; the General Assembly may mandate such exemptions, only if they provide for local governments to be

Amend Recommendation, SUMMARY AND EXPLANATION, page 10, by inserting a new paragraph after paragraph 4 to read: The General Assembly may also provide for exemptions or special taxing provisions to be applicable for a limited period of time to encourage rehabilitation of deteriorating areas, and promoting industrial and housing development.

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Chairman Leonard.

DELEGATE LEONARD. Mr. President, we now have ready the amendment to Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People from the Taxation and State Finance Committee.

PRESIDENT BRODERICK. Has this amendment been distributed?

DELEGATE LEONARD. Yes.

PRESIDENT BRODERICK. I suppose the language is self-explanatory?

DELEGATE LEONARD. The language is self-explanatory.

PRESIDENT BRODERICK. May I ask Chairman Nelson if he has any comments on it?

DELEGATE NELSON. I yield to Delegate Silverman.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Silverman.

DELEGATE SILVERMAN. Mr. President, I have no quarrel with the substance of Chairman Leonard's amendment, but I do believe that the language in the current proposal is more in keeping with what is written in other sections, and I believe that the substance is the same, and for this reason, because the style I feel is better, I would urge the delegates to vote against the amendment and support the committee.

PRESIDENT BRODERICK. The Chair recognizes Chairman Leonard.

DELEGATE LEONARD. Mr. President, there are some

absolutely inaccurate statements made in the summary and explanation here.

PRESIDENT BRODERICK. Would you care to comment?

DELEGATE LEONARD. Yes.

There are several things that are left out, in addition to which there is a paragraph in here which says the sinking fund is eliminated and the General Assembly is required to appropriate any surplus during the ensuing fiscal year for repayment of debts. That is completely inaccurate, and was in the old Constitution and is something that is being eliminated.

There are several other areas in which there are words that were changed on the floor by amendment, and the words that are in this summary and recommendation here are of the old words and not of the new words. I think that the words that are being added here clarify and clearly set forth the summary and explanation of Proposals Nos. 3, 4 and 5, and I heartily recommend their adoption.

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. I am obligated to take issue with Delegate Leonard on his statement that these things are absolutely inaccurate.

There are matters of interpretation involved, and I suppose interpretation will be going out of the words that we have written for many years to come, and I personally have no feeling one way or the other. If the Chairman of the Committee would prefer to change the words, it would make no difference to me. However, if some of the committee members feel that it does change the style, it worsens the style of it. Insofar as the substance is concerned, I would defend the substance.

PRESIDENT BRODERICK. The Chair recognizes Delegate Scales.

DELEGATE SCALES. Mr. President, I think we are all clear as to the chairman's intention, and I move the question.

PRESIDENT BRODERICK. Does anybody have any objection? The question before the Convention is in connection with the amendment being offered by Delegate Leonard to Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People.

All those voting "yea" will vote to support Chairman Leonard's recommendation, those voting "nay" will vote to reject it.

The question recurs,

Will the Convention agree to the amendment offered by Delegate Leonard?

The roll was recorded as follows:

YEAS—123

Aberman	Croop	Keller, J.	Redick
Allison	Cunningham	Kelly	Reynolds
Amsterdam	Curran	Krill	Richter
Aurentz	Desmond	Laputka	Rovner
Bagenstose	Devlin	Leach	Sahli
Baldrige	Erwin	Lee, L.	Scales
Baldus	Fagan	Leinbach	Scarlett
Baldwin	Fawcett	Leonard	Scranton
Banes	Fay	Levin	Shapiro
Barron	Feather	Manderino	Sharp
Barry	Filson	Mangery	Shively
Benedict	Fohl	Markley	Shoemaker
Benfield	Forster	McGeary	Shrager
Bloom	Gabreski	McGlynn	Strickler
Braham	Gerber	Meyer	Stroup
Brennan	Goldman	Michael	Swope
Broderick	Goldstein	Michener	Tate
Brown	Gouger	Miller, D.	Thomson
Buck	Gray	Miller, R.	Thornburgh
Bunting	Griffith	Moorhead	Tomascik
Burkholder	Hannum	More	Tully
Butera	Hatter	Morton	Van Sant
Cain	Henderson	Murray	Waldron
Camardella	Himes	Otto	Warman
Caron	Hocker	Pasquerilla	Welsh
Casey	Hook	Popil	Westerberg
Clark	Horne	Pott	Whittum
Clinger	Hostetter	Powell	Wilcox
Corey	Huggins	Prendergast	Wilmarth
Cortese	Irvis	Rappaport	Woodside
Cosetti	Kauffman	Rea	

NAYS—8

Basheff	Nelson	Orbin	Roberts
Mattioni	Orban	Pelletier	Silverman

NOT VOTING—32

Caputo	Fortney	Kline	Ruth
Conley	Gehrlein	Lane	Scott
Dailey	Harding	Lee, K.	Sebastian
Donaldson	Heyburn	Musselman	Shettig
Donolow	Johnson	O'Donnell	Solomon
Dumbauld	Jirolanio	Peehan	Sprogell
Fineman	Keller, M.	Percey	Stout
Fleming	King	Quiles	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

MICHENER AMENDMENT TO RECOMMENDATION No. 3

PRESIDENT BRODERICK. The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, I now present an amendment to Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People.

On the question recurring,

Will the Convention agree to Recommendation No. 3?

DELEGATE MICHENER offered the following amendment which was read by the clerk:

Amend Recommendation, ADDRESS TO THE PEOPLE OF PENNSYLVANIA, page 4, by inserting after the last line on page 4, a new paragraph to read: The Convention meticulously observed the three prohibitions placed upon it: (1) no graduated income tax was imposed; (2) no tax was imposed that was not uniform upon the same class of subjects; (3) all income from the Motor License Fund continues to be used solely for public highways, bridges and air navigation facilities.

On the question,

Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair now recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, the amendment which is being circulated at this moment is a very simple one. Delegate Forster and Delegate Nelson have approved it. It comes in at the bottom of page 4.

I would point out that this may be of great benefit to other states who are thinking about a limited convention, and I thought we ought to be on record that we were able to run a limited Convention within the rules laid down.

I recommend the passage of this amendment.

PRESIDENT BRODERICK. Are you ready for the question?

We will unlock the voting machine.

A DELEGATE. I wish to amend, if Delegate Michener would concur, that the Convention meticulously observed the three prohibitions placed upon it by Act No. 2 of the General Assembly of the Commonwealth of Pennsylvania, and then continue on from there.

DELEGATE MICHENER. That is a real improvement. I think we should write it in and proceed, Mr. President.

PRESIDENT BRODERICK. The Chair recognizes Chairman Nelson.

DELEGATE NELSON. Look at page 2, Delegate Michener. Have you read the last several paragraphs where these restrictions are spelled out? I wonder if adding this again would not be repetitious when you go beyond the sentence that the Convention meticulously observed these prohibitions or limitations. I think it is bad editorial style, and I would be the last to criticize yours. To repeat, they are spelled out in detail on page 2.

DELEGATE MICHENER. Yes, they are spelled out specifically on page 2, and items 2, 3 and 4 on the top of page 3, but nowhere do we say that we adhere to them.

DELEGATE NELSON. Would you consider inserting a sentence immediately following that?

DELEGATE MICHENER. Yes.

DELEGATE NELSON. The sentence would be, "The Convention meticulously observed these limitations."

DELEGATE MICHENER. I certainly would agree to that.

DELEGATE NELSON. It would go on the bottom of page 4. Page 3 would be just as good, immediately following the description of the limitation.

DELEGATE MICHENER. We can have it both ways, Mr. Chairman. You are quite right in saying this is a good alternative; I would agree with you.

PRESIDENT BRODERICK. May I ask Delegate Michener if you would then state to the delegates just how this amendment should read so that we may correct our copies without having to redo them? Then we will vote.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Woodside.

DELEGATE WOODSIDE. May I make a suggestion before Delegate Michener proceeds?

PRESIDENT BRODERICK. Yes.

DELEGATE WOODSIDE. It seems to me that we should not say, "no graduated income tax was imposed." It was not part of our business or prohibition to impose a tax, and it seems to me that the proper word to be used there would be "authorized," would it not?

DELEGATE NELSON. If you look on page 2 the precise limitation is set forth. It specifically prohibited the Convention from making any recommendation that clearly permits the imposition of a graduated income tax, which I submit is something different from either what Judge Woodside or Delegate Michener has said.

DELEGATE MICHENER. I think the solution is to follow the suggestion of co-chairman Nelson, that on page 3, whether it should be a separate paragraph or not, I do not know, but maybe after the word "facilities" in the first paragraph at the top of the page, No. 4, I think we should insert "the Convention meticulously observed the three prohibitions placed upon it."

DELEGATE NELSON. There were four. Could we add a paragraph after 4, since that is a series, and say, "The Convention meticulously observed the limitations or the restrictions thus placed upon it"?

DELEGATE MICHENER. Right, I agree. Then we would kill the numbers here.

I think it is important that this be in the document, because so much trouble was raised about this in preceding calls to limited conventions, and everybody said it could not be done, and we have done it, and I think we deserve credit for it.

PRESIDENT BRODERICK. May the Chair make a suggestion? There have been several suggestions which you received, Delegate Michener, in connection with a few changes to your amendment.

Suppose we were to recess for dinner, and when we return from dinner, we could take this up, and it would be in final agreeable language between you and Chairman Nelson.

DELEGATE MICHENER. Fine.

PRESIDENT BRODERICK. Then we would vote on it.

I might add that we have one more amendment to this from the Judiciary. It is not ready.

The Chair now recognizes Delegate Banes.

DELEGATE BANES. I rise in support of this amendment, but I think there should be one additional prohibition added, that no delegate is permitted to use this amendment in any campaign literature.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Levin. For what purpose does the gentleman rise?

DELEGATE LEVIN. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE LEVIN. Several weeks ago Delegate Michener noted the unique situation wherein he was seated between two female delegates.

I have noted I have been seated between two of the most promising young men in our community. I have on the left of me a legal wizard, and on the right of me a financial giant, and the wisdom of both of these gentlemen rubbed off on me, and that is why I did not vote wrong at all.

RECESS

PRESIDENT BRODERICK. It is now 6:20 p.m. We have a motion by Delegate Irvis, seconded by Delegate Fay, to recess until 8:15 and, unless we hear objection, we will recess until that time.

The Chair hears none and the Convention is now in recess until 8:15 p.m.

AFTER RECESS

PRESIDENT BRODERICK. The time of recess having expired, the Convention will come to order.

We are first going to complete the amendment proposal in connection with Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People.

I wonder if your amendment is ready, Delegate Michener. Delegate Michener's amendment is now being distributed.

The Chair recognizes Delegate Michener.

DELEGATE MICHENER. Mr. President, the distinguished Co-Chairman of the Committee on Arrangement, Submission and Address to the People is far too modest. He said he would hesitate to correct my prose. He made eight corrections, everyone was an improvement on what I had written. The amendment was reduced by 80 per cent. I think that is editorial work of the highest merit and I accept it. It has now been approved by the group, sir.

PRESIDENT BRODERICK. Thank you.

Is there any discussion? If not, are we ready for the question?

MICHENER AMENDMENT WITHDRAWN AND NEW MICHENER AMENDMENT SUBSTITUTED

DELEGATE MICHENER. I withdraw my former amendment, Mr. President, and substitute the following amendment.

On the question recurring,
Will the Convention agree to Recommendation No. 3?

DELEGATE MICHENER offered the following amendment which was read by the clerk:

Amend Recommendation, ADDRESS TO THE PEOPLE OF PENNSYLVANIA, page 3, by inserting after the first paragraph on page 3, a new paragraph to read: The Convention faithfully observed the limitations thus placed upon it.

On the question,
Will the Convention agree to the amendment?

The roll was recorded as follows:

YEAS—92

Allison	Cosetti	Leach	Reynolds
Aurentz	Croop	Lee, L.	Rovner
Bagenstose	Cunningham	Leinbach	Ruth
Baldus	Curran	Leonard	Scales
Bashoff	Devlin	Manderino	Scarlett
Benedict	Feather	Markley	Scranton
Benfield	Fohl	McGeary	Shapiro
Bloom	Forster	McGlynn	Sharp
Braham	Gerber	Michael	Shettig
Brennan	Goldman	Michener	Shively
Broderick	Gouger	Miller, D.	Strickler
Brown	Griffith	Miller, R.	Swope
Burkholder	Hannum	Morton	Tate
Butera	Hatter	Nelson	Thomson
Cain	Henderson	Orban	Thornburgh
Camardella	Himes	Orbin	Tully
Caputo	Hook	Otto	Van Sant
Caron	Horne	Pasquerilla	Waldron
Casey	Hostetler	Pelletier	Warman
Clark	Huggins	Popil	Welsh
Clinger	Irvis	Pott	Wilcox
Corey	Kauffman	Rea	Wilmarth
Cortese	Laputka	Redick	Woodside

NAYS—0

NOT VOTING—71

Aberman	Fay	Kline	Rappaport
Amsterdam	Filson	Krill	Richter
Baldrige	Fineman	Lane	Roberts
Baldwin	Fleming	Lee, K.	Sahli
Banes	Fortney	Levin	Scott
Barron	Gabreski	Mangery	Sebastian
Barry	Gehrlein	Mattioni	Shoemaker
Buck	Goldstein	Meyer	Shrager
Bunting	Gray	Moorhead	Silverman
Conley	Harding	More	Solomon
Dailey	Heyburn	Murray	Sprogell
Desmond	Hocker	Musselman	Stout
Donaldson	Jirolanio	O'Donnell	Stroup
Donolow	Johnson	Pechan	Tomascik
Dumbauld	Keller, J.	Percey	Westerberg
Erwin	Keller, M.	Powell	Whittum
Fagan	Kelly	Prendergast	Woodring
Fawcett	King	Quiles	

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

CLINGER AMENDMENT TO RECOMMENDATION No. 3

PRESIDENT BRODERICK. The Chair recognizes Delegate Clinger.

DELEGATE CLINGER. Mr. President, I now present amendments to Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People.

On the question recurring,
Will the Convention agree to Recommendation No. 3?

DELEGATE CLINGER offered the following amendment which was read by the clerk:

Amend page 16, second paragraph, fourth and fifth lines by striking out "Justice of the Peace,"

Amend page 16, second paragraph, eighth line by inserting after "Assembly": , and Justices of the Peace

Amend page 16, by inserting between third and fourth paragraphs: Common Pleas Courts shall have such number of judges as the General Assembly shall from time to time determine

Amend page 16, fifth paragraph by striking out all of said paragraph

Amend page 17, first paragraph, first line by inserting after "courts": and of Justices of the Peace

Amend page 17, second paragraph, fifth line by striking out "Appellate Court" and inserting: appellate court

Amend page 17, third paragraph, third line, by striking out "the" where it appears the first time

Amend page 17, fourth paragraph, second line, by striking out "the" where it appears the second time and inserting: that

Amend page 18, fourth paragraph and page 19, top paragraph by striking out all of the fourth paragraph on page 18 and "Community Courts" in first line, page 19 and inserting: The terms of office of all justices and judges

Amend page 19, top paragraph, last line, by striking out "a term" and inserting: terms

Amend page 19, third paragraph, sixth line by striking out "state"

Amend page 19, fifth paragraph, ninth line by striking out "State"

Amend page 20, second paragraph, second and third lines by striking out "by filing a declaration of candidacy,"

Amend page 20, third paragraph, first line by striking out "the case of the"

Amend page 20, third paragraph, last three lines by striking out "The President Judge of other" in fourth line, all of last two lines and inserting: In other courts members of the court will select the President Judge for a five-year term.

