



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE FOR THE MEETING HELD THURSDAY, APRIL 13, 2017

Call to Order:

Vice-chair Edward Gilbert called the meeting to order at 9:44 a.m.

Members Present:

A quorum was present with Vice-chair Gilbert, and committee members Beckett, Coley, Craig, Cupp, Taft, and Talley in attendance.

Approval of Minutes:

The minutes of the March 9, 2017 meeting of the committee were approved.

Reports and Recommendations:

Article VII, Sections 2 and 3 (Directors of Public Institutions)

Vice-chair Gilbert began the meeting by bringing up the report and recommendation for Article VII, Sections 2 and 3, recommending repeal of these provisions relating to directors of the penitentiary and other public institutions. The committee confirmed that these constitutional provisions are outdated and should be repealed. Committee member Bob Taft moved the first reading of the report and recommendation, second by Senator Bill Coley. There were no objections.

Article VII, Section 1 (Support for Persons with Certain Disabilities)

Vice-chair Gilbert then turned the committee's attention to the report and recommendation for Article VII, Section 1, recommending amended language regarding the state's responsibility toward persons with disabilities. At its previous meeting, the committee had requested Disability Rights Ohio to review the proposed constitutional language and seek comments from allied

interest groups. Vice-chair Gilbert recognized Mr. Michael Kirkman, executive director of Disability Rights Ohio, to provide an update.

Mr. Kirkman reported that his consultations resulted in a couple of recommended changes to the proposed language. First, he said the term “habilitation” has become a term of art used primarily for Medicaid. As the term is now used, it generally means care and treatment, which would make its use redundant in the context of the proposed constitutional language. Therefore, Mr. Kirkman recommended the term be removed.

Mr. Kirkman went on to recommend including a specific reference to the independence of individuals with disabilities and their integration into the community. In particular, he recommended that, after the phrase “supported by the state,” the following phrase suggested by Prof. Ruth Colker be inserted: “and to the maximum extent possible, support independence and integration in the community.”

In discussing the suggested changes, committee members agreed that “habilitation” could be removed, but expressed concern about the other recommendation. Representative Bob Cupp expressed concern that the phrase “maximum extent possible” would be undefinable and could lead to significant litigation. Committee member Bob Taft said he felt the suggested language was vague and, in any event, would be more appropriate as statutory language.

Sen. Coley formally proposed removal of “habilitation” from the language in the report and recommendation and all committee members agreed. The committee decided not to make any additional changes.

There being no further questions or discussion, Vice-chair Gilbert thanked Mr. Kirkman for his presentation and ongoing assistance in helping the committee improve the proposed language in the committee’s report.

Committee member Petee Talley moved the first reading of the report and recommendation, to which all members agreed, with the revised constitutional wording as follows:

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

Presentations and Discussion:

Vice-chair Gilbert then recognized Gov. Taft to begin discussion regarding municipal home rule as found in Article XVIII, Section 3.

Gov. Taft referred the committee to a recommendation provided by the Ohio Municipal League (OML) dated April 10, 2017. As the recommendation had only arrived two days before the meeting, Gov. Taft suggested asking representatives from OML to present their recommendation at the next committee meeting. He also suggested notifying the offices of the Attorney General, the House Speaker, and the Senate President that the committee will be considering issues of

municipal pre-emption by state law and requesting any comments on the OML recommendations.

Senior Policy Advisor Steven H. Steinglass commented that Harold Babbit, adjunct professor at Cleveland-Marshall College of Law, and Columbus Attorney John E. Gotherman might be able to offer testimony on the complex issue of home rule based on their prior work. In particular, Mr. Steinglass referenced the prior testimony of Prof. Babbit at the July 11, 2013 committee meeting. Vice-chair Gilbert requested staff to distribute Prof. Babbit's testimony to the committee.

Committee members briefly discussed and agreed regarding the importance of including municipal residency requirements as part of the home rule discussion.

Mr. Steinglass provided some background on the history of municipal authority in Ohio. In the 19th century, he said, cities needed to obtain specific legislative approval for all authority. Many disputes and political battles between cities and the state led to the adoption of the home rule provision following the 1912 constitutional convention. Mr. Steinglass explained that the provision provides two powers: (1) an unqualified power of local self-government; and (2) a qualified local police power that may not conflict with general laws of the state. He said the local police power has been litigated often as to what constitutes a "conflict." He noted the Supreme Court has a multi-part test to determine if a conflict exists between local and state law.

In discussing this background, Vice-chair Gilbert asked about the parts of the Supreme Court's conflict test. Mr. Steinglass offered to verify the details of the test and report back to the committee. Rep. Cupp also clarified that "police power" in this situation means the broad regulatory power of municipalities, not just law enforcement.

The committee discussed how to proceed with this issue. Rep. Cupp requested to hear from a variety of interest groups on the clarification or expansion of home rule power in order to obtain a balanced perspective on the issue. Members suggested notifying the chamber of commerce and public employee unions, as well as the Ohio Certified Public Accountant association and the National Federation of Independent Businesses, based on some current issues before the legislature involving those organizations. Gov. Taft requested that all contacted parties receive the OML suggestion for comment and reaction and that there be good public notice for the committee's discussion of this topic. Vice-chair Gilbert requested Mr. Steinglass and staff to help identify groups who may be able to testify on different sides of the issue.

Committee members agreed to prioritize the issue of municipal home rule for their next meeting in May.

Vice-chair Gilbert opened the floor to public comment on the issue of municipal home rule. No members of the public offered comment.

