

December 14, 1954

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Prepared as "every Board member" material at request of Executive Board & sent to state KYS chairman, Cookie Smith. This was sparked by Texas Voter article referred to on page 2. Bd made the noted corrections & authorized sending this to State assessor. Pressing in Bd. opinion. Brownscombe

Thoughts About the State Program Item, "Use of the Know Your State Survey as a Basis for Constitutional Revision"

I question that the local leagues had, at the time of the March, 1954, state convention, sufficient background to give a valid commitment for constitutional revision.

We had had excellent material from State on about half of the Know Your State Survey--material which discussed clearly and accurately (1) provisions and applications of part of the present constitution and (2) differences between the Model State Constitution and the Texas constitution. We had had, also, 2 1/2 pages of material on constitutional issues (December, 1952) and 6 pages on what a constitution should contain (February, 1953). In June, 1953, we had a 5-page history of revision under the present Texas constitution and 8 pages, including pro and con discussion, on methods of revision provided in the constitution. At that time we received, also, National's 5-page publication on "The League and State Constitutional Revision."

The above is the material we had had by March, 1954. In my opinion, in order to commit ourselves, with our eyes open, to constitutional revision at that time we should also have had considerable additional material, as follows:

1. The remaining sections of the Know Your State Survey.
2. Summaries of all sections of the KYS for use as "brush-up" material by all local leagues in the fall of 1953 and winter of 1953-54.
3. More material regarding sectional and complete revision of the constitution, including:
 - A. Case histories of constitutional revision and attempted constitutional revision in other states
 - B. A realistic, concrete, down-to-earth appraisal of what it takes, and how long, to achieve constitutional revision
 - C. Further material on methods of sectional and complete constitutional revision, e. g., commission, convention, etc.
 - D. An analysis of the failure of past moves to secure *comprehensive* ~~planned~~ constitutional revision in Texas, with an appraisal of factors which could be expected to operate now for and against revision

including money

I would say, in short, that since we did not have all the material mentioned above, which I consider necessary for an informed vote on constitutional revision, we did not really have sufficient

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background to commit ourselves on constitutional revision in the 1954 convention. I think State did a remarkable job in the material sent us. It was topnotch in quality, and in quantity was certainly as much as the local leagues could handle, considering their other program items. But there simply was not time, in the two years between the 1952 and 1954 conventions, to cover thoroughly an item of the magnitude of KYS. Because so much time is needed for research and the preparation of material and because local leagues can spend only part of their time on state program items, I think we would, indeed, do very well if by the 1956 convention we have achieved widespread informed League opinion on constitutional revision.

However, since we did commit ourselves to constitutional revision in the 1954 state convention, the necessity now, it seems to me, is to fill in the gaps in our basic information before we decide whether or not to enter the action phase of our constitutional revision item.

Feeling this way, I am alarmed over the KYS article in the December Texas Voter and the December 7th letter to KYS chairman from Mrs. Horton W. Smith. Both seem to me to be rushing things. "By the time of President's Council next March all local leagues should be ready to present the opinions of their members as to how far we think our Constitution must be changed to make it an effective document of fundamental law, and what methods we believe to be best." (Texas Voter, Dec., 1954, page 4, column 1.) But how can we do as requested?--the last three sections of KYS will not be available for study until January and February; no refresher summary of KYS is generally available to local leagues; and we simply have not had the material needed for us to decide on methods of constitutional revision. Furthermore, and most basic of all to my way of thinking, we have not had the material necessary for a decision as to whether the League should undertake constitutional revision.

I would suggest that the State League revise the schedule of timing on the KYS current agenda item, as follows:

1. Send to the local leagues no later than mid-August, 1955, the printed condensation of the KYS survey, or, alternatively, the 25-page KYS summary prepared by the Dallas League.
2. By mid-August, 1955, send to the local leagues further material on sectional and complete revision of the constitution, including:
 - A. Case histories of constitutional revision and attempted constitutional revision in other states
 - B. What it takes, and how long, to achieve constitutional revision + *how much it costs*

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- Comprehensive*
- C. Further material on methods of sectional and complete constitutional revision, e. g., commission, convention, etc.
 - D. An analysis of the failure of past moves to ~~secure planned~~ constitutional revision in Texas, with an appraisal of factors which could be expected to operate at present for and against revision.
 - E. A summary of the main points in the material mentioned in A, B, C, D above, to help unit group presentation of the material.
3. Ask local leagues to give, in their unit groups during September, October and November, 1955, a minimum of four hours to
- A. Brushing up on the KYS summary
 - B. Brushing up on the material already put out in December, 1952, and February and June, 1953 on constitutional revision and related issues
 - C. Studying the new material mentioned in #2 above
 - D. Making, if the unit group desires, a recommendation for constitutional revision as a 1956-58 state program item. (Note: program recommendations must be in to the state office by about November 28, 1955. Recommendations on constitutional revision should probably state whether sectional or complete revision is desired and by what method.
4. Emphasize to local board members and league members in general the importance of studying the unit group material mentioned in Nos. 1 and 2 above and of deciding whether or not to suggest constitutional revision as a 1956-58 program item.
5. If recommendations for 1956-58 state program favor the League undertaking constitutional revision, I think the State Board should have worked out, by the time for the 1956 convention, specific and detailed plans for action, to go into effect if the convention adopts a constitutional revision item. No time need be lost, then, in getting under way on the item. With such a prompt start it might even be possible to organize effective support in the 1957 legislature for bills looking toward constitutional revision.

"This is a complete set of summaries of the sections of the state League's monumental Know Your State survey. This is an outstanding job of summarizing, what "every member" material, & was discussed in most of the 1954-55 unit mtgs - usually, however only a section or two at a time & only as part of the program of the unit mtgs.
Brounscombe

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Briefing material on KNOW YOUR STATE

INTRODUCTION

The League of Women Voters encourages each state league to make a KNOW YOUR STATE SURVEY so that the members will be better equipped to take an active part in governmental affairs on the state level. Texas has chosen to emphasize the state constitution in its study with a view to possible efforts to revise it.

At the 1952 state league convention the delegates voted to study the sections of the survey as they were issued and use the 1952-4 period to inform the membership about its content. We are now in the process of completing that study as a local league. At the Presidents' Council in March 1955, our local league president will be expected to bring the consensus of opinion of our local membership as to what action the state league should take regarding revision of our constitution. "The fight for constitutional revision is a long one and members should decide, as they take up each section of the survey, whether or not the "sins and omissions" of our present constitution warrant the years of League effort that will be required to bring about revision" says the November 1953 Bulletin of the Texas League.

The complete KNOW YOUR STATE SURVEY contains eleven sections in all. Not all of them have been printed and sent to local Leagues.

The complete list includes:

- I. Political Parties and Elections
- II. Bill of Rights and Constitutional Issues
- III. The Legislature
- IV. History of Texas Constitutions and Means of Constitutional Revision
- V. The Executive Department
- VI. Administration
- VII. Education
- VIII. Taxation and Revenue
- IX. Health and Welfare
- X. Judiciary
- XI. State - Local Relations

Include
season for
this summary
& its suggested
use, i. e., as
the material
the units
work from.

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Briefing material on KNOW YOUR STATE
Summary of Section I - Political Parties and Elections

Texas Election Code (Constitutional provisions plus statutes)

Because Texas has been a one-party state, nomination in the democratic primary has been the equivalent of election, and therefore the procedures of the primary have been prescribed by law rather than left to the Party. No party is mentioned by name in the constitution, but two categories are defined with differing regulations for each. The category is determined by whether the parties' candidates for governor received more or less than 200,000 votes in the last general election. Parties in the higher category must select candidates by primaries; parties in the lower category may select candidates by conventions (cheaper).

Primaries - Held 4th Saturday of July

Run - off: Held 4th Saturday of August. Required by law if no candidate receives a clear majority (50% plus 1 of the total vote cast) in the first primary.

Conventions: precinct, county, state, national.

Dates for them are specified. They begin in May in quadrennial years (1952, 1956, 1960). They begin in July in biennial years (1954, 1958, 1962). In quadrennial years the state conventions must be over by the time the national conventions meet to choose the presidential candidate.

Executive Committees: county, state, national.

COUNTY: Chairman elected at 1st primary; members are all the precinct chairmen elected at the same time. This committee manages the affairs of the party in the county throughout the year, and makes all needed provisions for elections. The precinct chairman is the one the individual party member deals with.

STATE: consists of a chairman, a woman vice-chairman, and a man and woman from each of the 31 State Senatorial Districts.

NATIONAL: Each state has one man and one woman delegate.

Voting procedure (Taken up in detail in LWV Election Law Sketches)

Paper ballots are used in most of Texas. Secrecy is achieved by keeping in separate container the signed, numbered stubs of ballots which may not be examined unless the election is contested. Several ways of marking the ballot are permitted. Machines are very expensive, but where used provide absolute secrecy of ballot and automatic, accurate count of ballots.

The Texas size of ballot - long! About 50 officials on it.

Requirements to vote:

U.S. citizenship; Age 21; Residence in state one year and in county six months; payment of poll tax or procurement of exemption certificate before February 1st of the year of the election.

Amount of poll tax: \$1.00 by constitutional provision goes to the support of Public Free Schools. Counties may collect 25¢ and cities may collect up to \$1.00.

MODEL STATE CONSTITUTION: Provisions which differ from the Texas Constitution in regard to political parties and elections:

Requirements for voting: Age 18, NO poll tax, literacy test.

Short ballot: Governor, Chief Justice of the Supreme Court, and representatives to the legislature are the only ones elected. Other offices are filled by appointment. This fixes responsibility on few.

Election officials: Legislature is given power to determine details of their election provided it is done on a merit and fitness basis which is to be determined by competitive exam where possible. The MSC limits itself to setting a date for the general election, guaranteeing secrecy of ballot, providing for registration of voters, and setting the requirements for eligibility to vote.

*What is
Model
Const. &
why do
we quote
it & use
it as a
standard?*

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Briefing material on KNOW YOUR STATE
Summary of Section II - Bill of Rights and Constitutional Issues

Constitutional Issues

- Define statutory*
1. Statutory versus constitutional provisions
Should the function of a constitution be to set out general principles to be followed by the legislature, or is it possible for one generation to legislate for another?
 2. Prohibition of powers versus grant of powers
Should the emphasis be upon facilitating effective government or upon preventing evils from developing?
 3. Long constitution versus short constitution
Long ones usually contain sections of a statutory nature.
 4. Sectional revision versus complete revision
Those who favor revising the constitution article by article rather than writing a new constitution believe that the merits or demerits of one reform will not be confused with those of another and that each article will be more effectively debated and understood than if all needed changes in the constitution were an issue at the same time.

The Model State Constitution requires ^{that} a referendum be submitted to the voters at least every 15 years on the question of a constitutional convention call.

BILL OF RIGHTS

It sets forth specific privileges and immunities which establish the relationship that shall exist between the governors and the governed. It should not be confused with the main body of the constitution whose function is to set up governmental machinery.

Historical Background:

The Colonial Charters included the express provision that all colonists were to enjoy all rights and privileges of Englishmen, which had been established after a long struggle against arbitrary government. The milestones in their development are the Magna Charta of 1215, the Petition of Rights of 1628, and the Bill of Rights of 1689. When the states converted their charters to constitutions, they included bills of rights which drew largely in wording and content on the English one, adding new rights which were the product of their quarrel with England. The State of Virginia refused to ratify the federal constitution until assurance was given that appropriate amendments embracing a bill of rights would be the first order of business of the new congress. The provisions of our present Texas constitution are still important in marking out the area that shall be free of governmental influence.

The MODEL STATE CONSTITUTION eliminates duplication in the federal and state constitutions. Some guarantees which are traditionally found in a bill of rights are placed elsewhere in the MSC, such as sections concerning federal-state relations, and excess condemnation of property.

The Bill of Rights of the U. S. CONSTITUTION is contained in the first ten and the fourteenth amendments to it.

In the TEXAS CONSTITUTION all political powers are vested in the people who are pledged to preserve a republican form of government. Each person is guaranteed equality before the law, freedom in religious worship (no religious test may be given for office, no appropriation may be made for sectarian purposes), freedom of speech (although no speech or writings may lead directly to disorder, violence, or breach of the law). It prohibits unreasonable searches, bills of attainder (inflict punishment by an act of the legislature rather than by a judicial trial), ex post facto laws (no act of legislature can impair the fulfillment of contracts already made). It also establishes the right of eminent domain (property taken for public use, such as a pipeline, under limited conditions), and that no person may be deprived of life, liberty or property, without due course of law.

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Briefing material on KNOW YOUR STATE

[Summary of Section II - Bill of Rights and Constitutional Issues]

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additional rights (by individuals) given by the Texas Constitution:

TEXAS CONSTITUTION

Rights of accused persons in criminal prosecutions:

1. Speedy public trial by an impartial jury
2. A copy of the nature and cause of the accusation
3. Presence at his own trial
4. Privilege of not being compelled to give evidence against himself
5. Right of being heard by self or counsel or both
6. Right of subpoena - a compulsory process for obtaining witnesses in his favor
7. In all felony cases, indictment by a grand jury before ~~trial~~ ^{trial} (trial)

Other rights include:

1. Prohibition of excessive bail.
2. Writ of habeas corpus - whenever a person is accused of crime he can demand a preliminary hearing or trial to determine whether there is sufficient evidence to warrant depriving him of his liberty.
3. No one may be tried twice for the same act (twice in jeopardy).
4. A criminal's relatives may not be punished for his crimes (corruption of blood).
5. A criminal may not be required to forfeit his rights of ownership of property or his right to bequeath it.
6. No one may be convicted of treason except on the testimony of two witnesses to the overt act.

Supreme civil authority is maintained even under martial law because the governor is commander-in-chief of the militia, and the governor is subject to election by the people.

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Briefing material on KNOW YOUR STATE
Summary of Section III - The Legislature

This section of the Know Your State Survey is of particular importance because the legislature makes the policy for all state activities, and through our election of representatives in it we have our most direct link to government policy as individuals.

Historical Background - ^{Throws light} [It offers enlightenment] upon some of the reasons for the restrictive nature of our present constitution.

During colonial times the assemblies were the champions of the people against the tyrannies of the crown-appointed governors. Trouble arose in the early history of the newly sovereign states when legislative power was abused in passing mischief-making laws, such as granting divorces, special favors to individuals, reckless pledging of public funds and credit, and awarding additional compensation for services performed other than the amount authorized by pre-existing law. Following the Civil War there was a flood of pensions, annuities, etc. .

States followed one another rapidly in framing provisions to restrict the freedom of their legislatures. So in 1876 Texas was following the trend of the times in its distrust of the legislators, as well as reacting against the excesses of the Reconstruction. The Constitution fixes with a measure of finality many matters which might well have been left to the discretion of future legislatures.

Examples of Articles of the Constitution which conceivably could be handled more efficiently through general grants of powers or defined by statutory law: Those dealing with memorials of Texas history, records of Texas history, establishing an asylum for inebriates, provision for indigent lunatics, conservation and development of natural resources, compensation of officers, payment of claims, organization of state militia, revision and publication of laws, vagrant laws, prohibition of lotteries, prohibition of bribery, exemptions from forced sales which contains a long specific list including kitchen furniture, 5 cows, 50 chickens, 1 buggy, and a dog. (See p. 109 KYS)

^{a bill} How Bills become Laws in Texas - 28 steps in all. ^{fills} (Many fall on the way) Bills must have three readings on three separate legislative days. The number ^{a bill} [it] is given by the clerk determines when it will be considered on the legislative calendar. The Speaker of the House and the Lt.-Governor in the Senate choose the committee to consider the bill. In Texas bills are printed when the committee gives them a favorable report; in the U. S. Congress bills are printed after the first reading. Unpopular bills are buried in subcommittees. Certain days are set aside for certain types of bills. An exact daily order of business is followed except on suspension days (Mondays). All bills are supposed to be introduced during the first 30 days of the Session, but in practice they are introduced at all times by frequently suspending the rules, which requires a 4/5 vote. Bills are debated on the floor after the second reading; final passage occurs after third reading in each house. ^{a bill} [It] becomes law when the presiding officers of both houses have signed it unless it is vetoed by the governor within 10 days, excluding Sunday. The governor's signature is not required. In the case of Appropriation ^{an} bills the Comptroller of Public Accounts is required to certify that funds are available for it before it becomes law. (The 53rd Legislature passed a bill raising teachers' salaries \$600.00 but the Comptroller could not certify that the funds were available. Later a Special Session was called by the Governor for the purpose of securing funds for this ^{bill} purpose).

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Briefing material on KNOW YOUR STATE
Summary of Section III - The Legislature

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Resolutions - They differ from bills

1. Simple resolutions require the action of only one house and deal with things affecting that particular house, such as creating special committees, adopting rules, inviting speakers, etc.
2. Concurrent resolutions require a majority in both houses and may be vetoed by the governor. They are not referred to committees and are not laws. Examples of use are adopting joint rules of the two houses, stating the Legislature's interpretation of laws, giving permission to sue the State, requesting Congress to follow a certain line of action.
3. Joint resolutions require 2/3 majority in both houses but no action by the governor. They are sent to committees and are passed after a third reading. They are used to propose amendments to the State Constitution, ^{calling} recommend to call a State constitutional convention, and to ratify a proposed amendment to the U. S. Constitution.

Structural features of State Legislature

The House and Senate differ in:

- Size - House has 150 members; Senate 31
- Basis of representation - House apportionment based on population
Senate Districts based on number of qualified electors
- Term of office - House for 2 years, Senate for 4 years
- Choice of presiding officer - House elects its Speaker, The Senate is presided over by the Lt.-Governor who is elected by voters.
- Type of meetings - Always open meetings in House; may meet as executive committee of the whole in the Senate and close meeting.

The House and Senate are similar in order of business, qualification of members, officers, quorum (2/3), and keeping a journal. *explain*

General information:

Lobbies are unregulated except that they must register with the House Com. on Registration. There are 43 standing committees in the house and 39 in the Senate. Each legislator must serve on several, and each has many duties. To aid them the following committees and boards have been created: Reference Library, Budget Board (1949), Audit Board (1943), Legislative Council (1949). The Council reports on study projects requested by the Legislature. At present legislators are paid \$10.00 per day for 120 days; \$5.00 per day for additional days, and a small mileage allotment. Many serve at a financial loss. A proposed amendment to the constitution to be voted upon in November 1954 would raise the pay to a minimum of \$25.00 per day for 120 days only.

MODEL STATE CONSTITUTION provisions concerning the legislature:

The one-house legislature is deemed a continuous body during the two years for which it is elected. Three to seven representatives according to the population are elected from each district. Redistricting and census come under self-executing clause. It has a full time secretary in charge of all employees and records and who serves the Legislative Council. It recommends annual salary of \$7,500.00 - \$8,000.00, and in no case less than \$4,000.00. Each committee must keep a journal of its proceedings as a public record, and include in it the subject and date of each meeting a week in advance. One third of membership of legislature may relieve a committee of a bottled-up bill. The legislature is given broad grants of power without specific enumeration of what these grants include, for example "... to establish and maintain a complete program of public welfare services."

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Briefing material on KNOW YOUR STATE
Summary of Section IV - Texas Constitutional History
and Methods of Revising the Constitution

Texas Constitutional History

Seven constitutions: 1827, 1836, 1845, 1861, 1866, 1869, 1876.

The convention of 1845 has been called "the ablest political body that ever assembled in Texas". Some authorities called it the best state constitution of the time.

The framers of the constitution of 1866 (after the Civil War) were in sympathy with the southern cause and few changes were made from the constitution of 1845. A radical Republican majority in the national Congress overthrew President Johnson's plans for reconstruction which had been proceeding well in Texas, because they believed the Southern States had not been sufficiently punished. Military rule followed. Whites were disenfranchised. Governor Pease, who replaced Throckmorton, called another convention. The conduct of this convention lives in infamy. After spending \$100,000.00 in seven months, it dispersed without formally adopting the document, but it was ratified by a restricted electorate in November 1869.

The constitution of 1869 was patterned after the one of 1845, but there were two very controversial sections. One on election procedure required all elections to be held at the county seat from 8:00 A.M. to 4:00 P.M. on four consecutive days; the other was the authorization of a compulsory school attendance law which was resented by the frontier minded Texans as unwarranted invasion of individual liberty.

In 1876 the framers of our present constitution were influenced by the experiences of the reconstruction as well as following the trend of the times. (see summary KYS Section III) when they placed many restrictions upon the executive, the legislature, and the selection of judges. Since the constitution represented many compromises, it did not satisfy any of the convention delegates fully. On the whole the rural sections were overwhelmingly for ratification, while practically all the larger towns and cities gave majorities against the adoption of the document.

Methods of Revising the Constitution

The constitution of today only faintly resembles the original of ¹⁸⁷⁶~~1786~~ because it has been amended 110 times. 2,047 proposals to amend it have been introduced. In the '53 Session 40 amendments were introduced, eleven of which have been approved by the Legislature and are awaiting the decision of the electorate in November 1954. Sixty-one unsuccessful attempts have been made, one as late as 1949, to make thorough revision of the constitution. Among the reasons for these attempts are the many restrictions on the legislature, (new ideas necessitating changes in the educational system,) necessity to increase salaries of officials, (new ideas of social legislation having to be made possible,) and governmental reforms such as home rule for cities and counties, which required amendments. The most changes to the '76 constitution have been made in the judiciary provisions.

*growth of new
ideas regarding
the educational
system & social
legislation,*

The Biennial Amending Process

The legislature passes a joint resolution by a 2/3 majority and submits it to the electorate for approval at a time specified in the resolution (usually the next general election). This process intended for minor changes has resulted in a document in further need of revision. A variation on this process is one in which coordinated amendments are proposed which are designed to accomplish the complete revision of the constitution.

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Briefing material on KNOW YOUR STATE
[Summary of Section IV - Texas Constitutional History
and Methods of Revising the Constitution]

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Constitutional (Const. drafting)
The Legislature as a Convention

The members of the legislature meet as a constitutional convention. Such action would probably not be taken without first having a popular referendum.

Arguments pro:

1. Legislature is fitted for this task by its inherent nature as a law-making body.
2. The legislative process must be used whether the revision is by legislature or convention.
3. It saves time and money because the legislature is already organized.
4. There will be no opposition from the legislature, since it controls the process of revision.

Arguments con:

1. Legislature could not devote adequate time to it because of its crowded schedule.
2. Delegates convened for the specific purpose of revising the constitution are a more effective group than the legislature.
3. There would be insufficient time in the legislative session to accomplish the all-important task of arousing the interest of the public to combat undue influence of pressure groups.
4. The writing of the fundamental law would be placed in the hands of the party in control of the legislature.

Constitutional (Const. drafting)
The Commission

The powers of a commission are defined by the act that creates it.

Arguments pro:

1. It can act efficiently because it is small.
2. It is possible to enlist the services of the ablest persons in the state because it is an appointive body.
3. It is the least expensive.
4. It is politically expeditious. Where conventions are out of the question because of warring political factions, a commission can some times obtain satisfactory results.

Arguments con:

1. The members of the commission may not be truly representative of the people because they are not elected.
2. The commission could be weighted with people not in favor of change if a dominant political party controls the appointments. The actions of the commission could be sabotaged.
3. Commission-written drafts, if they must be passed on by the legislature before final submission to the people, may be defeated by or made obviously palatable to the legislature.

Constitutional Convention

This is the most widely used method of revision. Unless other means are provided, the legislature initiates the call for the convention. The question of whether or not it should be called is left to the people. It is important that the act calling the convention outline its duties and responsibilities. The election of delegates is usually done at the same time as the referendum on the convention call is made. The apportionment of delegates is usually on a geographical basis after nomination by political parties. It is considered good policy for a convention to submit its work to the people for ratification. The manner of submission is a problem for consideration by the convention. Texas has had considerable experience in convention procedure.

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Briefing material on KNOW YOUR STATE
Summary of Section V - The Executive Department

The executive authority of Texas is vested in an executive branch of the government rather than centered in the governor. This fifth section of KYS concerns the officials of the executive department. The many administrative agencies which complete the executive branch are discussed in section six.

Executive Branch

Executive Dep't.

Governor
Lt.-Governor
Sec'y. of State (appointed by Governor)
Comptroller of Public Accounts
Treasurer
Commissioner of the General Land Office (position peculiar to Texas)
Attorney General

Administrative Agencies

Independent boards
Agencies
Commissions
State institutions

The GOVERNOR has no authority over the elected officials in his department, and must depend on his political party leadership to control them. No constitutional limit is placed on the number of terms he may serve. Election is held in even years, and office is taken in January of odd years. The governor is usually able to depend on his faction of the Party for support of his program in the Legislature. Since Texas has been a one party state, nomination is based on personality or factional alignments within the Party. Three governors have been impeached; Houston 1861, Throckmorton 1867, Ferguson 1917. There were historical reasons for limiting the power of the executive. In colonial times the governor was considered a tyrant. Until this century the office of governor was one of honor but little power. There was a marked trend during the 19th century toward the lengthened ballot and the direct election of many administrative officers. The separation of the Colonies from England and Texas from Mexico was a revolt from executive type government. Then came the abuses in government during the reconstruction.

Salaries of executive department are specified in the constitution. (Governor \$12,000.00; Attorney General \$10,000.00; Secretary of State, Comptroller, Treasurer, and Commissioner of Land Office \$6000.00; Lt.-Governor receives pay of a legislator unless he serves as governor.) A proposed amendment to the constitution to be voted upon November 1954 will permit the Legislature to fix the salaries of all executive officers.

Powers of the Governor

1. Legislative: message to legislature, power to call Special Session, veto power, and item veto power on appropriation bills.
The governor has grown in legislative powers as he has been able to affect public opinion in favor of his policies. The legislature seldom demonstrates policy leadership and has become a ratifying, vetoing, amending body.
2. Administrative: Makes appointments (discussed in KYS Section VI)
3. Judicial: Pardon, parole, and probation with some restrictions.
4. Military: Head of militia and may call it out for specified purposes. He may suspend civil law in emergencies.
5. General powers and duties: Represents State in business with other states or the federal government, must sign all commissions and many other papers, is a member of many boards and commissions, receives delegates and visitors from organizations, heads his political party or faction of it, and attends events throughout the state.

What sort
of commis-
sions only
military?

Lieutenant Governor

He has no executive duties unless he serves in capacity of Governor. He presides over Senate, appoints all working committees, refers all bills to committees; thus he has an important part in the program presented to the legislature by the governor. When the Senate meets as a committee of the whole, he may debate and vote upon all questions.

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Briefing material on KNOW YOUR STATE
Summary of Section V - The Executive Department

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Attorney General

His opinions on constitutionality of bills is not binding, but is usually followed. He passes on the validity of all bonds issued by government units in the state. He represents the State before the Supreme Court. He inquires into charters of private corporations and takes legal action against a corporation when necessary. He gives legal advice to the governor.