Amend page 20, fourth paragraph, third line by striking out "but former" and inserting: . Former

Amend page 20, fourth paragraph, third line by striking out "justice" and inserting: justices

Amend page 20, fourth paragraph, fourth line by inserting after "may": with their consent

Amend page 20, fourth paragraph, last line by striking out "as prescribed"

Amend page 21, first paragraph, first line by striking out "will" and inserting: may

Amend page 21, second paragraph, third line by striking out "any of a list of" and inserting: certain

Amend page 21, second paragraph, fourth line by striking out "Justice" and inserting: Justices

Amend page 21, sixth paragraph, second line by striking out "specialized"

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. The Chair recognizes Delegate Clinger.

DELEGATE CLINGER. Mr. President, at the request of the Co-Chairman of the Judiciary Committee, the inscribers of the Article had their first reunion this afternoon in the back of the hall to consider the sections on Arrangement, Submission and Address to the People relating to the Judiciary Article.

As a result of this meeting, I have the honor of offering what I hope will be the last amendment to anything offered in this Convention.

On behalf of myself and Delegates Thornburgh, O'Donnell and Sharp, the ink-stained drudges of the Judiciary Committee, I submit this amendment, and I repeat, that the purpose of the amendment is to make crystal clear the intent of the Judiciary Committee.

DELEGATE NELSON. Mr. President, the Committee has no objection to this amendment.

PRESIDENT BRODERICK. Thank you.

Does anyone wish to be heard? Are you ready for the question?

DELEGATE GOUGER. Mr. President. May I interrogate the co-chairman of this Committee, Delegate Nelson?

PRESIDENT BRODERICK. You may.

DELEGATE GOUGER. Has the gentleman agreed with these amendments that we have in front of us?

DELEGATE NELSON. Yes, Mr. President, I have.

DELEGATE GOUGER. Is the gentleman quite positive?

DELEGATE NELSON. Yes. Have you some question?

DELEGATE GOUGER. No.

DELEGATE NELSON. Does any member of the committee have any questions? There are no objections to these amendments?

PRESIDENT BRODERICK. Are we ready for the question?

We will unlock the voting machine. The question before the Convention is, will the Convention agree to the amendment offered by Delegate Clinger? All those voting "yea" will vote to support the amendment, those voting "nay" will vote to reject it.

The question recurs,
Will the Convention agree to the amendment offered by Delegate Clinger?

The roll was recorded as follows:

YEAS—104

Allison	Cortese	Laputka	Roberts
Amsterdam	Cosetti	Leach	Rovner
Aurentz	Croop	Lee, L.	Ruth
Bagenstose	Cunningham	Lenbach	Sahli
Baldus	Curran	Leonard	Scales
Banes	Devlin	Manderino	Scarlett
Bashoff	Fagan	Mangery	Scranton
Benedict	Feather	Markley	Shapiro
Benfield	Fohl	McGeary	Sharp
Bloom	Forster	McGlynn	Shettig
Braham	Gerber	Michael	Shively
Brennan	Gouger	Michener	Stout
Broderick	Griffith	Miller, D.	Strickler
Brown	Hannum	Miller, R.	Stroup
Buck	Hatter	More	Swope
Bunting	Henderson	Morton	Tate
Burkholder	Himes	Nelson	Thomson
Butera	Hocker	Otto	Thornburgh
Cain	Hook	Pasquerilla	Tully
Camardella	Horne	Pelletier	Van Sant
Caputo	Hostetler	Popil	Waldron
Caron	Huggins	Pott	Warman
Casey	Irvis	Rea	Welsh
Clark	Kauffman	Redick	Whittum
Clinger	Kelly	Reynolds	Wilcox
Corey	Krill	Richter	Wilmarth

NAYS—3

Goldman	Orban	Orbin

NOT VOTING—58

Aberman	Ellson	King	Prendergast
Baldrige	Fineman	Kline	Quiles
Baldwin	Fleming	Lane	Rappaport
Barron	Fortney	Lee, K.	Scott
Barry	Gabreski	Levin	Sebastian
Conley	Gehrlein	Mattioni	Shoemaker
Dailey	Goldstein	Meyer	Shrager
Desmond	Gray	Moorhead	Silverman
Donaldson	Harding	Murray	Solomon
Donolow	Heyburn	Musselman	Sprogell
Dumbauld	Jirolanio	O'Donnell	Tomascik
Erwin	Johnson	Pechan	Westerberg
Fawcett	Keller, J.	Percey	Woodring
Fay	Keller, M.	Powell	Woodside

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

The question recurs,
Will the Convention agree to adopt Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People?

PRESIDENT BRODERICK. I do not think there are any more amendments to Recommendation No. 3, so therefore we are ready for a motion. The question is, shall the Convention adopt Recommendation No. 3 submitted by the Committee on Arrangement, Submission and Address to the People?

It has been moved by Delegate Orbin and seconded by Delegate Bloom.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera. For what purpose does the gentleman rise?

DELEGATE BUTERA. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE BUTERA. Since this amendment was made, do we not first have to suspend the rules?

PRESIDENT BRODERICK. No, we do not.

DELEGATE BUTERA. Fine.

PRESIDENT BRODERICK. This is not the same as a

proposal under our rules. I appreciate your keeping us on the ball though.

I just want my fellow delegates to know that Delegate Jirolanio is not here but he has assigned his right and privileges to Delegate Butera.

The Chair recognizes Delegate Forster.

DELEGATE FORSTER. One more comment before voting on this package and that is, it was the intention of the committee to have the staff names in that section reproduced as were the committee names of the delegates with first names first and last names last, and that is the way it will be done, even though it shows it the other way here.

DELEGATE BUTERA. Delegate Jirolanio did not tell me we are not on Proposal No. 7 now, we are on Arrangement, Submission and Address to the People.

PRESIDENT BRODERICK. Are we ready for the question? The question is, shall this Convention adopt Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People, as amended? We open up the voting machines. All those voting "yea" will vote in favor of its adoption, those voting "nay" would vote to reject it.

The question recurs,
Will the Convention agree to the Recommendation?

The roll was recorded as follows:

YEAS—123

Aberman	Cunningham	Lee, L.	Rovner
Allison	Curran	Leinbach	Ruth
Amsterdam	Desmond	Leonard	Sahli
Aurentz	Devlin	Levin	Scales
Bagenstose	Fagan	Manderino	Scarlett
Baldrige	Fay	Mangery	Scranton
Baldus	Feather	Markley	Shapiro
Barnes	Fohl	Mattioni	Sharp
Bashoff	Forster	McGeary	Shettig
Benedict	Gerber	McGlynn	Shively
Benfield	Goldman	Michael	Shoemaker
Bloom	Goldstein	Michener	Shrager
Braham	Gouger	Miller, D.	Silverman
Brennan	Gray	Miller, R.	Stout
Broderick	Griffith	Moorhead	Strickler
Brown	Hannum	More	Stroup
Buck	Hatter	Morton	Swope
Bunting	Henderson	Nelson	Tate
Burkholder	Himes	Orban	Thomson
Butera	Hocker	Orbin	Thornburgh
Cain	Hook	Otto	Tully
Camardella	Horne	Pasquerilla	Van Sant
Caputo	Hostetter	Pelletier	Waldron
Caron	Huggins	Popil	Warman
Casey	Irvis	Pott	Weish
Clark	Kauffman	Prendergast	Westerberg
Clinger	Kelly	Rappaport	Whittum
Corey	King	Rea	Wilcox
Cortese	Krill	Redick	Wilmarth
Cosetti	Laputka	Reynolds	Woodside
Croop	Leach	Roberts	

NAYS—0

NOT VOTING—40

Baldwin	Filson	Keller, J.	Percey
Barron	Fineman	Keller, M.	Powell
Barry	Fleming	Kline	Quiles
Conley	Fortney	Lane	Richter
Dailey	Gabreski	Lee, K.	Scott
Donaldson	Gehrlein	Meyer	Sebastian
Donolow	Harding	Murray	Solomon
Dumbauld	Heyburn	Musselman	Sprogell
Erwin	Jirolanio	O'Donnell	Tomascik
Fawcett	Johnson	Pechan	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the Recommendation was adopted.

COMMITTEE PROPOSAL ON THIRD CONSIDERATION

Agreeable to order,

The Convention proceeded to the third consideration of **Committee Proposal No. 7, Printer's No. 33**, entitled:

A Proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

On the question,
Will the Convention agree to the proposal?

PRESIDENT BRODERICK. With the permission of this body, I would like to revert to our calendar and call up Proposal No. 7, Printer's No. 33.

The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, this morning we called a recess of this Convention to discuss some of the areas involved in this proposal. After our meeting this morning, we met with Chief Counsel of the Convention, Mr. Comisky. We also met with the Co-Chairmen of the Judiciary Committee and there were three areas that we felt that the true intent of this Convention should go on record:

No. 1 deals with the jurisdiction of the Supreme Court of the State and you will notice on the proposal that the Supreme Court is granted such jurisdiction as shall be provided by law. In the schedule to the proposal it also gives to the Supreme Court, the power it now has. This is a point I believe we have to consider, that the Supreme Court will still have the kingsmen's power and this has been agreed to by counsel and by the Chairman of the Judiciary Committee.

The second area of concern to me, and my question this morning, was, the point of arbitration as we attorneys know it to be, and this is dealing with the right of appeal. It is the intent of the Judiciary Committee that nothing pertaining to this Constitution will affect anything presently existing in the present statutory law.

At the same time, a further question is one dealing with the right of waiver of jury trial, and this Committee has gone on record to state that nothing pertaining to this constitutional proposal will interfere with anything dealing with the right of appeal as now exists. I am sorry, jury trial waiver. This will continue the same as it has been in the past, and that this will merely continue the process and, actually, this waiver of jury trial is the same as it now is in the present Constitution. Therefore, there should be no problems in these three particular areas and I am saying this for the intent of this delegate body and also for the intent of the Judiciary Committee itself.

PARLIAMENTARY INQUIRY

PRESIDENT BRODERICK. The Chair recognizes Delegate Westerberg. For what purpose does the gentleman rise?

DELEGATE WESTERBERG. I rise to a parliamentary inquiry.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE WESTERBERG. Mr. President, I had a small corrective amendment to this judicial article prepared for quite a while and I just wondered if this is the time that you wanted me to offer it?

PRESIDENT BRODERICK. Under the rules, this is the last opportunity to amend this proposal and you just came in under the wire.

WESTERBERG AMENDMENT TO PROPOSAL No. 7

DELEGATE WESTERBERG. Mr. President, I now present an amendment to Committee Proposal No. 7.

On the question recurring,
Will the Convention agree to the proposal on third consideration?

DELEGATE WESTERBERG offered the following amendment which was read by the clerk:

"The judicial power of the Commonwealth of Pennsylvania shall be vested in one Supreme Court and in such inferior courts as the General Assembly may from time to time ordain and establish."

On the question,
Will the Convention agree to the amendment?

PRESIDENT BRODERICK. Would you like to comment on your amendment, Delegate Westerberg?

DELEGATE WESTERBERG. I can state it very simply. What it does, in the first part of the amendment it cuts out the entire judicial proposal as it is now and then I have just one small sentence to put in instead of this. It states:

"The judicial power of the Commonwealth of Pennsylvania shall be vested in one Supreme Court and in such inferior courts as the General Assembly may from time to time ordain and establish."

I do not believe that this would cause the Style and Drafting Committee any trouble.

I do not believe that it would cause any committee any trouble, and I did think that you would want to consider it, because I also have 33 sponsors other than myself on it and, at their urging, I could not let this pass.

PRESIDENT BRODERICK. Delegate Westerberg, I suppose you were not here this afternoon when, under our rules and pursuant to a motion made by Delegate Scranton, it requires 34 sponsors to get an amendment to the floor.

DELEGATE WESTERBERG. I now have the 34th sponsor.

PRESIDENT BRODERICK. We just made it 35.

The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. I am sure that the Parliamentarian will agree with me that I can withdraw my motion.

AMENDMENT WITHDRAWN

DELEGATE WESTERBERG. Mr. President, I would like to say one more thing in a serious vain. I would like to have it placed on the record that I am kidding.

PRESIDENT BRODERICK. The Chair recognizes Delegate Donolow.

DELEGATE BUTERA. I believe the delegate has temporarily left the House. He was downstairs.

PRESIDENT BRODERICK. The Chair recognizes Delegate Van Sant.

DELEGATE VAN SANT. Senator Donolow requests leave of absence for the remainder of the Convention.

PRESIDENT BRODERICK. Pursuant to our procedure, lest the Chair hears objection, the request for leave will be approved.

The question is, will the Convention agree to advance Proposal No. 7, Printer's No. 33, to final passage?

This proposal, pursuant to the rules, has been considered on three different days and agreed to and the question now before the Convention is, will the Convention finally pass this proposal? It must receive 82 votes.

Are we ready for the question? We will open up the voting machine and proceed to vote. All those voting "yea" agree to finally pass this proposal.

The question recurs,
Will the Convention agree to the proposal on third consideration?

The roll was recorded as follows:

YEAS—133

Aberman	Desmond	King	Redick
Allison	Devlin	Krill	Reynolds
Amsterdam	Fegan	Laputka	Roberts
Aurentz	Fawcett	Leach	Rovner
Bagenstose	Fay	Lee, K.	Ruth
Baldrige	Feather	Lee, L.	Sahli
Baldus	Filson	Leinbach	Scales
Banes	Fineman	Leonard	Scarlett
Barron	Fleming	Levin	Scranton
Barry	Fohl	Manderino	Shapiro
Bashoff	Forster	Mangery	Sharp
Benedict	Gabreski	Markley	Shettig
Benfield	Gerber	Mattioni	Shively
Bloom	Goldman	McGeary	Shoemaker
Braham	Goldstein	McGlynn	Shrager
Brennan	Gouger	Michael	Silverman
Broderick	Gray	Michener	Sprogell
Brown	Griffith	Miller, D.	Stout
Buck	Hannum	Miller, R.	Strickler
Bunting	Hatter	Moorhead	Swope
Burkholder	Henderson	More	Tate
Butera	Himes	Morton	Thomson
Cain	Hocker	Nelson	Thornburgh
Camardella	Hook	O'Donnell	Tomascik
Caron	Horne	Orban	Tully
Casey	Hostetler	Orbin	Van Sant
Clark	Huggins	Otto	Waldron
Clinger	Irvis	Pasquerilla	Warman
Corey	Jirolanio	Popil	Welsh
Cortese	Johnson	Pott	Westerberg
Cosetti	Kauffman	Prendergast	Whittum
Croop	Keller, J.	Rappaport	Wilcox
Cunningham	Kelly	Rea	Woodside
Curran			

NAYS—0

NOT VOTING—30

Baldwin	Fortney	Murray	Richter
Caputo	Gehrlein	Musselman	Scott
Conley	Harding	Pechan	Sebastian
Dailey	Heyburn	Pelletier	Solomon
Donaldson	Keller, M.	Percey	Stroup
Donolow	Kline	Powell	Wilmarth
Dumbauld	Lane	Quiles	Woodring
Erwin	Meyer		

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was agreed to.

And said proposal having been read a third time, considered and agreed to,

On the question,
Shall the proposal be finally adopted?

The roll was recorded as follows:

YEAS—134

Aberman	Curran	King	Reynolds
Allison	Desmond	Krill	Roberts
Amsterdam	Devlin	Laputka	Rovner
Aurentz	Fagan	Leach	Ruth
Bagenstose	Fawcett	Lee, L.	Sahli
Baldrige	Fay	Leinbach	Scales
Baldus	Feather	Leonard	Scarlett
Banes	Filson	Levin	Scranton
Barron	Fineman	Manderino	Shapiro
Barry	Fleming	Mangery	Sharp
Bashoff	Fohl	Markley	Shettig
Benedict	Forster	Mattioni	Shively
Benfield	Gabreski	McGeary	Shrager
Bloom	Gerber	McGlynn	Silverman
Braham	Goldman	Michael	Sprogell
Brennan	Gouger	Michener	Stout
Broderick	Gray	Miller, D.	Strickler
Brown	Griffith	Miller, R.	Stroup
Buck	Hannum	Moorhead	Swope
Bunting	Hatter	More	Tate
Burkholder	Henderson	Morton	Thomson
Butera	Himes	Nelson	Thornburgh
Cain	Hocker	O'Donnell	Tomascik
Camardella	Hook	Orban	Tully
Caron	Horne	Orbin	Van Sant
Caputo	Hostetler	Otto	Waldron
Casey	Huggins	Pasquerilla	Warman
Clark	Irvis	Popil	Welsh
Clinger	Jirolanio	Pott	Westerberg
Corey	Johnson	Prendergast	Whittum
Cortese	Kauffman	Rappaport	Wilcox
Cosetti	Keller, J.	Rea	Wilmarth
Croop	Keller, M.	Redick	Woodside
Cunningham	Kelly		

NAYS—1

Shoemaker

NOT VOTING—28

Baldwin	Fortney	Lee, K.	Powell
Conley	Gehrlein	Meyer	Quiles
Dailey	Goldstein	Murray	Richter
Donaldson	Harding	Musselman	Scott
Donolow	Heyburn	Pechan	Sebastian
Dumbauld	Kline	Pelletier	Solomon
Erwin	Lane	Percey	Woodring

The majority having voted in the affirmative, the question was determined in the affirmative and the proposal was adopted.

PROPOSAL No. 7 REFERRED TO COMMITTEE

PRESIDENT BRODERICK. This proposal has been adopted and is referred to the Committee on Arrangement, Submission and Address to the People.

REPORT OF COMMITTEE ON ARRANGEMENT, SUBMISSION AND ADDRESS TO THE PEOPLE

RECOMMENDATION NO. 1

PRESIDENT BRODERICK. The Chair will now recognize Chairman Nelson.

DELEGATE NELSON. Mr. President, I stand in place and read the following report.

THE CONSTITUTIONAL CONVENTION OF PENNSYLVANIA

1967-1968

RECOMMENDATION NO. 1

of the

COMMITTEE ON ARRANGEMENT, SUBMISSION AND ADDRESS TO THE PEOPLE

— — — — —

Subject to approval by the electorate, the Committee on Arrangement, Submission and Address to the People recommends that Proposals 1 to 7 inclusive adopted by the Convention and referred to it for arrangement into Articles and Sections (to be numbered as provided under Act No. 180 approved the 17th day of August, 1965) in accordance with the applicable provisions of Act No. 2, Session of 1967, be arranged in the following manner:

I. Proposals 1 and 2 shall be arranged into two (2) Sections numbered Sections 16 and 17 as follows:

Section 16. Legislative Districts.—The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

Section 17. Legislative Reapportionment Commission.—(a) In each year following that in which the Federal decennial census is officially reported as required by Federal law, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth. The commission shall act by a majority of its entire membership.

(b) The commission shall consist of five members: four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman selected as hereinafter provided. No later than the fourth Monday in January of the year following the year in which the Federal decennial census is officially reported as required by Federal law, the four members shall be certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections.

The four members within forty-five days after their certification shall select the fifth member, who shall serve as chairman of the commission, and shall immediately certify his name to such elections officer. The chairman shall be a citizen of the Commonwealth other than a local, State or Federal official holding an office to which compensation is attached.

If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within thirty days thereafter shall appoint the chairman as aforesaid and certify his appointment to such elections officer.

Any vacancy in the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) No later than ninety days after either the commission has been duly certified or the popula-

tion data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer.

The commission shall have thirty days after filing the preliminary plan to make corrections in the plan.

Any person aggrieved by the preliminary plan shall have the same thirty-day period to file exceptions with the commission in which case the commission shall have thirty days after the date the exceptions were filed to prepare and file with such elections officer a revised reapportionment plan. If no exceptions are filed within thirty days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(d) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this section seventeen.

(f) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine, but no part thereof shall be paid until a preliminary plan is filed. If a preliminary plan is filed but the commission fails to file a revised or final plan within the time prescribed, the commission members shall forfeit all right to compensation not paid.

(g) If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed by this section, unless the time be extended by the Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

(h) Any reapportionment plan filed by the commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportioned districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts.

SCHEDULE

The foregoing sections of article two of the Constitution of Pennsylvania, if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

Said Sections so arranged, shall replace existing Sections 16, 17 and 18 of Article II of the Constitution, so that this Article shall hereafter consist of a total of seventeen (17) consecutively numbered separate Sections.

II. Proposals 3, 4 and 5 shall be arranged into ten (10) sections as follows:

Section 1. Uniformity of Taxation.—All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Section 2. Exemptions and Special Provisions. —(a) The General Assembly may by law exempt from taxation:

(i) Actual places of regularly stated religious worship;

(ii) Actual places of burial, when used or held by a person or organization deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith;

(iii) That portion of public property which is actually and regularly used for public purposes;

(iv) That portion of the property owned and occupied by any branch, post or camp of honorably discharged servicemen or servicewomen which is actually and regularly used for benevolent, charitable or patriotic purposes; and

(v) Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.

(b) The General Assembly may, by law:

(i) Establish standards and qualifications for private forest reserves, and make special provision for the taxation thereof;

(ii) Establish as a class or classes of subjects of taxation the property or privileges of persons who, because of age, disability, infirmity or poverty are determined to be in need of tax exemption or of special tax provisions, and for any such class or classes, uniform standards and qualifications. The Commonwealth, or any other taxing authority, may adopt or employ such class or classes and standards and qualifications, and except as herein provided may impose taxes, grant exemptions, or make special tax provisions in accordance there-

with. No exemption or special provision shall be made under this clause with respect to taxes upon the sale or use of personal property, and no exemption from any tax upon real property shall be granted by the General Assembly under this clause unless the General Assembly shall provide for the reimbursement of local taxing authorities by or through the Commonwealth for revenue losses occasioned by such exemption;

(iii) Establish standards and qualifications by which local taxing authorities may make uniform special tax provisions applicable to a taxpayer for a limited period of time to encourage improvement of deteriorating property or areas by an individual, association or corporation, or to encourage industrial development by a non-profit corporation; and

(iv) Make special tax provisions on any increase in value of real estate resulting from residential construction. Such special tax provisions shall be applicable for a period not to exceed two years.

(c) Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double or quadruple amputees, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein.

Section 4. Public Utilities.—The real property of public utilities is subject to real estate taxes imposed by local taxing authorities. Payment to the Commonwealth of gross receipts taxes or other special taxes in replacement of gross receipts taxes by a public utility and the distribution by the Commonwealth to the local taxing authorities of the amount as herein provided shall, however, be in lieu of local taxes upon its real property which is used or useful in furnishing its public utility service. The amount raised annually by such gross receipts or other special taxes shall not be less than the gross amount of real estate taxes which the local taxing authorities could have imposed upon such real property but for the exemption herein provided. This gross amount shall be determined in the manner provided by law. An amount equivalent to such real estate taxes shall be distributed annually among all local taxing authorities in the proportion which the total tax receipts of each local taxing authority bear to the total tax receipts of all local taxing authorities, or in such other equitable proportions as may be provided by law.

Notwithstanding the provisions of this section, any law which presently subjects real property of public utilities to local real estate taxation by local taxing authorities shall remain in full force and effect.

Section 6. Taxation of Corporations.—The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the Commonwealth shall be a party.

Section 7. Commonwealth Indebtedness.—(a) No debt shall be incurred by or on behalf of the Commonwealth except by law and in accordance with the provisions of this section.

(1) Debt may be incurred without limit to suppress insurrection, rehabilitate areas affected by man-made or natural disaster, or to implement unissued authority approved by the electors prior to the adoption of this article.

(2) The Governor, State Treasurer and Auditor General, acting jointly, may (i) issue tax anticipation notes having a maturity within the fiscal year of issue and payable exclusively from revenues received in the same fiscal year, and (ii) incur debt for the purpose of refunding other debt, if such refunding debt matures within the term of the original debt.

(3) Debt may be incurred without limit for purposes specifically itemized in the law authorizing such debt, if the question whether the debt shall be incurred has been submitted to the electors and approved by a majority of those voting on the question.

(4) Debt may be incurred without the approval of the electors for capital projects specifically itemized in a capital budget, if such debt will not cause the amount of all net debt outstanding to exceed one and three-quarters times the average of the annual tax revenues deposited in the previous five fiscal years as certified by the Auditor General. For the purposes of this subsection, debt outstanding shall not include debt incurred under clauses (1) and (2) (i), or debt incurred under clause (2) (ii) if the original debt would not be so considered, or debt incurred under subsection (3) unless the General Assembly shall so provide in the law authorizing such debt.

(b) All debt incurred for capital projects shall mature within a period not to exceed the estimated useful life of the projects as stated in the authorizing law, and when so stated shall be conclusive. All debt, except indebtedness permitted by clause (2) (i), shall be amortized in substantial and regular amounts, the first of which shall be due prior to the expiration of a period equal to one-tenth the term of the debt.

(c) As used in this section, debt shall mean the issued and outstanding obligations of the Commonwealth and shall include obligations of its agencies or authorities to the extent they are to be repaid from lease rentals or other charges payable directly or indirectly from revenues of the Commonwealth. Debt shall not include either (1) that portion of obligations to be repaid from charges made to the public for the use of the capital projects financed, as determined by the Auditor General, or (2) obligations to be repaid from lease rentals or other charges payable by a school district or other local taxing authority, or (3) obligations to be repaid by agencies or authorities

created for the joint benefit of the Commonwealth and one or more other State governments.

(d) If sufficient funds are not appropriated for the timely payment of the interest upon and installments of principal of all debt, the State Treasurer shall set apart from the first revenues thereafter received applicable to the appropriate fund a sum sufficient to pay such interest and installments of principal, and shall so apply the money so set apart. The State Treasurer may be required to set aside and apply such revenues at the suit of any holder of Commonwealth obligations.

Section 8. Commonwealth Credit Not to be Pledged.—The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.

Section 9. Municipal Debt Not to be Assumed by Commonwealth.—The Commonwealth shall not assume the debt, or any part thereof, of any county, city, borough, incorporated town, township or any similar general purpose unit of government unless such debt shall have been incurred to enable the Commonwealth to suppress insurrection or to assist the Commonwealth in the discharge of any portion of its present indebtedness.

Section 10. Audit.—The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.

Any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the function of auditing that transaction after its occurrence.

Section 12. Governor's Budgets and Financial Plan.—Annually, at the times set by law, the Governor shall submit to the General Assembly:

(a) A balanced operating budget for the ensuing fiscal year setting forth in detail (i) proposed expenditures classified by department or agency and by program and (ii) estimated revenues from all sources. If estimated revenues and available surplus are less than proposed expenditures, the Governor shall recommend specific additional sources of revenue sufficient to pay the deficiency and the estimated revenue to be derived from each source;

(b) A capital budget for the ensuing fiscal year setting forth in detail proposed expenditures to be financed from the proceeds of obligations of the Commonwealth or of its agencies or authorities or from operating funds; and

(c) A financial plan for not less than the next succeeding five fiscal years, which plan shall include for each such fiscal year:

(i) Projected operating expenditures classified by department or agency and by program, in reasonable detail, and estimated revenues, by major categories, from existing and additional sources, and

(ii) Projected expenditures for capital projects specifically itemized by purpose, and the proposed sources of financing each.

Section 13. Appropriations.—(a) Operating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues and surplus available in the same fiscal year.

(b) The General Assembly shall adopt a capital budget for the ensuing fiscal year.

Section 14. Surplus.—All surplus of operating funds at the end of the fiscal year shall be appropriated during the ensuing fiscal year by the General Assembly.

SCHEDULE

The following schedule is adopted: Sections one and two shall take effect as soon as possible but no later than July 1, 1970. Section four shall take effect July 1, 1970, unless the General Assembly earlier provides enabling legislation in accordance therewith.

Sections ten, twelve, thirteen and fourteen of article eight shall take effect as soon as possible, but no later than July 1, 1970.

Said Sections 1, 6, 7, 8, 9 and 10, so arranged, shall revise or replace existing Sections 1, 3, 4, 6, 9 and 14 of Article VIII (formerly numbered Article IX) of the Constitution and said Sections 2, 4, 12, 13 and 14 are new and become additional Sections of Article VIII. Existing Sections 1b, 2, 18, 24 and 25 of Article VIII are retained, renumbered as Sections 3, 5, 11, 15 and 16, respectively, so that this Article shall hereinafter consist of a total of sixteen (16) consecutively numbered separate Sections.

III. Proposal 6 shall be arranged into a single Article consisting of fourteen (14) consecutively numbered Sections as follows:

ARTICLE

LOCAL GOVERNMENT

Section 1. Local Government.—The General Assembly shall provide by general law for local government within the Commonwealth. Such general law shall be uniform as to all classes of local government regarding procedural matters.

Section 2. Home Rule.—Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its

home rule charter or by the General Assembly at any time.

Section 3. Optional Plans.—Municipalities shall have the right and power to adopt optional forms of government as provided by law. The General Assembly shall provide optional forms of government for all municipalities. An optional form of government shall be presented to the electors by initiative, by the governing body of the municipality, or by the General Assembly. Adoption or repeal of an optional form of government shall be by referendum.

Section 4. County Government.—County officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law.

County officers, except for public defenders who shall be appointed as shall be provided by law, shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies shall be filled in such a manner as may be provided by law.

County officers shall be paid only by salary as provided by law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the Commonwealth, or as otherwise provided by law.

