

May 24, 1966

To: Brown, Joor, Winick Casperson, Brownscombe
From: Winick
Re. T.C. Review

Sure hope that someone is real sweet and send me a copy of that freshly published booklet before they all go to the State Office. I can't wait to get my hands on it.

Dorothy bouquets to you and Elizabeth for the hours you spent on the reading of the proofs.

I think your suggestions Dorothy^y are excellent and I am making a list to bring into the June Bd. meeting for my committee and hopefully Bd. approval. I also received some names from Mimi Freedman, so I am beginning to get some requests. The other names you mentioned Dorothy can you get them to me before June 20th????

I feel that it would be a very fine thing if someone did take a personal copy to Mr. Plain. This is good P.R. and who knows they just might want to finance something else we might want to ~~good~~ do thru our ~~own~~ L.W.V. Education fund and since Dorothy is one of our contacts I do think she is the logical one ~~ex~~ to do it. Also she offered to do this and I feel this should be her privilege.

Any ideas any of you have please write me as we have many copies to circulate and I am open for all kinds of suggestions.



TREADWAY MOTOR HOUSE

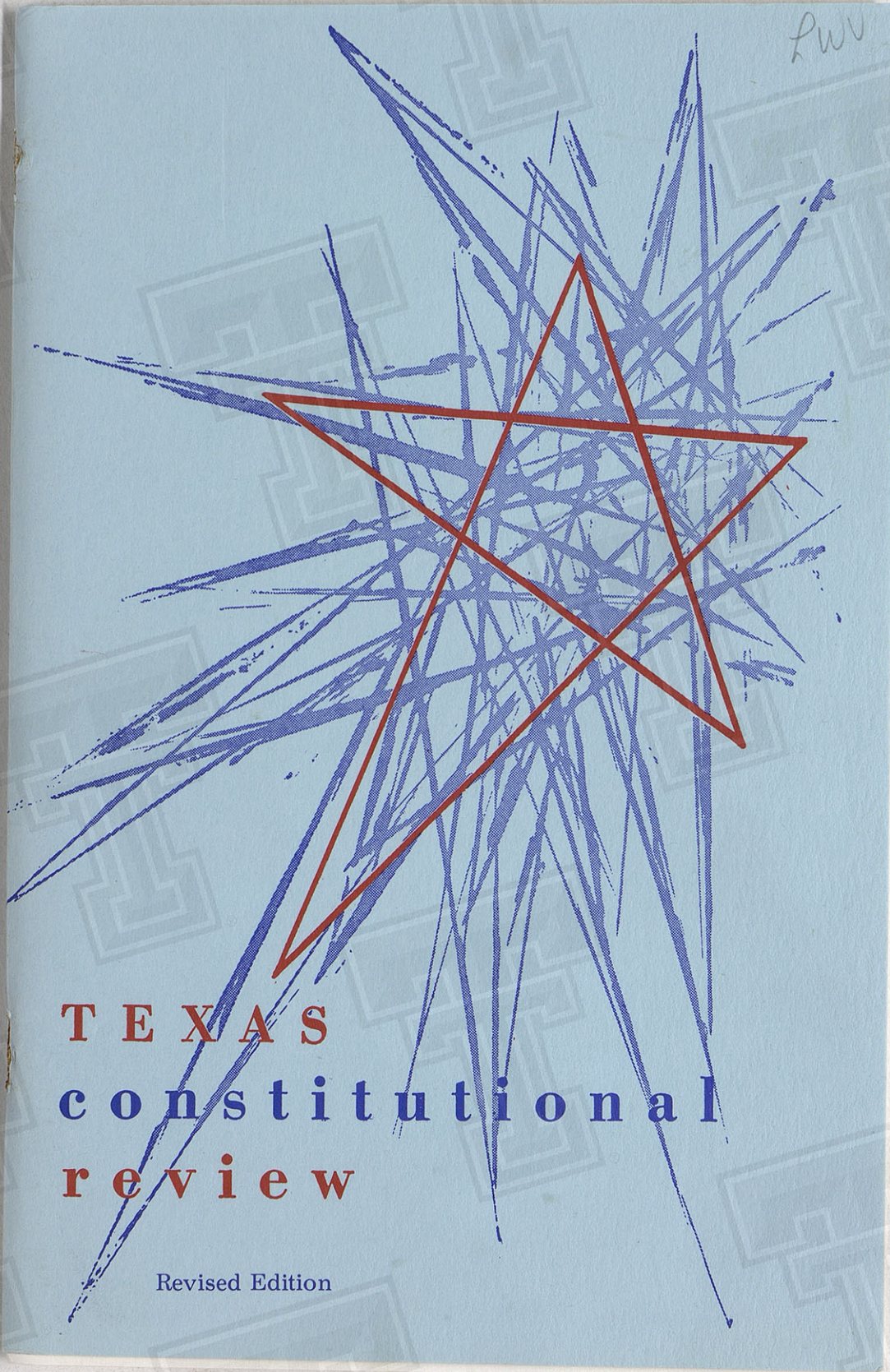
HARVARD SQUARE

CAMBRIDGE 38, MASS.

Errata

p. 4
p. 8
p. 25
p. 39

LWV



TEXAS
constitutional
review

Revised Edition

The League of Women Voters is a non-partisan organization devoted to the promotion of political responsibility through informed and active participation in government. The League never supports or opposes candidates.

The purpose of the League of Women Voters Education Fund is to undertake educational programs in the field of government in the United States.

A limited number of additional copies is available for a mailing and handling charge of 15¢ a copy, prepaid. League of Women Voters of Texas, 1841 Bingle Road, Houston, Texas 77055.

First Edition 1955

Revised Edition 1966

TEXAS CONSTITUTIONAL REVIEW

*A little book
to start you on
a rewarding journey
to improved state
and local governments*

Prepared by the
LEAGUE OF WOMEN VOTERS OF TEXAS

Published by the
LEAGUE OF WOMEN VOTERS EDUCATION FUND
Washington, D.C.

Financed by a
SEARS-ROEBUCK FOUNDATION GRANT

CONTENTS

	Page
Introduction	1
What Is A Constitution?	3
Bill of Rights	6
Legislative Department	10
Executive Department	18
Judicial Department	24
Suffrage and Elections	30
State Finance	33
State-Local Relations	37
General Welfare -- Education, Health, Public Welfare, Conservation	42
General and Miscellaneous	48
Methods of Constitutional Revision	52
Other Reading	59

INTRODUCTION

Texas Constitutional Review has been prepared for all those Texas citizens who, while cherishing the ideals of a constitutional democracy, are unfamiliar with the document itself. This handbook is designed to help the citizen understand the need for more intensive study and research, carried out with the cooperation of all those who believe that the State Constitution is the foundation from which Texas government grows.

To help the reader in reviewing the Constitution there have been included in the chapters which follow many references to provisions found in other state constitutions and in the Model State Constitution. This last-named document is a standard or ideal constitution, prepared by the Committee on State Government of the National Municipal League, and used for the past twenty-five years as a guide for state constitutional conventions and commissions. Since 1963 conventions have been held or called in Michigan (1963), New Hampshire (1964), Rhode Island (1964), Connecticut (1965), Tennessee (1965 -- limited scope), New Jersey (1966), and New York (1966); and revision commissions have been established in Kentucky, California, Florida, Idaho, New Mexico, Oregon, and Wisconsin.

Frequent reference is also made, either directly or indirectly, to other groups in Texas engaged in governmental research: the Texas Legislative Council created by the Legislature in 1949 to study problems of state government; the Arnold Foundation at Southern Methodist University; the Citizens' Advisory Committee for Texas Constitutional Revision; the Texas Research League, a nonpolitical organization established to further the cause of more efficient Texas government through analysis and research. The latter has begun, at the request of the Governor, a three-to-four-year study of the service structures of local governmental units in the state's twenty-one metropolitan areas. These research agencies can have an important place in any future activity

involving constitutional changes, just as they now occupy an important place in efforts to improve the operation of our state government.

In this connection, a quotation from an address made by Hines H. Baker, former president and director of the Humble Oil and Refining Company, and former chairman of the board of directors of the Texas Research League, will be of interest to thoughtful citizens:

"Research -- the impartial, objective examination and appraisal of the facts with the ultimate goal of throwing light on matters we do not fully understand -- has proved its value in every field in which it has been undertaken. In the sciences and technology research has yielded brilliant results. In such fields as business management money spent on research has returned itself many times.

"On the other hand, research in the field of government, where every man regards himself as an expert, has been quite limited until comparatively recently. Yet government is a field in which objective study and clear analysis are as necessary as in the natural sciences."

WHAT IS A CONSTITUTION?

A constitution is the people's written guarantee for the preservation of a democratic government, for it is created by the people themselves and can be changed only by their consent. Or, more formally:

A constitution is the fundamental law which establishes the relationship between the people and their government. It provides the basic rules of government.

Its functions are fourfold: to organize the government, to provide for the powers of government, to provide for amendment to itself, and to guarantee certain rights to the people.

Constitutional law is made by the people, whereas statutory law is made by their agent of government, the Legislature. Contents of many state constitutions, however, include not only matters of basic or permanent character, but also place great emphasis on restrictive and limiting details which would seem to be wholly statutory in character. Yet --

"A constitution is supposed to be an attempt at stating the accumulated wisdom of the ages, on the subject of government, while statutes are the contemporary effort to deal with problems of a current nature."*

Understanding of the distinction between constitutional law and statutory law will be a great help to the citizen who is trying to appraise his constitution in terms of its present usefulness and effectiveness.

Nobody will deny that the Texas Constitution, like those of most other states, contains a vast accumulation of

*W. Brooke Graves, *Major Problems in State Constitutional Revision* (1960).

statutory details. This is so for many reasons: our constitution-makers of 1875 followed the pattern of their times in fearing the executive and distrusting the legislature. Texas was just emerging from the trying period following the Civil War, when governmental abuses and extravagances had become almost unbearable. The consequence is that the restrictions and limitations spelled out in the Constitution are exceedingly numerous. But these detailed restrictions have had the effect of impeding adaptation of our basic law to changing conditions, so that more amendments have become necessary to make our Constitution even reasonably adequate to serve its purpose in an era of increased industrialization, rapid urbanization, and explosive population growth.

Because a constitutional provision is more difficult to change than a statutory one, pressure groups are fond of using the constitutional amendment route to get their ideas or proposals more firmly fixed in the law of the land. There are many people who believe that the Legislature is wise to get the approval of the electorate, by way of voting on constitutional amendments, for as much legislation as possible. All this has had the effect of making a clear-cut distinction between fundamental and statutory law extremely difficult.

Perhaps the simplest way to approach a definition of a constitution is to quote the words of capable men who have given thoughtful consideration to this subject.

Chief Justice John Marshall, in a judicial opinion in 1819:

"A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution . . . could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

W. Brooke Graves, Adjunct Professor, American University; Legislative Reference Service, Library of Congress, in "What Should A Constitution Contain?":

and former chief of the State Law Section,

"All things being equal, the shorter the constitution is, the better it is. The Federal Constitution has endured as long as it has, and it has continued to be a satisfactory instrument of government, because it was well drafted. Its provisions were confined to matters that were and are essential."

Albert L. Sturm, Professor of Government and Director of the Institute of Government Research at Florida State University, Tallahassee, Florida, in his book *Methods of State Constitutional Reform*:

"The ideal constitution should be flexible, concise, and dedicated to fundamental principles."

What is a constitution? It is the very symbol of self-government, the creation of which the people have reserved solely to themselves, as witness the Preamble to the Constitution of the State of Texas:

"Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution."

BILL OF RIGHTS

"That the general, great and essential principles of liberty and free government may be recognized and established"

begins the Bill of Rights of the Texas Constitution. Differing very little in purpose from the bills of rights of the federal and other state constitutions, the Texas Bill of Rights nevertheless reflects the very special determination of the Constitutional Convention of 1875 that the natural rights of Texans would never be violated. The rights and privileges of the individual which at one time or another in history have been denied are those which the Bill of Rights guarantees as being beyond the power of government to deny.

