



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, OCTOBER 13, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:34 p.m.

Members Present:

A quorum was present with Chair Mills and committee members Asher, Curtin, Davidson, McColley, Taft, and Tavares in attendance.

Approval of Minutes:

The minutes of the July 14, 2016 meeting of the committee were approved.

Reports and Recommendations:

Chair Mills began the meeting by referencing that he asked Steven C. Hollon, executive director, to have staff prepare reports and recommendations for some of the categories described in Mr. Hollon's memorandum grouping sections of Article II according to subject matter. Chair Mills said the committee now has two reports and recommendations that begin to address the committee's ideas regarding two of the categories described in Mr. Hollon's memorandum. He said this is not an official presentation, but a review of the initial draft of the reports and recommendations. Chair Mills said there will be a first presentation at the committee's next meeting, which he said will occur in November. Chair Mills said the committee will be meeting every month through January 2017.

Article II, Sections 3, 4, 5, 11, and 31

(Qualifications, Vacancy, and Compensation of Members of the General Assembly)

Mr. Hollon reviewed the report and recommendation for Article II, Sections 3, 4, 5, 11, and 31, which deal with the qualifications and compensation of members of the General Assembly, as

well as providing for filling vacancies in legislative seats. Mr. Hollon said the report and recommendation documents that the sections originally were adopted as part of the 1851 constitution. He described that Section 3 requires legislators to live in their districts. He continued that Section 4, amended in 1973, restricts members of the General Assembly from holding any other public office, except as specified. Addressing Section 5, Mr. Hollon said the report and recommendation indicates the section prohibits persons convicted of embezzlement from serving in the General Assembly, and prevents persons holding money for public disbursement from serving until they account for and pay that money into the treasury. Mr. Hollon outlined the report and recommendation's discussion of Section 11, which defines how vacancies are to be filled, as well as Section 31, which prescribes the compensation of members and officers of the General Assembly.

Mr. Hollon reviewed the report and recommendation's discussion of the Ohio Constitutional Revision Commission's recommendations in the 1970s. He indicated that the in-depth review of the 1970s Commission resulted in voters adopting several amendments to these sections, with other related recommendations being rejected at the polls. Mr. Hollon noted the report and recommendation's summary of two Supreme Court of Ohio decisions interpreting the sections, specifically Section 3, defining what constitutes the legislator's home county, and Section 4, defining what is meant by the prohibition on legislators holding public office during their terms. Mr. Hollon noted that the report and recommendation is incomplete because staff requires input from the committee regarding the disposition of these sections. Mr. Hollon asked whether the committee might consider moving Sections 4 and 5 to another article that would deal solely with officeholders.

Chair Mills then opened the floor for discussion on the report and recommendation. Committee member Bob Taft asked about testimony at an earlier meeting related to constitutionally creating a compensation commission to determine legislative salaries. Chair Mills provided a history of that issue before the committee, indicating that this was a concept proposed by the Senate in both the last General Assembly and in the current one. Chair Mills said the committee heard initial testimony from the Senate majority counsel, Frank Strigari, and held a general discussion about that concept. He added, in an effort to have additional testimony, and because the proposal would cover all officials in the state other than home rule municipalities, he asked Mr. Hollon to solicit interest from entities representing those interests. He said there was no indication that any interested groups wanted to testify. So, Chair Mills said, the committee held two hearings on the issue and no further action was taken at that point.

Representative Mike Curtin cautioned that he would not want to delve into a proposed broad amendment dealing with compensation of other levels of government without research to see what current city charters say, and what current practices are. He noted the state has 160 city charters, and he knows dual compensation is prohibited at least in the Columbus charter and probably in others. Rep. Curtin said it would take a lot of diligence to find out what the current practices are before contemplating a state constitutional amendment on that topic.

Mr. Hollon said what he was asking was whether holding two different elected offices is an issue.

Chair Mills asked whether any of the other committees are looking at this issue from other perspectives. Mr. Hollon said no, rather the question is whether this committee wants there to be

a separate constitutional article with all the requirements for officeholders of the state. Mr. Hollon directed the committee to Category VII in his memorandum, relating to the term of office. He said all of these sections are scattered around the constitution, but deal with other officeholders who are not in the legislative branch. He said that is one way the committee could go, but that he is not making a recommendation.

Senator Charleta Tavares, seeking clarification, asked if Mr. Hollon is just trying to streamline the constitution and make it more user friendly with respect to officeholders, but not to change the specific duties. Mr. Hollon said there are restrictions related to all officeholders, and that is why he considered the possibility of grouping them together in one article.

Sen. Tavares said, on the issue of the compensation commission, there has been no recommendation for whether to deal with that separately. Chair Mills said he would be happy to have additional hearings on the subject if anyone is interested. Sen. Tavares suggested that if the committee could hear from another state or level of government about their experiences it would be useful. Chair Mills said he will work with staff on that.

Gov. Taft said, on that same topic, there should be conversation about whether there is an argument for a compensation commission that would deal only with state legislative salaries. He said, currently, legislators have to set their own salaries, and this creates an appearance of interest that can create problems that do not exist if the legislature is setting salaries for other government officials. He said it would be good to hear from legislative leaders next year about that topic.

Committee member Jo Ann Davidson agreed there are some ideas that Rep. Curtin suggested that would be good. But, she cautioned, the committee needs to prioritize, considering the limited time remaining. She said, if the current legislature has refused to move anything on the concept of a compensation commission, then the committee should consider how to prioritize the issues that are still before it.