Three county commissioners shall be elected in each county. In the election of these officers each qualified elector shall vote for no more than two persons, and the three persons receiving the highest number of votes shall be elected.

Provisions for county government in this section shall apply to every county except a county which has adopted a home rule charter or an optional form of government. One of the optional forms of county government provided by law shall include the provisions of this section.

Section 5. Intergovernmental Cooperation.—A municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other governmental units including other municipalities or districts, the Federal government, any other state or its governmental units, or any newly created governmental unit.

Section 6. Area Government.—The General Assembly shall provide for the establishment and dissolution of government of areas involving two or more municipalities or parts thereof.

Section 7. Area-wide Powers.—The General Assembly may grant powers to area governments or to municipalities within a given geographical area in which there exists intergovernmental cooperation or area government and designate the classes of municipalities subject to such legislation.

Section 8. Consolidation, Merger or Boundary Change.—Uniform Legislation. The General Assembly shall, within two years following the adoption of this article, enact uniform legislation establishing the procedure for consolidation, merger or change of the boundaries of municipalities.

Initiative. The electors of any municipality shall have the right, by initiative and referendum, to consolidate, merge and change boundaries by a majority vote of those voting thereon in each municipality, without the approval of any governing body.

Study. The General Assembly shall designate an agency of the Commonwealth to study consolidation, merger and boundary changes, advise municipalities on all problems which might be connected therewith, and initiate local referendum.

Legislative Power. Nothing herein shall prohibit or prevent the General Assembly from providing additional methods for consolidation, merger or change of boundaries.

Section 9. Appropriation for Public Purposes.—The General Assembly shall not authorize any municipality or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual. The General Assembly may provide standards by which municipalities or school districts may give financial assistance or lease property to public service, industrial or commercial enterprises if it shall find that such assistance or leasing is necessary to the health, safety or welfare of the Commonwealth or any municipality or school district. Existing authority of any municipality or incorporated district to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual, is preserved.

Section 10. Local Government Debt.—Subject only to the restrictions imposed by this section, the General Assembly shall prescribe the debt limits of all units of local government including municipalities and school districts. For such purposes, the debt limit base shall be a percentage of the total revenue, as defined by the General Assembly, of the unit of local government computed over a specific period immediately preceding the year of borrowing. The debt limit to be prescribed in every such case shall exclude all indebtedness (1) for any project to the extent that it is self-liquidating or self-supporting or which has heretofore been defined as self-liquidating or self-supporting, or (2) which has been approved by referendum held in such manner as shall be provided by law. The provisions of this paragraph shall not apply to the City or County of Philadelphia.

Any unit of local government, including municipalities and school districts, incurring any indebtedness, shall at or before the time of so doing adopt a covenant, which shall be binding upon it so long as any such indebtedness shall remain un-

paid, to make payments out of its sinking fund or any other of its revenues or funds at such time and in such annual amounts specified in such covenant as shall be sufficient for the payment of the interest thereon and the principal thereof when due.

Section 11. Local Reapportionment.—Within the year following that in which the Federal decennial census is officially reported as required by Federal law, and at such other times as the governing body of any municipality shall deem necessary, each municipality having a governing body not entirely elected at large shall be reapportioned, by its governing body or as shall otherwise be provided by uniform law, into districts which shall be composed of compact and contiguous territory as nearly equal in population as practicable, for the purpose of describing the districts for those not elected at large.

Section 12. Philadelphia Debt.—The debt of the City of Philadelphia may be increased in such amount that the total debt of said city shall not exceed thirteen and one-half percent of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding three percent upon such average assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law.

In ascertaining the debt-incurring capacity of the City of Philadelphia at any time, there shall be deducted from the debt of said city so much of such debt as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in construction, purchase or condemnation of any public utility, or part thereof, or facility therefor, if such public improvement or public utility, or part thereof, or facility therefor, whether separately, or in connection with any other public improvement or public utility, or part thereof, or facility therefor, may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, shall be as now prescribed, or which may hereafter be prescribed by law.

In incurring indebtedness for any purpose the City of Philadelphia may issue its obligations maturing not later than fifty years from the date thereof, with provision for a sinking fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said City of Philadelphia for the purpose of the construction or improvement of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred.

No debt shall be incurred by, or on behalf of, the County of Philadelphia.

Section 13. Abolition of County Offices in Philadelphia.—(a) In Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law.

(b) Local and special laws, regulating the affairs of the City of Philadelphia and creating offices or prescribing the powers and duties of officers of the City of Philadelphia, shall be valid notwithstanding the provisions of section thirty-two of article three of this Constitution.

(c) All laws applicable to the County of Philadelphia shall apply to the City of Philadelphia.

(d) The City of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the County of Philadelphia.

(e) The provisions of section two of this article shall apply with full force and effect to the functions of the county government hereafter to be performed by the city government.

(f) Upon adoption of this amendment all county officers shall become officers of the City of Philadelphia, and until the General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution and the laws of the Commonwealth in effect at the time this amendment becomes effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

Section 14. Definitions.—As used in this article, the following words shall have the following meanings:

"Municipality" means a county, city, borough, incorporated town, township or any similar general purpose unit of government which shall hereafter be created by the General Assembly.

"Initiative" means the filing with the applicable election officials at least ninety days prior to the next primary or general election of a petition containing a proposal for referendum signed by electors comprising five per cent of the number of electors voting for the office of Governor in the last gubernatorial general election in each municipality or area affected. The applicable election official shall place the proposal on the ballot in a manner fairly representing the content of the petition for decision by referendum at said election. Initiative on a similar question shall not be submitted more often than once in five years. No enabling law shall be required for initiative.

"Referendum" means approval of a question placed on the ballot, by initative or otherwise, by a majority vote of the electors voting thereon.

SCHEDULE

This article shall take effect on the date of approval by the electorate, except that the following sections shall take effect on the effective date of legislation adopted pursuant to the sections or the date indicated below, whichever shall first occur.

The first, third and fourth paragraphs of section eight shall take effect two years after the effective date. The second sentence of section one, the fourth sentence of section two, all of section three, the third paragraph of section four, and the first paragraph of section ten shall take effect four years after the effective date. The second sentence of section one and the first paragraph of section eight on Uniform Legislation shall be construed so as to be consistent with the jurisdiction of this Convention.

Said Article, so arranged, shall replace existing Articles XIII, XIV, XV, and existing Sections 7, 8, 10, 15 and 19 of Article VIII (formerly numbered Article IX) of the Constitution.

IV. Proposal 7 shall be arranged into a single Article consisting of eighteen (18) consecutively numbered Sections as follows:

ARTICLE

THE JUDICIARY

Section 1. Unified Judicial System.—The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by the law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

Section 2. Supreme Court.—The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth;

(b) shall consist of seven justices, one of whom shall be the Chief Justice; and

(c) shall have such jurisdiction as shall be provided by law.

Section 3. Superior Court.—The Superior Court shall consist of seven judges, one of whom shall be the president judge, and its jurisdiction shall be as provided by law.

Section 4. Commonwealth Court.—The Commonwealth Court shall be a statewide court, and shall consist of the number of judges and have such jurisdiction as shall be provided by law. One of its judges shall be the president judge.

Section 5. Courts of Common Pleas.—There shall be one court of common pleas for each judicial district (a) having such divisions and consisting of such number of judges as shall be provided by law, one of whom shall be the president judge; and

(b) having unlimited original jurisdiction in all cases except as may otherwise be provided by law.

Section 6. Community Courts; Philadelphia Municipal Court and Traffic Court.—(a) In any judicial district a majority of the electors voting thereon may approve the establishment or discontinuance of a community court. Where a community court is approved, one community court shall be established; its divisions, number of judges and jurisdiction shall be as provided by law.

(b) The question whether a community court shall be established or discontinued in any judicial district shall be placed upon the ballot in a primary election by petition which shall be in the form prescribed by the officer of the Commonwealth who under law shall have supervision over elections. The petition shall be filed with that officer and shall be signed by a number of electors equal to five percent of the total votes cast for all candidates for the office occupied by a single official for which the highest number of votes was cast in that judicial district at the last preceding general or municipal election. The manner of signing such petitions, the time of circulating them, the affidavits of the persons circulating them and all other details not contained herein shall be governed by the general laws relating to elections. The question shall not be placed upon the ballot in a judicial district more than once in any five-year period.

(c) In the City of Philadelphia there shall be a municipal court and a traffic court. The number of judges and the jurisdiction of each shall be as provided by law. These courts shall exist so long as a community court has not been established or in the event one has been discontinued under this section.

Section 7. Justices of the Peace; Magisterial Districts.—(a) In any judicial district, other than the City of Philadelphia, where a community court has not been established or where one has been discontinued there shall be one justice of the peace in each magisterial district. The jurisdiction of the justice of the peace shall be as provided by law.

(b) The General Assembly shall by law establish classes of magisterial districts solely on the basis of population and population density and shall fix the salaries to be paid justices of the peace in each class. The number and boundaries of magisterial districts of each class within each judicial district shall be established by the Supreme Court or by the courts of common pleas under the direction of the Supreme Court as required for the efficient administration of justice within each magisterial district.

Section 8. Other Courts.—The General Assembly may establish additional courts or divisions of existing courts, as needed, or abolish any statutory court or division thereof.

Section 9. Right of Appeal.—There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an

administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

Section 10. Judicial Administration.—(a) The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace, including authority to temporarily assign judges and justices of the peace from one court or district to another as it deems appropriate.

(b) The Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts and justices of the peace.

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the judicial branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

(d) The Chief Justice and president judges of all courts with seven or less judges shall be the justice or judge longest in continuous service on their respective courts; and in the event of his resignation from this position the justice or judge next longest in continuous service shall be the Chief Justice or president judge. The president judges of all other courts shall be selected for five-year terms by the members of their respective courts, except that the president judge of the traffic court in the City of Philadelphia shall be appointed by the Governor. A Chief Justice or president judge may resign such position and remain a member of the court. In the event of a tie vote for office of president judge in a court which elects its president judge, the Supreme Court shall appoint as president judge one of the judges receiving the highest number of votes.

(e) Should any two or more justices or judges of the same court assume office at the same time, they shall cast lots forthwith for priority of commission, and certify the results to the Governor who shall issue their commissions accordingly.

Section 11. Judicial Districts; Boundaries.—The number and boundaries of judicial districts shall be changed by the General Assembly only with the advice and consent of the Supreme Court.

Section 12. Qualifications of Justices, Judges and Justices of the Peace.—(a) Justices, judges and justices of the peace shall be citizens of the Commonwealth. Justices and judges, except the judges of the traffic court in the City of Philadelphia, shall be members of the bar of the Supreme Court. Justices and judges of statewide courts, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within the Commonwealth. Other judges and justices of the peace, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within their respective districts, except as provided in this article for temporary assignments.

(b) Judges of the traffic court in the City of Philadelphia and justices of the peace shall be members of the bar of the Supreme Court or shall complete a course of training and instruction in the duties of their respective offices and pass an examination prior to assuming office. Such courses and examinations shall be as provided by law.

Section 13. Election of Justices, Judges and Justices of the Peace; Vacancies.—(a) Justices, judges and justices of the peace shall be elected at the municipal election next preceding the commencement of their respective terms of office by the electors of the Commonwealth or the respective districts in which they are to serve.

(b) A vacancy in the office of justice, judge or justice of the peace shall be filled by appointment by the Governor. If the vacancy occurs during the session of the Senate, the appointment shall be with the advice and consent of two-thirds of the members elected to the Senate, except in the case of justices of the peace which shall be by a majority. If the vacancy occurs during sine die adjournment of the Senate such appointment shall not require the advice and consent of the Senate. The person so appointed shall serve for an initial term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs.

(c) The provisions of section thirteen (b) shall not apply either in the case of a vacancy to be filled by retention election as provided in section fifteen (b), or in the case of a vacancy created by failure of a justice or judge to file a declaration for retention election as provided in section fifteen (b). In the case of a vacancy occurring at the expiration of an appointive term under section thirteen (b), the vacancy shall be filled by election as provided in section thirteen (a).

(d) At the primary election in 1969, the electors of the Commonwealth may elect to have the justices and judges of the Supreme, Superior, Commonwealth and all other statewide courts appointed by the Governor from a list of persons qualified for the offices submitted to him by the Judicial Qualifications Commission. If a majority vote of those voting on the question is in favor of this method of appointment, then whenever any vacancy occurs thereafter for any reason in such court, the Governor shall fill the vacancy by

appointment in the manner prescribed in this subsection. Such appointment shall not require the consent of the Senate.

(e) Each justice or judge appointed by the Governor under section 13 (d) shall hold office for an initial term ending the first Monday of January following the next municipal election more than twenty-four months following the appointment.

Section 14. Judicial Qualifications Commission.—(a) Should the method of judicial selection be adopted as provided in section thirteen (d), there shall be a Judicial Qualifications Commission, composed of four non-lawyer electors appointed by the Governor and three non-judge members of the bar of the Supreme Court appointed by the Supreme Court. No more than four members shall be of the same political party. The members of the commission shall serve for terms of seven years, with one member being selected each year. The commission shall consider all names submitted to it and recommend to the Governor not fewer than ten nor more than twenty of those qualified for each vacancy to be filled.

(b) During his term, no member shall hold a public office or public appointment for which he receives compensation, nor shall he hold office in a political party or political organization.

(c) A vacancy on the commission shall be filled by the appointing authority for the balance of the term.

Section 15. Tenure of Justices, Judges and Justices of the Peace.—(a) The regular term of office of justices and judges shall be ten years and the regular term of office for judges of the municipal court and traffic court in the City of Philadelphia and of justices of the peace shall be six years. The tenure of any justice or judge shall not be affected by changes in judicial districts or by reduction in the number of judges.

(b) A justice or judge elected under section thirteen (a), appointed under section thirteen (d) or retained under this section fifteen (b) may file a declaration of candidacy for retention election with the officer of the Commonwealth who under law shall have supervision over elections on or before the first Monday of January of the year preceding the year in which his term of office expires. If no declaration is filed, a vacancy shall exist upon the expiration of the term of office of such justice or judge, to be filled by election under section thirteen (a) or by appointment under section thirteen (d) if applicable. If a justice or judge files a declaration, his name shall be submitted to the electors without party designation, on a separate judicial ballot or in a separate column on voting machines, at the municipal election immediately preceding the expiration of the term of office of the justice or judge, to determine only the question whether he shall be retained in office. If a majority is against retention, a vacancy shall exist upon the expiration of his term of office, to be filled by appointment under section thirteen (b) or under section thirteen (d) if applicable. If a majority favors retention, the justice or judge shall serve for the regular term of office provided herein, unless sooner removed or retired. At the expiration of each term a justice or judge shall be eligible for retention as provided herein, subject only to the retirement provisions of this article.

Section 16. Compensation and Retirement of Justices, Judges and Justices of the Peace.—(a) Justices, judges and justices of the peace shall be compensated by the Commonwealth as provided by law. Their compensation shall not be diminished during their terms of office, unless by law applying generally to all salaried officers of the Commonwealth.

(b) Justices, judges and justices of the peace shall be retired upon attaining the age of seventy years. Former and retired justices, judges and justices of the peace shall receive such compensation as shall be provided by law. No compensation shall be paid to any justice, judge or justice of the peace who is suspended or removed from office under section eighteen of this article or under article six.

(c) A former or retired justice or judge may, with his consent, be assigned by the Supreme Court on temporary judicial service as may be prescribed by rule of the Supreme Court.

Section 17. Prohibited Activties.—(a) Justices and judges shall devote full time to their judicial duties, and shall not engage in the practice of law, hold office in a political party or political organization, or hold an office or position of profit in the government of the United States, the Commonwealth or any municipal corporation or political subdivision thereof, except in the armed service of the United States or the Commonwealth.

(b) Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court.

(c) No justice, judge or justice of the peace shall be paid or accept for the performance of any judicial duty or for any service connected with his office, any fee, emolument or perquisite other than the salary and expenses provided by law.

(d) No duties shall be imposed by law upon the Supreme Court or any of the justices thereof or the Superior Court or any of the judges thereof, except such as are judicial, nor shall any of them exercise any power of appointment except as provided in this Constitution.

Section 18. Suspension, Removal, Discipline and Compulsory Retirement.—(a) There shall be a Judicial Inquiry and Review Board having nine members as follows: three judges of the courts of common pleas from different judicial districts and two judges of the Superior Court, all of whom shall be selected by the Supreme Court; and two non-judge members of the bar of the Supreme Court and two non-lawyer electors, all of whom shall be selected by the Governor.

(b) The members shall serve for terms of four years, provided that a member, rather than his successor, shall continue to participate in any

hearing in progress at the end of his term. A vacancy on the board shall be filled by the respective appointing authority for the balance of the term. The respective appointing authority may remove a member only for cause. No member shall serve more than four consecutive years; he may be reappointed after a lapse of one year. Annually the members of the board shall elect a chairman. The board shall act only with the concurrence of a majority of its members.

(c) A member shall not hold office in a political party or political organization. Members, other than judges, shall be compensated for their services as the Supreme Court shall prescribe. All members shall be reimbursed for expenses necessarily incurred in the discharge of their official duties.

(d) Under the procedure prescribed herein, any justice or judge may be suspended, removed from office or otherwise disciplined for violation of section seventeen of this article, misconduct in office, neglect of duty, failure to perform his duties, or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, and may be retired for disability seriously interfering with the performance of his duties.

(e) The board shall keep informed as to matters relating to grounds for suspension, removal, discipline or compulsory retirement of justices or judges. It shall receive complaints or reports, formal or informal, from any source, pertaining to such matters, and shall make such preliminary investigations as it deems necessary.

(f) The board, after such investigation, may order a hearing concerning the suspension, removal, discipline or compulsory retirement of a justice or judge. The board's orders for attendance of or testimony by witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings.

(g) If, after hearing, the board finds good cause therefor, it shall recommend to the Supreme Court the suspension, removal, discipline or compulsory retirement of the justice or judge.

(h) The Supreme Court shall review the record of the board's proceedings on the law and facts and may permit the introduction of additional evidence. It shall order suspension, removal, discipline or compulsory retirement, or wholly reject the recommendation, as it finds just and proper. Upon an order for compulsory retirement, the justice or judge shall be retired with the same rights and privileges were he retired under section sixteen of this article. Upon an order for suspension or removal, the justice or judge shall be suspended or removed from office, and his salary shall cease from the date of such order. All papers filed with and proceedings before the board shall be confidential but upon being filed by the board in the Supreme Court, the record shall lose its confidential character. The filing of papers with and the giving of testimony before the board shall be privileged.

(i) No justice or judge shall participate as a member of the board or of the Supreme Court in any proceeding involving his suspension, removal, discipline or compulsory retirement.

(j) The Supreme Court shall prescribe rules of procedure under this section.

(k) The Supreme Court shall prescribe rules of procedure for the suspension, removal, discipline and compulsory retirement of justices of the peace.

(l) A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section eighteen shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.

(m) A justice or judge who shall file for nomination for or election to any public office other than a judicial office shall forfeit automatically his judicial office.

(n) This section is in addition to and not in substitution for the provisions for impeachment for misbehavior in office contained in article six. No justice, judge or justice of the peace against whom impeachment proceedings are pending in the Senate shall exercise any of the duties of his office until he has been acquitted.

SCHEDULE TO JUDICIARY ARTICLE

This schedule is a part of this judiciary article, and it is intended that the provisions contained herein shall have the same force and effect as those contained in the numbered sections of the article.

This article and schedule, unless otherwise stated herein, shall become effective on January 1, 1969. In this schedule where the word "now" appears it speaks from the date of adoption of this schedule; where the word "present" appears it speaks from the effective date hereof.

Courts Other Than in the City of Philadelphia and Allegheny County

Section 1. The Supreme Court.—The Supreme Court shall exercise all the powers and, until otherwise provided by law, jurisdiction now vested in the present Supreme Court and, until otherwise provided by law, the accused in all cases of felonious homicide shall have the right of appeal to the Supreme Court.

Section 2. The Superior Court.—Until otherwise provided by law, the Superior Court shall exercise all the jurisdiction now vested in the present Superior Court. The present terms of all judges of the Superior Court which would otherwise expire on the first Monday of January in an odd-numbered year shall be extended to expire in the even-numbered year next following.

Section 3. Commonwealth Court.—The Commonwealth Court shall come into existence on January 1, 1970. Notwithstanding anything to the contrary in this article, the General Assembly

shall stagger the initial terms of judges of the Commonwealth Court.

Section 4. The Courts of Common Pleas.—Until otherwise provided by law, the several courts of common pleas shall exercise the jurisdiction now vested in the present courts of common pleas. The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, and orphans' courts are abolished and the several courts of common pleas shall also exercise the jurisdiction of these courts. Orphans' courts in judicial districts having separate orphans' courts shall become orphans' court divisions of the courts of common pleas and the court of common pleas in those judicial districts shall exercise the jurisdiction presently exercised by the separate orphans' courts through their respective orphans' court division.

Section 5. Orphans' Court Judges.—In those judicial districts having separate orphans' courts, the present judges thereof shall become judges of the orphans' court division of the court of common pleas and the present president judge shall become the president judge of the orphans' court division of the court of common pleas for the remainder of his term without diminution in salary.

Section 6. Courts of Common Pleas in Multi-County Judicial Districts.—Courts of common pleas in multi-county judicial districts are abolished as separate courts and are hereby constituted as branches of the single court of common pleas established under this article in each such judicial district.

Section 7. Community Courts.—In a judicial district which establishes a community court, a person serving as a justice of the peace at such time:

(a) May complete his term exercising the jurisdiction provided by law and with the compensation provided by law, and

(b) Upon completion of his term, his office is abolished and no judicial function of the kind heretofore exercised by a justice of the peace shall thereafter be exercised other than by the community court.

Justices, Judges and Justices of the Peace

Section 8. Justices, Judges and Justices of the Peace.—Notwithstanding any provision in the article, a present justice, judge or justice of the peace may complete his term of office.

Section 9. Associate Judges.—The office of associate judge not learned in the law is abolished, but a present associate judge may complete his term.

Section 10. Retention Election of Present Justices and Judges.—A present judge who was originally elected to office and seeks retention in the 1969 municipal election and is otherwise eligible may file his declaration of candidacy by February 1, 1969.

Section 11. Selection of President Judges.—Except in the City of Philadelphia, section ten (d) of the article, shall become effective upon the expiration of the term of the present president judge, or upon earlier vacancy.

Magistrates, Aldermen and Justices of the Peace and Magisterial Districts Other Than in the City of Philadelphia

Section 12. Magistrates, Aldermen and Justices of the Peace.—An alderman, justice of the peace or magistrate:

(a) May complete his term, exercising the jurisdiction provided by law and with the method of compensation provided by law prior to the adoption of this article;

(b) Shall be deemed to have taken and passed the examination required by this article for justices of the peace if he has completed one full term of office before creation of a magisterial district, and

(c) At the completion of his term, his office is abolished.

(d) Except for officers completing their terms, after the first Monday in January, 1970, no judicial function of the kind heretofore exercised by these officers, by mayors and like officers in municipalities shall be exercised by any officer other than the one justice of the peace elected or appointed to serve in that magisterial district.

Section 13. Magisterial Districts.—So that the provisions of this article regarding the establishment of magisterial districts and the instruction and examination of justices of the peace may be self-executing, until otherwise provided by law in a manner agreeable to this article, the following provisions shall be in force:

(a) The Supreme Court or the courts of common pleas under the direction of the Supreme Court shall fix the number and boundaries of magisterial districts, of each class within each judicial district by January 1, 1969, and these magisterial districts, except where a community court has been adopted, shall come into existence on January 1, 1970, the justices of the peace thereof to be elected at the municipal election in 1969. These justices of the peace shall retain no fine, costs or any other sum that shall be delivered into their hands for the performance of any judicial duty or for any service connected with their offices, but shall remit the same to the Commonwealth, county, municipal subdivision, school district or otherwise as may be provided by law.

(b) Classes of magisterial districts

(i) Magisterial districts of the first class shall have a population density of more than five thousand persons per square mile and a population of not less than sixty-five thousand persons.

(ii) Magisterial districts of the second class shall have a population density of between one thousand and five thousand persons per square mile and a population of between twenty thousand persons and sixty-five thousand persons.

(iii) Magisterial districts of the third class shall have a population density of between two hundred and one thousand persons per square mile and a population of between twelve thousand persons and twenty thousand persons.

(iv) Magisterial districts of the fourth class shall have a population density of between seventy and two hundred persons per square mile and a population of between seven thousand five hundred persons and twelve thousand persons.

(v) Magisterial districts of the fifth class shall have a population density of under seventy persons per square mile and a population of between four thousand persons and seven thousand five hundred persons.

(c) Salaries of justices of the peace

The salaries of the justices of the peace shall be as follows:

(i) In first class magisterial districts, twelve thousand dollars per year,

(ii) In second class magisterial districts, ten thousand dollars per year,

(iii) In third class magisterial districts, eight thousand dollars per year,

(iv) In fourth and fifth class magisterial districts, five thousand dollars per year.

(v) The salaries here fixed shall be paid by the State Treasurer and for such payment this article and schedule shall be sufficient warrant.

(d) Course of training, instruction and examination. The course of training and instruction and examination in civil and criminal law and procedure for a justice of the peace shall be devised by the Department of Public Instruction, and it shall administer this course and examination to insure that justices of the peace are competent to perform their duties.

Section 14. Magisterial Districts.—Effective immediately upon establishment of magisterial districts and until otherwise prescribed the civil and criminal procedural rules relating to venue shall apply to magisterial districts; all proceedings before aldermen, magistrates and justices of the peace shall be brought in and only in a magisterial district in which occurs an event which would give rise to venue in a court of record; the court of common pleas upon its own motion or on application at any stage of proceedings shall transfer any proceeding in any magisterial district to the justice of the peace for the magisterial district in which proper venue lies.

Prothonotaries and Clerks Other Than in the City of Philadelphia

Section 15. Prothonotaries, Clerks of Courts, Clerks of Orphans' Courts.—Until otherwise provided by law, the offices of prothonotary and clerk of courts shall become the offices of prothonotary and clerk of courts of the court of common pleas of the judicial district, and in multi-county judicial districts of their county's branch of the court of common pleas, and the clerk of the orphans' court in a judicial district now having a separate orphans' court shall become the clerk of the orphans' court division of the court of common pleas, and these officers shall continue to perform the duties of the office and to maintain and be responsible for the records, books and dockets as heretofore. In judicial districts where the clerk of the orphans' court is not the register of wills, he shall continue to perform the duties of the office and to maintain and be responsible for the records, books and dockets as heretofore until otherwise provided by law.

The City of Philadelphia

Section 16. Courts and Judges.—Until otherwise provided by law: (a) the court of common pleas shall consist of a trial division, orphans' court division and family court division.

(b) The judges of the court of common pleas shall become judges of the trial division of the court of common pleas provided for in this article and their tenure shall not otherwise be affected.

(c) The judges of the county court shall become judges of the family court division of the court of common pleas and their tenure shall not otherwise be affected.

(d) The judges of the orphans' court shall become judges of the orphans' court division of the court of common pleas and their tenure shall not otherwise be affected.

(e) As designated by the Governor, twenty-two of the present magistrates shall become judges of the municipal court and six shall become judges of the traffic court, and their tenure shall not otherwise be affected.

(f) One of the judges of the court of common pleas shall be president judge and he shall be selected in the manner provided in section ten (d) of this article. He shall be the administrative head of the court and shall supervise the court's judicial business.

(g) Each division of the court of common pleas shall be presided over by an administrative judge, who shall be one of its judges and shall be elected for a term of five years by a majority vote of the judges of that division. He shall assist the president judge in supervising the judicial business of the court and shall be responsible to him. Subject to the foregoing, the judges of the court of common pleas shall prescribe rules defining the duties of the administrative judges. The president judge shall have the power to assign judges from each division to each other division of the court when required to expedite the business of the court.

(h) Until all members of the municipal court are members of the bar of the Supreme Court, the president judge of the court of common pleas shall appoint one of the judges of the municipal court as president judge for a five year term or at the pleasure of the president judge of the court of common pleas. The president judge of the municipal court shall be eligible to succeed himself as president judge for any number of terms and shall be the administrative head of that court and shall supervise the judicial business of the court. He shall promulgate all administrative rules and regulations and make all judicial assignments. The president judge of the court of common pleas may assign temporarily judges of the municipal court who are members of the bar of

the Supreme Court to the court of common pleas when required to expedite the business of the court.

(i) The Governor shall appoint one of the judges of the traffic court as president judge for a term of five years or at the pleasure of the Governor. The president judge of the traffic court shall be eligible to succeed himself as president judge for any number of terms, shall be the executive and administrative head of the traffic court, and shall supervise the judicial business of the court, shall promulgate all administrative rules and regulations, and shall make all judicial assignments.

(j) The exercise of all supervisory and administrative powers detailed in this section sixteen shall be subject to the supervisory and administrative control of the Supreme Court.

(k) The prothonotary shall continue to exercise the duties of that office for the trial division of the court of common pleas and for the municipal court.

(l) The clerk of quarter sessions shall continue to exercise the duties of that office for the trial division of the court of common pleas and for the municipal court.

(m) That officer serving as clerk to the county court shall continue to exercise the duties of that office for the family division of the court of common pleas.

(n) The register of wills shall serve ex officio as clerk of the orphans' court division of the court of common pleas.

(o) The court of common pleas shall have unlimited original jurisdiction in all cases except those cases assigned by this schedule to the municipal court and to the traffic court. The court of common pleas shall have all the jurisdiction now vested in the court of common pleas, the court of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' court, and county court. Jurisdiction in all of the foregoing cases shall be exercised through the trial division of the court of common pleas except in those cases which are assigned by this schedule to the orphans' court and family court divisions of the court of common pleas. The court of common pleas through the trial division shall also hear and determine appeals from the municipal court and traffic court.

(p) The court of common pleas through the orphans' court division shall exercise the jurisdiction heretofore exercised by the orphans' court.

(q) The court of common pleas through the family court division of the court of common pleas shall exercise jurisdiction in the following matters:

(i) Domestic Relations: desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings for custody of children; divorce and annulment and property matters relating thereto.

(ii) Juvenile Matters: dependent, delinquent and neglected children and children under eighteen years of age, suffering from epilepsy, nervous or mental defects, incorrigible, runaway and disorderly minors eighteen to twenty years of age and preliminary hearings in criminal cases where the victim is a juvenile.

(iii) Adoptions and Delayed Birth Certificates.

(r) The municipal court shall have jurisdiction in the following matters:

(i) Committing magistrates' jurisdiction in all criminal matters.

(ii) All summary offenses, except those under the motor vehicle laws.

(iii) All criminal offenses for which no prison term may be imposed or which are punishable by a term of imprisonment of not more than two years, and indictable offenses under the motor vehicle laws for which no prison term may be imposed or punishable by a term of imprisonment of not more than three years. In these cases, the defendant shall have no right of trial by jury in that court, but he shall have the right of appeal for trial de novo including the right to trial by jury to the trial division of the court of common pleas. Until there are a sufficient number of judges who are members of the bar of the Supreme Court serving in the municipal court to handle such matters, the trial division of the court of common pleas shall have concurrent jurisdiction over such matters, the assignment of cases to the respective courts to be determined by rule prescribed by the president judge of the court of common pleas.

(iv) Matters arising under The Landlord and Tenant Act of 1951.

(v) All civil claims involving less than five hundred dollars. In the cases, the parties shall have no right of trial by jury in that court but shall have the right of appeal for a trial de novo including the right to trial by jury to the trial division of the court of common pleas, it being the purpose of this subsection to establish an expeditious small claims procedure whereby it shall not be necessary for the litigants to obtain counsel. This limited grant of civil jurisdiction shall be co-extensive with the civil jurisdiction of the trial division of the court of common pleas.

(vi) As commissioners to preside at arraignments, fix and accept bail, issue warrants and perform duties of a similar nature.

The grant of jurisdiction under clauses (iii) and (v) of this subsection may be exercised only by those judges who are members of the bar of the Supreme Court.

(s) The traffic court shall have exclusive jurisdiction of all summary offenses under the motor vehicle laws.

(t) The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, the county court, the orphans' court and the ten separate courts of common pleas are abolished and their jurisdiction and powers shall be exercised by the court of common pleas provided for in this article through the divisions established by this schedule.

(u) The office of magistrate, the board of magistrates and the present traffic court are abolished.

(v) Those judges appointed to the municipal court in accordance with subsection (e) of this section who are not members of the bar of the Supreme Court shall be eligible to complete their present terms and to be elected to and serve for one additional term, but not thereafter.

(w) The causes, proceedings, books, dockets and records of the abolished courts shall become those of the court or division thereof to which; under this schedule, jurisdiction of the proceedings or matters concerned has been transferred, and that court or division thereof shall determine and conclude such proceedings as if it had assumed jurisdiction in the first instance.

(x) The present president judges of the abolished courts and chief magistrate shall continue to receive the compensation to which they are now entitled as president judges and chief magistrate until the end of their present terms as president judges and chief magistrate respectively.

(y) The offices of prothonotary and register of wills in the City of Philadelphia shall no longer be considered constitutional offices under this article, but their powers and functions shall continue as at present until these offices are covered in the Home Rule Charter by a referendum in the manner provided by law.

(z) If a community court is established in the City of Philadelphia, a person serving as a judge of the municipal or traffic court at that time:

(i) Notwithstanding the provisions of subsection (v) of this section, may complete his term exercising the jurisdiction provided by law and with the compensation provided by law; and

(ii) At the completion of his term, his office is abolished and no jurisdiction of the kind exercised by those officers immediately after the effective date of this article and schedule shall thereafter be exercised other than by the community court.

Allegheny County

Section 17. Courts.—Until otherwise provided by law:

(a) The court of common pleas shall consist of a trial division, an orphans' court division and a family court division; the courts of oyer and terminer and general jail delivery and quarter sessions of the peace, the county court, the orphans' court, and the juvenile court are abolished and their present jurisdiction shall be exercised by the court of common pleas. Until otherwise provided by rule of the court of common pleas and, except as otherwise provided in this schedule, the court of common pleas shall exercise the jurisdiction of the present court of common pleas and the present county court through the trial division. Until otherwise provided by rule of the court of common pleas, the jurisdiction of the present orphans' court, except as otherwise provided in this schedule, shall be exercised by the court of common pleas through the orphans' court division.

(b) Until otherwise provided by rule of the court of common pleas, the court of common pleas shall exercise jurisdiction in the following matters through the family court division:

(i) Domestic Relations: Desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings, including habeas corpus, for custody of children; divorce and annulment and property matters relating thereto.

(ii) Juvenile Matters: All matters now within the jurisdiction of the juvenile court.

(iii) Adoptions and Delayed Birth Certificates.

Section 18. Judges.—Until otherwise provided by law, the present judges of the court of common pleas shall continue to act as the judges of that court; the present judges of the county court shall become judges of the court of common pleas; the present judges of the orphans' court shall become judges of the orphans' court division of the court of common pleas; the present judges of the juvenile court shall become judges of the family court division of the court of common pleas.

Section 19. President Judges.—The present president judge of the court of common pleas may complete his term as president judge; the present president judge of the orphans' court shall be the president judge of the orphans' court division of the court of common pleas for the remainder of his term as president judge, and the present president judge of the county court shall be the president judge of the family court division of the court of common pleas for the remainder of his term as president judge, all these without diminution of salary as president judge. The president judge of the trial division shall be selected pursuant to section twenty of this schedule.

Section 20. President Judges; Court Divisions.—Until otherwise provided by law, the trial division, the orphans' court division and the family court division of the court of common pleas shall each be presided over by a president judge, who shall be one of the judges of such division and shall be elected for a term of five years by a majority vote of the judges of that division. He shall assist the president judge of the court of common pleas in supervising the judicial business of the court and shall be responsible to him. Subject to the foregoing, the judges of the court of common pleas shall prescribe rules defining the duties of the president judges. The president judge of the court of common pleas shall have the power to assign judges from one division to another division of the court when required to expedite the business of the court. The exercise of these supervisory and administrative powers, however, shall be subject to the supervisory and administrative powers of the Supreme Court.

The City of Pittsburgh

Section 21. Inferior Courts.—Upon the establishment of magisterial districts pursuant to this article and schedule, and unless otherwise provided by law, the police magistrates, including those serving in the traffic court, the housing court and the city court shall continue as at present. Such magistrates shall be part of the unified judicial system and shall be subject to the general supervisory and administrative authority of the Su-

preme Court. Such magistrates shall be subject to the provisions of this article and schedule regarding educational requirements and prohibited activities of justices of the peace.

Causes, Proceedings, Books and Records

Section 22. Causes, Proceedings, Books and Records.—All causes and proceedings pending in any abolished court or office of the justice of the peace shall be determined and concluded by the court to which jurisdiction of the proceedings has been transferred under this schedule and all books, dockets and records of any abolished court or office of the justice of the peace shall become those of the court to which, under this schedule, jurisdiction of the proceedings concerned has been transferred.

Commission and Board

Section 23. Judicial Qualifications Commission.—The selection of the first members of the Judicial Qualifications Commission provided for in section fourteen (a) of this article shall be made as follows: The Governor shall appoint the four non-lawyer members for terms of, respectively, one year, three years, five years and seven years, no more than two of whom shall be members of the same political party. The Supreme Court shall appoint the three non-judge members of the bar of the Supreme Court of Pennsylvania for terms, respectively, of two years, four years and six years, no more than two of whom shall be members of the same political party.

Section 24. Judicial Inquiry and Review Board.—The selection of the first members of the Judicial Inquiry and Review Board shall be made as follows: one judge of the Superior Court, one non-judge member of the bar of the Supreme Court, and one non-lawyer member shall be selected for two-year terms; one judge of the Superior Court, one non-judge member of the bar of the Supreme Court, and one non-lawyer member shall be selected for four-year terms; one judge of the court of common pleas shall be selected for a term of two years, one for a term of three years, and one for a term of four years.

General Provisions

Section 25. Dispensing with Trial by Jury.—Until otherwise provided by law, the parties, by agreement filed, may in any civil case dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases.

Section 26. Writs of Certiorari.—Unless and until changed by rule of the Supreme Court, in addition to the right of appeal under section nine of this article, the judges of the courts of common pleas, within their respective judicial districts, shall have power to issue writs of certiorari to the municipal court in the City of Philadelphia, justices of the peace and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

Section 27. Judicial Districts.—Until changed in accordance with section eleven of this article, the number and boundaries of judicial districts shall remain as at present.

Section 28. Referendum.—The officer of the Commonwealth who under law shall have supervision over elections shall cause the question provided for in section thirteen (d) of this article to be placed on the ballot in the 1969 primary election throughout the Commonwealth.

Section 29. Persons Specially Admitted by Local Rules.—Any person now specially admitted to practice may continue to practice in the court of common pleas or in that division of the court of common pleas and the municipal court in the City of Philadelphia which substantially includes the practice for which such person was previously specially admitted.

Said Article, so arranged, shall replace existing Article V of the Constitution.

Respectively submitted,

By: JAMES W. NELSON
By: WILLIAM H. GRAY, JR.

Co-Chairmen, Committee on Arrangement, Submission and Address to the People.

We certify that this Recommendation No. 1 of The Committee on Arrangement, Submission and Address to the People has passed the Pennsylvania Constitutional Convention on February 29, 1968.

RAYMOND J. BRODERICK, President
JAMES A. MICHENER, Secretary

MOTION TO ADOPT RECOMMENDATION No. 1 OF THE COMMITTEE ON ARRANGEMENT, SUBMISSION AND ADDRESS TO THE PEOPLE

PRESIDENT BRODERICK. The Chair recognizes Delegate Nelson.

DELEGATE NELSON. While we are waiting, I would like to ask for permission to have this Recommendation defended by one of America's truly great generals, Delegate Strickler.

PRESIDENT BRODERICK. The Chair is very happy to recognize Delegate Strickler and, while you are proceeding, we will have your report distributed.

DELEGATE STRICKLER. Mr. President, this report deals with the arrangement of all of the articles and sections that you passed finally at this Convention. Subject to the approval of the electorate, the Committee on Arrangement, Submission and Address to the People recommends that Proposals Nos. 1 to 7, inclusive, adopted by the Convention and referred to it for arrangement into articles and sections to be numbered as provided under Act 180, approved the 17th day of August, 1965, in accordance with the applicable provisions of Act 2, Section 1967, to be arranged in the following manner:

Proposal No. 1 and Proposal No. 2 dealing with Legislative Apportionment shall be arranged in two sections, numbered 16 and 17. Then follows those various sections that appear in the report of the recommendations and these sections so arranged shall replace sections 16, 17 and 18 of Article 2 of the Constitution now existing, so that this Article shall hereafter consist of a total of 17 consecutive numbered sections—correct that, it was 17, it is now 16. So that the Article shall hereafter consist of a total of 16 consecutive numbered separate articles.

Proposals Nos. 3, 4 and 5 on Taxation and State Finance of the Commonwealth Indebtedness shall be arranged into 10 sections, and those 10 sections follow, and the said sections of these 10 sections 1, 7, 8, 9 and 10 so arranged shall revise or replace existing sections 1, 4, 6, 9 and 14 of Article 8 formerly numbered Article 9 of the Constitution; and said sections 2, 4, 12, 13, 14 are new and become additional sections of Article 8, existing sections 1 (d), 2, 3, 18, 24 and 25 of Article 8 are retained.

Renumbered sections 3, 5, 6, 11, 15 and 16 respectively so that this Article hereinafter consists of a total of 16 consecutively numbered separate sections.

I think I shall pause here until these reports are distributed to the members. Some of them do not have them.

PRESIDENT BRODERICK. Would you see that these reports are distributed, please?

This is very unfortunate. We had 200 of these reports here. Now some of our delegates do not have copies. If anyone has an extra one, I certainly hope they will give it to the delegates who do not have a copy.

We need some more down here, please.

I understand, Delegate Strickler, that all the delegates now have a copy. Excuse me, we need a few more back here. Could we resurrect a few, please?

Would those delegates that have not as yet received a copy please raise their hands? Let us see how many we need. We need eight.

Some of the staff has a copy, I would appreciate them surrendering it to the delegates, and we will see that they get one.

DELEGATE POWELL. Mr. President, would you have me recorded in the journal as approving final passage of the Judiciary Article?

PRESIDENT BRODERICK. Those reports will be put on the record, that you approve the Judiciary Article.

Let me ask this: Does everyone have a copy now? We are now all right.

I again recognize Delegate Strickler.

DELEGATE STRICKLER. Mr. President, we are now on page 11 of the report.

I have gone over, in summary, Proposals Nos. 1, 2, 3, 4 and 5. There will be no change in language in any of these, so these are the exact copies of the final proposals. It is just a matter of arrangement.

Mr. President, may I go back to Proposals Nos. 1 and 2, and where I said that the sections so arranged shall replace existing sections 16, 17 and 18 of Article 2 of the Constitution, so that this Article hereinafter consists of 16 consecutive numbered sections, except it should be 17, as I originally stated. On page 4, next to the last line, change "16" to "17", shall be arranged into a single article consisting of 14 consecutive numbered sections and they follow, and said article so arranged shall replace existing articles 13, 14, 15 and existing sections 7, 8, 10, 15 and 19 of Article 8, formerly numbered Article 9 of the Constitution.

Proposal No. 7 shall be arranged into a single article consisting of 18 consecutively numbered sections as they are listed. Said article so arranged shall replace existing Article 5 of the Constitution.

That is the extent of the report, and if anybody would like to ask any questions, I will be glad to answer them.

If there are no questions, I would like to move the adoption of the report with regard to Recommendation No. 1.

DELEGATE GRAY. I second the motion.

PRESIDENT BRODERICK. We have a motion before the Convention that this Convention adopt Recommendation No. 1 of the Committee on Arrangement, Submission and Address to the People, and that motion was made by Delegate Strickler, seconded by Delegate Gray.

Are we ready for the question?

The question is, shall the Convention adopt Recommendation No. 1 of the Committee on Arrangement, Submission and Address to the People?

The question recurs,

Will the Convention agree to adopt Recommendation No. 1?