Section 1 declares that Texas is a *"... free and independent State, subject only to the Constitution of the United States."* The second half of the section states that *"... the maintenance of our free institutions and perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States."*

Section 2 declares that all free governments are founded in the political power inherent in the people and for their benefit. The people have at all times the *"... right to alter, reform or abolish their government in such a manner as they may think expedient,"* subject only to the limitation of preserving a republican form of government.

Section 3 states: *"All free men, when they form a social compact, have equal rights. . . ."*

Religious liberty is provided for in the next four sections: freedom of worship is guaranteed; there shall be no religious test for public office except for the requirement that office seekers acknowledge *"the existence of a Supreme Being"*; oaths taken in court shall be in accordance with an individual's religious belief or lack of it, but all persons are subject to penalties for perjury; and appropriations for sectarian purposes are forbidden.

Section 8 guarantees that *"Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege"*

Six sections of the Bill of Rights guarantee the protection of persons and property. No unreasonable seizures and searches are allowed. *"No bill of attainder, or ex post facto law, retroactive law, or any other law impairing the obligation of contracts, shall be made."* (A bill of attainder is one which inflicts punishment by an act of the legislature rather than by a judicial trial. An ex post facto law is one which makes a crime of an act which was not a crime when it was committed, or the punishment greater than it was when the act was committed.) No person's property may be taken for state purposes without adequate compensation, and no irrevocable grant of special privilege may be made.

Section 18 is brief: *"No person shall ever be imprisoned for debt."*

Section 19 is one of the most important in the Texas Bill of Rights, similar to the fifth and fourteenth amendments to the United States Constitution: *"No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."*

Section 27 guarantees the people the right to assemble peaceably, and the right to apply to the government for the redress of grievances or other purposes.

Nine sections are devoted to the rights of persons accused of crime. Section 10 guarantees a speedy trial by an impartial jury; a copy of the nature and cause of the accusation; presence at his own trial; the privilege of not being compelled to give evidence against himself; the right of being heard by self or counsel or both; a compulsory process for obtaining witnesses in his favor; and indictment by a grand jury before trial in all felony cases.

All prisoners shall be bailable, except for capital offenses, and these may be bailable under the law. The writ of habeas corpus shall never be suspended. Excessive bail and unusual punishment are prohibited, and no person shall ever be denied the use of the court in seeking redress.

No person shall ever be tried a second time for the same offense, after a verdict of not guilty. The right of trial by jury is guaranteed, and the Legislature is ordered

to pass the necessary laws to maintain "*its purity and efficiency.*" No person shall ever be declared outside the protection of the law ("outlawry"), and no citizen can be deported as punishment.

Section 21, titled "*Corruption of Blood; Forfeiture; Suicide,*" sounds strange in modern life. It guarantees that a criminal's innocent relatives shall not be punished with him, nor shall heirs of an offender be denied the right to inherit his property. A criminal cannot be required to forfeit to the state his ownership and other rights in his property. In cases of suicide an individual's property descends as in the case of natural death.

The crime of treason is defined in language almost identical with that of the United States Constitution.

Six sections of the Bill of Rights put limitations on the agents of government. Every citizen has the right to keep and bear arms in his defense. The military is subordinate to civil authority. No soldiers are to be quartered in the house of any citizen in time of peace, nor in time of war except as provided by law. Public officials are forbidden to grant perpetual existence to a corporation, and monopolies are declared to be "*contrary to the genius of a free government.*" The exclusive right of inheritance of the first born and the settling of property inalienably on a person and his descendants are prohibited. Only the Legislature has the power to suspend laws in Texas.

The last of the 29 sections of the Bill of Rights emphasizes the firm resolve of the framers of the Texas Constitution that this area shall be free of governmental influence: "*To guard against transgressions of the high powers being delegated, we declare that everything in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.*"

The Texas Bill of Rights has been amended four times.

1918 - amended to provide that the compulsory process for obtaining witnesses in favor of an accused person might be extended to include deposition from witnesses residing outside the state.

1935 - amended to provide that mentally ill persons not charged with a criminal offense might be

committed for observation and/or treatment, for not more than ninety days, by the County Judge without the necessity of a trial by jury.

1956 - amended to permit denial of bail to a person charged with a felony less than capital who has been theretofore twice convicted of a felony.

1956 - amended to require medical or psychiatric testimony for commitment of persons of unsound mind and authorizing the Legislature to provide for trial and commitment of such persons and for waiver of trial by jury where the person under inquiry has not been charged with commission of a criminal offense.

LEGISLATIVE DEPARTMENT

The Texas Constitution provides for the traditional separation of powers among the three branches: the legislative, the executive, and the judicial. Article II declares that the powers of government in Texas must be divided into three distinct departments, each with its own separate capacity.

Article III contains most of the basic provisions covering the Legislative Department of the State Government. The 55,000 word Texas Constitution, however, devotes some portion of each article to this branch of the government, and it is obviously impossible to report these many details in this brief review. The broad outlines will be sketched in this chapter, with a sampling of representative provisions, and the reader will be asked to view the whole picture of the legislative department in the light of pertinent provisions found throughout this review of the Constitution.

ORGANIZATION

MEMBERSHIP

The Legislature is composed of a Senate and a House of Representatives. The Senate consists of 31 members; the House of not more than 150. Representation in each house shall be reapportioned after each Federal census. A 1948 constitutional amendment created the Legislative Redistricting Board (composed of the Lieutenant Governor, Speaker of the House, Attorney General, Comptroller, and Commissioner of the General Land Office) which must reapportion the state senatorial and representative districts if the Legislature refuses to do so. However, in no reapportionment required since passage of the amendment has the Legislature failed to act.

Senatorial districts are based on the number of qualified electors, but the Constitution permits no county to have more than one senator regardless of the elector population within the county. In 1964 the U.S. Supreme Court ruled that state legislatures must reapportion both houses to comply with the

"one man, one vote" principle. Texas voters in September, 1965, rejected an amendment to increase the membership of the Senate from 31 to 39 members, but deleted the limitation that no single county shall have more than one state senator.

Representative districts are based on population. A 1936 amendment provided that counties of over 700,000 population would gain additional representation only with larger than average population increments (one additional for each 100,000 increase). Near the close of the 1965 session the Texas Legislature passed a House redistricting bill. A federal court decision upheld most of the act but directed the Legislature to make some corrections before August 1, 1967.

Senators are elected for four-year terms; representatives for two-year terms. A constitutional amendment which provided for four-year terms for members of the House of Representatives was defeated at the polls in November, 1965.

Qualifications as specified in the Constitution: Senators must be at least 26 years of age, qualified voters, residents of the state for five years and the district for one year; representatives must be at least 21 years of age, qualified voters, residents of the state for two years and the district for one year. Legislators may not hold any other civil office of profit, nor may they be interested, directly or indirectly, in any contract with the state or a county, which contract was authorized during their term in the Legislature. As with other state officials, legislators convicted of bribery must forfeit their office.

A 1960 constitutional amendment provided for salaries of \$4,800 per year for members of the Legislature. Per diem expenses for the first 120 days of a regular session and for special sessions are specified. In addition, legislators are paid \$2.50 for every 25 miles of travel to and from Austin.

An amendment will be voted on in November, 1966, that will, if adopted, specify that newly elected legislators shall take office on the day set by law for the convening of the Regular Session of the Legislature.

Special privileges are granted by the Constitution to members of the Legislature: they may not be questioned elsewhere for words spoken in debate in either house; they may not be arrested, except in certain instances, during the session of the Legislature or while traveling to and from Austin. The 1876 provision allows one day for every 20 miles of such travel.

PROCEDURE

The Constitution provides that the Legislature shall meet every two years and at other times when convened by the Governor. The Senate is presided over by the Lieutenant Governor, and elects a president pro tempore to serve in the absence of the Lieutenant Governor. The House of Representatives elects a Speaker. Each house chooses its other officers. An amendment failed to pass in 1965 which would have permitted the Legislature to set the salaries of the Lieutenant Governor and the Speaker.

The method of procedure of business is provided: bills shall be introduced during the first thirty days, committee hearings shall be held during the second thirty days, and the final sixty days shall be spent in legislative action on the bills and resolutions which are pending. Each house may alter these rules by a four-fifths vote of its membership.

All sessions shall be open, except the Senate when in executive session; neither house may adjourn for more than three days without the consent of the other. A journal shall be kept of the proceedings of each house of the Legislature.

The Constitution provides in several sections for the passage of legislation: no law shall be passed except by bill; bills may originate in either house, but tax bills shall originate in the House of Representatives; no bill shall be considered until it has been referred to a committee and reported on, at least three days before final adjournment; all bills shall be read on three separate days in each house and discussion allowed, except that by a four-fifths vote this rule may be suspended in case of "*imperative public necessity*"; after a bill or resolution has been defeated, no bill or resolution containing the same substance shall be passed at the same session; no bill, except appropriation bills, shall contain more than one subject; and other specific directions are given to the Legislature regarding its proceedings.

REQUIREMENTS AND LIMITATIONS

The Legislature has full power to enact statutes, both civil and criminal, which are not in conflict with the Constitutions of Texas and the United States, according to court decisions--an inherent power to protect and provide for the welfare of the people of the state. Section 42, Article III, of the Texas Constitution states: "*The Legislature shall pass such laws as may be necessary to carry into effect the provisions of*

this Constitution.” But throughout the Constitution are found specific requirements or limitations for almost every conceivable act of the Legislature.

**MANDATORY
PROVISIONS**

Though some 60 sections of the Constitution contain obligatory directions to the Legislature, most are qualified in some way with exceptions. Sample mandatory provisions:

The Legislature shall provide by law for compensation of officers.

It shall pass laws to give courts power to change venue.

It shall enact vagrant laws; it shall prohibit lotteries.

**PERMISSIVE
PROVISIONS**

The words “*may*” or “*shall have the power*” or “*shall not have the power except*” are variations of constitutional grants of permissive direction to the Legislature and, here again, a complete list would take several pages of this review. Sample permissive provisions:

The Legislature shall have the right to levy taxes for a teachers’ retirement system and other welfare benefits.

It may provide for revising, digesting and publishing the laws every ten years.

It may create certain named boards, commissions, agencies.

It may change the constitutional rule authorizing less than the whole number of the jury which can render a verdict.

It shall have the power to pass laws for the protection of stock raisers and the regulation of livestock.

**RESTRICTIVE
PROVISIONS**

By far the greatest number of constitutional provisions relating to the conduct of the Legislature are restrictive or limiting in nature, a reflection of the distrust of the Legislature held by the framers of the Constitution of 1876. Sample restrictive provisions:

The Legislature is restricted in the conduct of its own proceedings.

It is limited by a long list of purposes for which taxes may or may not be levied.

It shall not pass local or special laws on a long list of subjects.

It shall not appropriate funds nor pledge the credit of the state for any private purpose.

LEGISLATIVE REFORMS

Throughout the United States an increasing amount of study and research of the legislative branch of state government has been made recently. Thirty-five present constitutions were adopted in the nineteenth century--24 between the years 1876 and 1900 -- with the consequent detailed restrictions on the Legislature which were then considered necessary. It is now generally recognized that reorganization of state legislatures is one of the most difficult problems of government.

The movement for the return of states' rights has pointed up the fact that most legislatures have been hindered by state constitutions in providing for the needs of the twentieth century. Indeed much of the encroachment of the Federal government stems from the fact that states are not only unwilling, they are often unable, to furnish the services demanded by the people.

In Texas no extensive research has been done on the subject of the legislature, but a wealth of material is available from national organizations and from the many states which have authorized reorganization studies. Many Little Hoover Commissions created to study the executive branch have discovered what the Connecticut Commission found, that "all roads lead to or from the General Assembly."

Two reports were made in the mid-1950's on the role of the Legislature, one by the Committee on American Legislatures of the American Political Science Association, and one by the American Assembly.

