



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Ohio Constitutional Modernization Commission

Co-Chair

Sen. Charleta B. Tavares
Assistant Minority Leader

Co-Chair

Rep. Ron Amstutz
Speaker Pro Tempore

September 10, 2014

South Meeting Rooms B & C, 31st Floor
Riffe Center for Government and the Arts

Ohio Constitutional Modernization Commission

Co-Chair Sen. Charleta Tavares
Co-Chair Rep. Ron Amstutz
Ms. Janet Abaray
Professor Herb Asher
Mr. Roger Beckett
Ms. Karla Bell
Commissioner Paula Brooks
Rep. Kathleen Clyde
Mr. Douglas Cole
Sen. Bill Coley
Rep. Robert Cupp
Rep. Michael Curtin
Speaker Jo Ann Davidson
Judge Patrick Fischer
Mr. Edward Gilbert
Mr. Jeff Jacobson
Speaker Charles Kurfess
Dr. Larry Macon
Rep. Nathan Manning
Mr. Frederick Mills
Mr. Dennis Mulvihill
Sen. Larry Obhof
Sen. Bob Peterson
Mr. Chad Readler
Professor Richard Saphire
Sen. Tom Sawyer
Sen. Michael Skindell
Rep. Emilia Sykes
Governor Robert Taft
Ms. Petee Talley
Ms. Kathleen Trafford
Mr. Mark Wagoner



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

THURSDAY, SEPTEMBER 10, 2015

1:30 PM

**SOUTH MEETING ROOMS B & C, 31ST FLOOR
RIFFE CENTER FOR GOVERNMENT AND THE ARTS**

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of June 11, 2015
- IV. Standing Committee Reports
 - Coordinating Committee (Trafford)
 - Public Education and Information Committee (Beckett) and Liaisons with Public Offices Committee (Asher)
 - Organization and Administration Committee (Wagoner)
- V. Subject Matter Committee Reports
 - Education, Public Institutions, and Local Government Committee (Readler)
 - Finance, Taxation, and Economic Development Committee (Cole)
 - Judicial Branch and the Administration of Justice Committee (Abaray)
 - Bill of Rights and Voting Committee (Sapphire)
 - Constitutional Revisions and Updating Committee (Mulvihill)
 - Legislative Branch and Executive Branch Committee (Mills)

VI. Reports and Recommendations

➤ Article I, Section 13 (Quartering of Troops)

- First Presentation
- Public Comment
- Discussion

➤ Article I, Section 17 (No Hereditary Privileges)

- First Presentation
- Public Comment
- Discussion

VII. Proposed Amendments to Rules of Procedure and Conduct

VIII. Executive Director's Report (Hollon)

IX. Old Business

X. New Business

XI. Adjourn

Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
Ron Amstutz
Speaker Pro Tempore
1st House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, JUNE 11, 2015

Call to Order:

Co-chair Ron Amstutz, called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:40 p.m.

Members Present:

A quorum was present with Co-chair Amstutz and Commission members Asher, Bell, Brooks, Clyde, Cupp, Curtin, Davidson, Fischer, Gilbert, Kurfess, Macon, Mills, Mulvihill, Obhof, Sapphire, Sykes, Taft, Talley, Trafford, and Wagoner in attendance.

Approval of Minutes:

Minutes of the April 9, 2015 meeting were reviewed and approved.

Standing Committee Reports:

Coordinating Committee

Kathleen Trafford, chair of the Coordinating Committee, reported that the committee had no action items for the Commission at this time.

Public Education and Information Committee Liaisons with Public Offices Committee

Herb Asher, chair of the Liaisons with Public Offices Committee reported on the status of both committees, as the two committees meet jointly during the months when they convene. Mr. Asher reported that neither committee had action items for the Commission at this time.

Organization and Administration Committee

Mark Wagoner, chair of the Organization and Administration Committee reported the Commission remains on budget thanks to staff, and that the Commission is seeing improvements

in the process for approving reports and recommendations. Noting what he called the “roller coaster ride of the state budget,” he said he is optimistic about the future of the Commission.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Edward Gilbert, vice-chair of the Education, Public Institutions, and Local Government Committee, reported the committee has been examining Article VI, Section 1 (Funds for Religious and Educational Purposes) and Article VI, Section 2 (School Funds) and soon will be submitting reports and recommendations to the Commission recommending no change to either section. Mr. Gilbert said the committee is now looking at Article VI, Sections 3 and 4, relating to local and state boards of education, and has heard testimony from board members with the Columbus City Schools and Lincolnview Schools.

Finance, Taxation, and Economic Development Committee

In the absence of Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, and Karla Bell, vice-chair of the committee, Executive Director Steven C. Hollon provided the report for the committee. Mr. Hollon said the committee met on June 4th, rather than the regularly scheduled date in May, to accommodate the schedule of Professor Richard Briffault, Columbia School of Law, who gave a presentation on state constitutional provisions relating to state finance.

Judicial Branch and Administration of Justice Committee

Judge Patrick Fischer, vice-chair of the Judicial Branch and Administration of Justice Committee, noted there was nothing to report at this time.

Bill of Rights and Voting Committee

Richard Saphire, chair of the Bill of Rights and Voting Committee, reported the committee met earlier in the day and is making progress in deciding what to recommend regarding Article V, Section 6, which disenfranchises “idiots and insane persons.” He said the committee hopes to conclude its discussion on this issue soon.