Regarding Section 11, relating to filling vacancies, Chair Mills agreed the committee should not recommend a change without a great deal of study. He said it is important to fill vacancies in the General Assembly, and the current provision has allowed that to be done efficiently since the 1970s. Mr. Hollon said his point had been that it might be good to separate the section into paragraphs in order to make it easier to read. Sen. Tavares reiterated Mr. Hollon's point, saying it is a good goal to make the constitution succinct and readable.

*Article II, Sections 6, 7, 8, 9, 13, and 14
(Conducting Business of the General Assembly)*

Mr. Hollon then described the report and recommendation for Article II, Sections 6, 7, 8, 9, 13, and 14, all dealing with the subject of the General Assembly's methods for conducting its business. Mr. Hollon indicated that the report and recommendation covers Section 6, relating to the powers of each house of the General Assembly; Section 7, providing for the organization of each house of the General Assembly; Section 8, governing the legislative calendar; Section 9, relating to the requirement of keeping a journal of proceedings; Section 13, requiring open meetings; and Section 14, controlling the ability of either house to adjourn.

Mr. Hollon then reviewed the various recommendations of the 1970s Commission, including revisions allowing each house to punish members for disorderly conduct, to expel members, and to enforce rules and procedures promoting the orderly transaction of its business; moving a portion of former Section 8 that had described the procedure for selecting legislative officers, including the president of the senate and the speaker of the house of representatives; adding a statement confirming that each house may determine its own procedural rules; replacing former Section 8 with a new section detailing what constitutes a “session” of the General Assembly; and expanding from two days to five days the amount of time each house may adjourn without the consent of the other house. He said these recommendations were part of a package of ballot issues approved by voters on May 8, 1973. Mr. Hollon indicated that the report and recommendation described that Section 13, requiring the General Assembly to hold open meetings, was not addressed by the 1970s Commission and has not been amended since its adoption in 1851.

Mr. Hollon also discussed that the report and recommendation outlines two Supreme Court of Ohio cases addressing these sections, one defining what constitutes a “term” of the General Assembly, and one reinforcing Section 7’s expression of the self-governing power of the General Assembly. Mr. Hollon said the report and recommendation does not reach a conclusion about the will of the committee as to the disposition of these sections, a question the committee still needs to answer.

Chair Mills then opened up the floor for questions or comments.

Sen. Tavares drew the committee’s attention to Section 8, relating to the legislative calendar. Noting there is no prescribed number of days or months the General Assembly meets, she wondered if there is anything prohibiting the General Assembly from reducing or determining for itself how often it meets, since that is not spelled out in the constitution.

Mr. Hollon agreed, saying many states have a requirement about that. Chair Mills also agreed there are no restrictions. He said there are arguments that perhaps there should be some language on this point, but he thinks the general feeling has been the General Assembly should control its own calendar, and that, without a constitutional provision, they have the ability to do that without restrictions. Sen. Tavares agreed, saying maybe the legislature could then prescribe fewer days of meeting rather than meeting virtually full time. She said “We are supposed to be a citizen legislature, which is difficult if we don’t have our foot in the real world.” She said, as she talks to her colleagues throughout the country, she hears they can get their legislative work done in fewer days. She said, because of their legislative obligations, legislators outside of Columbus cannot have alternate employment unless they own their own business.

Chair Mills said the topics contained in these reports and recommendations will be coming up at the next meeting, so members with concerns or others who may wish to testify can contribute at that time.

Gov. Taft asked where the committee stands regarding a compensation commission to set compensation for the legislature. He wondered if there is any point in directing some inquiries to the newly elected leaders in order to determine the interest of majority and minority leaders in reviewing that question. Chair Mills said it is his intention that the committee will mark these two draft reports and recommendations as recommending no change, but he will work with staff

to see what other states do with regard to compensation commissions, as well as reaching out to leadership, so that the committee might continue a discussion of a compensation commission. Gov. Taft noted the committee should prioritize its time, and if there is no interest by legislators, then the committee should not spend time on it.

Chair Mills noted it is the committee's intention to look at the additional categories in Mr. Hollon's memorandum, indicating he will work with staff to come up with draft recommendations on those as well.

Mr. Hollon acknowledged Shari O'Neill, Commission counsel, as well as student interns Sara Leigh and Andrew Weaver, for their assistance in drafting the reports and recommendations. He said he will send the committee a copy of the 1970s Commission committee work on those sections. Chair Mills remarked that a strength of the 1970s Commission was that they took care of the Article II sections that were problems, so he is not sure there are many substantive issues for the committee to address. However, he said, the committee needs to work through that question.

Raising a matter under old business, Sen. Tavares asked Chair Mills for an update regarding the progress of the committee's consideration of Congressional redistricting. Chair Mills said there are efforts being made behind the scenes to continue that discussion. He said, at the appropriate time, if there is anything to report he will call a public meeting. He said he does not know what the odds are that an agreement will be reached, but the effort has not stopped.

Committee member Herb Asher asked whether Chair Mills senses that, if a compromise is reached, it would gain the approval of the General Assembly. Chair Mills said he hopes that would be the case, but he has no inside knowledge about that possibility. Mr. Asher commended Chair Mills for his efforts on the issue.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 3:31 p.m.

Approval:

The minutes of the October 13, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the December 15, 2016 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair