



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE COORDINATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, DECEMBER 10, 2015

Call to Order:

Judge Patrick Fischer called the meeting of the Coordinating Committee to order at 10:20 a.m. He explained that he was chairing the committee meeting due to Chair Kathleen Trafford being delayed and in the absence of the Vice-chair Jo Ann Davidson.

Members Present:

A quorum was present with Chair Trafford and committee members Abaray, Coley, Fischer, Mulvihill, and Obhof in attendance.

Approval of Minutes:

The minutes of the October 8, 2015 and November 12, 2015 meetings of the committee were approved.

Reports and Recommendations:

Article I, Section 20 (Powers Reserved to the People)

Judge Fischer first recognized Executive Director Steven C. Hollon, who presented to the committee a report and recommendation on Article I, Section 20 (Powers Reserved to the People), which was issued by the Bill of Rights and Voting Committee at its November 12, 2015 meeting.

Mr. Hollon indicated that the committee had recommended no change, wishing to retain the section in its current form. After reading the text of Article I, Section 20, Mr. Hollon described the history and purpose of the provision as well as related litigation. He indicated that there were no presentations to the committee on the section, which expresses the view that the powers of the government are derived from the people.

Judge Fischer then asked the committee if there were any questions regarding the report and recommendation, and there were none. On motion by Senator Bill Coley, seconded by Senator Larry Obhof, the committee voted unanimously to approve the report and recommendation as to form and completeness.

Article V, Section 4 (Exclusion from Franchise for Felony Conviction)

Mr. Hollon then presented a report and recommendation on Article V, Section 4, relating to the exclusion from franchise for felony conviction. Mr. Hollon indicated that, on November 12, 2015, the Bill of Rights and Voting Committee issued the report and recommendation, which recommends no change. Mr. Hollon explained that the section empowers the General Assembly to enact laws to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony. He further noted the report and recommendation's description of the history of the provision, which was revised in the 1970s to substitute the word "felony" for "bribery, perjury, or other infamous crime." Mr. Hollon concluded by indicating that the report and recommendation reflects the committee's consensus that the section should be retained in its current form.

Judge Fischer then asked the committee for comments, which there were none. Sen. Coley moved to approve the report and recommendation as to form and completeness, and Sen. Obhof seconded the motion, which passed unanimously.

Article II, Section 2 (Election and Term of State Legislators)

The committee then heard a presentation on a report and recommendation from Fred Mills, chair of the Legislative Branch and Executive Branch Committee, regarding Article II, Section 2 (Election and Term of State Legislators).

Mr. Mills explained that the section currently imposes an eight-year limit on legislative terms. He described that the Legislative Branch and Executive Branch Committee had voted to issue one recommendation with two options for extending these term limits to twelve years. Explaining the decision to create two options, he said that when the Commission was constituted it was clear that the issue of term limits was one of several important issues for his committee. Providing a brief history of the use of legislative term limits in Ohio and other states, Mr. Mills said his committee had considered testimony indicating that the trend of creating legislative term limits has stopped, and that the goals of term limits have not come to fruition. Mr. Mills noted that the committee heard from presenters on both sides of the issue. He said the committee discussed and considered the issue at several different meetings before voting eight to one to recommend that legislative term limits be expanded from eight to 12 years, a vote that required both options to be forwarded to the full Commission for the Commission to decide how to implement an expansion of the limits. He said the difference between the two options is that Option One would give current members the benefit of the additional four years, while Option Two would only apply to newly-elected members of the General Assembly. Mr. Mills having concluded his remarks, Judge Fischer then asked if committee members had any questions regarding the report and recommendation.

Committee member Dennis Mulvihill asked whether this recommendation, if adopted by the Commission, would constitute the Commission's first substantive recommendation to the public for an amendment to the constitution. Mr. Hollon answered that the full Commission has approved seven reports and recommendations, with five of those recommending no change and two recommending that the sections be repealed as obsolete.

Committee member Janet Abaray asked for clarification of the committee's function in reviewing reports and recommendations. Judge Fischer answered that the committee's function is to decide whether to approve a report and recommendation for review by the full Commission, stating that the committee deals with form rather than substance.

Sen. Coley asked about the issuance of two options for the Commission's consideration, wondering if that procedure was appropriate. Mr. Mills answered that the two options arose out of the discussions of the committee and that the issuance of two options resulted from the motion that was made in committee.

Sen. Coley wondered whether it is within the purview of the Coordinating Committee to send the report and recommendation back for clarification as to which option the Legislative Branch and Executive Branch was recommending. Judge Fischer said that the Coordinating Committee is not supposed to comment on the substance of a report and recommendation, and that "if we think it's wrong to send two options that is a process issue." Sen. Coley said process is what he is concerned about.

Mr. Mulvihill commented that Sen. Coley raised a good question, but wondered what the Legislative Branch and Executive Branch Committee actually decided. Mr. Mills said the discussion focused on the pros and cons, politically, of expanding term limits for current legislators, as opposed to newly-elected legislators. He said the decision was to allow the full Commission to weigh in, as opposed to restricting the decision to 11 members of one committee.

