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STATE OF OHIO

**OHIO CONSTITUTIONAL
REVISION COMMISSION**

**Recommendation for Amendment to
the Ohio Constitution**

**PART 5
INDIRECT DEBT LIMIT
ARTICLE XII, SECTION II**



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December 31, 1974
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December 31, 1974

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This fifth report of the Constitutional Revision Commission contains a single recommendation. Its purpose is to deal with the "indirect debt limit" problem posed by interpretations of Sections 2 and 11 of Article XII. It is presented to you separately from other recommendations relating to Article XII because of its importance and because it combines problems relating to debt, taxation, and local government and does not fall solely within any one of the three subjects.

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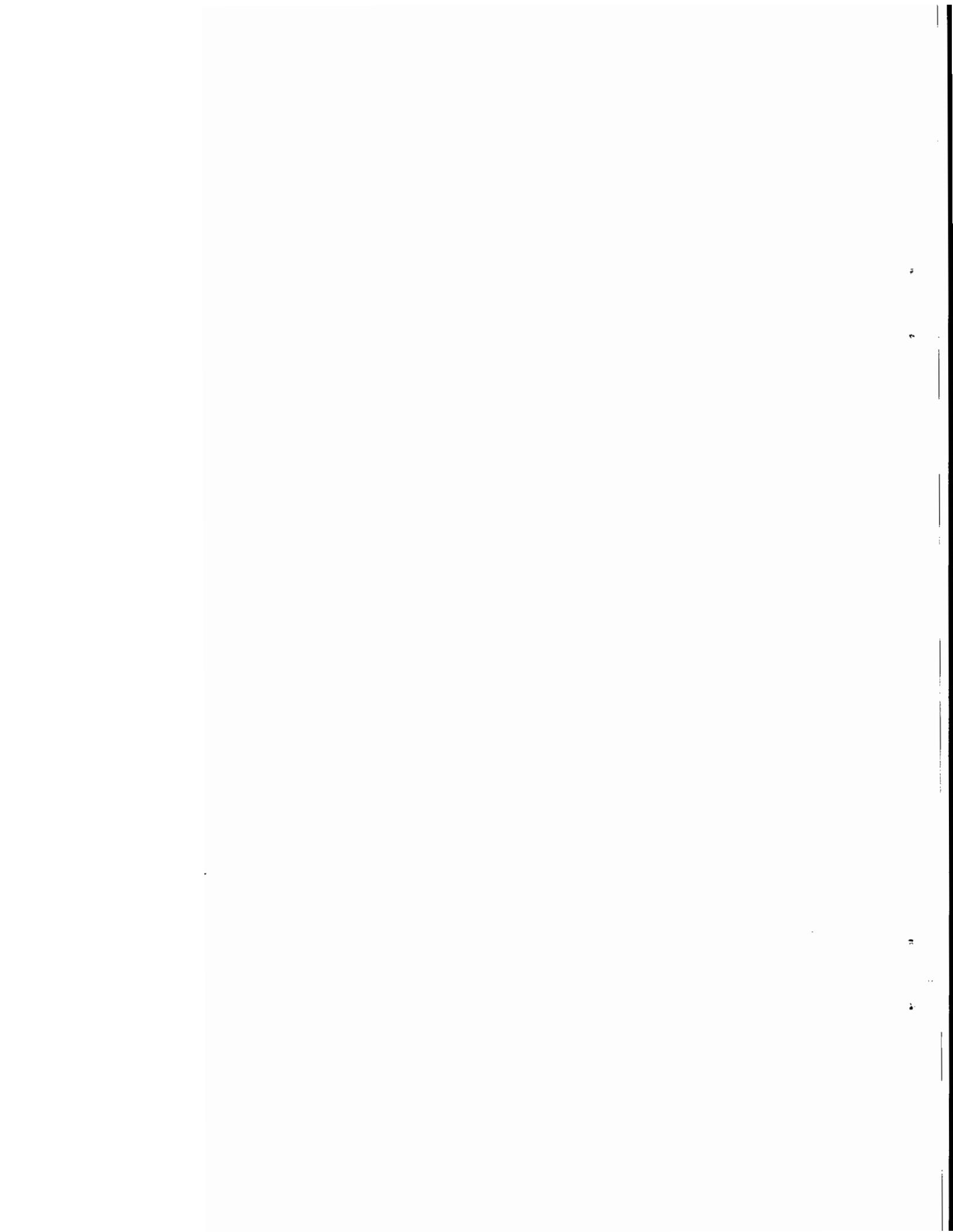
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Additional reports from the Commission are being prepared and will be presented to you very shortly. We are looking forward to an important and fulfilling year in 1975 for constitutional revision in Ohio

