

STATE OF OHIO

**OHIO CONSTITUTIONAL
REVISION COMMISSION**

**Recommendation for Amendment to
the Ohio Constitution**

PART 3

CONSTITUTIONAL AMENDMENTS



AUG 9 1983

December 31, 1973
Ohio Constitutional Revision Commission
41 South High Street
Columbus, Ohio 43215

Ohio Constitutional Revision Commission

41 South High Street
COLUMBUS, OHIO 43215

Ann M. Eriksson, *Director*

December 31, 1973

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The Ohio General Assembly
State House
Columbus, Ohio 43215

Gentlemen:

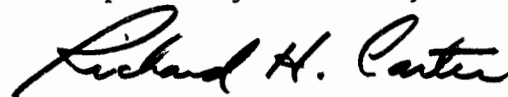
The single recommendation contained in this third report of the Constitutional Revision Commission to the General Assembly may well, in the long term, become one of the most important changes to the Ohio Constitution.

In recent years, we have had the opportunity to observe with great interest the experiences of bringing proposals for constitutional amendments to the voters. We completely agree with other concerned observers that there must indeed be a better way of presenting information on constitutional amendments to the voters! In particular, we believe that the two most serious problems which would be met by the recommendations in this report include (1) the need to state constitutional issues on the ballot in clear, nontechnical language which can be more easily understood by the voter, and (2) the need to provide the voter with better information about proposed constitutional amendments.

The bulk of our remaining recommendations will be presented to you in a series of reports later during the coming year; we hope that action by the General Assembly will place many of these recommendations before the voters in 1975.

But for the present, we urge your prompt consideration of the recommendation in this report so that the voters of Ohio may have an opportunity to act on it in May 1974. The Commission believes that such action is essential to the cause of sound constitutional revision. It is our understanding that the Secretary of State, also greatly concerned with this matter, fully concurs with these recommendations of the Commission.

Respectfully submitted,



Richard H. Carter, Chairman



**Members of the
Ohio Constitutional Revision Commission
December 31, 1973**

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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 thirty-two members, twelve 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 twenty members from the general public. Currently, there is one vacancy among the Senate membership.

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.

This report, Part 3 of the Commission's recommendations, deals with aspects of the constitutional amendment process and affects only one section of the Constitution--Section 1 of Article XVI. It results from the work of the committee appointed to study Elections and Suffrage, chaired by Mrs. Katie Sowle of Athens. Other members of that committee, which is continuing to work on elections and suffrage problems, are: Senator Applegate and Messrs. Aalyson, Carter,

King and Wilson. Senator Ocasek and Mr. Bartunek were also members of the committee when this recommendation was being considered.

The Finance and Taxation Committee, under the chairmanship of Mr. Carson, has completed its recommendations on Article XII, dealing with taxation, and the Local Government Committee, chaired by Mrs. Linda Orfirer, has completed recommendations dealing with county government. The Commission has completed its action on these two topics, and they will be presented to the General Assembly in subsequent reports. The Local Government Committee is continuing to work on constitutional provisions relating to local government, and two new committees were appointed during the year: Judiciary, chaired by Mr. Don Montgomery; and Education and Bill of Rights, chaired by Mr. Joseph Bartunek.

Recommendation

Article XVI - Section 1

PRESENT CONSTITUTION

Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

COMMISSION RECOMMENDATION

Either branch of the general assembly may propose amendments to this constitution; and if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be filed with the secretary of state at least ninety days before the date of the election at which they are to be submitted to the electors, for their approval or rejection. They shall be submitted on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe.

The ballot language for such proposed amendments shall be prescribed by a majority of the Ohio ballot board, consisting of the secretary of state and four other members, who shall be designated in a manner prescribed by law and not more than two of whom shall be members of the same political party. The ballot language shall properly identify the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal. The board shall also prepare an explanation of the proposal, which may include its purpose and effects, and shall certify the ballot language and the explanation to the secretary of state not later than seventy-five days before the election. The ballot language and the explanation shall be available for public inspection in the office of the secretary of state.

The Ohio supreme court shall have exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors. No such case shall be filed later than sixty-four days before the election. The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

Unless the general assembly otherwise provides by law for the preparation of arguments for and, if any, against a proposed amendment, the board may prepare such arguments.

Such proposed amendments, the ballot language, the explanations, and the arguments, if any, shall be published once a week for three consecutive weeks preceding such election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The general assembly shall provide by law for other dissemination of information in order to inform the electors concerning proposed amendments. An election on a proposed constitutional amendment submitted by the general assembly shall not be enjoined nor invalidated because the explanation, arguments, or other information is faulty in any way. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

Commission Recommendation

The Commission recommends the amendment of Section 1 of Article XVI as follows:

Section 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be FILED WITH THE SECRETARY OF STATE AT LEAST NINETY DAYS BEFORE THE DATE OF THE ELECTION AT WHICH THEY ARE TO BE submitted to the electors, for their approval or rejection; THEY SHALL BE SUBMITTED on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe.