Comptroller of Public Accounts

All duties are assigned to him by the legislature. His office is one of the most important in the fiscal operation of the state and will be discussed in the KYS Section VIII on Taxation and Revenue.

Treasurer

Will be discussed in KYS VIII on Taxation and Revenue.

Commissioner of the General Land Office

This office is unique among the 48 states, because Texas kept its public domain when it entered the Union. It was necessary to provide for the disposition and handling of public lands. The State has ranch, farm, and mineral rights to lease on about 30 million acres. He serves on the School Land Board as well. He handles millions of dollars from bonuses, rentals, leases, and royalties.

Secretary of State

It is the only appointive office in the executive department. He authenticates the publication of the laws and keeps a fair register of all official acts and proceedings of the Governor. Additional functions have been assigned to him by the legislature. These include: administration of laws relating to primary and regular elections, registration of trade marks, registration of labor union organizers, presiding over legislature until it is organized, and regulating issuance of charters for newly organized corporations and regulating corporation activities in dealing in securities.

MODEL STATE CONSTITUTION

The governor is the only elected executive officer. He appoints an administrative manager who serves at his pleasure.

The authors of the Model State Constitution are of the opinion that "Any possible danger of executive usurpation can be guarded against by making sure that the legislature itself is truly representative of the whole state".

They recommend elections be held in odd years.

They recommend the short ballot, based on the principle of concentration of administrative power and responsibility in a single popularly-elected chief executive.

They attempt to improve executive-legislative relationship by providing "The governor, the administrative manager, and heads of administrative departments shall be entitled to seats in the legislature, and may introduce bills therein, and take part in the discussion of measures, but shall have no vote".

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Briefing material on KNOW YOUR STATE
Summary of Section VI - Administration

Properly conceived administration is a part of the executive function. It deals with the day-by-day operation of governmental services; it is the branch with which the average citizen is most likely to come in contact. Any demands for economy must be answered by increased efficiency in administration, because its agencies spend more than 95% of the State's money.

The appointive power of the governor is strongly regulated by the Constitution and by custom. In his own department he appoints only the Secretary of State. He makes restricted appointments to numerous boards and commissions; all require approval by 2/3 of Senate present. He has no power to remove persons from office. The governor's ability to secure friendly appointees depends on his political acumen rather than on his actual authority.

The exact number of administrative agencies in Texas is difficult to determine, but there are about 200. There is no well integrated system of departments set up by which additional duties can be added to existing departments, and frequently when a new function is added it is accompanied by the formation of a new agency. The extensive use of boards and commissions over which the Governor has no control dissipates responsibility, invites delay, and causes gross inefficiency. Functions and duties frequently overlap and duplicate those of other agencies, boards, commissions, and departments. There is no consistent method of appointing boards or controlling them.

With the exception of four departments, the "spoils system" is the method of personnel selection commonly employed in Texas. The Department of Public Safety has installed its own system based on merit. The Department of Health, the Department of Public Welfare, and the Texas Employment Commission have a joint agreement under which the Merit System Council functions. It was created in 1940 to conform to the provisions of the Federal Social Security Act.

The two sources for public information about governmental agencies are newspaper reports and pamphlets or bulletins which are sent upon a request to the particular agency. Proper governmental reporting is an invaluable tool in the building of civic attitudes. Through the reports the citizen is able to determine just what has been accomplished by a given department and with what expenditure of funds. Uniform records could most readily be obtained from a well-integrated administrative system. Well prepared reports, however, are of little value unless adequate distribution is made of them. The suggestion has been made that a reporter who has adequate training and experience in the fields of both political science and journalism be employed.

A few efforts to change administrative procedure in Texas have been made. To replace 3 separate agencies a Board of Control was created in 1919 as a budgeting, auditing, and purchasing agency. Now it is primarily a purchasing agent. The 53rd Legislature has provided that it be reorganized in a set-up similar to the State Highway Department. In 1931 the firm of Griffenhagen and Associates was selected to make a study of Texas administration. Changes proposed were incorporated in a bill which failed to pass. It would have created 19 administrative departments (MSC recommends not more than 20). The Department of Public Safety, created in 1935 under a plan proposed in the Griffenhagen Report, shows how effective a unifunctional department can operate. It has become one of the outstanding police departments in the nation. The Texas Research League created in 1950 and reorganized in 1952 is a civic, nonpartisan, fact-finding body which undertakes projects upon the request of public officials or public bodies. Now it is surveying the administration of State hospitals and special schools, and the financing of the public schools, and will soon begin a study of the management of the University of Texas System.

Many volumes of excellent research have gathered dust for many years because apathetic citizens did not insist that action be taken along the lines suggested.

Questions
are
valuable!

September 3, 1954

Briefing material on KNOW YOUR STATE

Questions for discussion of Section I through VI

Section I Political Parties and Elections

Should the constitution be revised to make identical rules applicable to all political parties regardless of their size?

How long should the ballot be in Texas?

Should literacy be made a requirement for voting?

Do you favor the continuation of the poll tax as a requirement for voting?

How should voters be identified? By permanent registration? By annual registration? By poll tax receipts?

Section II Bill of Rights and Constitutional Issues

Which rights that are established in our bill of rights for our protection are lacking in communist dominated countries today?

Do you believe a criminal should have the privilege of not being compelled to testify against himself?

Section III The Legislature

Does Texas need a two-house legislature to represent the people of the state adequately?

What do you consider an adequate salary for members of the legislature?

What regulation for lobbies do you favor, if any?

Do you believe the present constitution places undue restrictions and limitations upon the legislature?

Section IV Texas Constitutional History and Methods of Constitutional Revision.

Do you think the LWV of Texas should work to promote the call of a constitutional convention?

Section V The Executive Department

Should executive authority be concentrated in the governor or be divided among elected officials and agencies as provided in the Texas Constitution? Would you favor a medium between the two?

Section VI Administration

How should Texans set about reorganizing the administration of State government?

Note to Unit Leaders: Please send a report of the opinions of your group to Mrs. Goetz Harwig, 6815 Hammond, Dallas 23. They will be sent to the State Resource Chairman who is eager to know what League members support.

October 17, 1954

KNOW YOUR STATE

Summary of Section VII

EDUCATION

Historical Background

The legislature was required by the constitution of 1836 to provide a general system of education. The 1845 constitution required it to provide for the support of public schools. The first public system of education was established in the state by a school law in 1854. It set aside 2 million dollars as a permanent school fund, and made an available school fund which would consist of the interest on the permanent fund plus other revenue set aside by the constitution. State aid was limited to districts providing good schoolhouses. The constitution of 1869 required the establishment of a uniform system of free instruction for all children 6-18 years old, and it initiated the poll tax as a source of revenue for schools. Our present constitution written in 1876 allocated $\frac{1}{4}$ of the general revenue and $\frac{1}{2}$ the revenue from the public domain for school support. It established a state board of education consisting of state officials with little time to devote to educational matters. Important laws since then include the compulsory attendance law of 1915 (nonexistent since 1876), funds for free textbooks in 1918, delegation of administrative authority to an appointed board in 1928, and the GILMER & AIKEN LAWS of 1949 which are the PRESENT BASIS OF THE PUBLIC SCHOOL SYSTEM.

The Public School System is directed entirely by the TEXAS EDUCATION AGENCY which consists of three parts:

1. Board of Education - It consists of 21 members (one elected from each of the Congressional districts), who serve six-year staggered terms; it is the policy-forming and planning body.
2. Commissioner of Education is the administrative head appointed by the Board of Education to serve a four year term. He must have special qualifications, and he is responsible for promoting efficiency and supplying the board with information. There are five assistant administrators.
3. Department of Education consists of the professional, technical, and clerical staff, appointed by the Commissioner for indefinite terms under a civil service plan.

THE TEXAS EDUCATION AGENCY administers all schools except four-year colleges. It has specific powers over financing, teacher certification, minimum standards, and selection of textbooks; it otherwise assists local districts, which are classified as common or independent.

The Common School District is governed by the District Board of Trustees, who in turn are answerable to the County Superintendent and the County Board of Trustees.

The Independent School District is under the exclusive management of its Board of Trustees and its superintendent.

From early times the towns have had the privilege of choosing whether their schools should be governed by the city council or an elected board of trustees. They also have been permitted to add to the required courses and to sell bonds to the State to finance their building programs.

State aid is distributed to localities under the MINIMUM FOUNDATION PROGRAM (created under the Gilmer-Aiken Laws of 1949) which in effect equalizes and guarantees that each district will be able to maintain the minimum education program provided by law. If the cost of the program exceeds the total of the local fund assignment plus State and county available funds, then the difference is paid from Foundation Program funds. Together local districts contribute 20% of the total program cost. Local assignments of cost are based on the application of an economic index (see p. 244 KYS). While the State guarantees a minimum program of education for every child, it is the responsibility of the local districts to enrich that program according to the wishes of the local citizens and their approval of local taxes to pay for this enrichment. Federal funds made available to Texas schools are special-purpose appropriations primarily for the school lunch and vocational programs. In 1950-51 the Texas Education Agency accounted for about 32% of all State government expenditures (the largest expenditure of the state; it is still the greatest item in the state budget). In July 1953 The Texas Research League accepted the State Board of Education's invitation to make a complete study of the public school financing structure, including an evaluation of the \$200 million-a-year Gilmer-Aiken Program.

October 17, 1954

KNOW YOUR STATE

Summary of Section VII

EDUCATION

page 2

Public Higher Education

Texas is second only to California in the number of its state-supported institutions of higher learning (list of them on p. 251 KYS). Each institution is governed by a board of regents or directors, and there is little overall planning of the system. Eight sections of Article VII of the Constitution go into detail about the financing of these institutions. Their support is derived chiefly from state appropriations (which have averaged 58.5% of total expenditures), federal funds, local funds (tuition), the University Permanent Fund, and the College Building Fund. The Legislature has set the tuition fees at \$25 per semester. The 53rd Legislature created a Commission on Higher Education to make a study of the needs, and to make recommendations for a coordinated system. This report is to be made not later than Nov. 1, 1954. It will be the responsibility of the 1955 Legislature to see that the report is used to clarify the constitutional and statutory provisions.

General Information

Teacher Retirement System: The State and the teachers make equal contributions to the fund, amounting to about 5% of their salaries. A constitutional amendment is to be voted upon in Nov. 1954 which would provide that accumulated retirement funds of any teacher or other State employee may be transferred from one account to the other, if the employee transfers to a different type of State employment.

The teacher turnover is about 25% annually. 11,000 more teachers will be needed by 1960

Teacher certification: The actual qualifications of teachers are higher than those required by law (last law concerning certification was passed in 1921). 95% of teachers hold Bachelor or Master degrees.

Scholarships: Five Good Neighbor scholarships are given annually to each of the other North American nations. A scholarship is given annually also to the highest ranking graduate of each four-year accredited high school.

Segregation

There has been general failure to comply with the "separate but equal" facilities provisions of the State Constitution. The expense to maintain two separate systems is tremendous. Segregation was declared unconstitutional by the U.S. Supreme Court in June 1954. Plans for integration have yet to be made.

MODEL STATE CONSTITUTION

The provisions for education are established only in broad outline. It requires a system of free public education to be set up. There is no provision made directly for financing the program.

QUESTIONS FOR DISCUSSION

1. Do you think the present proportion of State control and local district control in our public school system is satisfactory?
2. Do you think the constitutional provisions concerning institutions of higher learning (four-year colleges) in Texas should be more general in nature? That is should the details of providing for their financing be left to statutes enacted by the legislature?

December 28, 1954.

KNOW YOUR STATE Summary of Section VIII

STATE FINANCE

The aim of this section is to give a general picture of State financial matters. Public policy is involved in the determination of what taxes are to be levied and for what purposes the funds are to be spent. Once the purposes have been agreed upon and the taxes levied, everyone has good reason to examine the handling and accounting of the monies.

TAXATION AND REVENUE

A tax may be defined as a compulsory contribution exacted by the State from its citizens for the support and maintenance of governmental activities. Taxes account for about 63% of the State income. The purposes for which taxes may be levied are specifically enumerated in the constitution. Because of these limitations, it has been necessary to amend the constitution to provide funds for the Texas Centennial, various retirement funds, etc.

The four largest revenue producing taxes are:

Production taxes: sometimes called severance taxes, exacted for the privilege of severing natural resources from the soil (oil, gas, sulphur, carbon black). It yield about 21% of total State revenue. Motor Fuel Tax (4¢ a gal. on gasoline, 6¢ on other fuels) yields about 15% of total revenue. This is earmarked 1/4 for the Available School Fund and the rest for the highway system. Cigarette Tax (4¢ a pkg.) yields about 5% of total revenue. Automobile Licenses also yield about 5% of total revenue. Ad Valorem Property Tax used to be greatest yielder, but now gives about 3% of total revenue since the 1948 amendment providing it could not be levied for general state revenue purposes. (It is the most important source of revenue for cities and counties).

Non-tax sources yield 37% of the total State income, FEDERAL AID providing about 21% of total income. Other non-tax sources include such ones as land sales, rentals, royalties, fees, permits, and income from interest. Texas ranked 34th in the nation in 1951 in the amount per capita taxation with an average of \$56.57. In the same year taxes collected represented an average of 4 per cent of per capita income. Conclusions as to the justice of the distribution and to the amount of taxes raised can only be gained by a careful study of the functions and services performed by the State, and by a comparison of the quality of such services with those available to citizens in other states.

STATE EXPENDITURES

In 1953 three items consumed 74% of the State's total receipts of 737 million dollars as follows:

Education	193 million
State Highways	162 million
Public Welfare	138 million

46 million were spent for four-year colleges and universities, the next largest expenditure. The amounts scale down rapidly for other items, such as the operation of the three branches of government, support of asylums, prisons, museums, development of natural resources, protection of health, life and property, etc.

In Texas only one tax (Inheritance) is not earmarked in whole or in part. Earmarking is the designation of receipts from a tax or other revenue to support a certain public activity. The practice developed with the intention that revenue from a tax would be applied to support the purpose for which the tax was levied and to guarantee that certain governmental activities would be assured of income and be less subject to changes in legislative viewpoints. This practice has lead to a rigid and complex tax structure. Receipts and expenditures are not

December 28, 1954

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STATE FINANCE

balanced. The Legislature is less inclined to examine in detail the needs for expenditure of certain funds and is more inclined to appropriate all of the money in a particular fund to the agency or purpose for which it is earmarked. There are more than 160 special funds to which 85% of our tax receipts are channeled (45% by the constitution; 40% by statutes). All revenues not earmarked are credited to the General Revenue Fund which amounts to only 15% of state income, or around 70 million dollars.

Public Welfare expenditure involves thirty special funds. Many funds match federal aid grants. The Constitution was just amended in November 1954 to increase by 7 million dollars the maximum allowable appropriation by the Legislature to three important welfare funds: old age assistance, aid to dependent children, and aid to the needy blind.

FINANCIAL ADMINISTRATION

Texas operates under the disintegrated type of fiscal organization with various financial offices and agencies practically independent of one another.

The Comptroller of Public Accounts maintains a double entry system of bookkeeping for State revenue and expenditure except for the special funds. He collects 82% of Texas taxes and administers 35% of the total. A 1942 Constitutional Amendment stipulates that any appropriation bill before the Legislature must be submitted to the Comptroller, who ascertains if calculated income will cover the amount appropriated. If not, the bill cannot be passed until provision is made for necessary funds, or until a four-fifths vote of the Legislature validates the appropriation without the Comptroller's approval.

The Treasurer has no constitutional duties. The Legislature has assigned him the responsibility of receiving, holding and disbursing State funds. Checks from the Treasury must be signed by the Comptroller and countersigned by the Treasurer. The Treasury Department is the collection agency for cigarette taxes.

The State Board of Control now serves only in a part-time capacity. It appoints an executive director to carry out administrative functions previously executed by the board. All purchases of any State agency must be made through the purchasing division of the Board which prescribes purchasing procedure, advises agencies on needs, procures bids, awards contracts, issues orders and expedites delivery. Our system of appropriation and earmarking is such that the Board cannot refuse a purchase order, no matter how wasteful or extravagant, so long as an agency has the allotted funds to pay for its purchases.

The Legislative Audit Committee appoints the State Auditor for a term of two years as a means of checking on the operation of the executive branch of the government. He has access to all State records, books, accounts and reports. He may check into the accuracy of agency accounting systems and into the efficiency of service rendered by agencies and departments. He makes recommendations to the various departments for correction of any deficiencies, and reports such matters to the Legislature and the Governor.

The State Tax Board is composed of the Comptroller, Secretary of State, and the Attorney General. By statute it has authority to investigate State taxes, establish rules of taxation, recommend changes in the tax system, and conduct research on tax problems. Lack of money and personnel, and lack of a clear definition of its purposes have resulted in a rather ineffectual organization.

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KNOW YOUR STATE

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STATE FINANCE

The budgets and budgetary procedure of the State of Texas involve only 15 per cent of revenue receipts which make up the General Revenue Fund. The Legislature must include appropriations for earmarked funds in the appropriation bills, but they are not reviewed in detail by those planning the budget, since these monies are already earmarked for specific expenditure. Texas has a dual budget system. Hearings are held jointly by the executive and legislative budget officers, but the respective budgets are prepared independently. The Legislative Budget Director has stronger powers than those of the Executive Budget Officer which enable him to make inspections of the requesting agencies. The Governor may veto specific items in the appropriation bills.

The gathering and spending of public monies is of such concern to all that every effort should be made to encourage more intelligent consideration of future statutes and amendments along this line.

MODEL STATE CONSTITUTION

There is no list of purposes for which the Legislature may levy taxes. There is no limitation upon the amount of the state debt, but projects for which debts are to be incurred must be submitted to the voters at a regular election. Provision is made to prevent excess condemnation values and to permit the state to borrow for buying condemned property.

The practice of earmarking funds is specifically prohibited. The governor may reduce appropriations of certain agencies if revenue estimates are not met. The governor has the power of item veto on appropriation bills. Centralized purchasing is required wherever practicable.

The governor is required to present a budget to the legislature three months before the opening of the fiscal year. The legislature is required to act on it before any special bill may be considered. The state auditor is appointed by the legislature and serves at its pleasure.

SUGGESTED QUESTIONS FOR DISCUSSION

1. Should taxes be earmarked in whole or in part or at all for special funds?
2. Should the handling of public monies in Texas be administered by one central finance department headed by one chief executive officer?
3. Should the purposes for which taxes may be raised continue to be specifically enumerated in the State Constitution?

February 6, 1955

KNOW YOUR STATE Summary of Section IX HEALTH AND WELFARE

The departments of health and public welfare are two of the many agencies which form the executive branch of Texas Government. The extent of assistance provided by them seems to depend upon the amount of money available. The Constitution specifies the maximum funds which the Legislature may appropriate for Public Welfare (Nov. 1954 amendment raised it to 42 million.)

The DEPARTMENT OF HEALTH is the official governmental agency created to prevent and control disease and promote positive good health. The activities have changed through the years as the health programs expanded from the quarantine department created in 1891 to the present large organization with twenty divisions headed by a nine-member policy-making board appointed by the Governor with Senate consent. A legally qualified physician is elected by a majority vote of the board every two years to serve as administrative state health officer. Employees of the department are selected through the state merit system.

Divisions of Department of Health:

Central Administration: concerned primarily with personnel and finance.

Local Health Services: advisory, consultative and emergency services given to 47 local health units operating in 57 counties covering 60% of population.

Supervise Public Health Training Unit; collect disease incidence data; direct and control quarantine regulations against contagious diseases.

Bureau of Laboratories: operates the Central Public Health Laboratory in Austin and 19 Regional Labs in conjunction with local health units. Test milk, food, water; blood serology.

Bureau of Vital Statistics: record births, deaths, and adoptions.

Bureau of Food and Drugs: Investigates manufacturing and handling of them, and brings action against violators of the law. The Biennial Report of the department states the 1911 Law doesn't give adequate protection against adulterated and misbranded food and drugs.

Division of Public Health Education: prepares pamphlets, films, exhibits, and poster material for the use of other Department divisions and in local health educational programs.

Division of Hospital Survey and Construction: responsible for enforcing the State and Federal laws requiring hospitals to conform to minimum standards of operation and maintenance prescribed by the State Agency. It works with the 12 member Hospital Advisory Council appointed by the Governor.

Division of Bedding: enforces Law regulating sanitary manufacture, repair, and renovation of bedding, and collects necessary fees for such work.

Division of Public Health Nursing: Many phases of the health program are dependent upon the nursing staff (Maternal and pre-school clinics, school programs, immunization, health education, etc.). This division is seriously handicapped by the shortage of nurses. Funds for special training of nurses were "sharply curtailed beginning July 1, 1953" (Biennial Report).

Division of Venereal Disease Control: with federal aid carries on educational campaign, and operates clinics in many larger cities.

Division of Tuberculosis Control: Holds clinics in counties having a county health nurse; maintains and operates touring x-ray units for free tests.

Division of Dental Health: Under supervision of local health units it gives full-time dental service in five counties and part-time service in others (Limited only by allocated funds). Program is handicapped by a lack of available professional personnel due to inadequate salaries.

Bureau of Sanitary Engineering: concerned with conditions of health and cleanliness that affect public health such as water systems, sewage and garbage disposal, swimming pools, dairy farms, etc. Local inspectors report undesirable conditions, which must be remedied if the business activity is to continue.

Maternal and Child Health Division: A gratifying decrease in the infant mortality rate in the past few years indicates that the Maternal, Infant and Pre-School health programs have been of great value to the state. A large reduction in funds in 1953 closed 39 Well-Child Conferences and pre-natal clinics.

Crippled Children's Division: Federal Government matches state appropriations.

School Health Services Section: works with Texas Educ. Agency to examine eyes, ears, teeth and nutrition of school-age children periodically. It is now a subdivision of the Maternal and Child Health Division.

Heart Division: educational programs about cardiovascular diseases and heart clinics in the state.

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KNOW YOUR STATE

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Page 2

HEALTH AND WELFARE

Divisions of Department of Public Health cont'd.

Convalescent and Nursing Home Division: created 1953 to carry out state licensing law. Sustained by fees from licenses except for salary of medical director who is also in charge of Civil Defense.

Division of Civilian Defense: all civil defense activities of the department of health have been integrated into the State Defense and Disaster Relief Organization.

Division of Mental Health: The program is nearly 100% dependent upon a grant under the National Mental Health Act. It furnishes professional personnel for short or long periods of time to assist in carrying out preventive mental health projects. Grants are made to help establish child guidance clinics.

Cancer Control Division: Cooperates with other groups to subsidize clinics in the state; keeps local doctors informed on latest diagnosis and treatment; provides for indigent patients.

The Health Department spent about 9½ million during the last fiscal year, the source of which was distributed as follows: 42% state appropriation, 3% fee collection, 55% federal grant-in-aid. This does not include money raised in local communities for public health. National per capita average state appropriation is 62¢; in Texas 19¢, ranking 43rd in this respect.

PUBLIC WELFARE

The 1876 Constitution prohibited all grants of money to individuals or associations except in case of "public calamity". This section has been amended 16 times beginning with the establishment of a Confederate Home in 1894. As federal legislation has been enacted for welfare purposes, amendments have allowed the state to accept federal funds and appropriate state money for welfare purposes, such as unemployment compensation, social security, aid to the blind, etc.

The State Department of Public Welfare, created in 1939, has a 3 member policy-making board appointed by the Governor with Senate consent which appoints an executive director who serves as executive secretary of the Youth Development Council as well. The Austin office of the department deals with personnel, finance, and the Federal Commodity Distribution Program. Field workers in local offices in each county except the thinly populated ones, investigate and recommend action on all applications for aid. Counties are grouped into districts headed by an area supervisor who reports to the state office. The appeal board of the department passes upon the merits of any point causing dissatisfaction. The Division of Child Welfare has 20 regional units in addition to five field representatives. The Division of Social Security was created to cooperate with the federal program. The Waco State Home for dependent or neglected children was transferred from the Board of Texas State Hospitals and Special Schools.

<u>Finance</u>	Texas Monthly Aver. payment	Nat'l Aver.	Texas rank	% State funds	% federal aid
Old Age Assistance	\$38.83	\$51.46	39th	31%	69%
Needy Blind	43.80	56.06	38th	33%	67%
Dependent Children	59.63	85.26	43rd	22%	78%

In January 1954 a regular classification and reporting system for the Family Service program of the Department was put into effect to cover the many welfare services rendered to Texas citizens, over and above those required to establish eligibility for public assistance payments. Family service efforts of the field worker are primarily centered around one or more of eight major problems as they are found to exist in public assistance families. Because of the limited number of Child Welfare Units, field workers in many parts of the state are providing welfare services to children. The Texas field worker carries the highest caseload in the nation --371, which is more than twice the median caseload of 172 in the U.S.

The Division of Child Welfare helps establish local units (there are now 20) and licenses all child care and placement agencies. State funds available for aid to dependent children payments become insufficient to meet obligations in full and have been prorated since February 1, 1954.

YOUTH DEVELOPMENT COUNCIL

It was created to coordinate the State's departments and facilities in helping all communities develop and strengthen all child services to prevent delinquency. The Council is a policy-making body of 14 members, six of whom are citizens interested in youth welfare appointed by the Governor, and eight are ex-officio members. The executive secretary and administrative officer is the director of the State Dept. of Public Welfare.

The Council appointed a Director of Institutions, who took over the supervision of the State Schools, which the Council is striving to modernize. However the Legislature through appropriations continues to make most of the policy and program decisions in this area.

The Community Service staff (a director, 4 field workers, and a recreation consultant) of the Youth Council give increasingly effective assistance during the four years of its existence to juvenile courts, probation officers, social agencies and civic organizations. Nevertheless the 53rd Legislature abolished it by eliminating all funds for this delinquency prevention program.

OTHER HEALTH AND WELFARE SERVICES

Texas Education Agency, Texas State Commission for the Blind, Board for Texas State Hospitals and Special Schools, various examining and licensing boards. The Bureau of Child and Animal Protection is inactive.

MERIT SYSTEM COUNCILS

There are two in Texas; one operates through the Texas Employment Commission and the other through the State Department of Health. Both were created since 1939 to comply with requirements of the Federal Social Security Act in order to receive funds. The first Council is composed of three members appointed by the Governor to recruit, test, and certify employees for the Texas Employment Commission and, by special agreement, for the State Department of Public Welfare. A separate Merit System Council was established for the Health Department and operates under an agreement with the U. S. Public Health Service and the U. S. Children's Bureau. Examinations are prepared by persons trained in test construction and administered at centers over the state with local examiners in charge. Persons passing the exams are listed according to grades on registers. When a vacancy occurs in one of the departments served, the Merit System certifies to the personnel director of the agency involved the three highest names on the appropriate register, from which the agency head makes the appointment.

SUGGESTIONS FOR DISCUSSION

Should a **specific** ceiling on the amount the Legislature may appropriate for Public Welfare purposes continue to be stated in the constitution?

Do you think the Departments of Health and Welfare are financed adequately by present state appropriations?

Do you have any suggestions to make concerning possible improvements that could be made in the organization and operation of either the Health or Public Welfare Departments?

December 27, 1954

KNOW YOUR STATE

Summary of Section X

THE JUDICIARY

State courts are not only of equal importance with Federal courts — they are the courts with which the citizen comes in more frequent contact.

DEFINITION OF TERMS

There are two classes of law: constitution and statutory.

Constitution law regulates relations between the people and their government. The work of the courts is to review acts or actions to determine if they have kept within the sphere intended by the constitution or charter. There are no penalty provisions.

Statutory law regulates relations between individuals or groups.

Criminal law: the State is always plaintiff against persons committing violations of law or order.

A felony is a crime punishable by imprisonment or death.

A misdemeanor is an offense punishable by fine or imprisonment.

Civil Law is all statutory law except criminal. The state maintains the courts but the person who is injured must bring suit against the person who has injured him.

Jurisdiction of a court — its scope of authority to hear and decide cases.

Original: power to hear cases for the first time.

Concurrent: more than one court has power to hear a case the first time.

Exclusive: only court with power to hear case the first time.

Final: decision may not be appealed to a higher court.

Appellate: power to review cases tried in lower courts. In criminal cases, only the defendants may appeal.

Trial de novo: the entire case is tried over as though there had been no preceding trial.

Docket: list of cases to be tried in any court.

JUDICIAL ORGANIZATION IN TEXAS

There are two courts of final jurisdiction. The Supreme Court is "supreme" only in civil cases, while the Court of Criminal Appeals is the final court for criminal cases.

Inferior Courts:

Corporation Courts (provided for in local charters)

Original: criminal cases arising under municipal ordinances.

Concurrent: criminal cases arising within corporate limits, punishable by fine only, not exceeding \$200.00.

Justice of the Peace Courts (each county has 4 to 8)

Original: criminal cases punishable by \$200.00 or lower fines, civil cases not exceeding \$200.00

Exclusive: civil cases up to \$20.00

Final: civil cases not exceeding \$20.00.

Conduct investigation of a criminal offense charge, and serve as coroner when unlawful means of death is suspected.

County Courts (lowest court where records of proceedings are kept)

Original: All misdemeanors; civil cases from \$200.00 to \$1000.00; all juvenile cases, and most probate cases.

Exclusive: All misdemeanors over \$200.00; civil cases \$200.00 to \$500.00.

Final: Criminal cases not exceeding \$100.00; civil cases \$20.00 to \$100.00.

County Courts at Law

Established by the Legislature in populous counties where the regular county court is overburdened, and given civil and/or criminal jurisdiction but no probate jurisdiction. Dallas and Harris Counties have special probate county courts.

General Trial Courts:

District Courts: (In 1953 there were 135 of them)

Original: All felonies; all civil cases involving more than \$500.00 all divorce and slander, & certain probate cases and contested elections.

Exclusive: All felonies; all civil cases over \$1000.00 and other misc.

Criminal District Courts

Established by the Legislature in the more populous counties and assigned the same criminal jurisdiction as the regular district courts.

Administrative Judicial Districts

In 1927 the legislature established nine of these districts. The Governor, with the consent of the Senate, designates one in each district to be the presiding judge with power to make arrangements to equalize the court dockets in his district, exchange judges between districts, or assign a judge to replace another absent one.

December 27, 1954

KNOW YOUR STATE

Summary of Section X
page 2

THE JUDICIARY

JUDICIAL ORGANIZATION IN TEXAS (cont'd)

Intermediate Appellate Courts:

Courts of Civil Appeals (There are now eleven)

Chief Justice and two associate justices serve 6 yr. overlapping terms.

Appellate: All civil cases from county and district courts when the amount in controversy or the judgment rendered exceeds \$100.00 exclusive of interests and costs, certain interlocutory orders and appeals, and miscellaneous cases.

Final: All civil cases involving divorce and slander, certain disputed election cases, and miscellaneous cases. All cases as to fact.

Since 1941, the Supreme Court has the power to review the dockets of these courts and transfer cases.

Highest Appellate Courts:

The Court of Criminal Appeals

Three judges serve 6 year overlapping terms.

Appellate: All criminal cases from county and district courts over \$100.00.

Final: All criminal cases over \$100.00.

Commission of Criminal Appeals

A two-member commission with same qualifications as judges created by the Legislature to assist in hearing cases. In effect this makes the court a five-member body, but only the judges may function officially.

The Supreme Court

Chief Justice & 8 associate justices serve 6 year, overlapping terms.

Appellate: cases to which Railroad Commission is a party, cases involving the revenues of the state or the validity of a legislative act, and questions of material or substantive law.

Final: civil cases over \$100.00 which reach the Court.

Since 1941 the Court has had full rule-making power for practice and procedure in civil courts.

Advisory Civil Judicial Council: Its reports carry considerable influence. The members serve without pay, and the council reports annually to the Governor and Supreme Court of its findings and recommendations.

Board of Law Examiners: created in 1919 to enforce the rules of the Court for the admission of persons to the Bar of Texas.

State Bar of Texas: created in 1939 as an administrative agency of the judicial department of the State. Persons licensed to practice law must be members. They prescribe a code of ethics and rules for suspension or disbarment of members.

Special Courts:

The Legislature has authority to establish special courts as it deems necessary. Under the Constitution, the County and District Courts have concurrent jurisdiction over juveniles. Believing that special attention should be given juveniles, the League of Women Voters with other organizations has worked for the creation of special Juvenile and/or Family Relations Courts. In 1949 the legislature amended the Juvenile Court Act to establish a Juvenile Court for each county. Although one court must be designated as the Juvenile Court, the law does not specify that it must always be the same court. Thus it is possible that it would change periodically to the detriment of a successful plan for meeting the needs of children. In a few instances the Legislature has created a special court which is strictly a Juvenile or Domestic Relations Court, but in both cases a special bill creating the court was passed by the Legislature after requests by the local community (Potter and Lubbock Counties).

JUDGES, OFFICERS OF THE COURT, THE JURY SYSTEM

Judges: Nearly all are elected. There are no qualifications for Justices of the Peace, and their salaries vary throughout the state, some being supplemented by special fees. County Judges must be "well-informed in the law of the state"; salaries are prescribed by law. Judges in higher courts must have 10 years experience as practicing lawyer or judge in a court off record; their salaries range from \$9000.00 to \$15000.00 as of 1951. No judge may sit in any case in which he is interested or where one of the parties involved is related to him or he has served as counsel. Courts having original jurisdiction of criminal actions may suspend sentence and place defendant on probation after conviction. Method of removal of judges from office depends on the court in which they serve and the severity of the charges.

December 27, 1954.

KNOW YOUR STATE

Summary of Section X

THE JUDICIARY

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JUDGES, OFFICERS OF THE COURT, THE JURY SYSTEM (cont'd.)

Officers of the Court:

Clerks are appointed or elected, depending on the court which they serve. County and District Court Clerks are elected, but clerks in the Appellate court are appointed by the judges of the court. Their duties are prescribed by the Legislature in detail; supervision by judges is limited largely to requiring that they comply with regulations. The Judges have absolute control of the appointment and retention of deputy clerks and assistants in all of the courts. They should be retained on merit since utmost efficiency is desirable.

County and District Attorneys: The Legislature may provide for the election of district attorneys where it is deemed necessary. The County Attorney represents the State in all cases in district and inferior courts. In general, the county atty. represents the county in civil matters, and the district atty. in criminal matters. Both are elected.

A 1948 amendment to the constitution makes it mandatory to pay district and county officers on a salary basis in counties of over 20,000 population.

State Prosecuting Attorney: acts for the State before the Court of Criminal Appeals. He is appointed for a two-year term by that court but may be removed at any time for cause.

The Jury System

Grand Jury: In secret sessions it hears evidence and determines whether there is sufficient question of a person's innocence to require a trial. It is not a trial jury. No person can be tried on a felony charge unless he has been indicted by the Grand Jury. Has 12 men, but 9 are quorum.

Petit Jury: composed of 12 in district courts, but six in county courts. If a person is charged with a felony, he must be tried by a jury even if he pleads guilty. In all other instances, anyone desiring a jury trial makes his request in the open court. In civil cases, the person requesting the jury trial must pay the jury fees with such exceptions as are prescribed by the Legislature.

Grounds for exemption from jury service include civil officers of the State and U. S., persons over 60, overseers of roads, ministers, physicians, attorneys in practice, newspaper publishers, school teachers, druggists, undertakers, telegraph operators, railroad station agents, ferrymen and millers, railway employees, anyone who has been a jury commissioner within the past year, members of the State militia and National Guard, firemen in cities where such groups are professional. The State Civil Judicial Council in its 20th annual report recommends that the law be amended so as to allow only the following exemptions: Persons physically or mentally ill, jurors who have served during the past year, public officials, and persons on active duty with the Armed Forces of the U.S. In the opinion of the Report, this would result in a broader and more equitable base for jury service.

All who have access of jury lists, regardless of how they are prepared, must swear not to reveal the names of prospective jurors.

GENERAL PROVISIONS

All monies for the Judicial Department of the State come from the General Revenue Fund and amounted to about three and a half million in 1953. This does not include funds spent by counties or other local units of government. The State supplies part of county officials' salaries. Each county finances its own county courts out of county general funds; it also pays the County Judge.

Court costs to individuals: In lower courts average \$10-15; injunctions about \$25-75, criminal bonds 10% of face value, civil bonds 1% of face. In appellate courts costs are higher and generally must be paid in cash. The courts have power to give declaratory judgments, a form of preventive justice, which enables parties to disputes to sue for a declaration of rights without breach of contract. Under the Constitution, a person who commits homicide is liable for both civil and criminal proceedings.

JUDICIAL REFORM IN TEXAS: Most proposed reforms concern unification of courts, flexibility of the court system, procedure, and the manner of selection of judges and other judicial personnel. In 1946 and 1952 the Advisory Civil Judicial Council proposed amendments to replace the current judiciary Article. Both follow in general the provisions of the Model State Constitution. House Concurrent Resolution #129 adopted in 1953 directed the Texas Legislative Council to make a study of the amendment proposed by the State Bar of Texas and report its findings in 1955.

Notable

April 5, 1955

KNOW YOUR STATE

Summary of Section XI

STATE-LOCAL RELATIONS

This section deals with the factors in state government, especially constitutional provisions, which affect cities and counties generally. Despite the loose control of the central government, the State of Texas has the inherent legal power to regulate all units of local government within the State including special districts (conservation, water, school, hospital, etc.) as well as counties and cities.

Some history of the formation of local units:

Under Spanish rule in 1820 there were only two local units, San Antonio and Goliad, which were more like counties than cities, since they included the surrounding area with the towns. Whatever self-government existed did so chiefly because of poor communications with the central government. By the time Texas won its independence in 1836 there were 23 such local units which were called counties or precincts in the 1836 constitution, and were designated as election districts for representation to the Congress of the Republic. The Congress granted special charters to 18 towns and cities, so that units of local government as we know them today came into existence. Cities could remove nuisances, preserve the peace, establish schools, provide fire protection, and repair streets. Counties could maintain a system of courts, provide for roads, highways, and ferries, and care for the poor. Counties were militia districts and provisions were set up for election of a sheriff, coroner, and constables. The present system of common and independent school districts did not develop until the 1920's. Since 1931 the entire state has been organized into 254 counties. The number of incorporated communities has grown from fifty-four in 1845 to 777 in March 1955.

Counties are legal subdivisions of the State, whose powers and duties are clearly defined by the Constitution and by statute. They are administrative agencies of the state in elections, taxation, courts, and partly in road administration. In other instances the state serves in an advisory capacity; for example, the Department of Health helps create local units. The state gives financial aid, particularly in education and highways. All counties must submit tax bonds to the attorney general for approval.

The burdensome task of granting and amending special charters to municipalities led to the passing of the first general law in 1856 to provide uniform rules for incorporating and classifying types of cities and towns. The present constitution forbids special laws where a general law could be made applicable. However, the legislature at each session enacts much special legislation under the guise of general legislation often by using narrow range population brackets in the law. A constitutional amendment of 1912 permits home rule for cities of more than 5,000 population. It permits greater freedom of self-government, but does not free the cities from any constitutional or statutory restrictions.

Constitutional provisions regulating city and county functions generally:

1. Forbids granting of additional compensation to public officials on all levels.
2. Permits employees of political subdivisions to participate in the federal social security program, approved November 1954.
3. Residency requirements for all civil officers
4. Any qualified elector of the State satisfying a six-month residency requirement may vote for city officials, but must also be a registered property owner in the city if the expenditure of money is involved in the election.
5. Any city or town may be constituted an independent school district by the legislature.
6. The Constitution limits the terms of appointive officers except those under civil service regulations.
7. Conditions of creating pension plans for employees defined.

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page 2

STATE-LOCAL RELATIONS

THE TEXAS CONSTITUTION AND THE COUNTY

All the state constitutions of Texas have provided some form of county government, and the present one contains fifty-five sections concerning it. All 254 counties have a similar structure despite differences in size, population, climate, and economic well-being. County officials serve in both administrative and judicial capacities. The County Court is a part of the judicial system. The commissioners Court is a policy-making and administrative unit of the county. The County Judge serves both courts, but the commissioners have no judicial duties.

Commissioners Court:

The County Judge is the presiding officer and votes in case of a tie. He may call it into special session and fill vacancies on the Court. He posts notices of elections and records returns, handles and allocates supplies. He is a notary public and has power to perform marriages. Four Commissioners, one from each of four precincts, are elected for four year-staggered terms. They meet the second Monday of each month; three is a quorum, but all must vote when levying taxes. It has jurisdiction over county business and its duties include appointing a health officer and a few other officials, calling for competitive bids on contracts over \$500.00., establishing new roads, courthouses, jails, hospitals, libraries, parks. It must provide for the insane and paupers, and it may provide for indigents and dependents.

Juveniles: Though state law makes mandatory provision for a juvenile court in each county, the county must provide funds for its operation (probation department, detention home, etc.). Relatively few counties are providing juvenile court facilities, either because of disinterest of its citizens or for lack of technical knowledge as to what such a court requires.

Welfare: The county has the sole responsibility for general relief. The Department of Public Welfare administers categorical relief through its offices in each county.

Eleemosynary aid: When the State institutions are full, the county must provide for the deaf, dumb, insane, blind, and hospitals for the tubercular.

Health: The County health officer works part time or with inadequate pay and does little comprehensive planning. City-county health units provide more satisfactory services.

Highways: receive more money than any other county function, but the methods of administering the function are considered outdated. Lately the state has taken over some of the financial burden of building roads, but the county must furnish the rights-of-way.

Education and Courts: Discussed in previous sections of the Survey.

Elections: Commissioners Court administers them except for municipal or special district elections and party primaries.

The Constitution provides for the following County officials: Clerk, Attorney, Sheriff, Tax Assessor-collector, Treasurer, Surveyor, School Superintendent, School Trustees, Auditor, and Health Officer.

The County Home Rule Amendment passed in 1933 was a step forward in permitting a county to adopt its government to meet its needs; in practice, this has not been so, since no county has adopted a home rule charter. To be eligible a county must have at least 62,000 population by the last federal census, or if it has less, 2/3 of the membership of both houses of legislature must approve. The proposed charter must be approved by two separate majorities: of voters in the cities and towns of the county, and of those living outside the cities and towns. The procedure may be changed by a 2/3 vote of the legislature membership. The charters may not conflict with existing constitutional and statutory law.

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STATE-LOCAL RELATIONS

The Texas Constitution and the City

Every municipal government in Texas will fall into each of these three general classifications.

1. Type of Government: mayor-council, commission, council-manager, etc.

2. General law and home rule cities.

3. Population: home rule over 5,000; cities and towns over 66; towns and villages over 200; incorporated towns of 500 to 5,000.

Municipalities may incorporate under a specific classification of general law.

Since 1943, any general law city of less than 5,000 population may adopt the city manager plan by majority vote of the qualified electors.

Cities having more than 5,000 population may adopt or amend their charters subject only to limitations as prescribed by the legislature, and the following financial limitations: they may not levy any tax for any purpose which for any one year exceeds 2½% of the taxable property of the city, or create a debt unless provision is made to assess and collect annually enough to pay the interest and create a sinking fund of at least 2% of the principal. A home rule city may adopt any form of government it desires.

The Courts have varied through the years in their interpretation of the home rule amendment (of 1912) and the 1913 legislative act written to define the extent of powers granted under the amendment. The recent interpretations are more liberal. The tendency of legislators to create special legislation veiled under the name of general legislation has had the effect of further limiting of home rule powers held by cities.

FINANCING LOCAL UNITS OF GOVERNMENT

The increase in services to the people has brought a need for increased revenues. Local governments have little or no discretion in the solution of their financial problems since the Constitution and the statutes prescribe what is taxable. Local units can find no new sources without permissive legislation. The amount of taxation from the approved sources and the purposes for which the money may be spent are prescribed in great detail. This is another example of earmarking as discussed in Section 8 of the Survey. Many of the revenue problems of local governments are either centered in or enveloped by the problems of general property tax laws and administration. Property taxation is the basic revenue source administered, collected, and retained by local units of government.

MODEL STATE CONSTITUTION

The MSC proposes a very general constitution, leaving details to be worked out by statutes. The MSC would let any county adopt or amend its charter as long as it did not conflict with the general laws. It requires only a simple majority of those voting for a county home rule charter, and a charter commission can be elected if 10% of the voters petition for it. The MSC lists nine specific grants of powers to home rule cities, including police and sanitary regulations, levying taxes, acquiring lands for parks and public utilities, organizing schools, libraries, slum clearance, etc., down to maintenance of art institutes, museums, theatres, orchestras, etc. A comparison between the Model State Constitution and the Texas Constitution would seem to indicate that Texas has a very progressive set-up for both county and municipal home rule, with a few important but possible-to-modify exceptions.