Constitutional Revision and Updating Committee

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee reported the committee met earlier in the day to hear presentations on and discuss the concept of limiting the ability to use the initiative process to create a monopoly in the constitution.

Representative Michael Curtin commented that the work of the committee on this issue spans the last 15 months. He said that a number of issues have come to the ballot in last few years which has raised the question of whether the use of the constitution in this way should be permitted. Rep. Curtin said it is his view, based on research by Senior Policy Advisor Steven H. Steinglass,

that this is a pressing matter for the General Assembly and the State of Ohio. He said rather than being about marijuana, the issue is about any type of plan that would create a monopoly. Representative Curtin said he would like to refine this language for this November's ballot. He said he applauds the committee, chaired by Mr. Mulvihill, as well as the research provided by Mr. Steinglass. Rep. Curtin said it is imperative that the question regarding having a monopoly in the initiative process be addressed now because the state faces this issue in the form of a proposed initiative on the ballot on November 3, 2015. He said he believes the committee should move forward to refine the language, if possible, for this November's ballot in order to give voters an opportunity to state whether naked self-interested monopolies belong in our constitution. Rep. Curtin emphasized the seriousness of this issue.

Mr. Asher commented that the issue focuses on the potential abuse of the constitution. He said even though everyone supports the initiative, it must also be recognized that the political world has changed in terms of technology, campaigning, and funding. He said the casino provision, for example, creates a monopoly, specifies location, etc. Mr. Asher said this was not the purpose of the 1912 provision creating an initiative process. He mentioned a 2000 book by David Broder that talks about the abuse of the initiative process. Although Broder's focus wasn't on Ohio, Mr. Broder described how something that was designed to be a citizen-based, progressive reform was being captured by wealthy interests. According to Mr. Asher, Mr. Broder predicted what is happening now. Mr. Asher said he shares Rep. Curtin's concerns about this issue, and said citizens should have the ability to decide legalization of marijuana or casinos, but the notion that someone can create a monopoly in the process is not the intent of the initiative. Mr. Asher said the question is how to preserve citizens' rights to make decisions about issues like gambling or marijuana, but not at the same time create a "winner."

Co-chair Amstutz then asked Mr. Steinglass to provide some context to what has been developing in the committee. Mr. Steinglass said the committee had been looking for ways to avoid abuses of the initiative process, and noted that Commission staff was asked to do some drafting. He said the proposal just discussed in the committee meeting would be a limitation on the constitutional initiative, not a limitation on the General Assembly's ability to pass statutes or resolutions, or on citizens' ability to put forth a statutory initiative. He said the proposal would also broadly define the type of initiative that would be prohibited. For example, the language prohibits the granting of an economic interest, special privilege, benefit, right, license, or monopoly, which is not available to other similarly situated persons or entities. Mr. Steinglass said it is a broad prohibition, adding that the proposal also prohibits an amendment that violates that standard from going on the ballot, and does so explicitly. He continued, saying the proposal also provides that in the event the special-interest amendment and an anti-monopoly provision go on the ballot, the normal rule would apply (whichever one gets the most votes, trumps). The amendment provides it prevails in the event of a conflict.

Judge Fischer commented that, as a former anti-trust attorney, he recommends having someone speak to the committee on the topics of state-exempted monopolies and regulations, and horizontal and vertical monopolies. He said he thinks people would understand the issue a bit better, not only on the political side but also on the economic side. Judge Fischer said he could provide the committee with a list of potential experts on this topic.

Representative Kathleen Clyde expressed her concern with the language as drafted, saying she is not sure it addresses the issue the committee is trying to get at. She said the language isn't limited to preventing a monopoly, nor is it limited to business or for-profit entities. She said it is "very, very broad language." Rep. Clyde added "When we are talking about the citizen's right, we need to be careful to tailor the language and have lengthy discussions to make sure the language is narrowly-crafted." Rep. Clyde said she is concerned about adopting language that would have the potential for unintended negative consequences, which would then have a negative effect on the citizen's right to the initiative.

Mr. Sapphire asked if the committee had a proposal yet. Co-chair Amstutz answered there is no proposal yet. He explained the Commission is having this discussion now because this issue is also under consideration in the General Assembly, where it is getting expeditious attention. Co-chair Amstutz said it is his observation that the work of this Commission has been helpful with regard to this issue. He said he would agree with Rep. Clyde that the committee hasn't yet settled on language. He noted that though the words are broad, they are constricted by the last half of the sentence. Co-chair Amstutz said it is "well worth it" to be careful in proceeding.

Mr. Mulvihill emphasized that this issue is not about marijuana, even though the press is making it about marijuana. It is about whether someone can enshrine an economic monopoly in the constitution for their exclusive benefit or the benefit of a few. Mr. Mulvihill said this is not "OCMC versus marijuana." Mr. Mulvihill added that during his committee meeting, committee Vice-chair Charles Kurfess asked Ian James, who is director of the ResponsibleOhio legalization effort, whether an anti-monopoly provision would invalidate what ResponsibleOhio is attempting, and Mr. James said it would. Mr. Mulvihill then asked whether marijuana could go on the ballot without the monopoly language. Mr. James said such an attempt would not happen because there are practical impediments, meaning if there is no economic incentive then no one would try to put it on the ballot. Mr. Mulvihill said he thinks that statement is true of every initiative proposal, so Mr. James' argument doesn't work. Mr. Mulvihill said there is nothing the committee is doing that is addressing marijuana, either directly or indirectly.

