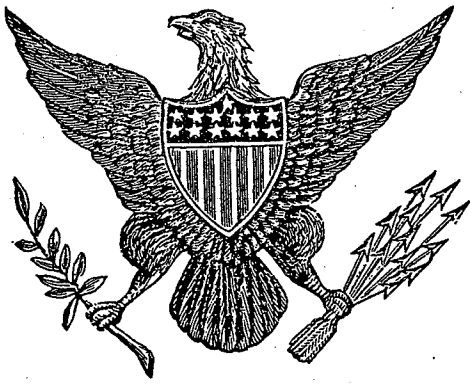

CONstitutional CONcepts

Number 4

A series of condensations of the scholars' research papers prepared by the Illinois Constitutional Research Committee which was appointed by Governor Richard B. Ogilvie to furnish background material for delegates to the Constitutional Convention.

THE LEGISLATURE AND THE ILLINOIS CONSTITUTION

Samuel K. Gove
and
Richard J. Carlson

What should a constitution say about the legislative body?

Should special legislation be prohibited?

Should local legislation be prohibited?

Should a constitution specify procedure or should this be left to the legislative body?

These and other questions are raised in the paper, "The Legislature," written by Samuel K. Gove and Richard J. Carlson. This is one of a series of papers prepared by the Governor's Constitution Research Group for consideration by delegates to the Illinois Constitutional Convention. The following is a summary of a 24-page paper and does not purport to contain all the detail of the original. (See the back page for further information.)

One of the basic questions of constitutional revision is: What areas of governmental concern are so important and enduring that their inclusion in the constitution is justified? To answer this question, it must be broken into two related parts.

The first concerns the range of authority in which the legislature will have to raise revenue and promote the public health, safety, and welfare. The second involves the legislative institution; its structure, organization, and procedures. This paper focuses primarily on legislative procedure—how the legislature goes about the business of law making.

The Illinois Commission on the Organization of the General Assembly, in its 1967 report, concluded that ". . . constitutional procedures are not a major cause of difficulty to the legislature." Nevertheless, the Commission believes that, while not seriously deficient, neither is the Constitution completely adequate to the responsibilities of a modern legislative body. Some provisions are out-dated, others require present day reality.

Special Legislation

When the 1870 Illinois Constitution was written, a profound recognition of wide-spread corruption and legislative politics existed. Charges of logrolling and corruption were offered freely. Special laws creating franchises, and corporations and private bill legislation occupied a large part of the legislative session.

In 1857, the private laws formed a volume of 1,550 pages. By 1867, they constituted three volumes of more than 2,500 pages. By 1869, there were four volumes of 3,350 of which 1,850 pages related to cities, towns, and schools. As a result in the 1870 Convention, Article IV, Section 22, prohibited special or local legislation in 23 specific cases and ended with a blanket prohibition: "In all other cases where a general law can be made applicable, no special law shall be enacted."

There is common agreement that a government ought to rely on laws of general applicability, and all but 14 states prohibit passage of special and local legislation. Nevertheless, situations do arise where special laws are needed—where general laws are not applicable. The Commission on the Organization of the General Assembly concluded in 1967 that a ". . . detailed list of prohibited subjects is neither necessary nor proper in the constitution itself."

Some consideration might be given to supplementing the blanket prohibition of Section 22 with an equal protection clause in the Bill of Rights. If a new local government article is included in a new constitution, such an article might include a ban on local legislation.

Length of Session

A great deal of nationwide agitation has existed for annual legislative sessions. In 1941, only four states met annually. At the beginning of 1969, this number has increased to 31. In some states, this has been done through amendments to the constitution. In others, including Illinois, it has been done under existing constitutional provisions.

The Illinois transition to annual sessions has involved constitutional turmoil. The tradition for well over a century has been for biennial sessions; but in 1967, the General Assembly adjourned on June 30 and subsequently reconvened in September and October; again in 1968 in March and July; and, again in January of 1969.

By keeping active, the General Assembly was able to consider gubernatorial vetoes, keep standing committees organized and in operation, consider emergency matters, and provide senatorial consent to gubernatorial appointments. The same type of procedure is in existence for the current General Assembly.