Very truly yours,

Richard H. Carter
Richard H. Carter, Chairman

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DECEMBER 31, 1974**

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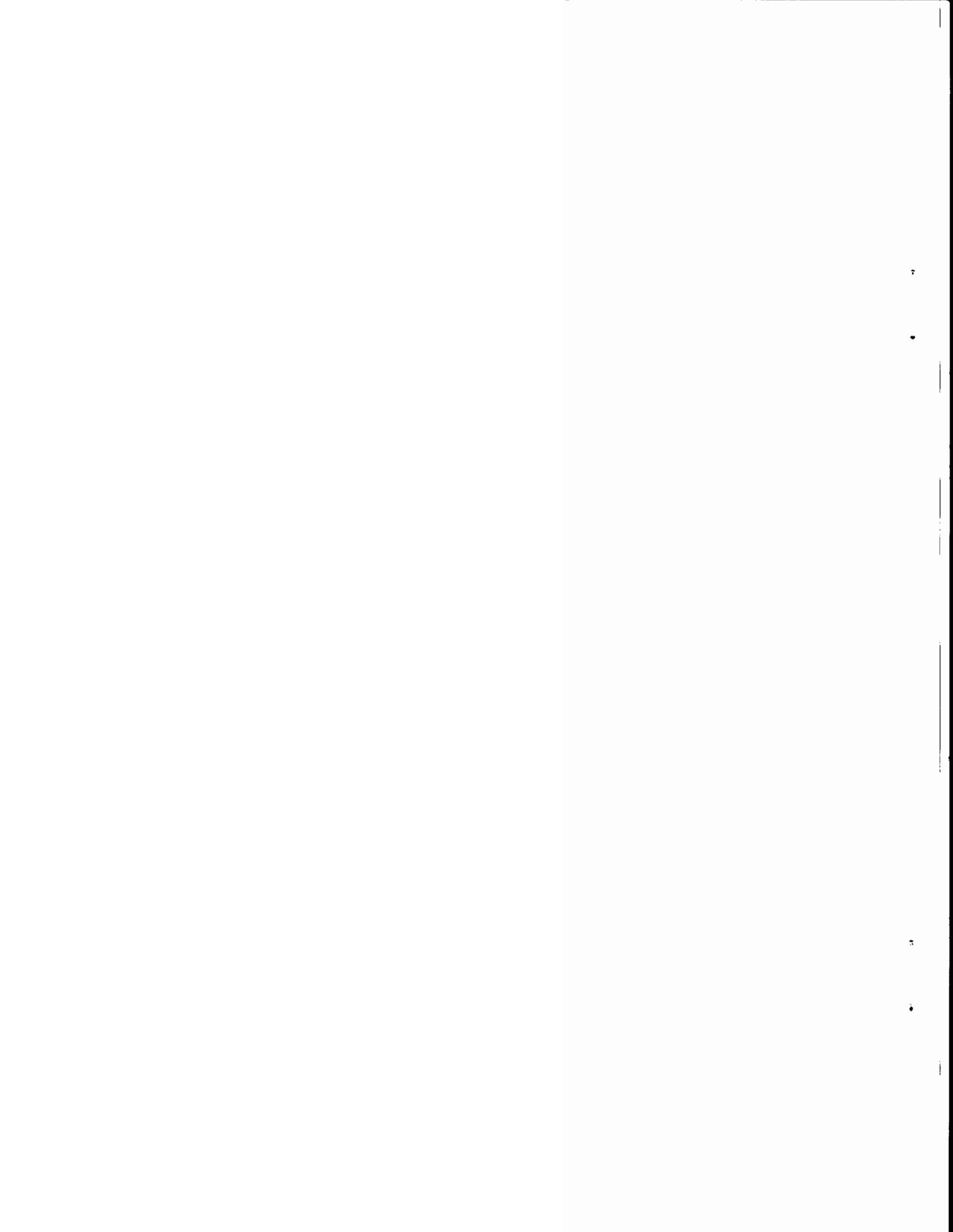
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Consultant for this Report

Eugene L. Kramer, Esq., Cleveland



INTRODUCTION

The 108th General Assembly (1969-70) created the Ohio Constitutional Revision Commission and charged it with these specific duties, as set forth in Section 103.52 of the Revised Code:

- A. Studying the Constitution of Ohio;
- B. Promoting an exchange of experiences and suggestions respecting desired changes in the Constitution;
- C. Considering the problems pertaining to the amendment of the Constitution;
- D. Making recommendations from time to time to the General Assembly for the amendment of the Constitution.

The Commission is composed of 32 members, 12 of whom are members of the General Assembly selected (three each) by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President Pro Tem of the Senate, and the Minority Leader of the Senate. The General Assembly members select 20 members from the general public.