Co-chair Amstutz said the work the committee has been doing was affected by the "metes and bounds" that recently found their way into the constitution as part of the casino initiative, and the concern that was generated.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said the committee will meet immediately after the Commission meeting, and will be continuing a discussion about congressional redistricting reform in the form of HJR 2. He said the committee also will hear testimony, if there is any, about SJR 1, which creates a public office compensation commission. Mr. Mills said the committee also plans to continue to discuss what future issues would be reviewed from Article II.

Co-chair Amstutz asked commission members if there were any questions for any of the committee chairs. There being none, he noted there was a now a quorum, and the Commission

then addressed the minutes from the April 9, 2015 meeting. On a motion for approval by Co-chair Amstutz, and second by Mr. Asher, the minutes were unanimously approved.

Reports and Recommendations:

Co-chair Amstutz recognized Mr. Saphire, chair of the Bill of Rights and Voting Committee, who provided a second reading of reports and recommendations for Article I, Section 2 (Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges), Article I, Section 3 (Right to Assemble), and Article I, Section 4 (Bearing Arms, Standing Armies, Military Power). Mr. Saphire said the Bill of Rights and Voting Committee has voted to retain these three sections in their current form. Mr. Saphire summarized the reports and recommendations for each of these provisions, indicating that it is the recommendation of the committee that these provisions be retained.

Co-chair Amstutz proposed that action be taken on these reports and recommendations, although the Commission was still awaiting one member's arrival, because several legislative members needed to leave. Senator Larry Obhof suggested that the co-chair hold the vote but keep the voting roll open for a brief time to accommodate additional members' votes upon their arrival, and so moved. Sen. Obhof also moved that the vote be taken with regard to all three reports and recommendations together. These motions were seconded by Mr. Mulvihill. The floor was opened for discussion, but there were no comments.

The roll call vote was then taken, with the following Commission members voting in favor of adoption of the reports and recommendations:

Amstutz, Asher, Bell, Brooks, Clyde, Cupp, Curtin, Davidson, Fischer, Gilbert, Kurfess, Macon, Manning, Mills, Mulvihill, Obhof, Saphire, Sykes, Taft, Talley, Trafford, and Wagoner.

None opposed.

Executive Director's Report:

The Commission then heard from Mr. Hollon who gave the Executive Director's report. Mr. Hollon said staff is hosting three student interns from the OSU Moritz College of Law: Bryan Becker, Alex Benson, and Joyce Gray. Mr. Hollon said he will be circulating a point-of-interest email relating to the celebration of the 800th Anniversary of the Magna Carta, in which he will provide relevant articles for those who have an interest in this topic.

Old Business:

Co-chair Amstutz asked if there was any other old business. There being none, he moved on to new business.

New Business:

Co-chair Amstutz referred to the “stirring of the budget-making process,” noting that the Senate is currently circulating a version that shortens the lifespan of this Commission. He said he takes this as a “shot across our bow,” meaning that the Commission needs to “double down” on its work and accomplish as much as possible in order to move forward. He said the budget process has not been completed and there are many in both houses, on both sides of the aisle, that are very interested in and supportive of the work of the Commission. He said it is his observation that although the Commission did have a slow start, the fact that it is now fully staffed has dramatically changed the workflow, the focus, and the leadership that the Commission has been able to generate, as well as the momentum. Co-chair Amstutz thanked staff for what they have been able to do, saying he looks forward to a longer life than might appear to be currently pending, and that he anticipates that process will conclude at the end of this month in a much more positive vein. He then asked if there was any other new business.

Mr. Asher said he wanted to follow up on an earlier reference to a book by David Broder, indicating that the title of the book is *Democracy Derailed: Initiative Campaigns and the Power of Money*. He said the book, published in 2000, identifies a whole industry consisting of campaign consultants, pollsters, lawyers, and others, all of whom have a vested interest in helping private interests and helping them push whatever interests would generate business for them. Mr. Asher said Broder was talking about this in 2000, and was focused on California, but this problem has grown much more severe in the last 15 years.

Adjournment:

With no further business, the Commission adjourned at 2:20 p.m.

Approval:

The minutes of the June 11, 2015 meeting of the Commission were approved at the September 10, 2015 meeting of the Commission.

Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

Co-chair
Representative Ron Amstutz
Speaker Pro Tempore



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION ARTICLE I, SECTION 13

QUARTERING OF TROOPS

The Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 13 of the Ohio Constitution concerning the quartering of troops. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article I, Section 13 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article I, Section 13, reads as follows:

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

The Bill of Rights as set forth in Article I is a declaration of rights and liberties similar to those contained in the United States Constitution. The Third Amendment to the U.S. Constitution reads: "No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

Adopted as part of the 1851 Ohio Constitution, Article I, Section 13 is virtually identical to its predecessor, Article VIII, Section 22 of the 1802 Constitution, which reads:

That no soldier, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in the manner prescribed by law.

The concept of quartering troops in private homes arose out of English law and custom, and was the byproduct of a military system that had transitioned from reliance upon local citizen militias to standing armies comprised of professional soldiers.¹ Eventually, Parliament's Mutiny Act protected private British citizens in England from being forced to house and feed British soldiers, requiring compensation to innkeepers and others who supplied traveling armies with food and shelter.² But the anti-quartering section of the Mutiny Act was not extended across the Atlantic, and the forced quartering of troops during the French and Indian War (1754-1763) angered colonists who felt they were being denied protections they understood to be their birthright as Englishmen.³ Attempting to defuse colonial anger, Parliament amended the Mutiny Act to include The Quartering Act of 1765, authorizing British troops to shelter in public houses or vacant structures where barracks were unavailable and clarifying that quartering in private homes was to be avoided.⁴

From the Crown's point of view, standing armies were necessary even after the war to protect British supremacy in North America, including the securing of territorial and trading interests.⁵ From the colonists' point of view, the end of the French and Indian War should have seen a reduction, rather than an increase, in troop numbers.⁶ Eventually, the role of colonial standing armies evolved to that of containing the civil unrest that ensued as the British government imposed unpopular taxes and other restrictions.⁷ Throughout this period, colonial governments were unwilling to concede the need for standing armies, the British control they symbolized, and the expense they represented.⁸

As the situation escalated, Parliament enacted a second Quartering Act in 1774 to require the quartering of troops in private homes.⁹ Citizen outrage followed, based, in part, on the growing conviction that the real purpose of the military presence was to suppress colonists' resistance to British control.¹⁰

Thus, the quartering of troops issue became a symbol of British oppression, and helped to provide justification for the independence movement.¹¹ In fact, "Quartering large bodies of armed troops among us" was one of the rights violations cited in the Declaration of Independence.¹² In the 1800s, some historians characterized the Quartering Acts, along with other parliamentary decrees limiting and controlling economic and personal liberties during colonial times, as "Intolerable Acts," a historiographical term which continues to be used to describe the despotic actions of the British government in the years leading up to the Revolutionary War.¹³

This history inspired several former colonies to include anti-quartering provisions in their state constitutions, and led to adoption of the U.S. Constitution's Third Amendment.¹⁴ It also influenced the drafters of the constitutions of Pennsylvania, Kentucky, and Tennessee, all three of which are recognized as primary sources for much of Ohio's 1802 Constitution.^{15 16}

Amendments, Proposed Amendments, and Other Review

Article I, Section 13 has not been amended since its adoption as part of the 1851 Ohio Constitution.¹⁷ The 1970s Ohio Constitutional Revision Commission did not recommend any changes to this section.¹⁸

Litigation Involving the Provision

Article I, Section 13 has not been the subject of significant litigation.

The Third Amendment to the United States Constitution has been cited in some litigation, not because it references the quartering of troops *per se*, but for its support of the concept that citizens have a constitutional right to privacy that must be protected from governmental intrusion. *See e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965); *Katz v. United States*, 389 U.S. 347 (1967).

Presentations and Resources Considered

There were no presentations to the committee on this provision.

Conclusion

The Bill of Rights and Voting Committee concludes that Article I, Section 13 should be retained in its current form.

Date Adopted

After formal consideration by the Bill of Rights and Voting Committee on April 9, 2015 and June 11, 2015, the committee voted to adopt this report and recommendation on June 11, 2015.

Endnotes

¹ Fields, William S. and David T. Hardy. *The Third Amendment and the Issue of the Maintenance of Standing Armies: A Legal History*, 35 Am. J. Legal Hist. 393 (1991).

² Rogers, Alan. *Empire and Liberty: American Resistance to British Authority 1755-1763*. Berkeley: Univ. of California Press. 1974. Print. 76.

³ *Id.*, at 83-84.

⁴ *Id.*, at 88.

⁵ Fields & Hardy, *supra*, at 414-415.

⁶ *Id.*, at 416.

⁷ *Id.*

⁸ *Id.*, at 415.

⁹ *Id.*

¹⁰ *Id.*, at 416.

¹¹ Rogers, *supra*, at 89.

¹² Fields & Hardy, at 417-18.

¹³ Bell, J.L. “*Intolerable Acts.*” J. of the Amer. Revolution. Web. 25 June 2013. Available at <http://allthingsliberty.com/2013/06/intolerable-acts/> (accessed April 24, 2105).

¹⁴ Note, *Does Five Equal Three? Reading the Takings Clause in Light of the Third Amendment’s Protection of Houses*, 112 Columbia L.Rev. 112 (2012), 126-27.

¹⁵ Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution* New York: Oxford UP (2nd prtg.), 2011. 21-22. Print.

¹⁶ The 1796 Constitution of Tennessee includes Article 11, Section 27, which reads: “That no Soldier shall in time of peace be quartered in any House without consent of the owner, nor in time of war but in a manner prescribed by Law.” Available at: http://www.tn.gov/tsla/founding_docs/33633_Transcript.pdf (accessed April 24, 2015).

Article IX, Section 23 of the Pennsylvania Constitution of 1790 states: “That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.” Available at: <http://www.duq.edu/academics/gumberg-library/pa-constitution/texts-of-the-constitution/1790> (accessed April 24, 2015).

Article XII, Section 25 of the 1792 Kentucky Constitution provides: “That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.” Available at: <http://www.kyhistory.com/cdm/ref/collection/MS/id/9926> MSS145_1_20 (accessed April 24, 2015).

Only minor differences in punctuation distinguish these three provisions from Article VIII, Section 22 of Ohio’s 1802 Constitution.

For a discussion of the quartering provisions in the Kentucky Constitution, see Ireland, Robert M. *The Kentucky State Constitution*. New York: Oxford UP (2nd Ed.) 2012. Print. A similar discussion regarding the Tennessee Constitution may be found at Laska, Lewis L. *The Tennessee State Constitution*. New York: Oxford UP. 2011. 64. Print.

¹⁷ Steinglass & Scarselli, *supra*, at 112.

¹⁸ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, April 15, 1976, pp. 36-37, and pp. 464-65 of Appendix K of the Final Report.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION ARTICLE I, SECTION 17

NO HEREDITARY PRIVILEGES

The Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 17 of the Ohio Constitution concerning the granting or conferring of hereditary privileges. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article I, Section 17 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article I, Section 17, reads as follows:

No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this State.

The Bill of Rights as set forth in Article I is a declaration of rights and liberties similar to those contained in the United States Constitution. Article I, Sections 9 and 10 of the U.S. Constitution similarly prohibit the granting of titles of nobility.¹

That hereditary titles and privileges had no place in the emerging egalitarian ideals of the American colonies is a concept reflected in the writings of prominent statesmen, political theorists, and constitutional framers of the time. As observed by Alexander Hamilton, "Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people."²

The prohibition of such titles and distinctions also was seen as necessary to the survival of the young republic, when the hard-won gains of the Revolutionary War were threatened by both British and French trade interference and other acts of aggression in the period leading up to the War of 1812. Out of the fear that foreign influence, bought with hereditary titles and aristocratic privileges, could weaken nationalistic resolve, constitutional framers both at the federal and state levels included prohibitions against such “titles of nobility” in their constitutions.³ Hereditary titles were seen as the antithesis of a societal aspiration that rejected Old World notions of birthright and a fixed social status in favor of liberty, equality, and economic opportunity. As Thomas Jefferson wrote on the occasion of the fiftieth anniversary of the signing of the Declaration of Independence, and near the end of his life:

That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.⁴

Article I, Section 17, adopted as part of the 1851 Ohio Constitution, is virtually identical to Section 24 of Article VIII of the 1802 Constitution, which reads: “That no hereditary emoluments, privileges, or honors shall ever be granted or conferred by this state.”⁵ The record of the 1802 Constitutional Convention does not reflect the provision’s source, but it is identical to the analogous provision in Article II, Section 30 of the Tennessee Constitution of 1796.

Amendments, Proposed Amendments, and Other Review

Article I, Section 17 has not been amended since its adoption as part of the 1851 Ohio Constitution.⁶ The 1970s Ohio Constitutional Revision Commission did not recommend any changes to this section.⁷

Litigation Involving the Provision

Article I, Section 17 has not been the subject of significant litigation.

Presentations and Resources Considered

There were no presentations to the committee on this provision.

Conclusion

The Bill of Rights and Voting Committee concludes that Article I, Section 17 should be retained in its current form.

Date Adopted

After formal consideration by the Bill of Rights and Voting Committee on April 9, 2015 and June 11, 2015, the committee voted to adopt this report and recommendation on June 11, 2015.

Endnotes

¹ U.S. Const. Art. I, Section 9 reads, in part: “No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.” Section 10 reads, in part: “No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.” Available at: http://www.archives.gov/exhibits/charters/constitution_transcript.html (accessed April 24, 2015).

² The Federalist No. 84 (A. Hamilton). Available at: http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H_4_0084 (accessed April 24, 2015).

³ See, e.g., Hart, Gideon M. *The “Original” Thirteenth Amendment: the Misunderstood Titles of Nobility Amendment*, 94 Marq. L. Rev. 311, 335-47 (2010-2011).

⁴ Letter to Roger C. Weightman, June 24, 1826 (Thomas Jefferson), as reprinted in *50 Core American Documents*. Ed. Christopher Burkett. Ashland: Ashland Univ., Ashbrook Press. 2013. Print. 136-37.

⁵ Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. 123. Print.

⁶ *Id.*

⁷ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, April 15, 1976, pp. 42-43, and pp. 470-71 of Appendix K of the Final Report.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Senator Tavares, Representative Amstutz, and Members of the Ohio Constitutional Modernization Commission

FROM: Steven C. Hollon, Executive Director

DATE: August 31, 2015

RE: Proposed Amendments to the Rules of Procedure and Conduct

The Ohio Constitutional Modernization Commission, upon the recommendation of the Organization and Administration Committee, adopted Rules of Procedure and Conduct on September 11, 2014.

After operating under the rules for nearly one year, it appears that some of the rules could be tightened up to create a more efficient timeline in the adoption of proposed reports and recommendations. In addition, there are a few minor typographical and textual errors that should be corrected. The purpose of this memorandum is to review these proposed changes.

At its scheduled meeting on September 10th the Organization and Administration Committee will likely approve the proposed amendments and then recommend at the full Commission meeting later in the day that the proposed amendments be adopted by the Commission.

This memorandum sets out a short summary of the rules to be amended and the reason why the amendment is being proffered. You will find a marked up version of the proposed amendments at Attachment A. In addition to being presented in legislative style with strike-through and underlining, I have highlighted the proposed changes in yellow so that you might find them more easily.

The following rules are proposed for amendment:

Rule 5.5

Rule 5.5 should be amended to correct the title of the committee from the Liaison with Public Offices Committee to the Liaisons with Public Offices Committee.

