



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Education, Public Institutions,
and Local Government Committee

Edward L. Gilbert, Vice-chair

April 13, 2017

Riffe Center for Government and the Arts
Room 1948

OCMC Education, Public Institutions, and Local Government Committee

Chair

Vice-chair Mr. Edward Gilbert

Mr. Roger Beckett

Ms. Paula Brooks

Sen. Bill Coley

Rep. Robert Cupp

Rep. Glenn Holmes

Gov. Bob Taft

Ms. Petee Talley



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

THURSDAY, APRIL 13, 2017

9:30 A.M.

RIFFE CENTER FOR GOVERNMENT AND THE ARTS ROOM 1948

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of March 9, 2017

[Draft Minutes – attached]

IV. Reports and Recommendations

- Article VII, Sections 2 and 3 (Directors of the State Penitentiary and State Institutions)

- First Presentation of Report and Recommendation
- Public Comment
- Discussion

[Draft Report and Recommendation – attached]

- Article VII, Section 1 (State Institutions for the Disabled)

- First Presentation of Report and Recommendation
- Public Comment
- Discussion

[Draft Report and Recommendation – attached]

V. Next Steps

- The chair will lead discussion regarding the next steps the committee wishes to take in preparation for upcoming meetings.

[Memorandum by Shari L. O'Neill titled "Remaining Articles Assigned to the Committee" – attached]

[Planning Worksheet – attached]

VI. Old Business

VII. New Business

VIII. Public Comment

IX. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, MARCH 9, 2017

Call to Order:

Vice-chair Edward Gilbert called the meeting to order at 3:02 p.m.

Members Present:

A quorum was present with Vice-chair Gilbert and committee members Beckett, Coley, and Taft in attendance. At the invitation of the vice-chair, Representative Glenn Holmes and Senator Vernon Sykes participated as ex officio non-voting members of the committee.

Approval of Minutes:

The minutes of the January 12, 2017 meeting of the committee were approved.

Presentations and Discussion:

Vice-chair Gilbert began the meeting by indicating that Article VII, Sections 2 and 3, relating to directors of the penitentiary and other public institutions, had been the subject of some discussion and questions in previous committee discussions. As a result, a speaker has been arranged to address the committee on this issue.

Darin Furderer
Corrections Analyst
Correctional Institution Inspection Committee

Vice-chair Gilbert introduced Darin Furderer, corrections analyst at the Correctional Institution Inspection Committee. Mr. Furderer was asked to speak about the use of the term “director” in relation to the penitentiary and how management of the state penal facilities is organized.

Mr. Furderer said that the term “director” is outdated and is no longer used to refer to the head of the penitentiary. The Department of Rehabilitation and Corrections (DRC) uses the term

“warden” to refer to a person in charge of an adult correctional facility, and the Department of Youth Services (DYS) uses the term “superintendent” to refer to a person in charge of a youth correctional facility. He said he believes that superintendents are appointed by the governor.

Mr. Furderer noted that there are 27 adult facilities, including both publicly- and privately-run facilities, and three state-run youth correctional facilities in the state.

Mr. Furderer having concluded his remarks, Vice-chair Gilbert asked if the committee had questions.

Committee member Bob Taft noted that the governor appoints a “director” of DRC, who is the head of the department rather than the head of the penitentiary. The department director then appoints the persons who run the correctional facilities.

After a brief discussion, committee members agreed that, given the current governance arrangements for correctional facilities, Sections 2 and 3 of Article VII serve no modern purpose.

There being no further questions, Vice-chair Gilbert thanked Mr. Furderer for his presentation.

Vice-chair Gilbert then opened the floor for discussion regarding changes or modifications to Article VII, Section 1, regarding the state’s obligation to provide institutions for the “insane, blind, and deaf and dumb.”

Vice-chair Gilbert mentioned that proposed wording for a re-write of Section 1 had been sent to the committee by email. The proposed wording, for discussion by the committee, is as follows:

Facilities for and services to persons who, by reason of disability or handicap, require care, treatment, or habilitation shall be fostered and supported by the state, and be subject to such regulations as may be prescribed by the General Assembly.

Senator Bill Coley expressed concern that this wording leaves open the possibility of a person claiming any condition would qualify as a disability or handicap. He suggested changing the language to allow the General Assembly to determine which conditions will be subject to the provision.

Vice-chair Gilbert remarked that the committee’s past discussion was about how to provide support to the individuals who need assistance. He said he agrees with Sen. Coley’s sentiment, but stressed the need to strike a balance between retaining a state obligation and giving the legislature flexibility to address the issue in a reasonable fashion. Sen. Coley reiterated his concern that, with the proposed wording, there would be a “rush to the courthouse” by people wanting to self-identify a condition that requires support by the state.

Committee member Roger Beckett also expressed concern about the courts being used to define disabilities eligible for support. He suggested deleting “and be subject to such regulations” to more clearly show that the General Assembly is regulating not just the support provided, but also defining the disabilities to be covered. There was general agreement from committee members on the proposed wording change.

Committee member Bob Taft wondered whether the wording would be acceptable to advocacy groups, especially Disability Rights Ohio. Michael Kirkman, executive director of Disability Rights Ohio, was in the audience and offered his thoughts. Mr. Kirkman said he thought the language seemed fine at first glance, but suggested also deleting “or handicap” as being duplicative of the term “disability.” The committee agreed to this suggestion. Gov. Taft asked which option disability advocates would prefer: the proposed language or deleting Section 1 altogether. Mr. Kirkman suggested that the proposed language would be preferable to deletion. In response to a request from the committee, Mr. Kirkman offered to confer with other advocates about the proposed language and report back at the next committee meeting.

Vice-chair Gilbert requested that staff circulate the suggested language to all committee members, showing the language as proposed by email along with changes suggested by the committee. The language to be circulated would be as follows:

Facilities for and services to persons who, by reason of disability ~~or handicap~~, require care, treatment, or habilitation shall be fostered and supported by the state, ~~and be subject to such regulations~~ as may be prescribed by the General Assembly.

Vice-chair Gilbert then began a discussion of how the committee would address the large list of items remaining on its schedule. He said, after the last meeting, he contacted several members to ask them to take the lead on making an initial assessment of the remaining items. He said Gov. Taft had agreed to take the lead on sections related to municipal corporations and home rule (Article XVIII), Committee member Paula Brooks had agreed to take on sections related to counties and townships (Article X), while Vice-chair Gilbert himself would make an initial assessment of the miscellaneous provisions (Article XV). He said the purpose of the initial assessment is to identify those provisions that require detailed discussion by the committee, and to more quickly dispense with non-controversial issues. He asked the identified members to bring to the next committee meeting a list of provisions the committee could consider for no change.

The committee briefly discussed the lottery and gambling section (Article XV, Section 6), and the marriage provision (Article XV, Section 11). Senior Policy Advisor Steven H. Steinglass offered that if the committee wants to consider removing certain provisions, other states have approached the removal of constitutional provisions by converting them to statute and protecting them with a safe harbor provision for a certain period of time in order to provide transition for the affected interests.

Gov. Taft recalled that there had been a presentation on the home rule issue early in the committee’s review process and requested any information from that presentation that was available. Mr. Steinglass confirmed his recollection and noted that the presentation was given before the Commission had staff. Mr. Steinglass said he would confer with staff to identify any past presentations or other information on the home rule issue.