Part 1 of the Commission's recommendations was presented to the General Assembly December 31, 1971. That report dealt with the organization, administration, and procedures of the General Assembly, and included recommendations for improving the legislative process, having the Governor and Lieutenant Governor elected as a team, and repealing obsolete sections of the Constitution. The recommendations in that report were the result of study by a committee appointed to study the Legislative and Executive branches of government, chaired by Mr. John A. Skipton of Findlay.

Part 2 of the Commission's recommendations was presented to the General Assembly as of December 31, 1972 and dealt with State Debt. Included were recommendations respecting all sections in Article VIII and one section in Article XII. These recommendations resulted from the work of the Finance and Taxation Committee, chaired by Mr. Nolan W. Carson of Cincinnati.

Part 3 of the Commission's recommendations dealt with aspects of the constitutional amendment process and affected only one section of the Constitution -- Section 1 of Article XVI. It resulted from the work of the committee appointed to study Elections and Suffrage, chaired by Mrs. Katie Sowle of Athens, and was presented to the General Assembly December 31, 1973.

Part 4 was presented to the General Assembly in November of 1974 and covers Article XII, Taxation. Mr. Nolan Carson of Cincinnati, was chairman of the Commission's Finance and Taxation Committee whose study resulted in the recommendations contained in that report.

The current report, Part 5, deals with the indirect debt limit and proposes the repeal of Section 11 and the enactment of a new section in Article XII, with changes which the Commission believes will alleviate the problems arising, particularly for local governments, from interpretations of sections 2 and 11 of Article XII which result in certain constitutional debt limitations being imposed. The Finance and Taxation Committee studied this problem and determined that it should be reviewed by the Local Government Committee, chaired by Mrs. Linda Orfirer of Cleveland. The Local Government Committee, after study, made the recommendation to the Commission that the Commission adopted and that appears in this report.

THE INDIRECT DEBT LIMIT

Article XII, Section 11

Present Constitution

Section 11. No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

Commission Recommendation

The Commission recommends the repeal of Section 11 of Article XII and the enactment of a new Section 7 of Article XII as follows:

Section 7. SO LONG AS ANY BONDS OR NOTES WHICH ARE GENERAL OBLIGATIONS OF A POLITICAL SUBDIVISION ARE OUTSTANDING, SUCH POLITICAL SUBDIVISION SHALL AT THE TIMES REQUIRED MAKE PROVISIONS FOR THE TIMELY PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SUCH BONDS AND NOTES BY PROVIDING FOR AND COLLECTING BY TAXATION OR BY ANY OTHER MEANS BY WHICH SUCH SUBDIVISION IS AUTHORIZED BY THIS CONSTITUTION OR BY LAW TO OBTAIN MONEYS FOR SUCH PURPOSES AND BY APPROPRIATING SUFFICIENT AMOUNTS FOR SUCH PURPOSE. IF AT ANY TIME THE OFFICERS OR OTHER AUTHORITY OF THE SUBDIVISION HAVING RESPONSIBILITY FOR MAKING SUCH PROVISIONS FOR THE TIMELY PAYMENT OF PRINCIPAL AND INTEREST FAIL TO DO SO, THE TREASURER OR OTHER OFFICER HAVING CHARGE OF THE RECEIPT OF MONEYS OF THE SUBDIVISION SHALL SET ASIDE FROM LAWFULLY AVAILABLE MONEYS OF THE SUBDIVISION, INCLUDING THOSE FIRST RECEIVED THEREAFTER, SUFFICIENT AMOUNTS FOR SUCH PAYMENT AND SHALL APPLY SUCH MONEYS THERETO. THIS SECTION AND SECTION 2 OF ARTICLE XII OF THIS CONSTITUTION DO NOT DIRECTLY OR INDIRECTLY LIMIT THE AMOUNT OF GENERAL OBLIGATION DEBT WHICH MAY BE INCURRED BY A POLITICAL SUBDIVISION BUT THE GENERAL ASSEMBLY MAY, BY LAW, PROVIDE FOR LIMITATIONS ON SUCH AMOUNTS. THIS SECTION DOES NOT AUTHORIZE THE LEVY OF ANY AD VALOREM PROPERTY TAX OTHER THAN AS AUTHORIZED OR PERMITTED BY SECTION 2 OF ARTICLE XII OF THIS CONSTITUTION.

History and Background of Section

Section 11 was added to Article XII, the Taxation Article, as a result of the proposals of the 1912 Convention. It prohibits bonded indebtedness from being incurred or renewed by the state or any political subdivision unless the legislation provides for levying and collecting, annually, by taxation an amount sufficient to pay the interest and to provide a sinking fund for the redemption of the bonds at maturity.