The roll was recorded as follows:

YEAS—140

Aberman	Curran	King	Redick
Allison	Desmond	Krill	Reynolds
Amsterdam	Devlin	Laputka	Richter
Aurentz	Erwin	Leach	Roberts
Bagenstose	Fagan	Lee, L.	Rovner
Baldrige	Fawcett	Leinbach	Ruth
Baldus	Fay	Leonard	Sahli
Baldwin	Feather	Levin	Scales
Banes	Filson	Manderino	Scarlett
Barron	Fineman	Mangery	Scranton
Barry	Fleming	Markley	Shapiro
Bashoff	Fohl	Mattioni	Sharp
Benedict	Forster	McGeary	Shettig
Benfield	Gabreski	McGlynn	Shively
Bloom	Gerber	Michael	Shoemaker
Braham	Goldman	Michener	Shrager
Brennan	Goldstein	Miller, D.	Silverman
Broderick	Gouger	Miller, R.	Sprogell
Brown	Gray	Moorhead	Stout
Buck	Griffith	More	Strickler
Bunting	Hannum	Morton	Stroup
Burkholder	Hatter	Nelson	Swope
Butera	Henderson	Orbin	Tate
Cain	Himes	O'Donnell	Thornburgh
Camardella	Hocker	Orban	Tomascik
Caputo	Hook	Otto	Tully
Caron	Horne	Pasquerilla	Van Sant
Casey	Hostetler	Pelletier	Waldron
Clark	Huggins	Percey	Warman
Clinger	Irvis	Popil	Welsh
Corey	Jirolanio	Pott	Westerberg
Cortese	Kauffman	Powell	Whittum
Cosetti	Keller, J.	Prendergast	Wilcox
Croop	Keller, M.	Rappaport	Wilmarth
Cunningham	Kelly	Rea	Woodside

NAYS—0

NOT VOTING—23

Conley	Gehrlein	Lee, K.	Scott
Dailey	Harding	Meyer	Sebastian
Donaldson	Heyburn	Murray	Solomon
Donolow	Johnson	Musselman	Thomson
Dumbauld	Kline	Pechan	Woodring
Fortney	Lane	Quiles	

The majority having voted in the affirmative, the question was determined in the affirmative and the Recommendation was adopted.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Powell. For what purpose does the gentleman rise?

DELEGATE POWELL. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE POWELL. Mr. President, would you have me recorded in the Journal as approving final passage of the Judiciary Article?

PRESIDENT BRODERICK. Your remarks will be put on the record, that you approve the Judiciary Article.

RESOLUTION

PRESIDENT BRODERICK. The Chair now recognizes Delegate Orban.

DELEGATE ORBAN. As an official of this Convention, I had the opportunity to be in touch with the work of the Committee on Arrangement, Submission and Address to the People. This Committee has worked under tremendous handicaps. I need not tell you why.

DELEGATE ORBAN requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

In the Constitutional Convention, Feb. 29, 1968.

The Committee on Arrangement, Submission and Address to the People is the one that was forced to operate under the extreme pressure of time since it only had a day or so to make its report on some proposals and an hour or so to make its report on others.

To expect the excellent reports that this Committee presented to the Convention was doubtful because of the time problem, but upon hearing the reports it is obvious to all the delegates that the members of the Committee completed the task assigned to them in an outstanding manner. Their complete and untiring devotion to their work is evidenced by what we have heard today; therefore be it

RESOLVED, That the Constitutional Convention offer its sincere congratulations to Delegates James W. Nelson and William H. Gray, Jr. the co-chairmen of the Committee on Arrangement, Submission and Address to the People, and to all the other members of the Committee for the outstanding job they have done in preparing their reports and presenting them to this Convention in such a short period of time.

WRITTEN EXPLANATION OF VOTE PURSUANT TO RULE 19

My vote against final passage of Proposal No. 5 dealing with tax exemptions was prompted by my strong feelings that the prolific enumeration of specific and detailed classes of exemptions is properly a legislative function and should not be welded into the Constitution.

I approve of the ends sought to be served by many of the exemptions set forth—specifically those directed toward encouraging urban renewal and rehabilitation—but it has been my feeling throughout the Convention that the exemption policy of this Commonwealth should be left basically to the legislature. Such a procedure would insure that exemptions are subject to continuing scrutiny and examination by the people so that maximum flexibility is provided to deal with unforeseen and changing future attitudes and circumstances.

RICHARD L. THORNBURGH

APPROVAL OF JOURNALS

PRESIDENT BRODERICK. Now the Chair recognizes Delegate Casey.

DELEGATE CASEY. Mr. President, there are a number of Journals of this Convention which have not been prepared as yet and presented to the Convention for approval, so, prior to adjournment, I would like to move for the record that we now approve formally those journals of the Convention which thus far have not been approved, and I so move.

PRESIDENT BRODERICK. It has been moved by Delegate Casey, seconded by Delegate Orban that we approve the remaining journals of this Convention.

On the question,
Will the Convention agree to the motion?
It was agreed to.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate Fohl. For what purpose does the gentleman rise?

DELEGATE FOHL. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE FOHL. I would like to take a minute to state into the record the results of a poll that I have taken. We heard polls from Delegate Clinger when he polled in his district about who could remember who was elected for judge. I took the liberty of conducting a poll in the 22nd Senatorial District, which is the Lackawanna County District. I contacted 30 people there and asked them who were their delegates to this Constitutional Convention. I am sorry to say that only one of the 30 could name all three delegates. However, the other 29 said Ed Popil and two others guys.

REMARKS BY DELEGATE STROUP

PRESIDENT BRODERICK. The Chair now recognizes Delegate Stroup.

DELEGATE STROUP. Mr. President, approximately 14 months ago the legislative leaders of the General Assembly began to formulate plans and to write legislation to bring this Convention into being as a reality. That was not an easy task, Mr. President. It took several months before the legislation was enacted into law. This is a statement on behalf of the ex officio delegates and the other delegates of this Convention: You came from the hills and the mountains, the fertile farms and the beautiful valleys, from those areas where the ancient, silent, timeless Alleghenies loom over our people, from the vast industrial and mining communities, from the teeming millions of our great cities here to the Hall of the House of Representatives determined to write and rewrite the basic

law of a portion of our law of the Commonwealth of Pennsylvania.

Seldom if ever, indeed, has there been gathered under one hall an assembly of men and women so talented, so brave in mind, so varied in their various occupations and professional aspects, so idealistic indeed and yet practical with it all, dedicated to a common purpose and to a common cause.

The devotion and the tireless effort each and every one of you as delegates to this Convention applied to the formidable task and to the legalistic requirements which you were compelled to face is a great tribute to the democratic process in this State of ours which is the birth of liberty of the nation.

Now, fellow delegates, as we say, each to the other, may God be with you. From your ex officio delegates, may the bronze of work, the silver of happiness and the gold of love be with each and everyone of you all the remaining days of your lives. This is not just our wish or a hope. It shall be our constant prayer for you and I say farewell to you as you leave these halls from your ex officio delegates and if forever, then still forever, fellow delegates, fare thee well.

REMARKS BY DELEGATE BUTERA

PRESIDENT BRODERICK. The Chair recognizes Delegate Butera.

DELEGATE BUTERA. I rise to second the remarks of Senator Stroup. I had similar remarks prepared. Suffice it to say that I, too, remember last December at our first leadership meeting when our president presented to us the skeleton of a bill which later would become an act of the Legislature to create this Convention. I want to thank those of you who endorsed the plan at that and several succeeding meetings and went on to work to have the bill passed, for you have restored our faith in human beings. We were told time and time again by those who opposed our efforts that you were all going to be some wild-eyed conservatives or liberals and that you were going to destroy our Commonwealth. We persevered and told them that was not going to be the case, and I can assure you that each one of us is more than pleased with the body here assembled and I do not think it could have been any finer.

REMARKS BY DELEGATE SCRANTON

PRESIDENT BRODERICK. The Chair recognizes Delegate Scranton.

DELEGATE SCRANTON. After listening to the eminent Majority Leader of the Senate, who has always been known in Pennsylvania as the Everett Dirkson of Pennsylvania, I would like to say that I think this body should go and adopt a new resolution and send a notice to Illinois that Senator Everett Dirkson is now the Stanley Stroup of Illinois.

REMARKS BY DELEGATE GERBER

PRESIDENT BRODERICK. The Chair recognizes Delegate Gerber.

DELEGATE GERBER. Mr. President, it seems to me it is only fitting and proper for those of us who are the amateurs to thank those professionals, Senator Stroup, Representative Butera, Representative Irvis, the other Senators and Representatives here who have helped us and you, too, in preparing this Convention.

I think we also owe a vote of thanks to Governor Scranton, Senator Casey, Governor Leader and Governor Shafer for helping bring about the victory in the May primary of 1967 and we only hope that what we did here was responsive to the great preparation done by our legislative leadership.

As one member here who has respect for the Legislature and has respect for the legislative leadership, I think we amateurs should vote thanks with a hand clap for the great legislators who helped bring this Convention together.

PRESIDENT BRODERICK. The Chair recognizes Delegate Irvis.

DELEGATE IRVIS. Mr. President, may I on behalf of the ex officio members thank Delegate Gerber and ask him if he will submit his remarks to one small amendment? Will he include in it his thanks to the League of Women Voters?

DELEGATE GERBER. You are asking an awful lot at a late hour. For you I will do that.

REMARKS BY DELEGATE STRICKLER

PRESIDENT BRODERICK. The Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, I would like to make a statement in connection with the 13 ex officio members. I do not believe a lot of the people realize how valuable it was to have them as members of this delegation. I know a lot of people felt that, perhaps, they should not have been here because it should have been entirely non-professional, non ex officio people, but we certainly impressed upon them our thinking. We impressed upon them the various articles and sections that had to be dealt with by the Legislature and they will be far better off to deal with it to meet the deadline on January 1, 1969. After all, we are one team. We are for Pennsylvania, and they are a great part of it.

REMARKS BY DELEGATE REYNOLDS

PRESIDENT BRODERICK. The Chair recognizes Delegate Reynolds.

DELEGATE REYNOLDS. Mr. President, I want to express my appreciation for having been here and for the reason that I have made some fine contacts here over the past three months.

I remember having received an invitation from Governor Shafer to come here, from ex-Governors of this State, Governor Fine, Governor Scranton, and I forget the Democrat's name, Governor Leader, and we accepted the challenge. I sent out over 10,000 pieces of literature throughout the State of Pennsylvania for the cause of this Convention. I believe we have called together here in this Convention a group of men and women that could not have been better.

I have been very much impressed with the fairness of the American spirit that has been shown here and, if I ever had any doubt as to the caliber of the people of the State of Pennsylvania, this Convention has wiped it out.

I want to pay special tribute to a man who stood up

here the other day and laid his heart at our feet, Secretary Michener, a man who did not have to say what he said. He told how he had been segregated against in the country that he loved so dearly. I also hail from another state, I am from North Carolina. I think it is a very nice place to be from. I am very happy to be living here as a citizen and, as I have said before, I served two terms in the Legislature here, and things were not as good then. I am staying in a hotel now that refused me accommodation when I was here before, but they have treated me very nice now.

I do not think we Americans have to worry about the hot summer days and everything as long as we have men and women who are spreading good will around this State. I believe that is what we have done here, and the example we have set here will go forward in settling some of the difficulties we have had with minority groups and other people. Delegate Michener stood here the other day and laid down another challenge, and we do have some areas in Pennsylvania that have not quite yet gotten a hold of the spirit that he exhibited.

I hope that we will carry that spirit everywhere we go from now on, and I can tell you that there are many thousands of minority groups, Jews, Catholics, Protestants and Negroes, black and white, all can live together.

I have been all around the world two times, and I can tell you very distinctly that despite all the faults of America, we are living in the best country in the world. No other country is like America.

The other day a delegate made a statement here, and some of you thought it was a bad statement, and should be expunged, and about 25 or 30 of you came up to me and apologized. You do not need to apologize for what he said, because he did not mean any harm by it; he came to me himself.

He used the word "nigger," and let me tell you there is not a white man in the world that cannot be a nigger, because if you look in the dictionary the word "nigger" means a bad citizen, a bad person, irrespective of race, creed or color, and, therefore, I do not feel ashamed to say that he did not mean what he said in a disparaging way. He was big enough to come to me and to apologize. As we go forward from here, I hope that all of us will carry that spirit.

Let us say to the world that America is the best place to live, and we can live here, whites and black, Jew and Gentile, and everybody will have an equal opportunity to go to the top if they have the ability.

REMARKS BY DELEGATE WELSH

PRESIDENT BRODERICK. I will recognize Delegate Welsh next. I just want to say that I can see something is building up inside of all of us. The unfortunate thing is we would like to come to the conclusion and get to the signing. I do want to recognize all those who are at the microphone. The only thing I want to say is, please keep it short.

The Chair recognizes Delegate Welsh.

DELEGATE WELSH. Mr. President, I would just like the record to show in the closing hours, when Delegate Gerber made his remarks, that Delegate Welsh from Allegheny County was standing and applauding.

Also, Mr. President, the name "politician" is still honored by me and I still hold it in high regard, not only at this Convention, because I had the same conviction prior to this Convention, but even more so after this Convention.

POINT OF INFORMATION

PRESIDENT BRODERICK. The Chair recognizes Delegate Cosetti. For what purpose does the gentleman rise?

DELEGATE COSETTI. I rise to a point of information.

PRESIDENT BRODERICK. The gentleman will state it.

DELEGATE COSETTI. I would like to be advised who has the adjournment resolution.

PRESIDENT BRODERICK. I just want you to know the adjournment resolution is out among the delegates.

REMARKS BY DELEGATE HOOK

PRESIDENT BRODERICK. The Chair recognizes Delegate Hook.

DELEGATE HOOK. Mr. President, I sat here and listened to the statements pertaining to the ex officio members. I would like to direct the delegate body to four members of the Legislature who served with us on the committee and were not ex officio members. I believe these four people have given us guidance and I would like to read into the record the names of the five people, one of whom I have gotten to know quite well, and that is Marian Markley, who is now going to retire from the General Assembly in January and who has served the Commonwealth of Pennsylvania for a period of 18 years;

Also, Senator Marvin Keller from Bucks County;

Another gentleman who I met the first night here at the Convention, none other than John Van Sant from Lehigh County;

Last but not least, the man from McKean County, Mr. Victor Westerberg of the Westerberg amendment;

James Prendergast of Northampton County, ex officio.

REMARKS BY DELEGATE SWOPE

PRESIDENT BRODERICK. The Chair recognizes Delegate Swope.

DELEGATE SWOPE. Mr. President. I have been very careful with my words the last few days. I have been trying to recover from the beating I got three days ago. I am recovered now.

I would like to say something about the committee upon which I was honored to be co-chairman with a man who I did not know before this Convention opened, but whose no less distinguished brother I have known for many, many years. I am referring to Iz Bloom.

I would not get up here tonight at this late hour excepting that the four substantive committees and the two committees that I have been working so hard on the last few days have been mentioned on this floor today. It is only fair that I should give some tribute to the members of the Committee of Administration and Finance. We toiled also, we labored, but we were not in the limelight. We tried to save the Commonwealth some money. We budgeted closely and we watched the staff and we did not overstaff, and we tried in every possible way to bring economy in the expenditure of the liberal appropriation that was given to this Convention by the General Assembly.

I want here in the record, Mr. President, the appreciation that I have as co-chairman for the splendid work, the quiet work, that was done by a wonderful group of 18 people in my committee. I would like at this moment if I may, to yield to my Co-Chairman, Iz Bloom.