The Council of State Governments, an organization founded and supported by the states, has established committees to study the procedures and functioning of state legislatures. Some of the recommendations of the Committee on Legislative Processes and Procedures, with comparative features of the Texas Legislative System, follow:

Undue limitations and restrictions upon the length and subject matter of legislative sessions should be removed.

The Texas Constitution specifies a biennial regular session that may not exceed 140 days; special sessions may be called only by the Governor. (An amendment providing for annual sessions of the Legislature was submitted to a vote of the people in November, 1958, and was defeated.)

Annual salaries sufficient to permit competent persons to serve without financial sacrifice should be provided by statute and not fixed in the Constitution.

The Texas Constitution provides for annual salaries not to exceed \$4,800 per annum. Per diem is provided for the first 120 days of a regular session and for the 30 days of any special session. (In 1965 an amendment increasing per diem pay of members of the Legislature failed.)

Skilled and essential full-time legislative employees should be appointed on the basis of merit and competence.

No mention is made of such employees in the Texas Constitution. (Presumably an article in the Constitution on Civil Service would include legislative employees, as well as executive and judicial employees.)

Legislative committees should be reduced in number and organized with regard to related subject matter, equalization of work, and cooperation between legislative houses. Committee meetings should be scheduled and announced, and a public record of committee action kept.

Other than the provision that all bills and resolutions must be submitted to committees before floor action, the Texas Constitution does not give direction on this subject. Specifically, it does not provide for a record of committee action. (The most important work of the state legislature is conducted by committees yet the citizen has no way of finding out what happens there to legislation in which he is interested, nor how his representative or senator voted. The Texas House of Representatives has 43 standing committees; the Senate has 38; there are no joint standing committees.)

Legislative councils and interim committees, reference, research, bill-drafting and statutory revision services should be strengthened.

These are not mentioned in the Constitution. The Texas Legislature has established some facilities (such as the Texas Legislative Council) and shows continued concern for improved services.

A study suggesting a reappraisal of state legislatures was made by the Commission on Intergovernmental Relations, which was appointed by President Eisenhower in 1953 and issued the report of its findings in June, 1955. In seeking to find the proper role of the state in the local-state-federal governmental relationship, the Commission speaks in unmistakable terms of the importance of strengthening state legislatures:

"Perhaps the chief obstacles to legislative flexibility are those created by over-detailed provisions of state constitutions. Some of these provisions rigidly prohibit certain forms of legislative action; others contain elaborate restrictions and prescriptions of an essentially statutory nature In a number of states the constitution earmarks so high a proportion of the tax revenues that the legislature's power to appropriate money applies to less than half of the state's expenditures. This tends to undermine the principle of responsible representative government and limits the ability of the legislators to adapt the spending policies of the state to changing needs and conditions.

"It is abundantly clear that restrictions and limitations of the type described have engendered at least as many errors and excesses as they have prevented. Removing these limitations would be an important step toward strengthening state Government."

In 1960 the National Municipal League undertook a State Constitutional Studies Project which sought to provide a broad program of education on the nature, importance, shortcomings and potentialities of state constitutions. One of the publications in this project, *Salient Issues of Constitutional Revision* (1961), devotes one chapter to the problems of structure, organization and procedure of state legislatures. Another excellent reference is the book *Major Problems in State Constitutional Revision* (1960) by W. Brooke Graves.

The many recent studies on state legislatures, both nationally and in the individual states now conducting their own studies, can be of certain benefit to further research in Texas.

For example, there are (1) the five-year project of the National Municipal League to study the effects of legislative reapportionment, to find specific ways of strengthening and improving state legislatures and to identify constitutional barriers, outdated practices and other factors which interfere with the effectiveness of state legislatures; and (2) the Citizens' Conference on State Legislatures, initiated in 1965 by "representatives of business and industry, labor, farm organizations and educators, to undertake a broad program of research and education to improve the organization and functioning of the state legislative process and to increase citizen interest."

EXECUTIVE DEPARTMENT

The Texas Constitution provides for no single head of the state, but for an Executive Department of seven officials: the Governor, Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, and Attorney General. Each of these is elected, except the Secretary of State who is appointed by the Governor with the consent of the Senate.

THE CHIEF EXECUTIVE

The Governor is elected for a two-year term. (An amendment authorizing a four-year term for the Governor and other executive officers failed to pass in 1965). He must be at least 30 years of age, a citizen of the United States, and a resident of Texas for five years preceding his election. His salary is now set by the Legislature, following adoption of a constitutional amendment in 1954 which provides for a minimum of \$12,000 a year. In 1955 the Legislature set his salary at \$25,000 a year.

The Governor is designated by the Constitution as the "*chief executive officer of the State*." As an administrator, the Governor is given the responsibility for execution of the laws, but the Constitution gives him little authority to carry out this mandate. He makes appointments to numerous boards and agencies, but these are subject to approval of two-thirds of the Senate, and he has no legal power to remove any appointees. The other executive officers are not responsible to him, nor are other elected or appointed heads of state departments. His constitutional right to request information and reports from executive and administrative departments gives him, therefore, little actual power of administration.

Among the more important legislative powers of the Governor is his power to call special sessions of the Legislature, which may not take up any legislation not presented to them by the Governor. At the beginning of each regular session,

the Governor must make a report on the condition of the state, recommend needed legislation, and give a financial statement and estimate of the taxes that will be needed by the state for the next two years. But his recommendations do not receive priority, as is the practice in some states, and he must rely on his political power and acumen to get favorable attention by the Legislature for his proposals.

His veto of any bill can be overridden by a two-thirds majority of each house of the Legislature, as can his item veto on appropriation bills. If the Legislature does not submit bills to him at least ten days before adjournment, the Governor has twenty days after adjournment to veto them, and the veto cannot, of course, be considered by the absent and adjourned Legislature.

The Governor's judicial authority stems from his constitutional power to issue pardons, paroles, and reprieves. His action in this field is subject to the advice and recommendations of the Board of Pardons and Paroles, a three-man board whose qualifications and conditions of appointment are minutely set forth in a constitutional amendment of 1936. The Governor may issue one 30-day reprieve in a capital case without a recommendation from the Board.

The Governor is also commander-in-chief of the state's military forces, and he represents Texas in all official business with other states and the United States.*

OTHER EXECUTIVE OFFICERS

The Lieutenant Governor serves as Governor if that official cannot, for any reason, accept the office or is absent from the state. His qualifications and his term of office are the same as the Governor's. His salary is the same while he is serving as Governor, but otherwise his compensation is the same as a member of the Legislature. (In 1965 an amendment which would have given the Legislature authority to set his salary failed.) He is President of the Senate and may cast a vote in case of a tie. As President of the Senate, he lays before the Senate its business in the order indicated by its rules and appoints all committees and committee chairmen. The Cons-

*A recent study of the Texas Governor is *The Chief Executive: A Study of Gubernatorial Leadership*, by Fred Gantt, Jr. (The University of Texas Press, Austin, Texas, 1964).

titution further provides in two separate sections titled "*Succession to Governorship*" that he shall be under all the restrictions and inhibitions imposed in this Constitution on the Governor.

The Secretary of State is appointed by the Governor with Senate consent for a two-year term. His salary is set by the Legislature at not less than \$6,000. His constitutional duties include responsibility for the Governor's official files, which he is required to furnish to either house of the Legislature; appointment of notaries public for each county; keeping the Seal of the State; and performing other duties as required by the Legislature.

The Attorney General is elected for two years; his salary is fixed by the Legislature at not less than \$10,000; no qualifications for his office are specified in the Constitution. His duties are enumerated in some detail with respect to charters of private corporations; he represents the state in the Supreme Court of Texas and gives legal advice to the Governor and other executive officers when requested; and he performs such other duties as may be required by law.

The Treasurer is elected for two years; his salary is set by the Legislature at not less than \$6,000; no qualifications are provided. His duties are prescribed by the Legislature.

The Comptroller of Public Accounts is elected for two years; his salary is set by the Legislature at not less than \$6,000; no qualifications for the office are set forth in the Constitution; his duties may be set by the Legislature. In 1942 the Constitution was amended to provide that the Legislature should limit appropriations to anticipated state revenues. No appropriation bill can be passed, except in an emergency, until the Comptroller has endorsed it as being within the estimated revenue available, and he must return the bill to the Legislature for additional consideration if it exceeds his estimates. (This constitutional requirement gives to the Comptroller greater power over state spending than is granted to any other state official.) Another important constitutional duty of the Comptroller is to prepare and submit to the Governor and the Legislature statements showing the financial condition of the State Treasury at the close of the past fiscal period and an estimate of the probable receipts and disbursements for the current fiscal year.

The Commissioner of the General Land Office is elected for

two years; his salary is set by the Legislature at not less than \$6,000; no qualifications are provided. Two entire articles of the Constitution, both of which are now largely obsolete, relate to the duties of the General Land Office. The Constitution was amended in 1951 to establish a Veterans Land Program and prescribe procedures of the Veterans Land Program. In 1956 the Constitution was amended to change membership of the Veterans Land Board and raise the total of bonds that may be authorized by the Board. It was further amended in 1962 to provide for offering unclaimed land in the Veterans Land Fund to non-veteran purchasers after land has first been offered to veterans. In 1963 and in 1965 voters failed to authorize an extension of the program, and the program will be terminated.

The seven officials who make up the Executive Department may not be removed from office except by impeachment, but the Constitution does not specify the causes for impeachment.

Unlike some parts of the Constitution, Article IV, which provides for the Executive Department, is relatively clear as to intent, is not often repetitious, and contains most of the provisions relating to the subject. Sections setting forth the duties of the Governor and other executive officers remain exactly as written in 1876, for the most part.

STATE ADMINISTRATION

Some explanation of state administration is desirable in reviewing the Executive Department. Many political scientists advocate placing all administrative authority in the Governor; but neither the Constitution nor the statutes is based on this concept of executive authority or responsibility. For instance:

Eleven state administrative units are headed by appointees not selected by the Governor (examples being the State Board of Library Examiners, State Chemist, Board of Managers of the Texas State Railroad).

One three-member commission is elected (the Railroad Commission).

One 21-member board is elected by congressional districts (State Board of Education).

In any attempt to list the many and various administrative units of Texas state government it must be pointed out that few of them follow a similar pattern of organization,

of function, or of autonomy. For instance, officials of one agency may also administer another; some agencies are administered by boards, some by single heads; some agencies carry out a total program, others perform some part of a larger program, etc. The organization plan of some of these units is spelled out in the Constitution. The total number of state administrative bodies is given as approximately 235 in the Texas Almanac 1964-65, but many of these are obsolete or inactive. (Examples: Board of Child and Animal Protection -- 1913 statute; Board to Approve Contracts for Fuel and Public Printing -- 1876 Constitution)*

ADMINISTRATIVE REFORMS

In sharp contrast to the sprawling and headless administrative system of Texas and many other states, the provisions of the Model State Constitution give the governor primary responsibility for administrative organization and reorganization, and full responsibility for top executive appointments. This document would make the governor the only elective member of the executive department, and would specify for him a four-year term. He would appoint an administrative manager, and there would be not more than 20 administrative departments, the heads of which would be appointed by the governor and subject to removal by him. The powers and functions of the departments would be prescribed by the legislature, which could also appoint temporary, special-purpose commissions.

Not since 1931 has Texas attempted an over-all reorganization of state administration, usually accomplished by so-called Little Hoover Commissions. At that time a Joint Legislative Committee on Organization and Economy was appointed, which engaged the firm of Griffenhagen and Associates to make a study of Texas administration. A system of integration of existing agencies was proposed which would have required numerous changes in the Constitution. A bill which would have created 19 administrative departments was introduced in the 1933 Legislature, was passed by the House, but defeated by the Senate.

*For a description and complete listing of Texas agencies consult *A Guide To Texas State Agencies* (1964), published by the Institute of Public Affairs at the University of Texas.

In 1950 a privately financed research organization, the Texas Economy Commission, was established to study the executive branch of Texas state government. Reorganized in 1952 and renamed the Texas Research League, it has no official status, though requests for research must be made by public officials or public bodies. It may undertake studies in both the executive and legislative departments.

In 1949 the Texas Legislative Council was organized by the Legislature to undertake various studies in the field of state government, as an aid to the Legislature. The Council has proposed legislation, some of which has been enacted, to clear the statutes of inactive administrative units. A great deal of further research into the state's administrative problems might be accomplished by the Council if the Legislature requested it.

JUDICIAL DEPARTMENT

Article V of the Texas Constitution provides for the Judicial Department. Section 1 vests the judicial power in a Supreme Court, Courts of Civil Appeals, a Court of Criminal Appeals, District Courts, County Courts, Commissioners' Courts, and Courts of Justices of the Peace. Section 1 also authorizes the Legislature to establish such courts as "*it may deem necessary.*"

Texas courts may be broadly classified into trial and appellate courts. Trial courts, composed of one judge each, hear cases for the first time or at their point of origin, examine the evidence and render the initial decision. Appellate courts, each composed of several judges, hear on appeal cases already decided in the trial courts or reviewed by lesser appellate courts; and they review and correct their errors, usually of law.

Texas is unusual in having two highest courts. Only one other state (Oklahoma) has a similar system. The Supreme Court of Texas, which hears only civil cases, is the highest appellate court for civil matters; the Texas Court of Criminal Appeals, which hears only criminal cases, is the highest and, unlike courts in most other states, the only appellate court for criminal matters. Generally, the Supreme Court does not hear a case unless it has gone first to one of the Courts of Civil Appeals, which are intermediate appellate courts.

On the trial court level the courts in order of superiority of importance in terms of litigation handled are the District Courts, the County Courts and various county-level courts, the Justice of the Peace Courts and City or Corporation or Recorder Courts.

Courts may also be classified on the basis of geography. The Texas Supreme Court and Texas Court of Criminal Appeals are state-wide. The Courts of Civil Appeals generally hear appeals only from trial courts operating within one of the Supreme Judicial Districts into which the Legislature has divided the state under Section 6 of Article V. District Courts (including the special Criminal District Courts) handle largely

litigation arising within the respective geographic judicial districts established by the Legislature under Section 7 or Article V. County Courts and special county-level courts are limited to cases arising within their respective counties. Justice of the Peace Courts operate within precincts drawn by the Commissioners' Court of their respective counties. City, Corporation or Recorder Courts operate within the limits of their particular city.

The Commissioners' Courts have never functioned as courts. They are administrative-legislative bodies for the counties. Their presiding officer is the County Judge, who does, however, retain judicial authority.

The total number of Texas courts (and judges) is continually subject to increase. The exact number is determined by the Legislature with some exceptions. The exceptions include Constitutional provisions pertaining to the Supreme Court, the Court of Criminal Appeals, the County Courts and the Justice of the Peace Courts. The number of the latter is determined for each county by its Commissioners' Court, subject to the Constitutional provision that there be not less than four nor more than eight for each county, with two for each city of 8,000 or more in population.

As of September 1, 1965, the number of Texas courts and judges were:

COURTS		JUDGES	
Supreme Court	1	9	
Court of Criminal Appeals	1	5	(including 2 commis- sioners)
Court of Civil Appeals	13	39	
District Courts (not including Criminal District Courts)	168	168	
Criminal District Courts	15	15	
Constitutional County Courts	254	254	
*Courts of Domestic Relations (including one Juvenile Court)	3	18	

*The Domestic Relations Courts (including one Juvenile Court) should not be confused with those courts composed merely of a regular judge of a District Court or other court who has been assigned the duty of giving attention to domestic relations or juvenile matters. Domestic Re-

County Probate Courts	4	4
County Courts at Law	27	27
County Civil Courts at Law	3	3
County Criminal Courts at Law	4	4
County Criminal Courts	6	6
*County Criminal Courts of Appeals	2	2
Justice of the Peace Courts	924	924
City, Corporation or Recorder Courts	800	800
Grand Total of Courts	2225	
Grand Total of Judges	2278	

The Constitution prescribes the qualifications for appellate, district and constitutional county court judges. No legal training is required for the judges of the constitutional county courts or for justices of the peace.

The Constitution also prescribes terms of office, which are six years for all appellate judges and four years for all trial judges, with exceptions as to city-level judges. The Constitution also describes the jurisdiction of the courts named in the Constitution, and it provides for disqualification of judges, removal of judges, and exchange of districts by district judges.

All judges are elected to office in Texas with the exception of most city-level judges. Vacancies are, however, filled by appointment; and most judges are initially appointed rather than elected to the office.

Article V allows the Supreme Court to make procedural rules for all courts "*not inconsistent with the laws of this State.*" By a 1939 Act the Legislature repealed all of its own laws affecting civil procedure in favor of a set of rules to be made by the Supreme Court. The Code of Criminal Procedure remains under legislative control; in 1965 the

lations Courts are special county-level courts with their judges being devoted exclusively to domestic relations.

*The County Criminal Courts of Appeals are special courts of metropolitan counties created to handle the appeals allowed by law from minor offense convictions in Justice of the Peace Courts or city-level courts. In most counties such appeals go to the County Court and in many to one of the other several county courts.

Legislature enacted a new Code under the leadership of the State Bar.

The jury system is provided for by the Constitution. The Bill of Rights states that the "*right to trial by jury shall remain inviolate.*" Article V implements this provision, determining juror qualifications, votes necessary for verdicts, limitations on jury trials, and the like.

The Constitution of Texas, so detailed in other respects, takes little express account of the law practice, which is closely affiliated with the administration of justice. The Legislature has long required licensing of attorneys by the Supreme Court and in 1939 passed the State Bar Act which requires membership of all practicing attorneys in the State Bar of Texas.

JUDICIAL IMPROVEMENTS

The Judiciary Article has been amended many times since the Constitution was written. In 1965 the Legislature submitted two more proposed amendments to the people. One, which was approved by the voters on November 2, 1965, provides for the automatic retirement of district and appellate judges for old age, forced retirement for disability, and removal of judges for misconduct. It also creates a new Judicial Qualifications Commission to administer some of the provisions. The second amendment, to be voted upon in 1966, would enlarge the Court of Criminal Appeals to five, making two commissioners full members. It would also provide for a continuous full-year term of court and make the office of Presiding Judge a special one corresponding to that of the Chief Justice of the Supreme Court.

An important agency for judicial improvement in civil matters is the Texas Civil Judicial Council created by statute in 1929. It consists of judges, lawyers, legislators, and two non-lawyer citizens, one of whom must be a professional journalist. Its purpose is the continuous study of and reporting upon the organization, rules, procedure and practice of the civil judicial system and its various parts, and methods for its improvement.

Among the many improvements attributed in large part to the Texas Civil Judicial Council are the creation of the State Bar; drafting and adoption of the Supreme Court rules on civil procedure; adoption of the 1945 amendment to Article V changing the composition of the Supreme Court to its

present membership of nine; notable improvements in civil court procedure, such as declaratory judgments; a compilation of local court rules; an analysis of the "Work of the Texas Courts of Civil Appeals, 1951-58"; and projects for the relief of congestion in particular courts through temporary assignment to them of judges of courts elsewhere located or of retired judges.

A number of other judicial reforms have been advocated but have not yet been adopted in Texas. One of these would change the present method of selection of district and appellate judges to the so-called Merit Plan, long advocated by the American Bar Association and since 1940 in effect in Missouri and several other states. The Merit Plan provides for the initial selection of judges by gubernatorial appointment from a list of three nominees submitted by a Judicial Nominating Commission composed of lawyers and other citizens. The appointee must thereafter undergo periodical elections but without an opponent and on a nonpartisan ballot reading, "Shall Judge _____ of the _____ Court be retained in office? Yes or No." Failure of the appointee to win at any election creates a vacancy which is filled by the same nomination-appointment process. The Merit Plan has been recommended by the Texas Civil Judicial Council since 1946 and endorsed by the State Bar in 1949 in the only membership vote ever taken exclusively on the project.

Another proposal, which has the support of the Texas State Bar and the Texas Civil Judicial Council, would create a Judicial Districts Board with power to redistrict courts in the absence of legislative action. This proposal is one way of relieving the congestion problem for District Courts by rearranging courts according to need.

Also worth mention is the proposed extensive revision of Article V which was voted down by members of the State Bar in a poll taken in 1955, although approved by them in 1953. The proposed revision included the following changes:

- (1) The Merit Plan of selecting judges, as described above;
- (2) Merging of all the presently separate District Courts into one District Court of many judges assignable by the Supreme Court to different localities as determined by the Court;
- (3) Merging of the Supreme Court and the Court of Criminal Appeals into one; and
- (4) Transferring control of the judicial system from the Legislature to the Supreme Court.

Proposals for the creation of an office of Judicial Administrator under control of the Supreme Court, a proposal similar to that now in effect for the federal judiciary and in several states, has not yet received the endorsement of the State Bar or the Texas Civil Judicial Council.

SUFFRAGE AND ELECTIONS

SUFFRAGE

The Texas Constitution provides for suffrage in Article VI. Section 1 lists persons not allowed to vote: persons under 21, idiots and lunatics; paupers supported by any county; persons convicted of any felony, subject to such exceptions as the Legislature may make. Other sections of the Constitution deny the right of franchise to persons convicted of bribery, perjury, forgery, or other higher crimes, and persons who have fought duels with deadly weapons or have served as seconds in such duels.

Those who are allowed to vote in Texas must be citizens of the United States and residents of the state for one year and the county for six months preceding the election, and they must register before the first day of February preceding the election.*

A poll tax (head tax) was made a requirement for voting by an amendment to the Constitution in 1902. The poll tax was set at \$1.00 in the constitutional provision which allocated this amount for school purposes. (The Legislature set an additional state poll tax of \$.50 and authorized counties to levy a \$.25 poll tax.) Some Texas cities used the Constitutional authority to levy a local poll tax and made it a prerequisite for voting. The State Constitution exempted from payment of the poll tax as a voting requirement all otherwise qualified persons over sixty years of age. An amendment to the Federal Constitution (1964) exempted all qualified individuals from payment of the poll tax as a requirement for voting in federal elections.* In a suit filed in 1965 by the Federal government the use of a poll tax as a prerequisite for voting in any Texas election was declared unconstitutional.

*The November 1966 ballot will include an amendment to liberalize residence requirements; and an amendment to abolish the payment of a poll tax as a prerequisite for voting, and to substitute an annual registration system.

To insure some means of identifying eligible voters in the event that the Supreme Court upheld the lower court decision, a Special Session of the 59th Legislature provided for a registration system that closely parallels the poll tax system but with no fee requirement. The Supreme Court upheld the lower court decision in May, 1966, thus outlawing the use of the poll tax as a prerequisite for voting.

Other constitutional provisions relating to suffrage state that voters are privileged from arrest during their attendance at elections and in going to and returning therefrom except for treason, felony or breach of the peace; all electors must vote in the precinct of their residence; voters at bond elections must be property owners who have duly rendered their property for taxation.

The Texas Constitution has restricted the voting rights of military personnel for many years. The current provision denying the right to vote in Texas to all out-of-state military personnel, regardless of whether they have established bona fide residence in Texas, was ruled unconstitutional by the U. S. Supreme Court in 1965.*

ELECTIONS

Section 4 of Article VI specifies that *"the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more."* The Legislature may authorize absentee voting.

SUFFRAGE AND ELECTION REFORMS

Recent movements to improve election procedures have been concerned with modifications in the procedures by which citizens become eligible to vote, for example, the elimination of a fee (such as a poll tax) to register. Many states have

*The November 1966 ballot will include an amendment that will delete the requirement in Art. VI, Sec. 2 that members of the armed services may vote only in the county in which they resided at the time of entering service.

facilitated registration of voters by extending the periods during which a voter may register and by maintaining active voters as eligible on voter listings.

A related movement has been encouraging the adoption of uniform residence requirements in the various states to reduce the disfranchisement of voters who move their residence to another state.*

Reforms in the conducting of elections are being urged to take advantage of electronic machines to record and tabulate votes; however, these changes generally fall within the voluminous statutory legislation on the conducting of elections. The Constitution itself is concerned with the basic definitions as to the right to vote and the essential need for uncorrupted elections.