Mr. Beckett mentioned that there also was a presentation on the state board of education. It was noted that the issue of local boards of education was put on hold due to pending litigation. Vice-chair Gilbert requested an update from staff at the next meeting as to the status of the state board of education issue and local school board litigation.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 3:28 p.m.

Approval:

The minutes of the March 9, 2017 meeting of the Education, Public Institutions, and Local Government Committee were approved at the April 13, 2017 meeting of the committee.

Edward Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VII, SECTIONS 2 AND 3

DIRECTORS OF PUBLIC INSTITUTIONS

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VII, Sections 2 and 3 concerning directors of public institutions. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that Article VII, Sections 2 and 3 be repealed as obsolete.

Background

Sections 2 and 3 of Article VII read as follows:

Section 2

The directors of the penitentiary shall be appointed or elected in such manner as the General Assembly may direct; and the trustees of the benevolent, and other state institutions, now elected by the General Assembly, and of such other state institutions, as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the Senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the Senate.

Section 3

The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified.

Origin of Sections 2 and 3

In creating provisions about public institutions, the delegates to the 1850-51 Constitutional Convention were plowing new ground; no similar article or provisions were a part of the 1802 Constitution. While one apparent goal was to express support and provide for “benevolent institutions,” understood as facilities for persons with diminished mental capacity as well as for the blind and deaf, the greater portion of the discussion centered on the governance of the state correctional system, the purposes of incarceration, and the operation of prison facilities and prison labor programs.¹

Addressing proposals for Section 2, delegates immediately focused on whether directors of the penitentiary should be selected by the General Assembly, appointed by the governor, or directly elected by voters.² Some delegates supported allowing the General Assembly to make this determination. Others expressed that the rationale given for involving the governor – that the General Assembly had become unpopular – was not supported by fact, and, in any event, was not sufficient justification to have voters approve “every small office in the state.”

Other delegates expressed that the importance of the role of directors of the penitentiary meant they should be elected, with one delegate, Daniel A. Robertson of Fairfield County, having previously supported that position in his previous role as a member of the New York Constitutional Convention in 1837, where he advocated the popular election of all public officers.³ In fact, requiring all state offices to be elective had been a key plank in the platform of reforms advocated by Samuel Medary and others as justification for voting to hold the 1850-51 convention.⁴

Some delegates supported allowing the governor to appoint, with a requirement for obtaining the advice and consent of the Senate as a compromise measure.

Delegates then returned to the issue of how directors should be selected. G.J. Smith, a Warren County attorney, offered an amendment that would add at the close of Section 2 the words “and the question upon all nominations made by the Governor shall be taken by yeas[] and nays and entered upon the journal of the senate,” which delegates approved.

D.P. Leadbetter, a Holmes County farmer, then proposed Section 3 to address how vacancies would be filled, as follows:

The governor shall have power to fill all vacancies that may occur in the offices created by this article of the Constitution, until their successor in office shall be elected and qualified, or until the meeting of the ensuing legislature, and the successor confirmed and qualified.⁵

This addition was adopted, and the committee reported both sections back to the convention.

The discussions of Sections 2 and 3 resulted in provisions that assigned roles to the General Assembly and the governor in selecting penitentiary and benevolent institution directors, and provided a procedure for filling director vacancies in penitentiaries and benevolent institutions.

While a significant portion of the discussion dealt with the purposes of incarceration and compensation for prison labor, these topics did not culminate in a recommendation.

Although Sections 2 and 3 may seem overly concerned with how the officers of the institutions are selected, in 1850-51, a concern about legislative overreaching, as well as a related desire to elevate the role of the voter, heightened delegates' interest in the topic.⁶ Indeed, a large part of the delegates' discussion about public institutions centered on which branch of government should control and regulate these institutions.

Aside from expressing general support for public institutions, the convention delegates' primary goal seems to have been to address the election-versus-appointment issue. The meandering discussion allowed delegates to express opinions on crime and punishment, racial segregation, and political power, but the discourse never ripened into a substantive policy statement or consensus for an approved recommendation. While one delegate attempted to expand the concept of "public institutions" to include a provision related to prison labor, his proposal was rejected. No other delegate appears to have attempted to propose a new amendment.

Relationship to Statutory Law

The provisions in Article VII, Sections 2 and 3 are not self-executing, and the General Assembly has adopted more detailed statutory provisions.

Article VII, Section 2 references "directors of the penitentiary" but does not create that role. The phrasing of Article VII, Section 2 suggests that the referenced positions already exist. Thus, its primary purpose, as well as that of Section 3, is not to create the roles but to describe how the roles are to be filled.

Under current statutory law, the most analogous position to that of the "directors of the penitentiary" is possibly the director of the department of rehabilitation and correction, a statutory department head role identified in R.C. 121.03, at subsection (Q). R.C. Chapter 5120 relates to the Department of Rehabilitation and Correction (DRC), providing under R.C. 5120.01 that the director is the executive head who has the power to prescribe rules and regulations, and who holds legal custody of inmates committed to the DRC. While R.C. Chapter 5145 generally concerns "the penitentiary," its current focus is on details related to managing the prison population, rather than the role of the director of the penitentiary.

In relation to Article VII, Section 3, R.C. 3.03 provides specific instructions for the governor's exercise of the power to appoint to fill a vacancy in office, with the advice and consent of the Senate.⁷

Amendments, Proposed Amendments, and Other Review

In the 1970s, the Ohio Constitutional Revision Commission (1970s Commission), recommended the repeal of Sections 2 and 3, finding them to be obsolete. As the committee of the 1970s Commission noted, the sections derived from a time when nearly all appointing power was vested in the legislature, so that the provisions were deemed necessary to allow a transfer of that

power to the governor, with the advice and consent of the Senate. However, the 1970s Commission observed that the office of the directors of the penitentiary is no longer in existence. The Commission report further noted that, by the 1970s, the only state institution that could be considered a “benevolent institution,” the Ohio Soldiers’ and Sailors’ Orphans’ Home, was governed by a statutory five-member board of trustees appointed by the governor with the advice and consent of the Senate. Thus, neither Section 2 nor Section 3 was deemed to be necessary for the state to carry out functions related to the incarceration of prisoners or the support of state “benevolent institutions.”

Litigation Involving the Provision

In re Hamil, 69 Ohio St. 2d 97, 437 N.E.2d 317 (1982), invited the Supreme Court of Ohio to consider whether a “benevolent institution” included a private psychiatric facility. In that case, the juvenile court found a 13-year-old charged with delinquency to be a mentally ill person in need of hospitalization at a state facility. When the superintendent at the state facility determined a more appropriate placement was at a private facility, the court ordered the juvenile’s private placement and further ordered that the state would be responsible for the full expense of his care, with reimbursement by his parents to the extent of their insurance coverage and ability to pay. On appeal, the Court held the juvenile court had acted beyond the scope of its jurisdiction in ordering the state to pay the cost of care of a juvenile in a private psychiatric hospital.

Acknowledging Article VII, Section 1’s requirement that state institutions of this kind “shall always be fostered and supported,” the Court interpreted this mandate as indicating the state’s “strong responsibility to care for citizens placed in its public institutions.” *Id.*, 69 Ohio St. 2d at 99, 431 N.E.2d at 318. However, the Court observed that, historically, the phrase “benevolent institution” has been used to refer to state-owned and operated institutions, not private institutions. *Id.*, 69 Ohio St. 2d at 100, 431 N.E.2d at 318. Therefore, the Court found, “no justification exists * * * for imposing a similar duty upon the state to care for persons confined to privately operated facilities over which the state has no control.” *Id.*, 69 Ohio St. 2d at 99, 431 N.E.2d at 318.