Rule 6.3

Rule 6.3 should be amended to delete reference to Ohio Constitution Article I, Section 16 as being assigned to the Bill of Rights and Voting Committee. This section, which deals with redress for injury and due process of law, has been assigned to the Judicial Branch and Administration of Justice Committee.

Rule 6.5

In a very minor change, Rule 6.5 should be amended to list the articles assigned to the Education, Public Institutions, and Local Government Committee in numerical order by listing Article XV (Miscellaneous) before Article XVIII (Municipal Corporations).

Rule 6.7

Rule 6.7 should be amended to add a reference to Ohio Constitution Article I, Section 16 as being assigned to the Judicial Branch and Administration of Justice Committee from the Bill of Rights and Voting Committee (see Rule 6.3 above).

Rule 8.1

Rule 8.1 should be amended to make clear that the committee assignments are first set by the rules, and then secondarily by the Coordinating Committee.

Rule 8.3

Rule 8.3 should be amended to allow a subject matter committee the option of shortening the time that it considers a proposed report and recommendation. As Rule 8.3 now reads, a subject matter committee must consider a proposed report and recommendation “for not less than two consecutive meetings.” This can be a lengthy timeline, especially with committees meeting every other month. The proposed amendment allows for a committee to potentially reduce this timeline, by now noting that the report and recommendation needs to be on the committee’s agenda “for at least one meeting.”

As you know, the reports and recommendations are only prepared after advance discussion by committees for at least one if not multiple meetings, and are usually prepared after a committee has taken a preliminary vote on whether it wishes to retain a constitutional provision as written or amend it in some way. Thus, there is ample opportunity for the public to monitor and comment upon the actions of the committee.

This amendment will help streamline the committee’s consideration of a report and recommendation without jeopardizing the public’s interest in following the deliberations or commenting on the actions of the committee.



Rule 10.2

Similarly to Rule 8.3, Rule 10.2 should be amended to allow the Commission the option of shortening the time it considers a proposed report and recommendation. Rule 10.2 now reads that following the first presentation of a report and recommendation, “the Commission shall take the matter under advisement until the next Commission meeting.” As with the timeline between committee meetings noted in Rule 8.3, this can lengthen the time it takes to get a report and recommendation approved, especially if a Commission meeting is canceled. The proposed amendment permits the Commission to reduce this timeframe by allowing it, upon motion and vote, to either approve the report and recommendation after one reading or take the matter under advisement until the next Commission meeting.

This gives the Commission the discretion of advancing a proposed report and recommendation for a vote when there is a matter of little controversy, without having to wait for a second presentation.

Conclusion

Upon the recommendation of the Organization and Administration Committee, the full Commission should amend the rules as proposed.



**Section 5.0
Standing Committees**

Rule 5.1 Creation

The Commission shall maintain four standing committees as set forth in Rules 5.3, 5.4, 5.5, and 5.6. The Commission may form additional standing committees as required.

Rule 5.2 Membership

Each member of the Commission shall be assigned to sit on one standing committee.

Rule 5.3 Organization and Administration Committee

The Organization and Administration Committee shall serve as a standing committee for the purpose of making recommendations to the Commission and staff regarding budget, staffing, ethics, and rules.

Rule 5.4 Public Education and Information Committee

The Public Education and Information Committee shall serve as a standing committee for the purpose of making recommendations to the Commission and staff on how best to disseminate information to the public regarding the Commission and its operation, educate the citizens of Ohio regarding the Commission's proposals, and receive input from the public.

Rule 5.5 Liaisons with Public Offices Committee

The Liaisons with Public Offices Committee shall serve as a standing committee for the purpose of providing information and maintaining relations with all public offices reasonably affected, if at all, by any proposal or action of the Commission.

Rule 5.6 Coordinating Committee

The Coordinating Committee shall serve as a standing committee for the purpose of coordinating the study of the Ohio Constitution by each subject matter committee. In addition to the provisions of the Ohio Constitution assigned to each subject matter committee for review under Rules 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8, the Coordinating Committee may assign additional provisions or topics for a subject matter committee to review and consider. The Coordinating Committee may provide input to the co-chairs of the Commission for the purpose of developing the agenda for full Commission meetings.

Section 6.0

Subject Matter Committees

Rule 6.1 Creation

The Commission shall maintain six subject matter committees as set forth in Rules 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8. The Commission may form additional subject matter committees as required.

Rule 6.2 Membership

Each member of the Commission shall be assigned to sit on two subject matter committees.

Rule 6.3 Bill of Rights and Voting Committee

The Bill of Rights and Voting Committee shall serve as a subject matter committee for the purpose of reviewing the provisions of Article I (Bill of Rights) of the Ohio Constitution dealing with the rights of all, including Sections 1, 2, 3, 4, 6, 7, 11, 13, 16, 17, 18, 19, 19b, 20, and 21. In addition, the Committee shall review the provisions of the Ohio Constitution dealing with voting rights, including all sections of Article V (Elective Franchise) and Article XVII (Elections).

Rule 6.4 Constitutional Revision and Updating Committee

The Constitutional Revision and Updating Committee shall serve as a subject matter committee for the purpose of reviewing the provisions of the Ohio Constitution dealing with amending, revising and updating its provisions through initiative and referendum, including Sections 1, 1a, 1b, 1c, 1d, 1e, 1f, and 1g of Article II (Legislative) and all sections of Article XVI (Amendments).

Rule 6.5 Education, Public Institutions, and Local Government Committee

The Education, Public Institutions, and Local Government Committee shall serve as a subject matter committee for the purpose of reviewing the provisions of the Ohio Constitution dealing with the topics of education, school funding, public institutions, county and township organizations, municipal corporations, home rule, and miscellaneous matters, as well as the general topics of adjoining regionalization and economic development, including all sections of Article VI (Education), Article VII (Public Institutions), Article X (County and Township Organizations), Article XV (Miscellaneous), and Article XVIII (Municipal Corporations), ~~and Article XV (Miscellaneous).~~

Rule 6.6 Finance, Taxation, and Economic Development Committee



The Finance, Taxation, and Economic Development Committee shall serve as a subject matter committee for the purpose of reviewing the provisions of the Ohio Constitution dealing with the topics of public debt, public works, finance, taxation, and corporations, as well as the general topics of tax reform and statewide economic development, including all sections of Article VIII (Public Debt and Public Works), Article XII (Finance and Taxation), and Article XIII (Corporations).

Rule 6.7 Judicial Branch and Administration of Justice Committee

The Judicial Branch and Administration of Justice Committee shall serve as a subject matter committee for the purpose of reviewing the provisions of Article I (Bill of Rights) of the Ohio Constitution dealing with all rights under justice, including Sections 5, 8, 9, 10, 10a, 12, 14, 15, **16.** and 19a. In addition, the Committee shall review the provisions of the Ohio Constitution dealing with the judicial branch of Ohio government, as well as the general topics of judicial organization, the criminal and civil justice systems, and the rights of the criminally accused, including all sections of Article IV (Judicial).

Rule 6.8 Legislative Branch and Executive Branch Committee

The Legislative Branch and Judicial Branch Committee shall serve as a subject matter committee for the purpose of reviewing the provisions of the Ohio Constitution dealing with the legislative branch and executive branch of Ohio government, the militia, apportionment and districting, term limits, and livestock care standards, as well as the general topic of global, statewide, and regional economic development, including Sections 2 through 42 of Article II (Legislative), Article III (Executive), Article IX (Militia), Article XI (Apportionment), Article XIV (Livestock Care Standards Board).

Section 8.0

Review of Existing Constitutional Provisions

Rule 8.1 Review by Subject Matter Committee

To facilitate the full examination of the Ohio Constitution by the Commission, each subject matter committee shall review every section of the Ohio Constitution as assigned to it by **these rules and, when required**, the Coordinating Committee, and issue a report and recommendation to the Coordinating Committee as to whether the section should be amended in whole or in part, deleted in whole or in part, or whether no change should be made.

Rule 8.2 Report and Recommendation

(A) A report and recommendation as issued by a subject matter committee regarding existing sections of the Ohio Constitution shall include (i) a summary of the history and meaning of the current section, (ii) a plain language summary of any proposed amendment, (iii) copies of all materials, testimony and other documents relied upon by the committee in preparing the report and recommendation, and (iv), as fully as necessary to provide for a thorough understanding of the examination which it undertook in review of the section, the rationale for its recommendation.

(B) For the purpose of clarity and at the discretion of the subject matter committee, a report and recommendation may be issued for (i) each section of an article of the constitution, (ii) all sections contained within the same article, or (iii) sections contained in separate articles provided the subject matter of the material in each section is reasonably related to the same topic.

Rule 8.3 Agenda

Before voting to approve a report and recommendation regarding existing sections of the Ohio Constitution, a subject matter committee shall place the proposed report and recommendation on its written agenda for **not less than two consecutive meetings at least one meeting** for the purpose of allowing discussion by committee members and to receive comment from the public. The report and recommendation shall also be made available on the Commission's website as part of the notice of the meeting for the subject matter committee.

Rule 8.4 Legislative Style; Joint Resolution Style

When considering a report and recommendation that includes a proposal to amend a section in whole or in part or delete a section in whole or in part, a subject matter committee shall have the proposed section prepared in legislative style and joint resolution style. Subject matter committees shall work with Commission staff and, if appropriate, the Legislative Services Commission to assist in formatting the language in the appropriate styles.

Rule 8.5 Majority Vote

A report and recommendation prepared pursuant to Rule 8.2 may only be approved by affirmative vote of a majority of the members constituting the subject matter committee taken by roll call vote and recorded in the minutes of the meeting at which the vote was cast.

Rule 8.6 Review by Coordinating Committee

Upon receipt of a report and recommendation from a subject matter committee, the Coordinating Committee shall review the report and recommendation to determine if it meets the requirements of Rules 8.2 and 8.4. If the Coordinating Committee finds the report and recommendation to be complete, it shall forward the report and recommendation to the Commission co-chairs for the purpose of placing the matter on the agenda at a future Commission meeting. If the Coordinating Committee finds the report and recommendation not to be complete, it shall return the matter to the subject matter committee for further consideration.



Section 10.0 Action by Commission

Rule 10.1 Agenda

Upon receipt of a report and recommendation from the Coordinating Committee, as issued by a subject matter committee, the Commission co-chairs shall place the matter upon the written agenda for a future Commission meeting. The proposed report and recommendation shall also be made available on the Commission's website as part of the notice of the Commission meeting.