*see footnote p. 30

STATE FINANCE

The Texas Legislature has the power to tax, to spend, and to incur debt subject to limitations in the Texas and U. S. Constitutions.

Two general statements of principle in the Texas Constitution govern taxation:

Taxation shall be equal and uniform.

Taxes shall be levied for public purposes only.

The Constitution expressly permits the Legislature to levy four types of taxes -- property, poll, occupation and income. But the Legislature has authority to levy other kinds if it wishes, as it did in 1961 with the passage of the general sales tax law. Many constitutional provisions pertain to the property tax, which is a general one on all kinds of property unless the Constitution states otherwise. Exemptions named in the Constitution are: \$3,000 homestead; certain public, school, religious and cemetery property; and \$250 worth of household and kitchen furniture belonging to each family. No property shall be assessed for taxes at a greater value than its fair cash market value. The County Commissioners' Court is named the board of equalization for each county.

There are four general limitations on expenditures:

Appropriations are limited to estimated revenue. (This was provided for by the so-called "Pay-As-You-Go Amendment" of 1942.)

No money shall be drawn from the treasury except by specific appropriation.

No appropriation may be made for a period longer than two years.

No grant of public money shall be made to individuals or to municipal or private corporations.

The fourth limitation on expenditures has led to additional

amendments as the people of Texas have voted to adopt programs which provide for payments of state money to individuals. The first change by amendment occurred in 1897 when small pensions to certain Confederate veterans and indigent widows of veterans were authorized. Most changes have occurred since the Depression of the 1930's. Amendments were passed in 1933, 1935 and 1936 to provide for relief expenditures and new permanent welfare programs. Since then the Constitution has been amended eleven times, most recently in 1964 and 1965, to institute new or to expand or otherwise to alter existing welfare programs, such as aid to the needy aged, the needy blind, and dependent children. The voter has grown accustomed to raising the constitutional ceiling on expenditures for these programs.

The Texas Constitution contains a rigid debt limitation in Section 49 of Article III. This provision restricts the creation of general debt to certain purposes such as suppressing insurrection, and it limits the size of the general debt to \$200,000. To get around this provision, the voters have approved a number of debt authorization amendments of which a few will be mentioned. Three important and relatively recent amendments have authorized bonds for the veterans land program, initially provided for in 1946; the college building program, initially provided for in 1947; and the water development program, initially provided for in 1957. Bonds are presently outstanding for all three programs, but the veterans program is scheduled to expire following the failure of the voters in 1963 and 1965 to approve an amendment to extend debt authorization for it. In 1965 the voters adopted an amendment authorizing bonds for a new college student loan fund. In addition to provisions on general debt the Constitution also contains provisions on debt secured by special revenues.

The Texas Constitution contains several provisions concerning state fiscal administration. The Constitution does not establish a central fiscal office. Rather, it divides responsibility for the conduct of the state's fiscal affairs among several officials and groups. Chief among these are the Governor, the Legislature, the Comptroller of Public Accounts and the Treasurer. The Governor is required to submit an estimate of needed revenues at the beginning of each regular legislative session and an account of funds expended under his authority; he is also given the item veto power over appropriations, as already noted elsewhere. The fiscal duties of the other officers have also been described elsewhere. The Legislature by statute has entrusted other officials and bodies

with fiscal duties, including the Auditor and the Legislative Budget Board. Texas is unusual in providing for two budgets, one prepared by the Governor (the executive budget) and one prepared by the Legislative Budget Board (the legislative budget). Texas has a disintegrated financial administrative structure.

In regard to fiscal administration, the Texas Constitution also provides for several special funds or accounts supported by earmarked or dedicated revenues. Texas has over 230 of these funds, but the vast majority are created by statute or administrative regulation, not by the Constitution. An example of a constitutional provision dedicating revenues for special funds is Section 7-a of Article VIII. By this provision revenues derived from motor vehicle registration fees and motor fuel and lubricant taxes are earmarked for the Highway Fund and the Available School Fund. The Constitution also prohibits the Legislature from borrowing or in any way diverting money from the special funds. When the special funds are excluded, the Governor and the Legislature are free to budget only about 17 per cent of the state's revenues, which make up the General Fund. Many experts, as will be noted below, disapprove of the widespread use of special funds.

FISCAL REFORM

Taxation, since 1950, has been the subject of numerous studies by special commissions, and interim committees of the Texas Legislature and the Texas Legislative Council. One of the most important studies was made by the Texas Commission on State and Local Tax Policy, created by the Legislature in 1959. A major subject of the study was the state property tax, which is, as noted above, provided for in the Texas Constitution. The Commission recommended extensive changes in the administration of the tax and its abolition on some properties. In 1963 the Committee on State and Local Tax Policy recommended the abolition of the tax. Governor Connally also recommended its abolition in 1965. Texas is one of only a few states to retain the tax, most states preferring to leave the tax to local governments for whom it is the principal source of revenue. However, instead of abolishing the tax, the Legislature and the voters in 1965 approved an amendment which increased the state property tax levy in order to expand the college building program. The property tax for the program was increased from a rate of 5 cents per \$100 of assessed value to 10 cents.

Other fiscal reforms which might be considered are to be found in the Model State Constitution (MSC), prepared by a special committee of the National Municipal League. The latest edition (1964) of the MSC is based on the premise that the governor and the legislature ought to be entrusted with responsibilities and powers adequate to meet the changing fiscal needs of the state. To this end, there are only the barest of limitations placed on their powers. Some experts prefer that state constitutions contain no provisions at all on finance, but the MSC does not go this far.

The MSC places no restrictions upon the taxing authority of the legislature except in connection with special funds, but it does place the customary safeguards upon debt creation and appropriations, namely, that state debt must be authorized by law and for specific projects or objects and that "no money shall be withdrawn from the treasury except in accordance with appropriations made by law."

The MSC forbids the earmarking of revenues except when this is necessary to participate in a federal grant-in-aid program. Many experts regard earmarking as a deterrent to good budgeting. It leaves out of the budget most of the revenues and expenditures so that the budget gives only an incomplete and distorted picture of the state's fiscal condition. It also makes it difficult for the state to provide money where and when it is needed. Too often the General Fund is in the red while other funds bulge with unused and unneeded money. The MSC editors argue that the ban on earmarking prevents "the development of an intolerable fiscal situation wherein a 'built-in' imbalance exists between actual public expenditures and genuine public need." The Griffenhagen Report also recommended the elimination of earmarked funds.

The MSC also provides for an executive budget which means that the governor has authority to prepare the budget as part of his general responsibility for the administration of state government. This is accepted practice, but, as already observed, Texas divides budget-making responsibilities between the Governor and the Legislature.

STATE-LOCAL RELATIONS

The Texas Constitution treats the subject of local government with a mass of detailed provisions. Every grant of power is limited by prohibitions and restrictions. These basic provisions are scattered throughout the Constitution. Two articles are titled "Counties" and "Municipal Corporations," but many of the most important restrictions are to be found in the legislative, judicial, and taxation and revenue articles.

TYPES OF LOCAL GOVERNMENT

Counties are subdivisions or agents of the state created to carry out policies which are of state concern as distinguished from local or municipal, although they are increasingly being looked to for the performance of municipal type functions.

Cities or towns, having only the powers delegated to them by the Constitution and the Legislature, are agencies of the state as are the counties, although they were created to administer internal affairs within their corporate limits.

Special Districts, often called the third branch of local government, are also authorized by the Constitution and Legislature. They are set up to perform functions and services which the two general local units (counties and cities) are unwilling or unable to perform because of constitutional limitations on their powers. They are usually created to perform a single governmental function or occasionally a group of closely related functions. The most familiar of these are the school districts, water districts and hospital districts.

STRUCTURE OF LOCAL GOVERNMENT

All **Counties** in Texas have identical patterns of organization set by the Constitution. Each must elect a county judge,

four county commissioners, a county clerk, a county attorney, from four to eight justices of the peace and constables, a sheriff, a tax assessor-collector if more than 10,000 population, a county treasurer, and a county surveyor. (The Legislature has provided for additional elected county officials.) A constitutional amendment in 1954 provided that each of these officials shall be elected for four-year terms.

The 1933 constitutional amendment for county home rule provides that a county may adopt its own charter, with such organization and officials as it deems best for its needs. However, 3,000 words in the constitutional provision and a 12-page enabling act have failed to clarify the powers and limitations of this home rule provision, and no county in Texas has adopted its own charter. The consequence is that all 254 counties are bound to the same rigid structure, from the largest (6,208 square miles) to the smallest (147 square miles), from the most populous to the least populous. Counties vary in population from Harris, 1,243,158, to Loving, 226 (both 1960 census).

Cities and towns in Texas are given more latitude by the Constitution in selecting the form and type of their government. There are two general types: Home Rule cities and General Law cities and towns. Under the home rule amendment for cities, any city of more than 5,000 population may adopt its own charter which gives it the power to have the form of government it desires and to amend or repeal its charter. But the charters adopted cannot contravene either the Constitution or general laws, which means the Legislature is still dominant. Towns and villages under 5,000 are chartered by general laws and may select from three different types of government which are specified by the Legislature.

POWERS AND LIMITATIONS GIVEN LOCAL GOVERNMENTS

The powers of local governments are limited to those delegated through the Constitution and the Legislature.

County government is regulated by some 56 sections in the Constitution. The County Commissioners' Court (not a judicial court) is made the policy-making and general administrative body, but the commissioners have only such powers and jurisdiction over county business as are specifically conferred by the Constitution and laws of the

state. There are provisions for the county to serve as a representative district; as a unit for administering state and general elections; as an administrative subdivision of the state for building roads and highways, providing for public health, public welfare and public education; and as a fiscal unit of the state for collecting state revenues and dispensing various state and federal funds. Various sources of county revenue are listed in the Constitution, most with accompanying restrictions as to their use. For example, the commissioners may levy a property tax not to exceed 80¢ per \$100 valuation, and the Constitution specifies how much of this tax may be spent for what purposes; an additional 30¢ ad valorem tax may be levied, under certain conditions, to be used only for farm-to-market roads or flood control. The commissioners are directed to serve as a board of equalization. Although the commissioners do not preside over judicial proceedings, the County Judge does. The jurisdiction and the terms of the court as a court of record are clearly delineated. There is only one other state in the United States (West Virginia) that establishes the governing body of the county in the Judicial Article of the Constitution, thereby endowing it with judicial powers. *disbursing*

Cities and towns operate under an immense number of constitutional limitations. Home rule cities (those with more than 5,000 population) may tax up to \$2.50 per \$100 valuation, general law cities may tax up to \$1.50 per \$100 valuation. No debt may be created unless provision is made to collect taxes for interest and to provide a sinking fund on the debt. Various types of taxes are permitted, but detailed restrictions are made as to the amount and purposes for which the revenues may be used. Towns and cities may provide for a system of retirement and disability pensions for their employees.

A bill, passed by the Legislature in 1963, limits annexation of large areas by cities without the provision of services within three years. It further restricts the area annexed by a city in any one year to ten per cent of the city's pre-annexation area. The law also established extra-territorial jurisdiction according to the population of the city; and this area may not incorporate without permission of the city having jurisdiction over it.

Special Districts are so diverse that it is not an easy task to classify them. They are much more independent of state or local supervision in financing and administration of services

than the general local governmental units. Many have no legal tax or debt limits. Therefore, their continued formation to perform services may completely negate the constitutionally imposed tax and debt limits on the other local government units (counties and cities).

Constitutional limitations to protect cities and counties from encroachments on their powers were attempted in Article III, Sec. 56. It lists 29 subjects on which the Legislature may not pass local or special laws, concluding with the provision "*And in all other cases where a general law can be made applicable no local or special law shall be enacted . . .*" except for the preservation of game and fish. However, by court decision general laws in Texas have been ruled to be both of statewide and local concern.

General laws can be made local by a method of classification. Cities, towns or counties may be classified as to size or other identifying characteristics. The Legislature has thus been given a way of circumventing to some degree the restrictions against passage of special and local laws which tend to erode the powers of home rule.