THE BALLOT LANGUAGE FOR SUCH PROPOSED AMENDMENTS SHALL BE PRESCRIBED BY A MAJORITY OF THE OHIO BALLOT BOARD, CONSISTING OF THE SECRETARY OF STATE AND FOUR OTHER MEMBERS, WHO SHALL BE DESIGNATED IN A MANNER PRESCRIBED BY LAW AND NOT MORE THAN TWO OF WHOM SHALL BE MEMBERS OF THE SAME POLITICAL PARTY. THE BALLOT LANGUAGE SHALL PROPERLY IDENTIFY THE SUBSTANCE OF THE PROPOSAL TO BE VOTED UPON. THE BALLOT NEED NOT CONTAIN THE FULL TEXT NOR A CONDENSED TEXT OF THE PROPOSAL. THE BOARD SHALL ALSO PREPARE AN EXPLANATION OF THE PROPOSAL, WHICH MAY INCLUDE ITS PURPOSE AND EFFECTS, AND SHALL CERTIFY THE BALLOT LANGUAGE AND THE EXPLANATION TO THE SECRETARY OF STATE NOT LATER THAN SEVENTY-FIVE DAYS BEFORE THE ELECTION. THE BALLOT LANGUAGE AND THE EXPLANATION SHALL BE AVAILABLE FOR PUBLIC INSPECTION IN THE OFFICE OF THE SECRETARY OF STATE.

THE OHIO SUPREME COURT SHALL HAVE EXCLUSIVE, ORIGINAL JURISDICTION IN ALL CASES CHALLENGING THE ADOPTION OR SUBMISSION OF A PROPOSED CONSTITUTIONAL AMENDMENT TO THE ELECTORS. NO SUCH CASE SHALL BE FILED LATER THAN SIXTY-FOUR DAYS BEFORE THE ELECTION. THE BALLOT LANGUAGE SHALL NOT BE HELD INVALID UNLESS IT IS SUCH AS TO MISLEAD, DECEIVE, OR DEFRAUD THE VOTERS.

UNLESS THE GENERAL ASSEMBLY OTHERWISE PROVIDES BY LAW FOR THE PREPARATION OF ARGUMENTS FOR AND, IF ANY, AGAINST A PROPOSED AMEND-

MENT, THE BOARD MAY PREPARE SUCH ARGUMENTS.

Such proposed amendments, THE BALLOT LANGUAGE, THE EXPLANATIONS, AND THE ARGUMENTS, IF ANY, shall be published once a week for THREE consecutive weeks preceding such election, in at least one newspaper OF GENERAL CIRCULATION in each county of the state, where a newspaper is published. THE GENERAL ASSEMBLY SHALL PROVIDE BY LAW FOR OTHER DISSEMINATION OF INFORMATION IN ORDER TO INFORM THE ELECTORS CONCERNING PROPOSED AMENDMENTS. AN ELECTION ON A PROPOSED CONSTITUTIONAL AMENDMENT SUBMITTED BY THE GENERAL ASSEMBLY SHALL NOT BE ENJOINED NOR INVALIDATED BECAUSE THE EXPLANATION, ARGUMENTS, OR OTHER INFORMATION IS FAULTY IN ANY WAY. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

HISTORY AND BACKGROUND OF SECTION

Section 1 of Article XVI provides the method by which the General Assembly can propose and submit constitutional amendments to the voters. The 1802 Ohio Constitution had no such provision—the only method of amending provided for in that Constitution was through a convention, recommended by the General Assembly and voted for by a majority of the electors voting for representatives. The only election at which such a recommendation could be submitted to the voters was at the election for members of the General Assembly. The 1851 convention, called pursuant to this procedure, made it at least possible for the General Assembly to submit proposed amendments to the people for their approval or rejection, but retained several conditions which had the effect of reducing the probabilities that the Constitution would be amended this way. One such restriction was the necessity that a proposed amendment be approved by a majority of all those voting at the election. Another was the requirement that amendments could be submitted only at the election for members of the General Assembly.

In 1912, as a result of the work of the Convention held in that year, the section was amended to permit submission of proposed constitutional amendments by the General Assembly at a special or a general election, as the General Assembly prescribed, and to declare amendments adopted if approved by a majority of the voters

voting on the amendment, rather than a majority voting at the election. Other significant changes were also made in 1912--amendments must now be submitted on a separate ballot without any party designation, and the duration of required newspaper publication was reduced from six months preceding the election, to five weeks.