Gov. Taft then brought to the committee's attention a concern expressed by the County Commissioners Association of Ohio (CCAO) regarding salaries of county commissioners. He noted the pay of county elected officials is governed by Article II, Section 20, which prohibits

any change of salary during a term of office. He said due to the staggered terms of county commissioners, this constitutional provision results in different commissioners receiving different salaries at the same time when a pay change is enacted by the General Assembly. In an email to Gov. Taft, CCAO asserted that all commissioners should be paid the same and suggested that compensation for county officials should be addressed in the same manner as judges in Article IV, Section 6(B).

The committee briefly discussed how to address this issue. Rep. Cupp mentioned that a constitutional amendment had been proposed in the Senate to create a special state commission that would set the pay of all public officials in Ohio. He said any consideration of this issue should keep the state commission approach in mind.

Mr. Beckett commented that the concept of prohibiting mid-term pay raises is commonly accepted, so it may be difficult to change. Gov. Taft noted that there is a difference between elected officials voting for their own pay raise, such as pay raises for General Assembly members, versus the legislature voting to raise the pay of other officials.

The committee discussed possible interested parties on this issue, including taxpayer associations and local government associations. Vice-chair Gilbert requested staff to obtain testimony on this issue for the June meeting.

Vice-chair Gilbert reviewed the previous assignment of certain members to do an initial review of different constitutional articles. He said, unfortunately, committee member Paula Brooks may not be able to undertake the county and township issues in Article X, so volunteers were requested. Committee member Roger Beckett was asked and agreed to review this article.

Vice-chair Gilbert requested that assigned members provide comments on their assigned sections to staff for distribution to the committee before the June meeting so that the list of provisions from each section can be discussed at that meeting. The assigned members are: Mr. Beckett on Article X, Mr. Gilbert on Article XV, and Gov. Taft on Article XVIII.

Vice-chair Gilbert then recognized Sen. Coley to begin discussion of the casino gaming provisions in Article XV, Section 6.

Sen. Coley stated his belief that the constitution should not contain specific business plans or create private monopolies like the provisions related to casino gaming. In addition, he expressed concern about the constitutionality of some current statutes related to casinos. He suggested that the casino gaming provisions should be removed from the constitution and placed in state statute. Sen. Coley circulated for committee consideration the following proposed constitutional changes to Article XV, Section 6:

- Delete sections (C)(1), (C)(2), (C)(3), (C)(5), (C)(6), (C)(8), (C)(9), (C)(10), (C)(11), and (C)(12) and convert the same provisions, if possible, into statutory language.
- Create the following new sections using language from the existing sections:

- (C)(1) Casino gaming is hereby authorized in the state of Ohio to create new funding for cities, counties, public school districts, law enforcement, the horse racing industry and job training for Ohio’s workforce.
- (C)(2) One hundred percent of the tax revenue derived from such gaming shall be distributed to or used for education, local governments, law enforcement training, the treatment of problem gaming and substance abuse, the Ohio state racing commission, and the operation of the Ohio casino control commission.
- Make the following changes in remaining sections:
 - In (C)(4): insert “no less than” before “fifty million dollars.”
 - In (C)(4): delete “for a total of two hundred million dollars (\$200,000,000).”
 - In (C)(4): delete “To carry out the tax provisions of section 6(C), and.”
 - In (C)(7): delete the word “four” where it appears before the word “casino.”

Gov. Taft requested clarification about how the transfer of language from the constitution into statute would happen. Sen. Coley suggested having simultaneous ballot issues that remove the constitutional language and create the statutory language. Sen. Coley recognized the two casino companies will fight this proposal but felt that racetrack owners would probably support the proposal.

Mr. Beckett agreed that the current language does not belong in the constitution. However, he expressed concern about the logistics of having it as a ballot issue. He said the General Assembly can place a constitutional amendment before the voters, but there is no process to place a law before the voters except through the statutory initiative process. Mr. Beckett asked whether the legislature could enact replacement statutory language in anticipation of the passage of a ballot issue to remove constitutional language.

Rep. Cupp raised a concern about whether other constitutional problems would occur if the current constitutional language was placed in the Revised Code, commenting that not all transferred provisions would necessarily be valid as statutory language. Vice-chair Gilbert expressed concern about whether, if given to the General Assembly, the current language would be substantively changed when converted into statutory language rather than just moved into the Revised Code.

Gov. Taft asked Mr. Steinglass to clarify whether the General Assembly can pass a law to take effect contingent on the passage of a constitutional amendment. Mr. Steinglass said that, based on case law, such an approach is not allowed. However, he suggested that other approaches have been used in other states, but was not sure if those alternatives would be possible in Ohio.

Alternatively, Mr. Steinglass mentioned the possibility of providing a “sunrise” provision in the proposed new statutory language such that it would take effect on a certain date (for example, January 1, 2018) rather than being contingent on the passage of an amendment. Rep. Cupp suggested that the idea of a sunrise is possible, but Ohio case law on the issue is unclear; there is no authoritative answer as to whether it would work.

In response to a question from Vice-chair Gilbert, Sen. Coley indicated that he has not yet asked the attorney general for any advice on this issue.

The committee agreed to make the issue of casino gaming the main subject of the July meeting.

Vice-chair Gilbert opened the floor to public comment. No members of the public offered comment.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:54 a.m.

Approval:

The minutes of the April 13, 2017 meeting of the Education, Public Institutions, and Local Government Committee were approved at the May 11, 2017 meeting of the committee.

/s/ Edward Gilbert

Edward Gilbert, Chair