LOCAL GOVERNMENT REFORMS

There are those who say that the kind of local government Texas needs in the last half of the 20th century hardly resembles the kind provided in the 1876 Constitution, even as amended. While theoretically the Constitution provides for both county and municipal home rule, the possibility for a county to adopt home rule is practically negated by a vast number of limitations and ambiguities. The municipal home rule amendment has provided flexibility since its adoption in 1912, but the scope of its powers has been subject to changing court views and decisions. The current concept that home rule confers upon cities all power that the Legislature could have exercised prior to the adoption of home rule is a concept that favors local autonomy and has been commended by leading authorities in other states.

Whether the solution to effective local government is sought through home rule, optional charters, formation of area-wide units for performance of specific functions, semi-consolidation or mergers of general units, the Advisory Commission on Intergovernmental Relations (a research commission created by Congress) makes this statement of principle: "As long

as the State retains the right to act where necessary there is much to be gained and nothing to lose in leaving a wide range of discretion and initiative to local government."

Since about 1950 there has been a trend toward comprehensive planning by state and local governments, especially metropolitan area or regional planning and statewide planning. Except for comprehensive planning by a substantial number of cities in Texas and participation in comprehensive transportation planning by twenty-two urban areas over 50,000 in population following the passage of the Federal-Aid Highway Act of 1962, the trend has not been very visible in Texas. But Texas may be on the threshold of important new developments. In 1965 the Legislature passed an act authorizing the establishment of regional planning commissions by local governments and created by Senate Concurrent Resolution a state planning agency, the Planning Agency Council of Texas or PACT, with authority to coordinate state planning programs and to prepare a state development plan.

Also relevant to local government reform is the long-range study of metropolitan areas in Texas being made by the Texas Research League at the request of Governor John Connally, as mentioned in the Introduction to this publication. The TRL was asked to recommend appropriate steps to be taken at both the state and local levels to modernize and improve the administration, planning, and financing of public services in the metropolitan areas.

GENERAL WELFARE

The fields of government which might fall within the category of "General Welfare" are those of Education, Health, Public Welfare, and Conservation. Of these, only Education is included as a separate article of the Constitution.

EDUCATION

The Constitution of the State of Texas provides for public education in Article VII, Sections 1 through 8 for the public free schools and Sections 10 through 18 for universities and colleges. Section 1 makes it the duty of the Legislature to establish and make suitable provision for the support and maintenance of an efficient system of public free schools. Section 2 provides for a permanent school fund which now amounts to over one-half billion dollars and can be invested in government and school bonds and corporate stocks and bonds. The interest from this money goes into the Available School Fund. Section 3 provides for certain taxes, all of which go into the Available School Fund. Section 5 provides for the distribution of the Available School Fund to each of the school districts in the state on a per capita basis, that is, so much money for each scholastic in the district. Section 7 provides for separate schools for white and colored children, and in a friendly suit in 1965 this Section was declared unconstitutional by a State District Court in Travis County, based on the Supreme Court decision of 1954 abolishing racial segregation in the public schools. Section 8 provides for a State Board of Education which until the Gilmer-Aiken Laws of 1949 was appointive but is now elective.

In the field of higher education the Constitution provides that the Legislature shall establish, organize and provide for the maintenance, support and direction of the University of Texas. The Agricultural and Mechanical College was made a branch of the University. The Legislature was also directed to establish a branch of the University for the instruction of the colored youths of the state, but no taxes were to be levied

nor money appropriated out of the general revenue either for this purpose or for the erection of buildings of the University.

A permanent university fund was established through lands set apart for this purpose, and the investment of proceeds from these lands is prescribed in detail: in bonds of the United States, the State of Texas, counties or cities of the state, school bonds of municipalities, or bonds issued under the Federal Farm Loan Act of 1916. Only the interest on these investments may be appropriated by the Legislature for the support of the University and its branches. In 1956 an amendment was adopted to provide for broader investment of the Permanent University Fund in corporate bonds and stocks.

In 1947 another constitutional amendment established a college building fund for twelve other state colleges not in the University or A. and M. systems and provided explicitly for financial details of bond transactions, taxes levied, the distribution of this income to each college for successive ten-year periods, etc. (State colleges created since 1947 could not participate in this college building fund, since only those listed in the Constitution might use the earmarked funds.) An amendment passed in 1965 increased the ad valorem tax 5¢ on the \$100 valuation and added five schools to those already benefiting. A companion amendment is to be voted on in 1966, withdrawing Arlington State College from participation in the Permanent University Fund.

Of more than 15 amendments to this article of the Constitution since 1876, only three have not been concerned with financial matters: one to reorganize the State Board of Education; one to fix the terms of public school officers not to exceed six years; and one to validate certain school districts.

EDUCATION REFORMS

The Gilmer-Aiken Laws of 1949 completely revised the method of financing the public schools. In addition to the Available School Fund, the Gilmer-Aiken Laws provided for a Foundation School Fund, which is raised from certain dedicated taxes and from general revenue to provide a minimum school program in each school district of the state based on the number of students in each grade. No money is provided by the state, however, for buildings. The Texas Research League study of public school financing under the Minimum Foundation School Program, conducted in 1953, has not

been implemented to any great extent, even though legislative action only would be required and no constitutional change is needed.

In 1965 an amendment was passed authorizing the Legislature to provide a loan fund for Texas students attending institutions of higher learning within the state.

An amendment will be submitted in 1966 regarding the status of taxes and bonds of school and junior college districts when district boundaries are changed.

The 1963 Legislature authorized a committee to study education past the high school, and this committee appointed by Governor Connally submitted its report in August of 1964. Its findings were implemented by the 1965 Legislature. The law replaced the Commission for Higher Education with a Coordinating Board and gave it broad powers to control appropriations to each public institution of higher learning in the state and to control each course or program of instruction taught in each of the institutions. The bill passed by the 1965 Legislature also took administration of the public junior colleges away from the State Board of Education and put them under the Coordinating Board.

The 1965 Legislature also authorized a committee to study public school education in Texas, that is, elementary and secondary education, with their report to be submitted by August of 1968. Governor Connally has appointed this committee to study public school financing, the instructional program, the authority of the state versus the local school board and such controversial problems as consolidation and federal aid.

The expanding Federal Aid to Education program has become of increasing importance to public education in Texas. Beginning on a small scale in 1917 in vocational education, the Federal Government spent some forty million dollars in Texas in 1964 under the authority of various federal acts. One hundred and thirty-five million dollars was made available in Texas in 1965, and this amount will grow in the future.

Texas' permanent school funds provide more resources for educational financing than any other state, due to the fact that the millions of acres of public lands retained have proved rich in oil and minerals, and it is reasonable that the Texas Constitution should contain many provisions relating to the preservation of these funds. Other states with permanent

school funds have not found it necessary to write into their constitutions such explicit and statutory details regarding school finances. For example, the Missouri Constitution of 1945 retained only the safeguarding phrases from its Constitution of 1875 -- that the public school and seminary funds should be "securely invested" by the state board of education, and "sacredly preserved" so that the annual income would be "faithfully appropriated" for the schools.

HEALTH

The Texas Constitution recognizes the duty of the state toward its citizens' health in one section: "*The Legislature may provide by law for the establishment of a Board of Health and Vital Statistics, under such rules and regulations as it may deem proper.*" Another section provides that the qualifications of physicians may be prescribed by the Legislature. One of the original provisions of the Constitution has never been implemented: the Legislature may establish an inebriate asylum "*for the cure of drunkenness and reform of inebriates.*"

PUBLIC WELFARE

Article III, Section 51, of the State Constitution provides that the Legislature shall have no power to make any grant of public money to any individual, except for pensions to Confederate veterans and their widows. Authorizations for various public welfare expenditures have been put into the Constitution as amendments to this section. One such amendment covers payment of categorical assistance -- aid to the needy aged, the needy blind, and dependent children. This section provides for the acceptance of federal funds and for the enactment of laws to make lists of recipients available for inspection; gives the detailed specifications of eligibility for assistance in each category; and freezes into the Constitution the maximum number of dollars which may be provided in individual assistance payments and the maximum total which may be expended from state funds for such assistance. A new amendment must be passed each time it is necessary to change these amounts.

Section 51b was added to Article III in 1956 giving the Legislature the power, under such regulations and limitations as it deems expedient, to grant assistance to permanently and

totally disabled persons between 18 and 65, limiting such aid to \$20 per month each. An amendment providing for an increase in the amount of money which the Legislature may appropriate for needy persons totally and permanently disabled by reason of mental or physical handicaps was added to this section in 1962.

Previously, in 1957, Section 51a, Article III, had been rewritten to change the state welfare program, raising monthly assistance payments. And in 1958 Subsection 51a-1 was added to allow the Legislature to make payment directly to the vendor of medical services, matching federal funds.

Other amendments added to Section 51a were passed in 1962 (increasing amounts of payments); in 1964 (a new Subsection 51a-2 providing medical care for persons over 65 and authorizing the Legislature to participate in the federal-state program known as the Kerr-Mills law); and in 1965 (incorporating into one Section 51a the Subsections 51a-1 and 51a-2 and extending the federal-state assistance programs).

In 1956 Section 51c was added; it provides aid and compensation to persons for false imprisonment.

The electorate will be asked to vote in 1966 to add a new Section 51d providing for payment of assistance by the state to surviving spouse and minor children of law enforcement officers, custodial personnel of the Texas Department of Corrections and firemen who suffer violent death in performance of duty.

Retirement and disability pension plans for employees of cities and towns were adopted in 1944; in 1954 an amendment was adopted which permits some employees to participate in the Federal Social Security Program. Workmen's compensation insurance was authorized for state employees in a 1936 amendment, and for county employees in 1948. A teachers' retirement fund was established in 1949 and, since 1954, the Constitution has provided that teachers and state employees may transfer their service credits if they change positions between these two categories.

An amendment passed in 1956 further revised the teacher retirement system. In 1965 voters passed an amendment clarifying the investment authority for the Board of Trustees of the Teacher Retirement System.

The Constitution since 1876 has stated that each county may provide "*a manual labor poorhouse and farm, for*

taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants," a provision which is the basis for legal determination that only the county may dispense direct relief to the needy in Texas.

One other constitutional provision relating to public welfare is of special interest: in 1935 the Bill of Rights was amended to provide that mentally ill persons might be committed for observation or treatment without the necessity of a trial by jury, for a period not to exceed ninety days.

The inclusion of so much minutiae on a subject which is generally considered an inherent responsibility of the state would seem to indicate that the Texas Constitution has here departed entirely from the concept of a constitution as fundamental law.

CONSERVATION

A constitutional amendment adopted in 1917 declares that *"the conservation and development of all the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties"* The creation of conservation and reclamation districts is authorized and the Legislature may authorize *"all such indebtedness as may be necessary"* In 1964 an amendment was adopted requiring 30-90 days notice by publication prior to introduction of such legislation.

GENERAL AND MISCELLANEOUS

For purposes of an over-all view, several articles of the Texas Constitution should be mentioned, if only briefly.

RAILROADS; PRIVATE CORPORATIONS

These two articles of the State Constitution reflect the fear of big business which was prevalent throughout the nation in 1876. Though these provisions have historical interest, it is doubtful that such details have a rightful place in the fundamental law of the land or, if they do, that distrust of the power of the Legislature should be expressed on only these two subjects of business in the state.

SPANISH AND MEXICAN LAND TITLES; PUBLIC LANDS AND LAND OFFICE

Looming large in 1876, the subjects of these two articles would undoubtedly be treated differently in a modern constitution, though, again, they form an interesting chapter in the history of Texas.

IMPEACHMENT

The details of impeachment proceedings are given. The power of impeachment is given to the House of Representatives, with trial by the Senate, but the causes for impeachment of any state official are not prescribed. The details of the method of removal of judges are also found in this article. The Legislature is made responsible for providing by law for the trial and removal of other state officers where the mode of their removal is not provided by the Constitution.