Presentations and Resources Considered

Furderer Presentation

On March 9, 2017, the committee heard a presentation by Darin Furderer, who is a corrections analyst at the Correctional Institution Inspection Committee, on the leadership arrangements for correctional facilities and the use of the term “director.”

Mr. Furderer noted the title of “director” is not used to refer to the head of the penitentiary. He added that the DRC currently uses the term “warden” to refer to a person in charge of an adult correctional facility, and the Department of Youth Services uses the term “superintendent” to refer to a person in charge of a youth correctional facility.

Discussion and Consideration

The Committee noted that the governor appoints a “director” of DRC, who is the head of the department rather than the head of the penitentiary. The DRC director then appoints the persons who run the correctional facilities.

Committee members agreed the sections appear to be obsolete, noting that they focus on who appoints the heads of these institutions, an issue that has been settled for a long time and is not relevant to any present procedure.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VII, Sections 2 and 3 are no longer relevant and should be repealed.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on April 13, 2017, and _____, the committee voted to issue this report and recommendation on _____.

Endnotes

¹ An analysis of this debate, including a table of the participating delegates and an excerpt of the proceedings, is contained in a memorandum provided to the Committee. See O’Neill, Article VII (Public Institutions) at the 1851 Constitutional Convention (August 23, 2016). The discussion, in full, may be found in Ohio Convention Debates, pages 539-49, available at <http://quod.lib.umich.edu/m/moa/aey0639.0002.001?view=toc> (last visited Aug. 23, 2016).

² As originally introduced, Section 2 provided as follows:

The Directors of the Penitentiary, and the Trustees of the Benevolent Institutions, now elected by the General Assembly of the State, with such others as may be hereafter created by subsequent Legislative enactment shall, under this constitution, be appointed by the Governor, by and with the advice and consent of the Senate.

³ See David M. Gold, *Judicial Elections and Judicial Review: Testing the Shugerman Thesis*, 40 Ohio N. L. Rev. 39, 51 (2013).

⁴ See Barbara A. Terzian, *Ohio’s Constitutional Conventions and Constitutions*, in *The History of Ohio Law* 40, 52 (Michael Les Benedict and John F. Winkler, eds., 2004).

⁵ Currently, Section 3 provides: “The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified.”

⁶ As Steinglass and Scarselli note: “Over the course of five decades under the first constitution * * * the people began to see the legislature as the source of many, if not most, of the problems of government, and the new constitution reflected this general distrust of legislative power. * * * [T]he new constitution took the

appointment power away from the General Assembly. All key executive branch officers became elected officials, as did all judges.” Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 35 (2nd prtg. 2011).

⁷ R.C. 3.03 provides:

When a vacancy in an office filled by appointment of the governor, with the advice and consent of the senate, occurs by expiration of term or otherwise during a regular session of the senate, the governor shall appoint a person to fill such vacancy and forthwith report such appointment to the senate. If such vacancy occurs when the senate is not in session, and no appointment has been made and confirmed in anticipation of such vacancy, the governor shall fill the vacancy and report the appointment to the next regular session of the senate, and, if the senate advises and consents thereto, such appointee shall hold the office for the full term, otherwise a new appointment shall be made. A person appointed by the governor when the senate is not in session or on or after the convening of the first regular session and more than ten days before the adjournment sine die of the second regular session to fill an office for which a fixed term expires or a vacancy otherwise occurs is considered qualified to fill such office until the senate before the adjournment sine die of its second regular session acts or fails to act upon such appointment pursuant to section 21 of Article III, Ohio Constitution.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VII, SECTION 1

SUPPORT FOR PERSONS WITH CERTAIN DISABILITIES

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VII, Section 1 concerning public institutions for persons with certain disabilities, specifically, the “insane, blind, and deaf and dumb.” It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission’s Rules of Procedure and Conduct.

Recommendation

The committee recommends that Article VII, Section 1 be changed to modernize outdated language and clarify the state’s commitment to assisting persons with disabilities.

Background

Section 1 of Article VII reads as follows:

Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the General Assembly.

In addressing the topic of public institutions, the delegates to the 1850-51 Constitutional Convention devoted the greater portion of their discussion to the governance of the state correctional system, the purposes of incarceration, and the operation of prison facilities and prison labor programs.¹ Nevertheless, the consensus was that the state should play a role in assisting persons with disabilities, specifically, those who were “insane,” “blind,” and “deaf and dumb.”

The General Assembly has broad power to create institutions for the benefit of persons with mental or physical disabilities even without the authority in Section 1. Indeed, Ohio had been providing for the care and treatment of the “insane” since the early 1800s.² The new provision,

however, created a constitutional mandate that the state address this issue by providing that the institutions in question “shall always be fostered and supported by the state.”

The initial version of Section 1 had respectfully referred to the intended beneficiaries of the institutions being created as “inhabitants of the State who are deprived of reason, or any of the senses * * *.”³ The use of the word “senses,” however, was felt to be too broad and was replaced with language referring to the insane, blind, and deaf and dumb.

Amendments, Proposed Amendments, and Other Review

In the 1970s, the Ohio Constitutional Revision Commission (1970s Commission), recommended that Section 1 be retained without change.

The 1970s Commission engaged in extensive discussion, both at the committee and the Commission level, about how to describe the position of the state relative to the needs of persons with disabilities. Acknowledging the evolving state of “legal, and perhaps social, obligations to persons needing care,” the 1970s Commission struggled with how to recognize the state’s commitment as well as how to describe exactly which persons in need of care would be covered by the provision. The 1970s Commission recognized that the original language addressed only “the insane, blind, and deaf and dumb,” while some of the revisions they considered expanded the subject population to others in need of assistance, such as the aged, and the developmentally and mentally disabled. The 1970s Commission additionally wondered whether the word “institutions” should be clarified so as to create an obligation to help in settings outside of a physical facility, or whether the original concept of the state’s creating or funding schools, asylums, or other types of residential facilities should be maintained. The 1970s Commission also was concerned about using language that might suggest the state has an unlimited financial responsibility for the care of such persons. The committee of the 1970s Commission recommended the following language:

Facilities and treatment for persons who, by reason of disability or handicap, require care, treatment, or habilitation shall be fostered by the State. Such persons shall not be civilly confined unless, nor to a greater extent than, necessary to protect themselves or other persons from harm. Such persons, if civilly confined, have a right to appropriate habilitation, treatment, or care.

Although a majority of the 1970s Commission approved this proposal, it failed to achieve the necessary two-thirds support, and therefore did not become a recommendation. As reported by the 1970s Commission, the major objections “appeared to be grounded in the uncertainty of the state’s obligation as a result of the language,” with the result that the inclusion of the phrase “right to treatment” suggested to some members that the state would be taking on a greater burden than it could assume.

The failure of the recommendation to obtain the supermajority necessary for adoption prompted a minority report that was supported by 17 members of the 1970s Commission. As described by those signing the report, the first sentence of the recommended change states the same principle as the present constitution, allowing for more modern, less stigmatizing language. The minority

report further suggested that removing the word “support” from the original provision would indicate that the state was not extending a right to specific services or facilities. The minority report asserted that the second part of its recommendation was a statement of the state’s obligations under federal constitutional, statutory, and case law to provide due process as well as a right to appropriate care, treatment, or habilitation.

