



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 Furderer said that the term “director” is outdated and is no longer used to refer to the head of the penitentiary.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.

/s/ Edward Gilbert _____
Edward Gilbert, Vice-chair