HISTORY

The Constitution makes it the duty of the Legislature to provide for the collecting and safekeeping of records relating to the history of Texas. A 1954 amendment creating the State Building Commission authorized the expenditure of not more than \$30,000 for the erection of memorials to *"the Texans who served in the Armed Forces of the Republic in the Texas War for Independence."*

GENERAL PROVISIONS

Article XVI contains 66 sections on a vast number of subjects, some of great importance, some of seemingly little consequence, many of which are added or restated details of the powers and limitations of the Legislature. For instance:

The Legislature must make provisions for fines and costs to be discharged by manual labor, and for utilizing convict labor for working on public roads. The Legislature may provide for a Commissioner of Insurance, Statistics and History; for an inebriate asylum; for state supervision of banks; for the management and control of the prison system; for the custody and maintenance of indigent lunatics; for organizing and disciplining the militia of the state; for defining the term "open saloon" and enacting laws against such; etc.

Several sections concern civil rights and the protection of the individual: wages are exempt from garnishment, laborers on public works are protected against failure of contractors to pay justly due wages, mechanic's liens are established, usurious interest is defined (generally not more than 10% unless the Legislature establishes a higher rate) and prohibited, conscientious objectors shall not be compelled to bear arms *"but shall pay an equivalent for personal service."* The homestead is defined, and its preservation, descent, and exemption from taxation are prescribed.

The oath of office for state officials is given (amended in 1956 to provide two separate forms for oaths of office of elective and appointive officers of the state); bribery of state officials is specifically defined and its punishment outlined; two sections forbid persons to hold more than one civil office in the state; the Legislature shall provide for deductions from the salary of public officers who neglect their duty; and the prohibition against dueling is found in this article.

The rights of women are protected by a provision regarding the wife's separate property, and community property rights are defined. One section reading "*The Legislature shall prescribe by law the qualifications of grand and petit jurors*" was amended in 1954 by an explicit provision that this right and duty should not be denied by reason of sex. Upon the request of the 1955 Legislature the Texas Legislative Council made a study of the constitutional and statutory provisions relating to the status of married women in Texas. Several sessions of the Legislature have considered proposals to provide equal legal rights for women.

The provision appears again that no appropriation shall be made for private purposes, and a 1932 amendment states that the Legislature may appropriate money for the Texas Centennial but for no "*other future exposition or celebration of any kind or character.*"

An amendment adopted in 1958 gives the Legislature the power to appropriate money and to establish a procedure to develop information about Texas and to inform people and corporations of other states of the resources of the State of Texas through advertising in periodicals of national circulation.

A reading of this entire article is recommended for its historical interest, for the picture it presents of the concepts of constitution-writing which were held by the framers in 1876, and for the contrast shown between the brevity of wording of the original sections and the lengthy detail of recent amendments to the article.

PROVISIONS NOT FOUND IN THE TEXAS CONSTITUTION

Two subjects which have received recognition in many constitutions, but which are omitted from the Texas Constitution, are those relating to personnel policies and to the privilege of the initiative and referendum.

CIVIL SERVICE

Recently revised constitutions invariably have provisions for basic policies regarding employee selection and retention, usually a merit system based on competitive examinations, as far as practicable, e.g., the New York and Missouri Consti-

tutions. The New Jersey Constitution also provides that political subdivisions of the state shall be subject to civil service regulations.

INITIATIVE AND REFERENDUM

The subject of the initiative and referendum -- the power of the people to initiate or vote directly on laws or amendments -- is not a new one, and there is considerable variation among the many state constitutions containing such provisions. This technique for direct action by the voters is not intended to replace legislative action, but to supplement it when the Legislature fails to act according to the wishes of a majority of the people. The power to initiate statutes or constitutional amendments is not given to the people of Texas, but the State Constitution does provide for a referendum vote on proposed constitutional amendments.

METHODS OF CONSTITUTIONAL REVISION

Article XVII is titled "Mode of Amending the Constitution of This State," a subject which is properly included in every constitution. Only amendments proposed at regular biennial sessions are specifically provided for by the Texas Constitution. These are to be adopted by two-thirds of the members elected to each house of the Legislature in recorded votes, then voted on by the qualified electors of the state. Commencing at least three months before the election, the amendments must be published once a week for four weeks in a newspaper in each county. A simple majority of votes cast by the electors for any amendment is all that is required to make the amendment a part of the Constitution, and no further legislation is necessary, though, of course, most constitutional provisions must have implementation in the form of further statutory details.

This simple procedure for amending the Constitution places Texas in that group of states which are said to have flexible constitutions, i.e., those comparatively easy to amend. Some states have such rigid requirements for amendment of their constitutions that changes are almost impossible to effect.*

A great many states are finding in the mid-twentieth century that their constitutions present obstacles to adaptation for present-day needs and demands. The method selected for use in the study and revision of a state constitution should be determined by the type of revision contemplated, the degree to which citizen inertia and opposition to change may be overcome, and the degree of interest and cooperation which may be found in the legislature, for this body will play an important role in every method of revision.

*Texas had 163 amendments in 1965; 16 more are to be voted on in November, 1966.

In addition to the single amendment method, the legislature might, if the Constitution were changed to allow this method, propose wholesale change of the Constitution by the amendment procedure. The technique of revision in this case rests with a series of amendments whose cumulative result would be a partial or total revision of the Constitution. The entire series may be presented to the electorate for action as a single unit or in such a way as to allow each amendment to be voted upon separately. Professor J. William Davis (Professor of Government, Texas Technological College, Lubbock, Texas) feels that the disadvantage of this method is "the possibility that the Constitution would not be carefully reorganized as a whole" If prior authorization were secured from the voters the legislature itself could act as a convention and rewrite the Constitution. However, the crowded agenda in a legislative session presents a major drawback since this would make a thorough study highly improbable in any one session.

NUMBER OF AMENDMENTS SUBMITTED TO ELECTORATE SINCE ADOPTION OF 1876 CONSTITUTION

YEAR	NO.	YEAR	NO.	YEAR	NO.
1879	1	1909	4	1937	7
1881	2	1911	5	1939	4
1883	5	1913	7	1941	5
1887	6	1915	7	1943	3
1889	2	1917	3	1945	8
1891	5	1919	13	1947	9
1893	2	1921	5	1949	10
1895	2	1923	2	1951	7
1897	5	1925	4	1953	14
1899	1	1927	8	1955	9
1901	1	1929	7	1957	6
1903	3	1931	9	1959	4
1905	3	1933	12	1961	14
1907	9	1935	13	1963	7
				1965	27

CONSTITUTIONAL COMMISSION

The composition, purpose, and function of a Commission are determined by the terms of the legislative act which creates

it. Though several types of bodies organized for constitutional review are sometimes called commissions, the following discussion relates to those created by law as a joint product of the legislative and executive branches.

The membership of a Commission may be composed of appointees from each house of the legislature, executive appointees, judicial representatives, and private citizens. Recent Commissions in other states have varied in size from seven to thirty-two members and are invariably public officials and laymen of a high level of ability and competence.

The purpose of a Commission is determined by the intent of the legislature creating it. It may be to draft a new constitution or to study the existing structure with a view to making recommendations to the legislature. In any case, Commissions are purely advisory in character and their recommendations require further action by legislative bodies which may accept, modify, or reject them in whole or in part. They have rendered their greatest service in initiating research for the study of constitutions.

Advantages of a Constitutional Commission:

Its relatively small size lends itself to functional efficiency.

Since its membership is determined by appointment, those members may be selected on a basis of interest and competence.

This is the least expensive method of approaching the problem of constitutional revision.

A Commission has been found to be of tremendous value in stimulating and focusing public interest and attention on the need for and the problems of constitutional revision.

Disadvantages of a Constitutional Commission:

Members of a Commission are not elected and may therefore not represent the wishes of the electorate.

Selection of a Commission by a strong state political machine would tend to weight its membership against effective constitutional review since machine politics almost always thrive on outmoded constitutional processes.

Since a Commission's report must be made to the legislature, the possibility always exists that the legislature will fail to act on the Commission's recommendations, or that those recommendations will be watered down and altered to gain legislative approval.

An attempt to secure constitutional revision in Texas came in January, 1949, when 200 citizens met in Austin on call from the late Governor Beauford Jester, but the Legislature failed to act. Governor Allan Shivers appointed the Texas Economy Commission in 1950 to study needed reforms, and again there was no legislative action.

As interest in revision continued to grow, House Concurrent Resolution 13 was adopted by the 55th Legislature in 1957, providing for a four year constitutional research project by the Texas Legislative Council. This same resolution created a Citizens' Advisory Committee composed of 18 citizens who served without compensation. Unfortunately the 55th Legislature failed to provide any funds for the research which the Citizens' Advisory Committee had estimated would require a minimum of \$150,000. It was not until the summer of 1959 that a special session of the next Legislature finally appropriated \$50,000 for the Texas Legislative Council to begin the research. A director was not appointed until March, 1960.

Because of insufficient funds and the short period of time --less than a year--before a final report had to be made, the Texas Legislative Council decided that a thorough research job was not possible. As a result the Council adopted a more simplified format than that set out in the Resolution. It was decided to analyze each section of the Constitution as to its original intent, present significance and value, and to make specific recommendations for change of that section if necessary. The Texas Legislative Council's final report to the 57th Legislature suggested that the Constitution reflected the governmental philosophy of the people of Texas for their government and that no Convention or Commission was needed at the time; however, the Council did recommend the elimination of approximately fifty deadwood provisions, amendment of Article XVII -- the Amending Article -- to allow inclusion of more than one subject to be voted on as one question, and that a future study be made of Article V, the Judicial Section.

The Citizens' Advisory Committee concurred in the Texas Legislative Council's recommendations calling for removal of deadwood and amending Article XVII, but sharply disagreed with those recommendations which indicated no need for substantive changes or for the creation of a Commission. The Citizens' Advisory Committee reiterated its previous recommendations for non-substantive and substantive changes and strongly urged the creation of a Constitutional Commission to study all available materials on the Constitution, including the

Texas Legislative Council reports. The Commission was to be empowered to make specific recommendations for constitutional revision.

In several legislative sessions, including 1965, a bill was introduced to create a Constitutional Revision Commission, but so far no bill has been passed.

CONSTITUTIONAL CONVENTION

This is the oldest technique for amendment and revision of state constitutions, developed during the formative period of American states after the Declaration of Independence. It evolved from the idea that a constitution is fundamental law and should be formulated by a body chosen directly by the people and for that specific purpose. The Convention has now been accepted as the principal device for extensive revision of existing documents and for the writing of new constitutions.

Initiation of this method of constitutional reform rests with the Legislature. The Texas Attorney General has ruled that the Legislature is not empowered to call a Constitutional Convention without first seeking approval of the voters.

The legislative act calling for a referendum on revision of the Constitution by a Convention will provide for the method of selection of delegates to the proposed Convention and for its expenses, to be voted upon by the people at the same time. Thus the electorate has the opportunity and responsibility of voting upon the question of holding a Convention as well as upon the selection of the membership of that body.

Powers of a Constitutional Convention:

A Convention is an autonomous and sovereign body deriving its power and owing its responsibility directly to the people.

The legislature may limit and direct the activities of the Convention only to the extent it is authorized to do so by the specific provisions voted on in the referendum setting up the Convention.

From a practical point of view a Constitutional Convention must submit its draft of constitutional revision to the voters for ratification; such a provision may be included in the Convention Act which is submitted to the people for authorization of the Convention.

Advantages of a Constitutional Convention:

The caliber of delegates is usually superior (historically proved).

Delegates (not needing to run for re-election) are not subject to political pressures to as great a degree as are legislative bodies.

Attention of the members is concentrated on the single purpose of proposing constitutional changes.

A Convention may require the kind of technical research necessary to prepare delegates for their important job.

Disadvantages of a Constitutional Convention:

The necessary research and publicity are costly.

Considerable time is required for authorizing and assembling a convention.

There may be opposition from official and other vested interests who do not favor constitutional change.

Legislative hostility may be present since a Convention is independent of legislative control.