Litigation Involving the Provision

In re Hamil, 69 Ohio St.2d 97, 437 N.E.2d 317 (1982), invited the Supreme Court of Ohio to consider whether a state agency serving the mentally ill was required to cover the cost of care of a juvenile at a private psychiatric facility. In that case, the juvenile court found a 13-year-old charged with delinquency to be a mentally ill person in need of hospitalization at a state facility. When the superintendent at the state facility determined a more appropriate placement was at a private facility, the court ordered the juvenile’s private placement and further ordered that the state would be responsible for the full expense of his care, with reimbursement by his parents to the extent of their insurance coverage and ability to pay. On appeal, the Court held the juvenile court had acted beyond the scope of its jurisdiction in ordering the state to pay the cost of care of a juvenile in a private psychiatric hospital.

Acknowledging Article VII, Section 1’s requirement that state institutions of this kind “shall always be fostered and supported,” the Court interpreted this mandate as indicating the state’s “strong responsibility to care for citizens placed in its public institutions.” *Id.*, 69 Ohio St.2d at 99, 431 N.E.2d at 318. However, the Court found, “no justification exists * * * for imposing a similar duty upon the state to care for persons confined to privately operated facilities over which the state has no control.” *Id.* The Court additionally observed that, historically, the phrase “benevolent institution” has been used to refer to state-owned and operated institutions, not private institutions. *Id.*, 69 Ohio St.2d at 100, 431 N.E.2d at 318.

The Court rejected the parents’ argument that a substantial portion of the expenses would be paid by insurance, so that the state’s burden would be light. Instead, the Court reasoned that a decision solely based on the cost to the state would have negative repercussions, since in other cases the state would be called upon to “absorb the entire cost of treatment at an expensive private institution.” *Id.*, 69 Ohio St.3d at 104, 437 N.E.2d at 321.

Presentations and Resources Considered

Kirkman Presentation

On September 8, 2016, the committee heard a presentation by Michael Kirkman, who is executive director of Disability Rights Ohio, on the history of Article VII, Section 1, relating to “Institutions for the Insane, Blind, and Deaf and Dumb.”

Mr. Kirkman noted the word “institution” is ambiguous because an institution can be a physical place or a service, among other things. He added that the language of the section is not self-executing, requiring action by the General Assembly.

Describing the history of the state's involvement in the care of the mentally disabled, Mr. Kirkman said the earliest attempts to provide care reflected a lack of understanding. He noted that, in the 1800s, reformers Benjamin Rush and Dorothea Dix led campaigns to provide more humane treatment to mentally ill persons. He said during that period, twenty states expanded the number of mental hospitals. He noted that, prior to the passage of Section 1 in 1851, Ohio had provided for the care and treatment of the insane, although most responsibility fell to charities, counties, and churches. After 1851, the state population grew, and there came a need for the state to sponsor asylums to provide more humane treatment to the mentally ill. He said there was no scientific evidence that Dix's asylum model actually had a therapeutic value, but many believed asylums helped.

Mr. Kirkman commented that, as time went on, these institutions changed for the worse. Further problems were related to the philosophy behind the Eugenics Movement in the early 20th century, which regarded "feeble-mindedness" as being genetic, and which was viewed as justification for mandatory sterilization. Mr. Kirkman noted examples of persons or groups who were institutionalized or sterilized solely because of race or economic status rather than due to actual mental incapacity.

Mr. Kirkman remarked that, in the 1960s, attitudes changed, and the field of psychiatry adopted new views on treating and institutionalizing the mentally ill. He said during that period the mental hospital was replaced with community care and neighborhood clinics. In the 1980s, he said, law evolved to the point where the state is now required to provide training to people in commitment, and the mentally ill are afforded equal protection and due process rights under the Fourteenth Amendment to the United States Constitution.

He commented there has been a significant depopulation of state hospitals since the 1980s, with the unfortunate result that many mentally disabled persons became homeless or were imprisoned. He further noted that assistance to that population is now governed by the Americans with Disabilities Act (ADA), which focuses on services in the community rather than institutionalization.

He said Ohio currently has six psychiatric hospitals with a total of 1,067 beds. He said as many as 70 percent of this population has been committed as a result of a criminal proceeding.

Mr. Kirkman emphasized that the language used to describe those with psychiatric disabilities is a "major focus in the mental health world." He said the word "insane" is offensive and discriminatory, with the current trend in the Ohio Revised Code being to identify people first and the disability second.

Mr. Kirkman suggested that, because Ohio does not operate any institution for the "blind" or the "deaf and dumb," and because the trend is away from institutionalizing the mentally incapacitated, Article VII, Section 1 could be eliminated. As further support, he noted that funding state institutions takes away from community-based services. He said eliminating the section would not affect treatment of persons in the criminal justice system because treatment for those persons is required by the U.S. Constitution and derives from the inherent authority of the state to prescribe criminal laws.

Addressing the phrase “deaf and dumb” in Section 1, Mr. Kirkman said that the deaf community does not like the word “dumb,” and that many do not consider themselves as having a disability but rather that they simply have a different language. He said the main point is the deaf and blind are integrated into society now and are not institutionalized.

Mr. Kirkman described that the inherent authority to use public funds to assist the disabled lies with the general authority to provide for the general welfare of people in the state. But, he acknowledged, taking this language out could be viewed by some as eliminating a backstop.

Colker Presentation

On January 12, 2017, Ruth Colker, professor of law at the Ohio State University Moritz College of Law, presented to the committee in relation to the committee’s review of Article VII, Section 1. Prof. Colker indicated her first recommendation would be to repeal Section 1 as unnecessary. Failing that, she said, her second recommendation would be to recommend new language that would meet the underlying purpose of the original section, but would be more respectful and consistent with other provisions. She said, in this regard, she would recommend changing the language to state:

The state shall always foster and sustain services and supports for people with disabilities who need assistance to live independently; these services and supports will, to the maximum extent possible, be provided in the community, rather than in institutions.

Prof. Colker said, in formulating this language, she consulted with members of the disability rights community. She said the revision is more respectful, and offers a more functional definition of disability. She said another goal was to have the section be more consistent with modern notions under federal law and the United States Constitution.

Addressing the terms used in the current section to describe persons with disabilities, Prof. Colker said the disability rights community prefers “person first” language, thus persons with psychiatric impairment would not be described as “the insane.” She said the thinking behind this word choice is that disability status is only one aspect of personhood. She added that descriptors such as “insane” or “deaf or dumb” are not used. Instead, such persons would be described as being individuals with psychiatric, speech, sensory, visual, or intellectual impairments. Describing definitions that have been used at the federal level, she said no one definition would serve the purpose, and that the federal government has chosen different functional definitions depending on the context.

Prof. Colker emphasized considering the kind of assistance the state is saying it wants to provide. Noting federal case precedent, she said the United States Supreme Court and Congress have adopted the concept that people with disabilities should be integrated into communities as much as possible. She cited an example as being that the Individuals with Disabilities Education Act (IDEA) provides that states must have procedures assuring, to the maximum extent appropriate, that children with disabilities are educated with children who are not disabled, and that special or

separate placement occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary assistance cannot be achieved satisfactorily. She said this has been the preference since 1975, and suggests a default principle that persons with disabilities be placed in an integrated environment.