Rule 10.2 Presentation to Commission

(A) When the report and recommendation of a subject matter committee is placed upon the agenda for a Commission meeting, the Commission co-chairs shall require the chair of the subject matter committee that has issued the report and recommendation to present an oral summary of the report and recommendation to the Commission members.

(B) Following the oral summary, the Commission co-chairs shall allow an opportunity for public testimony regarding the report and recommendation. Following the presentation of an oral summary and any public testimony, the Commission, **upon motion, may elect to vote on the report and recommendation or shall** take the matter under advisement until the next Commission meeting.

Rule 10.3 Action by Commission

At the Commission meeting following the meeting at which the chair of the subject matter committee presented an oral summary of a report and recommendation and an opportunity for public testimony was provided, the Commission may take any one of the following actions:

(A) If the report and recommendation of a subject matter committee finds that an existing section or sections of the Ohio Constitution should not be changed, the report and recommendation may be approved by affirmative vote of seventeen members of the members constituting the Commission taken by roll call vote as recorded in the minutes of the meeting at which the vote was cast.

(B) If the report and recommendation of a subject matter committee finds that an existing section or sections of the Ohio Constitution should be amended by the addition to or deletion from language contained in the existing section, the report and recommendation may be approved by affirmative vote of twenty-two members of all members constituting the Commission taken by roll call vote and recorded in the minutes of the meeting at which the vote was cast.

(C) If the report and recommendation of a subject matter committee finds that a proposed amendment to the Ohio Constitution as submitted pursuant to Rule 9.1 should be adopted, the report and recommendation may be approved by affirmative vote of twenty-two members of all members constituting the Commission taken by roll call vote and recorded in the minutes of the meeting at which the vote was cast.

(D) Table the report and recommendation until the next meeting of the Commission.

(E) Refer the report and recommendation to the subject matter committee which issued the report and recommendation for further consideration or action.

Rule 10.4 Referral to General Assembly

If the Commission votes to adopt a report and recommendation of a subject matter committee pursuant to Rule 10.3 that finds a section or sections of the Ohio Constitution should be amended by the addition to or deletion from language contained in the existing section or sections or that a proposed new amendment should be adopted, the Commission co-chairs shall present the report and recommendation as approved by the Commission to the President of the Senate and Speaker of the House of Representatives by filing it with the clerk of each respective chamber of the Ohio General Assembly.





OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

STATUTORY CHARGES

103.61 Ohio constitutional modernization commission.

The members of the Ohio constitutional modernization commission shall meet for the purpose of:

- (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.

A commission recommendation is void unless it receives a two-thirds vote of the membership of the commission.

103.62 Report to general assembly.

In the event of a call for a constitutional convention, the Ohio constitutional modernization commission shall report to the general assembly its recommendations with respect to the organization of a convention, and report to the convention its recommendations with respect to amendment of the Constitution.

103.63 Establishment; members; compensation.

There is established an Ohio constitutional modernization commission consisting of thirty-two members. Twelve members shall be appointed from the general assembly as follows: three by the president of the senate, three by the minority leader of the senate, three by the speaker of the house of representatives, and three by the minority leader of the house of representatives. On or before the tenth day of January every even-numbered year, the twelve general assembly members shall meet, organize, and elect two co-chairpersons, who shall be from different political parties. Beginning in 2014, the twelve general assembly members shall elect one co-chairperson from each house of the general assembly. The members shall then, by majority vote, appoint twenty commission members, not from the general assembly. All appointments shall end on the first day of January of every even-numbered year, or as soon thereafter as successors are appointed, and the commission shall then be re-created in the manner provided above. Members may be reappointed. Vacancies on the commission shall be filled in the manner provided for original appointments.

The members of the commission shall serve without compensation, but each member shall be reimbursed for actual and necessary expenses incurred while engaging in the performance of the member's official duties. Membership on the commission does not constitute holding another public office. The joint legislative ethics committee is the appropriate ethics commission as described in division (F) of section 102.01 of the Revised Code for matters relating to the public members appointed to the Ohio constitutional modernization commission.

103.64 Receipt of and disbursement of funds; annual report.

The Ohio constitutional modernization commission may receive appropriations and grants, gifts, bequests, and devises and may expend any funds received in such a manner for the purpose of reimbursing members for actual and necessary expenses incurred while engaged in official duties, or for the purpose of meeting expenses incurred in any special research or study relating to the Constitution of Ohio. The commission shall file annually with the auditor of state, on or before the fifteenth day of March, a full report of all grants, gifts, bequests, and devises received during the preceding calendar year, stating the date when each was received and the purpose for which the funds received therefrom were expended.

103.65 Staff.

The Ohio constitutional modernization commission may employ professional, technical, and clerical employees as may be required successfully and efficiently to carry out the purposes of the commission. Funds for the compensation and reimbursement of employees shall be paid from the state treasury out of funds appropriated for the purpose. All disbursements of the commission shall be by voucher approved by one of the co-chairpersons of the commission.

103.66 Timing of reports.

The Ohio constitutional modernization commission shall make its first report to the general assembly not later than January 1, 2013. Thereafter, it shall report at least every two years until its work is completed.

103.67 Expiration of commission.

The Ohio constitutional modernization commission shall complete its work on or before July 1, 2021, and shall cease to exist at that time. The terms of all members shall expire July 1, 2021.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Remaining 2015 Meeting Dates

October 8

November 12

December 10

2016 Meeting Dates (Tentative)

January 14

February 11

March 10

April 14

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8