Mr. Mulvihill commented that, if the report and recommendation came out of committee on one motion, the recommendation to the Commission is to vote on either option.

Ms. Abaray asked whether the members of the committee expressed a preference for one option or the other. Mr. Mills said they did not take a vote on the separate options. Ms. Abaray wondered whether the legislative members preferred to recuse themselves from the vote. Mr. Mills answered that they probably would have preferred that, but it would be hard for the Commission to comply with its rules of order if legislative members do not vote on a recommendation.

Mr. Mulvihill wondered what will occur when the recommendation goes to the full Commission, asking whether the Commission will decide either option or neither option. Judge Fischer said the Commission could recommend both options, one or the other option, or neither option. Mr. Hollon offered that the Commission alternatively could let the General Assembly decide, or that the question could even be left to the voters.

Judge Fischer clarified the question as being whether the Coordinating Committee should be approving and sending forward two competing versions. Ms. Abaray asked whether doing so

created a constitutional issue. Judge Fischer answered that because it is the constitution that would not be a problem, but then one must apply rules of constitutional construction. Mr. Mills commented that his committee did discuss this question at length, and, although there was no formal vote on whether the expansion of term limits should apply to one set of legislators or another, no one on the committee objected to going from eight to 12 years. He said, instead, the discussion focused on whether to apply the expansion only to newly-elected members.

Mr. Mulvihill asked whether there is any rule that prohibits the Legislative Branch and Executive Branch Committee from making a recommendation with two options, and it was generally agreed that there is nothing to prevent this course of action.

Sen. Obhof then moved that the committee hold over a final decision on whether to approve the report and recommendation so that the committee could further discuss the procedural question. The motion was seconded by Sen. Coley. Judge Fischer then opened the floor for discussion of whether the committee should wait to vote on approving the report and recommendation.

Mr. Mulvihill asked what more the committee would want to know. Sen. Obhof said it seemed to him that the members of the committee need to have a broader discussion about what kinds of proposals can be made. He wondered whether the committees or the Commission is permitted to “just highlight big ideas” before sending them forward, or whether there is a requirement to send one specific proposal.

Ms. Abaray commented that she would like to send the two options to the full Commission now because it could be useful to get guidance on the procedural issue from the full Commission.

Mr. Mulvihill said he understands Sen. Obhof’s concern and that he has no problem tabling the question, but he also has no problem with letting the subject matter committee decide how it wants to bring issues forward. He said the Coordinating Committee is not here to second guess that decision.

Judge Fischer then asked for a roll call vote on whether the question of whether to approve the report and recommendation for Article II, Section 2 should be held over to the next meeting of the Coordinating Committee.

A roll call vote was taken with Sen. Coley, Judge Fischer, Mr. Mulvihill, and Sen. Obhof voting in favor of the motion, and Ms. Abaray voting against the motion. Judge Fischer reported that the motion passed, and that the question of whether to approve the report and recommendation for Article II, Section 2 would be brought up again at the next meeting of the Coordinating Committee.

Presentations:

Continuing the Coordinating Committee’s review of the progress of the subject matter committees, Judge Fischer then recognized Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, who provided a status report on the committee’s work.

Chair Cole said the Finance, Taxation, and Economic Development Committee is charged with reviewing three articles: Article VIII, Article XII, and Article XIII. He said the majority of the work so far has focused on Article VIII, governing public debt and public works. He said Article VIII is the longest article in the constitution, and covers an exceedingly complex and inter-related subject matter. He said there are 17 listed sections in Article VIII, which is misleading because Section 2 actually has 2a through 2s. He said the difficulty the committee has faced is that, unlike other articles, these sections all work together. He noted the interrelationship of the sections has been a topic of some concern, because it deals with the state's ability to raise debt. He said the committee recognizes any changes to the article could affect the state's ability to raise capital and incur debt. He said the committee has been moving slowly and holistically, looking at the entirety of the article, and hearing extensive testimony, including from the Ohio Treasurer's office, the Office of Budget and Management, Professor Richard Briffault of Columbia University, and Senior Policy Advisor Steven H. Steinglass. He said the committee is nearly at the point of bringing forward a proposal for the entirety of Article VIII. He said he expects there to be a recommendation to remove sections that no longer have remaining bond issuing authority and so are obsolete. He said the committee also has heard recommendations for some more fundamental changes, but noted there is not an appetite for making too dramatic a change. He added he anticipates the report and recommendation will deal with everything in Article VIII, except for the lending aid and credit provisions. He said while Article VIII primarily deals with the way the state issues debt, it also has two provisions, Sections 4 and 6, dealing with joint ventures between the state, counties, and private enterprise. He said the committee has not done much with those provisions, but in the upcoming year he expects the committee to do so before moving on to the other articles.

Judge Fischer wondered about the timeline for issuing a report and recommendation for Article VIII. Chair Cole answered that the committee has before it a proposed amendment that would accomplish these goals, but more discussion by the committee was needed on these issues. He said the committee would have that discussion at the meeting immediately following today's Coordinating Committee meeting, and that he anticipates that the committee would be in a position to finalize its work on Article VIII by mid-2016.