CHANGES PROPOSED BY COMMISSION

The major issues which have occupied the attention of the Constitutional Revision Commission with respect to submission of legislatively proposed constitutional amendments were not debated at the 1912 Convention. These issues include: (1) assuring that the language on the ballot is clear and nontechnical so that voters will be informed, not confused, by what they read when they enter the voting booth; (2) providing information to the voters about the substance and effect of the proposal; and (3) establishing a time frame prior to the election for submitting proposals and court actions.

A. BALLOT LANGUAGE

The present statutory requirement (Section 3505.06 of the Revised Code) is that the "condensed text" of a proposed constitutional amendment must appear on the ballot, if the entire text does not. The Commission has been advised by the Secretary of State, who is presently responsible, again by virtue of statute, for preparing the ballot language, that in order to avoid undesirable court tests on the acceptability of a "condensed text", this requirement leads to the presentation of amendments to the voters in lengthy, highly technical, legalistic language which can confuse voters as to the true purpose and effect of the proposal.

The Commission's proposal would provide for an Ohio Ballot Board, with the Secretary of State as one of its members, which would be responsible for drafting the language to appear on the ballot for amendments proposed by the General Assembly. In addition to the Secretary of State, four members shall be named in a manner designated by the legislature, not more than two of whom are members of the same party. The ballot language need not be a condensed text of the issue, but shall properly identify the substance of the proposal. Language could not be ruled off the ballot unless it is such as to mislead, deceive, or defraud the voters. These standards for ballot language--identification of the issue, and language to be invalidated only if it is misleading, deceiving, or fraudulent--are taken from an Ohio Supreme Court decision which predated the present statutory requirement that the "condensed text" appear. (*Thrailkill v. Smith*, 106 Ohio State 1, 1922).

In the Commission's view, providing a constitutional mechanism for preparing the ballot language, and standards which emphasize the substance of the proposal and de-emphasize technical details, will assist in reaching the goal of furthering voter understanding of constitutional amendments.

B. VOTER INFORMATION

The Constitution presently requires only one type of information to be supplied to voters prior to voting on proposed constitutional amendments--legal advertising in newspapers five weeks prior to the election. The Commission believes that few people read such advertisements, and if they do, they are given only the text of the proposal and no explanation.

The proposal to amend section 1 of Article XVI requires the Ballot Board to prepare an explanation of the proposed amendment, when it prepares the ballot language. The explanation may include the purpose and effects of the proposal. In addition, unless the General Assembly otherwise provides for the preparation of arguments for and against the proposal, the Ballot Board may prepare such arguments.

The Commission's proposal would continue to require legal advertising of proposed amendments, but added to the advertising would be the explanation prepared by the Ballot Board and the arguments, if any. The advertising would be required for three, instead of five, weeks. The requirement of newspaper publication of the proposed amendment was retained in 1912 from the 1851 version of the section, and the only change, which reduced from 6 months to 5 weeks the durational requirement of publication, was made because, according to the debates, communications had substantially improved since 1851, and the costs of publication had also increased. For both of these reasons, the Commission recommends a further reduction from five weeks to three weeks for publication.

The section, as proposed by the Commission, would specifically require the General Assembly to provide by law for dissemination of information other than newspaper publication in order to inform the electors concerning proposed amendments. The use of other media, and presentation of material other than the text of the amendment, it is hoped, would serve not only to spark voter interest in the constitutional question involved, but to enable voters to cast an informed and intelligent vote.

C. THE TIMETABLE

Last minute submission of amendments to the voters results in lessened public understanding of

the issues and may deprive both proponents and opponents of an issue of adequate opportunity to place their views before the public; last minute halting of elections by court order causes substantial problems for elections officials, confuses the voters, and undoubtedly lessens public confidence in some aspects of governmental processes.

The Commission proposes to set forth a time table in the Constitution and to provide for court challenges to the most important aspects of submitting amendments in order to overcome these difficulties. The General Assembly would be required to file proposed amendments with the Secretary of State at least 90 days before the election at which they are to be submitted. (The statutes presently require submission 75 days before the election.) The Ballot Board would then have 15 days in which to prepare the ballot language and the explanation of the proposal, which are to be available for public inspection in the office of the Secretary of State.

The Ohio Supreme Court is given exclusive, original jurisdiction in all cases challenging any aspect of the adoption and submission of proposed constitutional amendments to the voters, but any such suit must be brought not later than 64 days before the election. Thus, 10 days are allowed for examination of the ballot language and the explanation prepared by the Board and the filing of a suit if a challenge is to be brought. Although the election on the proposed amendment might be enjoined by the Court if the ballot language is such that it misleads, deceives, or defrauds the voters, or for other reasons which might be found in faulty legislative procedures or in the inclusion of more than one amendment without permitting a separate vote on each, it could not be enjoined because the explanation, arguments, or other information supplied to the voters is faulty. The Commission believes that other remedies—such as halting the publication of an explanation which is not proper—would be adequate for such defects.



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