Noting Section 1's use of the word "institutions," Prof. Colker said this word choice suggests a preference for an institutional setting, a concept that is no longer the prevailing view. She said she tried to craft language that would indicate an understanding that, aspirationally, the state would try to place people in a community setting, rather than have the default be placing them in institutions.

She said this approach is also reflected in the Americans with Disabilities Act, which was passed in 1990. Citing the case of *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), she said the ADA is violated when people who are able to live in the community are placed in institutions because, as the U.S. Supreme Court concluded, unjustified isolation is discrimination based on disability. She noted that principle is stated in the Court's finding that there is a presumption of deinstitutionalization, and that states are required to provide community-based treatment for persons with mental disabilities when it is determined "that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." *Olmstead* at 607.

Addressing whether her suggested language could be interpreted as creating a fundamental right, Prof. Colker said that would depend on what doctrine or rule of law applies. She said she relied on the language in the *Olmstead* decision indicating the resources of the state are a consideration. She said, as a result, her recommendation would be to describe the state's obligation as being "to the maximum extent possible." She said the definition of a fundamental right does not mean limitless support, but rather means a court would develop a pragmatic rule that is flexible. She said one goal in changing Section 1 would be to maintain the principle articulated in the current provision that the state should be doing something for people who cannot live without assistance.

Prof. Colker said the current language indicates the state only has an obligation to support people who are in an institutional setting. She said from a policy perspective that is wrong, and is also unconstitutional and illegal.

Asked whether, if Ohio did not have Section 1, the standard would be found in state law, Prof. Colker said eliminating Section 1 would not have a significant impact because *Olmstead* already requires the state to provide for the disabled. She said a constitution is aspirational, and that keeping and refining the obligation set out in Section 1 would continue that aspirational goal using language that is respectful and modern.

Discussing her recommendation that the provision be changed to include the phrase "assistance to live independently," Prof. Colker said it is important to recognize that each individual might need a different level of assistance. As to whether the proposed language would create an obligation the state could not fulfill in a budget crisis, Prof. Colker said the current provision

mandates state support that would be important to maintain in any revision. She said, if rewriting the provision is not an option, her preference would be to delete it.

Pizzuti Presentation

Also on January 12, 2017, Marjory Pizzuti, who is president and chief executive officer of Goodwill Columbus, appeared before the committee to provide her organization's perspective on the state's support of people with disabilities. She said her organization serves more than 77,000 individuals, with 85 percent of those persons having a disadvantaging condition such as long-term unemployment, incarceration, low educational attainment, and physical or intellectual disabilities. She said Goodwill chapters throughout Ohio are partners and providers of services through many state agencies, including Opportunities for Ohioans with Disabilities, and the Ohio Departments of Aging, Jobs and Family Services, Developmental Disabilities, Rehabilitation and Corrections, and Mental Health and Addiction Services. She said her organization seeks to provide support to individuals with disabilities, and to assure that all citizens can be full and active participants in the community.

Addressing current Section 1, Ms. Pizzuti said the commitment to community-based integration may be fundamentally at odds with the intent of Section 1, which specifically references "institutions." She said Section 1 raises three issues: the wording used, the appropriateness of continuing to include a provision that focuses on institutionalizing people with disabilities, and the fundamental question of whether any reference to a specific population should be included anywhere in the Ohio Constitution.

With regard to the terminology used to describe persons with disabilities, Ms. Pizzuti said the current section is not only offensive but inappropriate based on the current understanding of illness and disabilities. She said, while this language was relevant at the time of adoption, it has no place in current or future revisions of the Ohio Constitution. However, she recognized that an attempt to revise the terminology is difficult and ultimately would not resolve the problem because society's perception of individuals with disabilities continues to evolve.

Ms. Pizzuti continued that the movement toward community integration has been reflected in the downsizing of the state's institutional facilities, the increase in competitive integrated employment, and the transition into community-based settings. She said this is an intentional and widely-acknowledged paradigm shift for the full integration of individuals with physical and intellectual disabilities into communities.

Acknowledging the good intentions of the drafters of Section 1 to protect and serve individuals with disabilities, she said the previous practice of institutionalizing people with disabilities has given way to policies that favor community-based support.

Ms. Pizzuti said there is a more fundamental question of whether a need to foster and support individuals with disabilities has a place in the constitution, and, if so, where it should be placed. She said it is possible such a "general welfare" statement could be incorporated in the Bill of Rights or the Preamble. She said Article VII, Section 1 provides an important voice for individuals with disabilities, although the notion of institutionalization and the language used is

obsolete. She encouraged the committee to work toward balancing the need to modernize the language with the need to reaffirm the spirit of the intent of the provision, which is to provide assistance that “fosters and supports” opportunities for individuals with disabilities.

Hetrick Presentation

Finally, on January 12, 2017, the committee heard a presentation by Sue Hetrick, executive director of the Center for Disability Empowerment, to provide her agency’s perspective on potential changes to Section 1. Ms. Hetrick described that her agency operates a center for independent living, and that such facilities have been around since the 1970s. She said the concept that persons with disabilities, with assistance, could be integrated into the community corresponded with the civil rights movement. She said her organization emphasizes consumer control, and that 51 percent of the board of directors is comprised of persons who are disabled.

Ms. Hetrick said disability is regarded as a neutral difference, meaning that it results from the interaction of the individual with his or her environment, rather than from other causes. She said, despite the emphasis on integrating persons into the community, Ohio continues to have a culture of institutions, maintaining schools for the deaf and for the blind, as well as nursing facilities sometimes being mental health institutions. She said any congregate setting can be an institution. However, she said, under *Olmstead*, if the appropriate supports and services are in place segregation is not necessary.

Asked whether, if Section 1 is not revised, it should be removed or kept as is, Ms. Hetrick remarked that, if the constitution is to provide sections protecting gender and religion, there should be a section acknowledging and protecting persons with disabilities. Thus, she said, if revision is not an option she would prefer that the section be left as is.

Discussion and Consideration

While all committee members agreed that the current references to “the insane” and the “deaf and dumb,” are outdated and disrespectful, there was concern that alternate language may overly broaden the scope of the state’s responsibility by expanding the population to be served.

In considering how to phrase the state’s involvement in fostering and supporting care, committee members indicated a concern that state resources could be stretched beyond capacity if the constitutional provision were written or interpreted as requiring limitless support. Committee members also expressed concern that use of the term “disability” may be vague, preferring language to allow the General Assembly to determine which conditions will be subject to the provision.

The committee discussed whether the reference to “institutions” indicates that the state has an obligation to provide physical facilities, or whether, more broadly, it suggests a state obligation to accommodate the needs of persons with disabilities, whatever those needs may require. Committee members observed that the current trend is away from institutionalizing persons in need of care. Instead, for example, mentally ill persons often benefit from community-based treatment. In addition, children with vision or hearing impairments, with appropriate assistance,

can attend public schools. Some members expressed support for a change that would indicate the state would provide support “to the maximum extent appropriate,” which would allow the creation of facilities for persons requiring an institutional setting.

Some committee members expressed that Section 1 could be removed without eliminating the General Assembly’s authority to enact laws assisting the subject populations. However, members acknowledged that a recommendation to repeal Section 1 should not be interpreted as suggesting that the state should no longer foster programs that support the disabled. In the end, the committee decided against recommending repeal of the section.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VII, Section 1 should be replaced with the following language:

Facilities for and services to persons who, by reason of disability, require care, treatment, or habilitation shall be fostered and supported by the state, as may be prescribed by the General Assembly.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on April 13, 2017, and _____, the committee voted to issue this report and recommendation on _____.

Endnotes

¹ An analysis of this debate, including a table of the participating delegates and an excerpt of the proceedings, is contained in a memorandum provided to the Committee. *See* O’Neill, Article VII (Public Institutions) at the 1851 Constitutional Convention (August 23, 2016). The discussion, in full, may be found in Ohio Convention Debates, pages 539-49, available at <http://quod.lib.umich.edu/m/moa/ae90639.0002.001?view=toc> (last visited Aug. 23, 2016).

² *See* Eagle and Kirkman, Ohio Mental Health Law, Section 1.11 (2nd Ed. Banks-Baldwin). *See generally* Kirkman, “Fostering” Institutions and People with Disabilities (Sept. 8, 2016) (presentation to the Ohio Constitutional Modernization Commission).

³ As originally introduced, Section 1 provided as follows:

The Institutions for the benefit of these classes of the inhabitants of the State who are deprived of reason, or any of the senses, shall always be fostered and supported by the State, and be regulated by law so as to be open to all classes alike, subject only to reasonable restrictions.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Vice-chair Ed Gilbert and Members of the Education, Public Institutions, and Local Government Committee

FROM: Shari L. O'Neill, Counsel to the Commission

DATE: February 17, 2017

RE: Remaining Articles Assigned to the Committee

To date, the Education, Public Institutions, and Local Government Committee has reviewed Article VI (Education) and Article VII (Public Institutions). Sections contained in Articles X (County and Township Organizations), XV (Miscellaneous), and XVIII (Municipal Corporations) also have been assigned to the committee for review, and are provided below:

ARTICLE X – County and Township Organizations

Section 1 – (Organization and government of counties; county home rule; submission)

The General Assembly shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government. No alternative form shall become operative in any county until submitted to the electors thereof and approved by a majority of those voting thereon under regulations provided by law. Municipalities and townships shall have authority, with the consent of the county, to transfer to the county any of their powers or to revoke the transfer of any such power, under regulations provided by general law, but the rights of initiative and referendum shall be secured to the people of such municipalities or townships in respect of every measure making or revoking such transfer, and to the people of such county in respect of every measure giving or withdrawing such consent.

(Adopted Nov. 7, 1933; 115 v PtII, 443.)

Section 2 – (Township officers; election; power)

The General Assembly shall provide by general law for the election of such township officers as may be necessary. The trustees of townships shall have such powers of local taxation as may be prescribed by law. No money shall be drawn from any township treasury except by authority of law.

(Adopted Nov. 7, 1933; 115 v PtII 443 [444].)

Section 3 – (County charters; approval by voters)

The people of any county may frame and adopt or amend a charter as provided in this article but the right of the initiative and referendum is reserved to the people of each county on all matters which such county may now or hereafter be authorized to control by legislative action. Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law. Any such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. Any charter or amendment which alters the form and offices of county government or which provides for the exercise by the county of power vested in municipalities by the constitution or laws of Ohio, or both, shall become effective if approved by a majority of the electors voting thereon. In case of conflict between the exercise of powers granted by such charter and the exercise of powers by municipalities or townships, granted by the constitution or general law, whether or not such powers are being exercised at the time of the adoption of the charter, the exercise of power by the municipality or township shall prevail. A charter or amendment providing for the exclusive exercise of municipal powers by the county or providing for the succession by the county to any property or obligation of any municipality or township without the consent of the legislative authority of such municipality or township shall become effective only when it shall have been approved by a majority of those voting thereon (1) in the county, (2) in the largest municipality, (3) in the county outside of such municipality, and (4) in counties having a population, based upon the latest preceding federal decennial census of 500,000 or less, in each of a majority of the combined total of municipalities and townships in the county (not included within any township any part of its area lying within a municipality). (As amended November 5, 1957.)

Section 4 – (County charter commission; election, etc.)

The Legislative authority (which includes the Board of County Commissioners) of any county may by a two-thirds vote of its members, or upon petition of eight per cent of the electors of the county as certified by the election authorities of the county shall forthwith, by resolution submit to the electors of the county the question, "Shall a county charter commission be chosen?" The question shall be voted upon at the next general election, occurring not sooner than ninety-five days after certification of the resolution to the election authorities. The ballot containing the question shall bear no party designation. Provision shall be made thereon for the election to such commission from the county at large of fifteen electors if a majority of the electors voting on the question have voted in the affirmative.

Candidates for such commission shall be nominated by petition of one per cent of the electors of the county. The petition shall be filed with the election authorities no less than seventy-five days prior to such election. Candidates shall be declared elected in the order of the number of votes received, beginning with the candidate receiving the largest number; but not more than seven candidates residing in the same city or village may be elected. The holding of a public office



does not preclude any person from seeking or holding membership on a county charter commission nor does membership on a county charter commission preclude any such member from seeking or holding other public office, but not more than four officeholders may be elected to a county charter commission at the same time. The legislative authority shall appropriate sufficient sums to enable the charter commission to perform its duties and to pay all reasonable expenses thereof.

The commission shall frame a charter for the county or amendments to the existing charter, and shall, by vote of a majority of the authorized number of members of the commission, submit the same to the electors of the county, to be voted upon at the next general election next following the election of the commission. The commission shall certify the proposed charter or amendments to the election authorities not later than seventy-five days prior to such election. Amendments to a county charter or the question of the repeal thereof may also be submitted to the electors of the county in the manner provided in this section for the submission of the question whether a charter commission shall be chosen, to be voted upon at the first general election occurring not sooner than sixty days after their submission. The legislative authority or charter commission submitting any charter or amendment shall, not later than thirty days prior to the election on such charter or amendment, mail or otherwise distribute a copy thereof to each of the electors of the county as far as may be reasonably possible, except that, as provided by law, notice of proposed amendments may be given by newspaper advertising. Except as provided in Section 3 of this Article, every charter or amendment shall become effective if it has been approved by the majority of the electors voting thereon. It shall take effect on the thirtieth day after such approval unless another date be fixed therein. When more than one amendment, which shall relate to only one subject but may affect or include more than one section or part of a charter, is submitted at the same time, they shall be so submitted as to enable the electors to vote on each separately. In case more than one charter is submitted at the same time or in case of conflict between the provisions of two or more amendments submitted at the same time, that charter or provision shall prevail which received the highest affirmative vote, not less than a majority. If a charter or amendment submitted by a charter commission is not approved by the electors of the county, the charter commission may resubmit the same one time, in its original form or as revised by the charter commission, to the electors of the county at the next succeeding general election or at any other election held throughout the county prior thereto, in the manner provided for the original submission thereof.

The legislative authority of any county, upon petition of ten per cent of the electors of the county, shall forthwith, by resolution, submit to the electors of the county, in the manner provided in this section for the submission of the question whether a charter commission shall be chosen, the question of the adoption of a charter in the form attached to such petition.

Laws may be passed to provide for the organization and procedures of county charter commissions, including the filling of any vacancy which may occur, and otherwise to facilitate the operation of this section. The basis upon which the required number of petitioners in any case provided for in this section shall be determined, shall be the total number of votes cast in the county for the office of Governor at the last preceding general election therefor.

The foregoing provisions of this section shall be self-executing except as herein otherwise provided.

(Amended, effective Nov. 7, 1978; SJR No.11.)



ARTICLE XV – Miscellaneous

Section 1 – (Seat of government)

Columbus shall be the seat of government, until otherwise directed by law.

Section 3 – (Receipts and expenditures)

An accurate and detailed statement of the receipts and expenditures of the public money, the several amounts paid, to whom, and on what account, shall, from time to time, be published, as shall be prescribed by law.

Section 4 – (Who is eligible to office)

No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector. (As amended Nov. 3, 1953; 125 v 1095.)

Section 6 – (Lotteries, charitable bingo, casinos)

Except as otherwise provided in this section, lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State.

(A) The General Assembly may authorize an agency of the state to conduct lotteries, to sell rights to participate therein, and to award prizes by chance to participants, provided that the entire net proceeds of any such lottery are paid into a fund of the state treasury that shall consist solely of such proceeds and shall be used solely for the support of elementary, secondary, vocational, and special education programs as determined in appropriations made by the General Assembly.

(B) The General Assembly may authorize and regulate the operation of bingo to be conducted by charitable organizations for charitable purposes.

(C)(1) Casino gaming shall be authorized at four casino facilities (a single casino at a designated location within each of the cities of Cincinnati, Cleveland, and Toledo, and within Franklin County) to create new funding for cities, counties, public school districts, law enforcement, the horse racing industry and job training for Ohio's workforce.

(2) A thirty-three percent tax shall be levied and collected by the state on all gross casino revenue received by each casino operator of these four casino facilities. In addition, casino operators, their operations, their owners, and their property shall be subject to all customary non-discriminatory fees, taxes, and other charges that are applied to, levied against, or otherwise imposed generally upon other Ohio businesses, their gross or net revenues, their operations, their owners, and their property. Except as otherwise provided in section 6(C), no other casino gaming-related state or local fees, taxes, or other charges (however measured, calculated, or otherwise derived) may be, directly or indirectly, applied to, levied against, or otherwise imposed upon gross casino revenue, casino operators, their operations, their owners, or their property.

(3) The proceeds of the tax on gross casino revenue collected by the state shall be distributed as follows:

(a) Fifty-one percent of the tax on gross casino revenue shall be distributed among all eighty-eight counties in proportion to such counties' respective populations at the time of such distribution. If a county's most populated city, as of the 2000 United States census bureau census,



had a population greater than 80,000, then fifty percent of that county's distribution will go to said city.

(b) Thirty-four percent of the tax on gross casino revenue shall be distributed among all eighty-eight counties in proportion to such counties' respective public school district student populations at the time of such distribution. Each such distribution received by a county shall be distributed among all public school districts located (in whole or in part) within such county in proportion to each school district's respective student population who are residents of such county at the time of such distribution to the school districts. Each public school district shall determine how its distributions are appropriated, but all distributions shall only be used to support primary and secondary education.

(c) Five percent of the tax on gross casino revenue shall be distributed to the host city where the casino facility that generated such gross casino revenue is located.

(d) Three percent of the tax on gross casino revenue shall be distributed to fund the Ohio casino control commission.

(e) Three percent of the tax on gross casino revenue shall be distributed to an Ohio state racing commission fund to support purses, breeding programs, and operations at all existing commercial horse racetracks permitted as of January 1, 2009. However, no funding under this division shall be distributed to operations of an Ohio commercial horse racetrack if an owner or operator of the racetrack holds a majority interest in an Ohio casino facility or in an Ohio casino license.

(f) Two percent of the tax on gross casino revenue shall be distributed to a state law enforcement training fund to enhance public safety by providing additional training opportunities to the law enforcement community.

(g) Two percent of the tax on gross casino revenue shall be distributed to a state problem gambling and addictions fund which shall be used for the treatment of problem gambling and substance abuse, and related research.

Tax collection, and distributions to public school districts and local governments, under sections 6(C)(2) and (3), are intended to supplement, not supplant, any funding obligations of the state. Accordingly, all such distributions shall be disregarded for purposes of determining whether funding obligations imposed by other sections of this Constitution are met.

(4) There is hereby created the Ohio casino control commission which shall license and regulate casino operators, management companies retained by such casino operators, key employees of such casino operators and such management companies, gaming-related vendors, and all gaming authorized by section 6(C), to ensure the integrity of casino gaming.

Said commission shall determine all voting issues by majority vote and shall consist of seven members appointed by the governor with the advice and consent of the senate. Each member of the commission must be a resident of Ohio. At least one member of the commission must be experienced in law enforcement and criminal investigation. At least one member of the commission must be a certified public accountant experienced in accounting and auditing. At least one member of the commission must be an attorney admitted to the practice of law in Ohio. At least one member of the commission must be a resident of a county where one of the casino facilities is located. Not more than four members may be affiliated with the same political party. No commission member may have any affiliation with an Ohio casino operator or facility.

Said commission shall require each initial licensed casino operator of each of the four casino facilities to pay an upfront license fee of fifty million dollars (\$50,000,000) per casino facility for the benefit of the state, for a total of two hundred million dollars (\$200,000,000). The upfront license fee shall be used to fund state economic development programs which support



regional job training efforts to equip Ohio's workforce with additional skills to grow the economy.

To carry out the tax provisions of section 6(C), and in addition to any other enforcement powers provided under Ohio law, the tax commissioner of the State and the Ohio casino control commission, or any person employed by the tax commissioner or said commission for that purpose, upon demand, may inspect books, accounts, records, and memoranda of any person subject to such provisions, and may examine under oath any officer, agent, or employee of that person.

(5) Each initial licensed casino operator of each of the four casino facilities shall make an initial investment of at least two hundred fifty million dollars (\$250,000,000) for the development of each casino facility for a total minimum investment of one billion dollars (\$1,000,000,000) statewide. A casino operator: (a) may not hold a majority interest in more than two of the four licenses allocated to the casino facilities at any one time; and (b) may not hold a majority interest in more than two of the four casino facilities at any one time.

(6) Casino gaming authorized in section 6(C) shall be conducted only by licensed casino operators of the four casino facilities or by licensed management companies retained by such casino operators. At the discretion of each licensed casino operator of a casino facility: (a) casino gaming may be conducted twenty-four hours each day; and (b) a maximum of five thousand slot machines may be operated at such casino facility.

(7) Each of the four casino facilities shall be subject to all applicable state laws and local ordinances related to health and building codes, or any related requirements and provisions. Notwithstanding the foregoing, no local zoning, land use laws, subdivision regulations or similar provisions shall prohibit the development or operation of the four casino facilities set forth herein, provided that no casino facility shall be located in a district zoned exclusively residential as of January 1, 2009.

(8) Notwithstanding any provision of the Constitution, statutes of Ohio, or a local charter and ordinance, only one casino facility shall be operated in each of the cities of Cleveland, Cincinnati, and Toledo, and in Franklin County.

(9) For purposes of this section 6(C), the following definitions shall be applied:

"Casino facility" means all or any part of any one or more of the following properties (together with all improvements situated thereon) in Cleveland, Cincinnati, Toledo, and Franklin County:

(a) Cleveland:

Being an approximate 61 acre area in Cuyahoga County, Ohio, as identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel numbers 004-28-001, 004-29-004A, 004-29-005, 004-29-008, 004-29-009, 004-29-010, 004-29-012, 004-29-013, 004-29-014, 004-29-020, 004-29-018, 004-29-017, 004-29-016, 004-29-021, 004-29-025, 004-29-027, 004-29-026, 004-28-008, 004-28-004, 004-28-003, 004-28-002, 004-28-010, 004-29-001, 004-29-007 and 004-04-017 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcels.