As interpreted by the Ohio Supreme Court, when read in conjunction with Section 2 of Article XII which prohibits levying ad valorem property taxes in excess of one per cent of the value of the property without a vote of the people in the taxing district, Section 11 constitutes a limit on the amount of general obligation debt which may be incurred. The Court held, in Portsmouth v. Kountz, 129 Ohio St. 272 (1935), that the amount required to meet the payments on general obligation debt must be computed within the one per cent (statutory 10-mill) limit even though the debtor anticipated that revenues other than those received from property taxation would be sufficient to meet the bond payments. Moreover, the outstanding unvoted indebtedness of all overlapping political subdivisions must be included in computing whether the proposed bond issue will fall within the "10-mill" limit. The 1912 convention debates do not indicate that this was the anticipated effect of the section -- for one thing, the Constitution did not contain a property millage tax limitation and the Convention rejected a proposal to insert one in the Constitution; for another, the Smith "one per cent" law, in effect at the time, excluded millage necessary to meet payments to sinking funds and interest on bonds. Thus, it seems to have been anticipated by the delegates that the taxes referred to in Section 11 would not fall within the 10 mill limit. However, the Supreme Court held that the people must have intended, when the one per cent limitation was subsequently placed in the Constitution, to have the limit cover taxes levied, or which might be necessary to be levied, for debt, as well as those levied for current expenses of government.

The 1912 debates on Section 11 discuss almost entirely the problems of political subdivisions, and very little the problems of state debt. Indeed, the \$750,000 limitation on state debt, which carried over from 1851, was, and is, a severe limitation on the state's ability to incur debt and, as a practical matter, all major amounts of state debt must be voted by the people. In another report, the Commission has made recommendations to the General Assembly regarding state debt. Except where specifically provided in a constitutional amendment the state has not levied ad valorem property taxes to meet payments on state debt.

Another effect of Section 11 is to place debt charges in a priority position over other expenses of government. (State ex rel. Bruml v. Brooklyn, 126 Ohio St. 459 (1933)). Thus, the section is a guarantee of payment -- at least, to the extent that payment can be obtained from within the one per cent (10 mill) limit.

The Ohio General Assembly has complete authority, by virtue of Section 13 of Article XVIII and Section 6 of Article XIII, to limit the power of municipal corporations to incur debt, and has plenary power, by virtue of its general legislative power, to limit the authority of other political subdivisions to incur debt. Moreover, this authority is exercised by the General Assembly through appropriate statutes. Although the Commission, in its report on Local Government, is making recommendations to combine the two sections relating to municipal corporations, no diminution of the legislature's power to regulate and limit local government debt will result.

The Commission believes that the problem of the indirect debt limit is that it is an artificial limit, since levies within the 10 mills are rarely, if ever, necessary to meet debt payments. Other sources of taxation, and revenues other than tax revenues, are used for debt purposes; the particular local government may, nevertheless, and within the statutory limits, prefer to issue unvoted general obligation bonds to finance a particular project for a variety of reasons -- lower interest rate; immediate need for a project and lack of time to go to the voters; a decision that the project is not one to engender great public support and might lose at the polls, no matter how necessary it might be; or for some other reason. There is no evidence that local governments in Ohio are failing to meet debt payments when due.

Effect of Commission Recommendation

The Commission proposal would:

1. Continue the guarantee aspects of Section 11 of Article XII by requiring timely payment of principal and interest on general obligations, and requiring the treasurer or other officer in charge of the receipt of money to set aside from lawfully available moneys of the subdivision sufficient amounts for payment if sufficient provision is not made.
2. Permit provision for payment to be made from taxation or by any other means by which the subdivision can legally obtain money.
3. Eliminate the reference to the state from the section. The present constitutional debt limit is a sufficient barrier to the state incurring debt; the Commission's recommendations on state debt, if adopted, would render this section completely superfluous as to the state.
4. Eliminate the sinking fund requirement, since most bonds today are serial bonds.
5. Specifically state that the tax limitation of Section 2 is not a debt limit, but reinforce the provision that the General Assembly may provide for political subdivision debt limitations.
6. Specifically state that the new section does not authorize the levy of any ad valorem property tax other than as authorized by Section 2 of Article XII. Thus, the one per cent tax limit could not be violated by construction of the new section.
7. The section would be renumbered in accord with the scheme indicated in the Commission's fourth report, dealing with Article XII.

Intent of the Commission

Adoption of the proposal will not, by itself, solve any problems for the political subdivisions presently restricted by its application as an indirect debt limit, since statutes presently impose the same limit and will require alteration before the indirect debt limit is removed. However, this is a necessary first step.

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