REMARKS BY DELEGATE BLOOM

PRESIDENT BRODERICK. The Chair recognizes Delegate Bloom.

DELEGATE BLOOM. The committee that we had consisted of the nicest men that I ever met. They discussed every problem with us and at the end you had unanimity and we had it during every meeting. Whenever we voted upon a question, everybody agreed, and by the time we mulled it over we went over and over it time and time again, but we all agreed.

This committee, as I said before, watched every nickel that was spent of the taxpayers' money of this Commonwealth. We did our job. We came under criticism at one time by the press, maybe rightfully so, because if there were meals served here during the holiday season, we took it very gracefully and no offense was taken by our committee of what the press said in that connection. We understand they were observers on the outside and, perhaps, did not understand our problems.

I want to go on record as thanking these men who served with us and are still serving with us, as we will not be discharged until all of the moneys have been accounted for and we have been audited and we have made arrangements for the audit.

We made every arrangement for the distribution of the necessary pamphlets, and so forth, that we were authorized to do. Our work will be carried on right up until the time of election.

REMARKS BY DELEGATE HUGGINS

PRESIDENT BRODERICK. The Chair recognizes Delegate Huggins.

DELEGATE HUGGINS. Mr. President, you know and I know the end is here, but you know in my particular profession you get over with it quick and you end it with an amen to say that you have agreed. It seems like the more we hear, the less we can "amen."

I think that is going to be the problem, too, when the Constitution we have been working on goes out to the public. Some of the people are not going to buy it too quickly, because they do not know all the sweat and turmoil that went into creating it. There are always strangers around the work of a group like this.

I think no group has tried to be of more creative and more, should I say, understanding of what we are trying to accomplish here to finish tonight.

There are some strangers in our midst whom I think we need to recognize for a job we may not like, for a few points we cannot really tolerate, but for whom we have a very high regard, because they have been with us through the long hours and that is the gentlemen of the press. I think they should stand so we can applaud them.

REMARKS BY DELEGATE CAMARDELLA

PRESIDENT BRODERICK. The Chair now recognizes Delegate Camardella.

DELEGATE CAMARDELLA. Mr. President, first of all, I would like to have a personal privilege here of saying that it has been my pleasure for the last three months to serve with some of the finest people of this Commonwealth of Pennsylvania.

I think a week ago I said I thought my calendar was at an end. Have we reached that point, Mr. President? As I read it now, it is finished. We are pooped. We are out of business. Where do we go from here? Let us proceed.

PRESIDENT BRODERICK. We do have some place to go from here. We are going to recognize the few delegates that were on the floor previously.

We have a signing ceremony and I would hate to tell you this, but your President would like to just give one or two closing remarks that will not take more than two minutes, if I may. If I could have your indulgence for two or three minutes.

I will do that after we recognize Delegate Forster, Delegate Pott and Delegate Warman and, also, Delegate Orban.

ANNOUNCEMENT BY DELEGATE FORSTER

PRESIDENT BRODERICK. I will now recognize Delegate Forster.

DELEGATE FORSTER. Mr. President, even though you have adopted Recommendation No. 3 of the Committee on Arrangement, Submission and Address to the People, the polls are still open on the section where your names are recorded. At least a dozen delegates have come to report incorrect spelling or their names shown the wrong way. I urge you again to check it and let us know tonight. It is important for you to do that, otherwise, you will be most disappointed.

Mr. President, I want to tell you that in Lancaster County there is a Pennsylvania Dutch expression that says, "When the little red car comes, the train is all." I understand when the Committee Report from Arrangement, Submission and Address to the People comes, the Convention is all. This is a parliamentary inquiry, is that correct?

PRESIDENT BRODERICK. I think it is almost correct.

REMARKS BY DELEGATE POTT

PRESIDENT BRODERICK. The Chair recognizes Delegate Pott.

DELEGATE POTT. Mr. President, our sessions over the past three months have started with prayer from men who were invoking Divine guidance over this Convention.

If I can sum up what I believe our Chaplains have been trying to say to us, it would be the following words:

God of our Fathers, be with us yet, lest we forget, lest we forget.

REMARKS BY DELEGATE ORBAN

PRESIDENT BRODERICK. The Chair recognizes Delegate Orban.

DELEGATE ORBAN. Mr. President. For the benefit of the stenographer, it is O-r-b-a-n.

PRESIDENT BRODERICK. Vice President of this Convention.

DELEGATE ORBAN. Mr. President, I want to express to you my sincerest thanks for permitting me to be your second vice president.

Secondly, I want to thank you for the remembrance presented to me last night.

Thirdly, I want to repeat last night's statement that the treatment and courtesy accorded me by all the delegates and the staff is undeserved, knowing the good, if any, that I contributed is negligible, while the ills I created may be great.

FAREWELL ADDRESS BY PRESIDENT

PRESIDENT BRODERICK. If you will be kind enough to give me, I assure you, not more than two and half, three minutes to say to you from the bottom of my heart, as this Constitutional Convention is about to slip into the pages of history, I just feel compelled to express my gratitude to each and everyone of you, as well as to every one of our 12 million fellow Pennsylvanians, for the job you have done so well.

You know, you worked murderous hours. You ignored your businesses, your families. You have ignored your personal life over the last three months, but you have struck a mighty blow for public service.

You have differed many times on many points, but you have all agreed that this Commonwealth's basic charter should be updated to permit it to cope with the problems of the 21st Century.

You know, on the sixth day of this Convention I gave what some people laughingly referred to as the President's Address, and in that address I said, and I want to quote, "We are here to mold a judicial system which shall produce justice." We have done it.

I said in that address, "We are here to make local government more efficient." We have done it.

I said in that address, "We are here to provide a tax structure which will satisfy the needs of all Pennsylvanians." We have done it.

I also said, "We are here to make one man, one vote, a reality." We have done it.

Yes, we have accomplished all those things, but, even more, there has been a spirit in this Convention which will live on and on after the final adjournment resolution, which will be offered by Delegate Strickler. Let me say something more, if I may, about that spirit. From the day we assembled here until this very moment we have been ruled, we have been controlled, not by any political machine or any political factions, not by the idea of making a Constitution for some part of Pennsylvania or for some special interest, but by the desire to provide a fundamental law under which the people of this Commonwealth, which we all love, will live and prosper for years and years to come.

In humility and in closing, I express to you my heartfelt thanks for the honor which you have conferred upon me by electing me your presiding officer. Your support has sustained me through many trying hours in this Convention and it is sincerely appreciated.

This is not the end of our labors, however. I am going to ask you to help me, help each other, to convince the voters of Pennsylvania that our recommendations are the best for a better Commonwealth, and I hope you will join me in that effort over the next two months.

Yes, I share with you the thought that our recommendations are not perfect, but I also share with you the thought and the determination that they will give Pennsylvania the best Constitution in the land, and in this closing moment I salute you. I say, God bless you. God bless your families, and God bless this wonderful Commonwealth.

Thank you.

ANNOUNCEMENT BY EXECUTIVE DIRECTOR

PRESIDENT BRODERICK. I would like to state at this time that John Ingram has an announcement.

MR. INGRAM. Mr. President, I have been asked to convey to you a message I received late this afternoon from H. Vernon Eney, the President of the recently adjourned Maryland Convention. You will recall he visited this Convention and addressed you.

He asked to be remembered to you. He offered his best wishes and his congratulations to the Pennsylvania Convention, to the officers, to the delegates.

He asked that you be commended on behalf of the Maryland Convention for completing your work in the allotted time and he wanted to wish you well in achieving voter approval of the proposals of this Convention.

PROPOSALS SIGNED BY PRESIDENT

Proposals numbered and entitled as follows having been prepared for presentation to the Secretary of the Commonwealth, and the same being correct, the titles were publicly read as follows:

PROPOSAL NO. 1

A Proposal amending the Constitution of Pennsylvania making changes relating to legislative districts.

PROPOSAL NO. 2

A Proposal amending the Constitution of Pennsylvania making changes relating to legislative apportionment.

PROPOSAL NO. 3

A Proposal amending the Constitution of Pennsylvania further providing for Commonwealth indebtedness.

PROPOSAL NO. 4

A Proposal amending the Constitution of Pennsylvania specifying audit control of public moneys and establishing and regulating a balanced State budget for the next fiscal year and financial plans for the succeeding five years.

PROPOSAL NO. 5

A Proposal amending the Constitution of Pennsylvania further regulating exemptions from taxation and providing for the taxation of real property of public utilities.

PROPOSAL NO. 6

A Proposal amending the Constitution of Pennsylvania providing for local government in Pennsylvania.

PROPOSAL NO. 7

A Proposal repealing article five of the Constitution of Pennsylvania relating to the Judiciary and adding a new Judiciary article.

Whereupon, the PRESIDENT, in the presence of the Convention, signed the same.

POINT OF PERSONAL PRIVILEGE

PRESIDENT BRODERICK. The Chair recognizes Delegate O'Donnell. For what purpose does the gentleman rise?

DELEGATE O'DONNELL. I rise to a point of personal privilege.

PRESIDENT BRODERICK. The gentleman will state it.

The Chair now recognizes Delegate O'Donnell.

DELEGATE O'DONNELL. Mr. President, I, too, rise to a point of personal privilege. I would like publicly to acknowledge a splendid gift which I have just received from our Secretary. He asked me to witness his signature as Secretary of the Convention to Committee Proposal No. 7 and he was kind enough to give me the pen with which he signed it. I would like you to know I thank Secretary Michener and I will treasure this pen.

PRESIDENT BRODERICK. Now, Mr. Ingram, would you please explain how we are going to sign these documents?

MR. INGRAM. The final document, your proposals and the questions, will be placed on the rostrum here. In accordance with Act 2, they will be signed first by the officers, the President, the First Vice President, the Second Vice President and then the Secretary. They will then be received, acknowledged and signed by the Secretary of the Commonwealth. They will then be signed by each delegate who will affix his signature in reverse alphabetical order starting with Judge Woodside in seat 168.

We will ask you to file in alphabetical order in the reverse numerical order of your seat number over to that aisle and that side, down the aisle, across here, up this side of the rostrum and sign here.

We do have a photographer and he will take the picture of each of you as you sign. You will receive in the mail an order form in the event that you want to order a picture of yourself signing the document.

PRESIDENT BRODERICK. You know, before we start up to sign, Delegate Buck came up and handed me a quotation from Benjamin Franklin. I will not read the whole quote, but would you permit me to read the last sentence? It says, "On the whole, sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it would with me on this occasion doubt a little of his own infallibility and to make manifest our unanimity, put his name to this instrument."

Please come forward.

WIVES OF DELEGATES INVITED TO JOIN DELEGATES

(After the signing ceremony, the following proceedings were had.)

PRESIDENT BRODERICK. Will the delegates please take their seats. We will have about three minutes more.

At this time the Chair would like to invite the wives of our delegates to come in and sit inside the rail in the rear of this assembly.

AMENDMENT TO RESOLUTION

DELEGATE ORBAN. Mr. President, I would like to amend the last resolution I presented at the request of Chairmen Nelson and Gray to include in the Arrangement Committee's resolution the staff and legal counsel.

PRESIDENT BRODERICK. Unless the Chair hears objection, we will consider it as an amendment pursuant to the amendment that you have handed up. The Chair hears no objection, and it is so amended.

LEAVES OF ABSENCE

DELEGATE MICHENER. I have one last request for leave of absence, which I hope the delegates will pass unanimously. Two of our most respected and beloved delegates are out of work. They have asked for leaves from March to November to find a new job. They are Delegate Pasquerilla from Johnstown and Delegate Casey from Scranton.

PRESIDENT BRODERICK. We wish them success in their quest.

DELEGATE MICHENER. We do wish them success.

RECOGNITION OF PAGES

PRESIDENT BRODERICK. Since the beginning of this Convention, we have been very fortunate in having with us each week a group of honor students serving as honorary pages. They are outstanding young men and young women in their respective schools and have been selected by their principals.

On this last and final day, I would like to introduce them to you and ask them to rise as I call their names. When I have introduced all of them, let us show our appreciation by giving them a fine round of applause. We appreciate very much their contribution.

The students are:

Phyllis Black of Elizabethtown High School in Elizabethtown;

John Fedora and Joseph Eckert from Stevens Trade School in Lancaster;

Sue Bowman from Annville-Cleona High School in Annville;

Steven Yocklovich from Lebanon High School in Lebanon;

Theodore Bucher from Boiling Springs High School in Boiling Springs;

Robert Shiffer from Millersburg Area High School in Millersburg;

Andrew McCrea from Big Spring High School in Newville;

Richard Bitting from Halifax Area High School in Halifax;

Ernest Wallander, Jr., from Donegal High School in Mt. Joy.

RESOLUTION

DELEGATE WARMAN requested and obtained unanimous consent to offer the following resolution for immediate consideration, which was read, considered and adopted:

PRESIDENT BRODERICK. The Chair now recognizes Delegate Warman.

DELEGATE WARMAN. Mr. President, I stand in place and present a resolution which I think will be the last one before the adjournment resolution.

I am a non-lawyer and I have decided to write the last will and testament for the Convention, although I did have a little advice from my attorney friend Gerry Ruth.

In the Constitutional Convention, Feb. 29, 1968.

After three months of diligent work, and much mental and verbal exercise, we have attempted to sculpture a document for posterity. In doing so, we have been handicapped by our human limitations. In sequence thereto, it is fitting and proper that we leave certain legacies to any future Constitutional Conventions; now, therefore, be it

RESOLVED, That we bequeath to any future Constitutional Conventions

All problems which now remain unsolved.

All the mistakes we inadvertently and without specific intent have made, or caused by our inability to foresee and forecast the future.

All the problems which may develop from the Space Age that we have been unable to foresee.

All the wisdom, wit and good humor shown by our delegates.

All the legal knowledge shown by the lawyer delegates in bringing it into proper final language.

All the knowledge of human relations and the human needs and desires that must be reflected in the Constitution under the democratic system.

Finally, we pledge that the document so produced is the dedicated effort of the delegates, prepared and delivered with no motivation other than maintaining Pennsylvania as a model for the several States of the Union.

ADJOURNMENT SINE DIE

PRESIDENT BRODERICK. Now for the moment that we have been waiting for for 91 days, and I note by the clock that it is now 10:41.

The Chair recognizes Delegate Strickler.

DELEGATE STRICKLER. Mr. President, now that we have completed our work by adopting seven proposals for constitutional changes, full of human interest and intentionally meaningful in the use of verbage, I now move that this 1967-1968 Pennsylvania Constitutional Convention adjourn sine die.

PRESIDENT BRODERICK. The Chair now recognizes Delegate Brown.

DELEGATE BROWN. Mr. President, I would like to second that motion.

PRESIDENT BRODERICK. It has been moved by Delegate Strickler, seconded by Delegate Brown, that this Convention adjourn sine die. All those in favor of that resolution say "aye," those opposed say "no." The ayes have it. We stand adjourned.

(Whereupon, the 1967-1968 Pennsylvania Constitutional Convention adjourned sine die.)