Being an approximate 8.66 acre area in Cuyahoga County, Ohio, being that parcel identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel number 101-21-002 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcel.

Being an approximate 2.56 acre area in Cuyahoga County, Ohio, being that parcel identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel number 101-21-002 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcel.



Being an approximate 7.91 acre area in Cuyahoga County, Ohio, being that parcel identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel number 101-23-050A and all lands and air rights lying within and/or above the public rights of way adjacent to such parcel.

All air rights above the parcel located in Cuyahoga County, Ohio identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel number 101-22-003.

Being an approximate 1.55 acre area in Cuyahoga County, Ohio, as identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel numbers 122-18-010, 122-18-011 and 122-18-012 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcels.

Being an approximate 1.83 acre area in Cuyahoga County, Ohio, as identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel numbers 101-30-002 and 101-30-003 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcels.

Consisting of floors one through four, mezzanine, basement, sub-basement, Parcel No. 36-2, Item III, Parcels First and Second, Item V, Parcel A, and Item VI, Parcel One of the Higbee Building in Cuyahoga County, Ohio, as identified by the Cuyahoga County Auditor, as of 2/29/09, as tax parcel numbers 101-23-002 and 101-23-050F and all lands and air rights lying within and/or above the public rights of way adjacent to such parcels.

(b) Franklin County:

Being an approximate 113.794 acre area in Franklin County, Ohio, as identified by the Franklin County Auditor, as of 01/19/10, as tax parcel number 140-003620-00.

(c) Cincinnati:

Being an approximate 20.4 acre area in Hamilton County, Ohio, being identified by the Hamilton County Auditor, as of 02/27/09, as tax parcel numbers 074-0002-0009-00, 074-0001-0001-00, 074-0001-0002-00, 074-0001-0003-00, 074-0001-0004-00, 074-0001-0006-00, 074-0001-0008-00, 074-0001-0014-00, 074-0001-0016-00, 074-0001-0031-00, 074-0001-0039-00, 074-0001-0041-00, 074-0001-0042-00, 074-0001-0043-00, 074-0002-0001-00, 074-0004-0001-00, 074-0004-0002-00, 074-0004-0003-00 and 074-0005-0003-00.

(d) Toledo:

Being an approximate 44.24 acre area in the City of Toledo, Lucas County, Ohio, as identified by the Lucas County Auditor, as of 03/05/09, as tax parcel numbers 18-76138 and 18-76515.

"Casino gaming" means any type of slot machine or table game wagering, using money, casino credit, or any representative of value, authorized in any of the states of Indiana, Michigan, Pennsylvania and West Virginia as of January 1, 2009, and shall include slot machine and table game wagering subsequently authorized by, but shall not be limited by subsequent restrictions placed on such wagering in, such states. Notwithstanding the aforementioned definition, "casino gaming" does not include bingo, as authorized in article XV, section 6 of the Ohio Constitution and conducted as of January 1, 2009, or horse racing where the pari-mutuel system of wagering is conducted, as authorized under the laws of Ohio as of January 1, 2009.

"Casino operator" means any person, trust, corporation, partnership, limited partnership, association, limited liability company or other business enterprise that directly holds an ownership or leasehold interest in a casino facility. "Casino operator" does not include an agency of the state, any political subdivision of the state, or any person, trust, corporation, partnership, limited partnership, association, limited liability company or other business enterprise that may have an interest in a casino facility, but who is legally or contractually restricted from conducting casino gaming.



"Gross casino revenue" means the total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects by casino patrons, less winnings paid to wagerers.

"Majority interest" in a license or in a casino facility (as the case may be) means beneficial ownership of more than fifty percent (50%) of the total fair market value of such license or casino facility (as the case may be). For purposes of the foregoing, whether a majority interest is held in a license or in a casino facility (as the case may be) shall be determined in accordance with the rules for constructive ownership of stock provided in Treas. Reg. § 1.409A-3(i)(5)(iii) as in effect on January 1, 2009.

"Slot machines" shall include any mechanical, electrical, or other device or machine which, upon insertion of a coin, token, ticket, or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, makes individual prize determinations for individual participants in cash, premiums, merchandise, tokens, or any thing of value, whether the payoff is made automatically from the machine or in any other manner.

"Table game" means any game played with cards, dice, or any mechanical, electromechanical, or electronic device or machine for money, casino credit, or any representative of value.

(10) The General Assembly shall pass laws within six months of the effective date of section 6(C) to facilitate the operation of section 6(C).

(11) Each provision of section 6(C) is intended to be independent and severable, and if any provision of section 6(C) is held to be invalid, either on its face or as applied to any person or circumstance, the remaining provisions of section 6(C), and the application thereof to any person or circumstance other than those to which it is held invalid, shall not be affected thereby. In any case of a conflict between any provision of section 6(C) and any other provision contained in this Constitution, the provisions of section 6(C) shall control.

(12) Notwithstanding the provisions of section 6(C)(11), nothing in this section 6(C) (including, without limitation, the provisions of sections 6(C)(6) and 6(C)(8)) shall restrict or in any way limit lotteries authorized under section 6(A) of this article or bingo authorized under section 6(B) of this article. The provisions of this section 6(C) shall have no effect upon activities authorized under sections 6(A) and/or (6)(B) of this article.

(HJR No.16; Effective November 5, 1975)

(SJR 9; Adopted November 3, 1987, effective January 1, 1988)

(Adopted November 3, 2009; Proposed by Initiative Petition)

(SJR 8; Adopted May 4, 2010; Effective May 4, 2010)

Section 7 – (Oath of officers)

Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this state, and also an oath of office.

Section 10 – (Civil service)

Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.

(Adopted September 3, 1912.)



Section 11 – (Marriage amendment)

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

(Adopted Nov. 2, 2004; Proposed by Initiative Petition)

ARTICLE XVIII – Municipal Corporations**Section 1 – (Classification)**

Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

(Adopted September 3, 1912.)

Section 2 – (General and additional laws)

General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

(Adopted September 3, 1912.)

Section 3 – (Powers)

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

(Adopted September 3, 1912.)

Section 4 – (Acquisition of public utility; contract for service; condemnation)

Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

(Adopted September 3, 1912.)



Section 5 – (Acquisition by ordinance; procedure; referendum; submission)

Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

(Adopted September 3, 1912.)

Section 6 – (Sale of surplus)

Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per cent of the total service or product supplied by such utility within the municipality, provided that such fifty per cent limitation shall not apply to the sale of water or sewage services.

(As amended November 3, 1959.)

Section 7 – (Home rule)

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

(Adopted September 3, 1912.)

Section 8 – (Submission of question of election of charter commission; approval)

The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general



election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

(Adopted September 3, 1912.)

Section 9 – (Amendments to charter; submission; approval)

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the general assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

(Amended January 1, 1971.)

Section 10 – (Appropriation in excess of public use)

A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

(Adopted September 3, 1912.)

Section 11 – (Assessments for cost of appropriating property)

Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation.

(Adopted September 3, 1912.)

Section 12 – (Bonds for public utilities)

Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such



municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

(Adopted September 3, 1912.)

Section 13 – (Taxation, debts, reports, and accounts)

Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

(Adopted September 3, 1912.)

Section 14 – (Elections)

All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

(Adopted September 3, 1912.)



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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2017 Meeting Dates

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14