The present constitution provides that a law does not become effective until July 1 following its passage, unless it has been passed with a vote of ⅔ of the members elected to each house—in which case it may become effective immediately. This language had led to a traditional adjournment by June 30 of the year in which the legislature met. Further confusion involving appropriations has led to other questions as to the constitutionality of annual sessions in Illinois for budget purposes. The present General Assembly is proceeding with an annual budget for the first time in Illinois history.

Procedural Requirements

The Constitution requires each bill ". . . to be read at large on three different days, in each house." This is generally assumed to mean that the entire text of the bill must be read. The roots of this provision go back to a day before modern printing and reproduction processes made exact copies of bills readily available to all members of the General Assembly and all persons interested in the legislation. As a matter of practice, the clerk of each house reads the bill only by title and the journal then records that each bill has been read "at large." Whenever members demand that bills be read in their entirety, the legislative process grinds to a halt until a satisfactory agreement can be reached with the members, and usual processes resume.

One Subject

The Constitution also provides that only one subject shall be included in a piece of legislation. A result of this has been a considerable amount of court challenges. Up until recent years, courts adopted a liberal attitude and few bills were successfully challenged on this ground. The principal merit of this provision is preventing the practice of "rider" amendments unrelated to an existing bill—a device commonly used in the United States Congress.

Amendment by Reference

The 1870 Constitution provides ". . . no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act." The intent of this provision was to insure that legislators could see the existing law in its entirety when considering changes to that law. However, supreme court decisions have complicated this provision to the extent that a number of companion bills to the major bill must be drafted, in order to amend any other act which might be affected. This prevents the court from declaring the bill void as an amendment by reference.

Arguments both in favor and in opposition to the retention of this provision can effectively be made.

Roll Call Vote at Passage

The Constitution requires that ". . . on final passage of all bills, the vote shall be by yeas and nays, upon each bill separately . . ." Thus, a formal vote for each bill at passage stage is required. In the session ending in 1967, there were 2,603 bills passed in both houses indicating well over 5,000 roll call votes. The use of automatic tabulating and roll call devices now used in the house and proposed in the senate can greatly speed up roll calls.

July 1 Effective Date

The provision that the effective date for legislation is July 1 following its passage has had a profund impact on the distribution of the legislative workload. Traditionally, a major "logjam" accumulates in the closing weeks of June. Attempts in the last two legislative sessions with cut-off dates for various parts of the legislative procedures have more uniformly distributed the legislative workload; but traditionally, the legislature must stop the clocks before midnight of June 30 and work well into the next day on an artificial time basis to complete work before July 1 so the legislation may become effective as of that date.

Executive Veto

The Governor has veto power over any legislation passed by the General Assembly, and may veto appropriations by item. He is required to conclude his actions on all legislation within 10 days after the legislation has been "presented to him." To overcome the problem of the tremendous mass of legislation which would otherwise come over his desk within 10 days after the final adjournment of the legislative session, the Governor spaces his requests for bills to legislative leaders, thus controlling the flow of legislation he must consider.

WHY these DIGESTS?

Preparing for a constitutional convention requires advance background and research. Accordingly, Governor Richard B. Ogilvie called upon a group of scholars to prepare research papers for the use of delegates and appointed Dr. Samuel K. Gove, director of the Institute of Government and Public Affairs of the University of Illinois as project director. Sixteen papers on various aspects of state government are being assembled. These will be issued in condensed form in continuing issues of Constitutional Concepts. A sincere attempt has been made to retain the concepts and ideas of the writers whose papers run from up to 80 pages or more. Any errors which result from the condensations clearly are not those of the scholars originating the research.

As no public funds were available to the Constitution Research Group, the Union League Club of Chicago made an initial grant of $10,000 to the group so the work might proceed. The Club took no part in the selection of the scholars nor the topics to be researched; made no effort to influence either research or conclusion; and did not, in any manner, direct the group. Nor does the Club necessarily endorse any suggestions, proposals or ideas expressed by the scholars.

This is one of a series of condensed research papers, prepared and published as a public service by the Public Affairs Committee of the Union League Club of Chicago.

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