Ohio Constitutional Modernization Commission 2015 Annual Report

Judge Fischer then recognized Mr. Hollon, who presented to the committee a draft of an Annual Report that, with the committee's approval, would be presented to the full Commission at its next meeting. Mr. Hollon noted that the Commission's enabling statutes require it to issue a report at least every two years until its work is completed, but that staff is recommending that the Commission issue an annual report, so as to more frequently publicize the work that has transpired. Mr. Hollon then described that the Annual Report provides, in the same format as the Biennial Report, a summary of the work of all the committees, including the reports and recommendations that have been issued by the committees, approved by the Coordinating Committee, and adopted by the Commission.

There being no questions, Mr. Mulvihill then moved to approve the Annual Report for review by the Commission. Sen. Coley seconded the motion. The motion passed by unanimous vote, including Chair Trafford who was now in attendance.

Bill of Rights and Voting Committee

Judge Fischer then recognized Richard Saphire, chair of the Bill of Rights and Voting Committee, who reported on the progress of the work of that committee.

Mr. Saphire said, in October 2013 the committee approved a document that laid out two or two-and-a-half years of agenda items for the committee's consideration. He said they tried to arrange the agenda so that the least complicated and controversial provisions assigned to the committee would be taken up first. He said the committee is responsible for the Bill of Rights except for the criminal justice sections in Article I, all of Article V (Elective Franchise), and parts of Article XVII (Elections). He said the committee also was assigned the Preamble as well as Article I, Section 1 (Inalienable Rights).

Mr. Saphire then described the status of the committee's work on sections in Article I and Article V. He said the committee had issued reports and recommendations recommending no change to Article I, Section 2 (Right to Alter, Reform, or Abolish Government), Section 3 (Right to Assemble), and Section 4 (Bearing Arms). He continued that the committee had agreed to retain Article I, Section 6 (Slavery) in its current form and expects to review a report and recommendation on that section soon. He said Article I, Section 7 (Rights of Conscience) and Article I, Section 11 (Freedom of Speech) have not yet been reviewed. Mr. Saphire noted that the committee issued reports and recommendations for Article I, Section 13 (Quartering Troops), and Article I, Section 17 (No Hereditary Privileges), recommending no change.

Mr. Saphire continued that Article I, Section 18 (Suspension of Laws), has not yet been taken up by the committee, nor have Article I Section 19 (Eminent Domain) and Section 19b (Protect Private Property Rights in Ground Water, Lakes, and Other Water Courses).

Mr. Saphire said a report and recommendation for Article I, Section 20 (Powers Reserved to the People), was issued by his committee and approved by the Coordinating Committee earlier in the meeting, and that he would present it to the full Commission later in the day. Finally, with regard to Article I, Mr. Saphire said that Article I, Section 21 (Preservation of the Freedom to Choose Health Care and Health Care Coverage) had not yet been considered by the committee.

Regarding Article V, Mr. Saphire said the committee just began a discussion of Section 1 (Who May Vote). He noted that Sections 2 and 2a of Article I were discussed preliminarily, and the committee anticipates a report and recommendation that will advocate for no change to those sections. He said a report and recommendation for no change to Article V, Section 4 (Exclusion from Franchise for Felony Conviction) was issued by his committee and approved by the Coordinating Committee earlier in the meeting, and would be presented to the full Commission later in the day.

With regard to Article V, Section 6 (Mental Capacity to Vote), Mr. Saphire said this section had proved to be the most complicated so far, and that the committee has spent the better part of at least six meetings addressing that provision. He said the section, which deals with disenfranchising due to mental disability, has prompted some disagreement, but that he is hopeful the committee will be able to issue a report and recommendation for changing the provision in early 2016.

Mr. Saphire said that the committee had some preliminary discussions regarding Article V, Section 7 (Primary Elections), but has taken no formal action yet. He said Article V, Section 8 (Congressional Term Limits) was addressed early on by the committee, and there was a consensus to retain it notwithstanding its unconstitutionality. However, he said the matter was transferred to the Legislative Branch and Executive Branch Committee, which will also be dealing with Article V, Section 9 (Eligibility of Officeholders) because it deals with a related topic.

Mr. Saphire concluded that the Bill of Rights and Voting Committee has not yet begun a review of Article XVII (Elections).

Judge Fischer then opened the floor for questions. Ms. Abaray asked about the phrase “all men are created equal” in Article I, Section 1, wondering whether the committee has discussed modernizing the language. Mr. Saphire answered that he recalls there being discussions in the Commission about how to address provisions that are not gender neutral. He said he thinks it might be better to address that question as a Commission, rather than by committee.

There being no other questions, Judge Fischer then thanked Mr. Saphire for his presentation.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:11 a.m.

Approval:

The minutes of the December 10, 2015 meeting of the Coordinating Committee were approved at the January 14, 2016 meeting of the committee.

/s/ Kathleen Trafford

Kathleen M. Trafford, Chair

/s/ Jo Ann Davidson

Jo Ann Davidson, Vice-chair