Six Constitutional Conventions in Texas have produced our six Constitutions: in 1836 when Texas was a Republic; in 1845 in anticipation of annexation to the United States; in 1861 after Texas seceded to join the Confederacy; in 1866 when Texas rejoined the Union; in 1869 under the military rule of the reconstruction period; and in 1876 at which time the present Constitution was written. Since 1876 many proposals have been introduced before the Legislature calling for a Constitutional Convention, but only in 1919 was such a resolution passed and submitted to the people for approval. The vote was 71,376 against to 23,549 for, only some ten per cent of the qualified electors voting on the question. Since that time no such proposal has passed the Legislature.

CONCLUSION

The late Judge Virgil T. Seaberry, chairman of the 1949 Citizens' Committee on the Constitution, chairman of the State Bar of Texas Committee on Constitutional Revision in 1949, and a member of the 1957 Citizens' Advisory Committee for Constitutional Revision, reported to the State Bar:

"We believe that a full study of the Constitution

should be made by groups all over the state, so as to provide a grass roots foundation . . . that the study should be led by nonpartisan citizens . . . and that a reasonable fund should be raised from private sources to defray the actual expenses of conducting an educational campaign throughout the state."

Professor J. William Davis, in his book, *A Survey of Texas Government* (1964) says:

"Either a Convention or a Commission could probably draft a constitution which would be superior to the existing document. Under whatever method used, the revision would have to be submitted to the voters for approval. It would have to be based upon sound research and study and an awareness of the needs of the state as well as the opinions of the electorate. Thus, careful research and public education become important factors in any movement toward constitutional revision."

OTHER READING

Major Problems in State Constitutional Revision by W. Brooke Graves, Public Administration Service, 1313 East 60th St., Chicago, Illinois 60637 (1960).

The Constitution of the State of Texas. This is available from the Office of the Attorney General, Supreme Court Building, Austin, Texas, or may be found in *Texas Almanac*.

The Book of the States, published biennially by The Council of State Governments, 1313 East 60th St., Chicago, Illinois 60637.

The Constitution and Government of Texas by Frank M. Stewart and Joseph L. Clark, D. C. Heath and Company, Boston (1949).

Texas Government by Stuart A. MacCorkle and Dick Smith, McGraw-Hill Book Co., New York (1964).

The Government and Politics of Texas by Clifton McCleskey, Little, Brown and Company, Boston (1963).

Texas: Its Government and Politics by Wilbourn E. Benton, Prentice-Hall Book Co., Englewood Cliffs, New Jersey (1966).

A Survey of Texas Government by J. William Davis, Texas Technological College, Lubbock, Texas (1964).

Seven Decades of the Texas Constitution of 1876 by Seth S. McKay, Texas Technological College Press, Lubbock, Texas (1942).

Texas, the Lone Star State by Rupert N. Richardson, Prentice-hall Co., Englewood Cliffs, New Jersey (1958).

"Constitutional Revision in Texas," a special issue of *Texas Law Review*, Vol. 35, No. 7, University of Texas, Austin, Texas (October 1957).

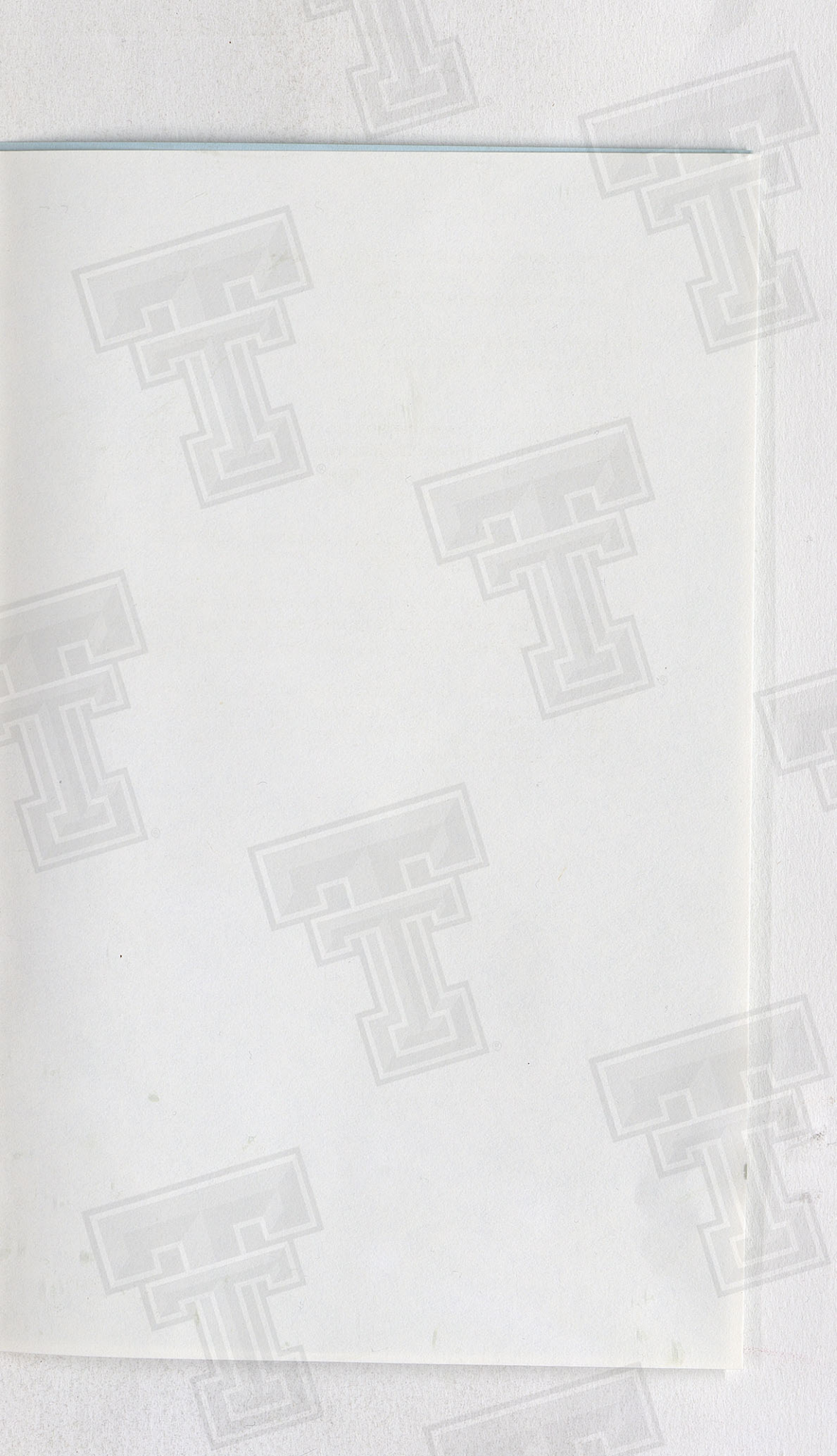
Methods of State Constitutional Reform by Albert L. Sturm, University of Michigan Press, Ann Arbor, Michigan (1954).

The following organizations publish monographs and pamphlets of importance in the study of constitutional revision. Up-to-date publications lists may be obtained by writing directly to the address listed.

Arnold Foundation Monographs, Southern Methodist University, Dallas, Texas 75225.

National Municipal League, 47 East 68th Street, New York, 10021. The State Constitutional Studies Project which includes the Model State Constitution is particularly useful.

Institute of Public Affairs, University of Texas, Austin, Texas. IPA publications include both the bimonthly articles, *Public Affairs COMMENT*, and the monographs of the Public Affairs Series.



Constitutional Revision in Texas," a special issue of the
Public Affairs Series, Vol. 26, No. 2, University of Texas
Press, Austin, October 1957.

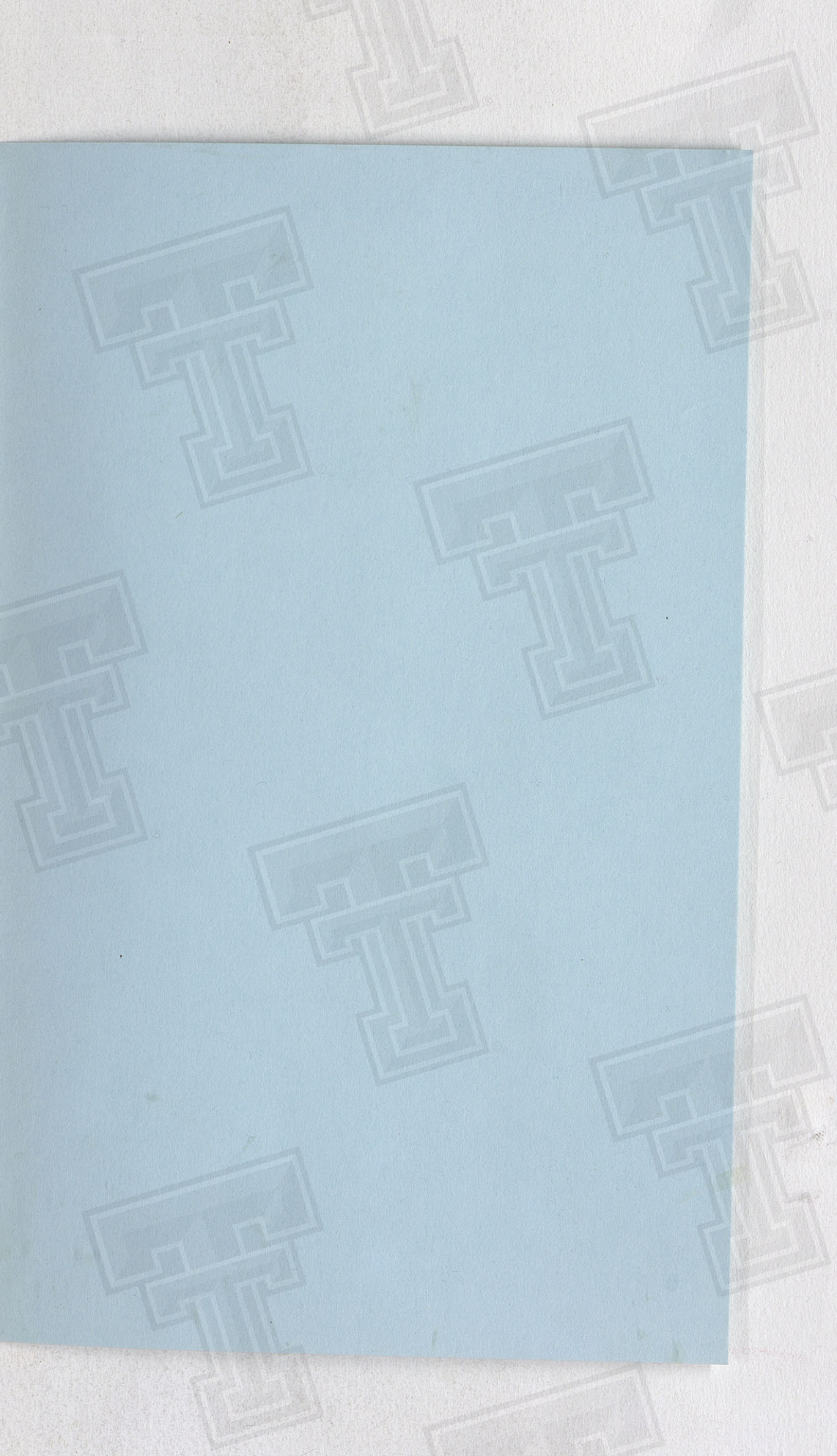
Book of State Constitutional Experiments by Albert J. Isaacs,
University of Michigan Press, Ann Arbor, Michigan, 1954.

The following organizations, besides monographs and
publications of importance in the study of constitutional revision,
also publish materials that may be obtained by writing
to the following addresses:

Arnold Forster on Monographs, Southern Methodist University,
Dallas, Texas 75275.

National Municipal League, 125 West 47th Street, New York
10036. The State Constitutional Study Project which in-
cludes the Model State Constitution is particularly useful.

Institute of Public Affairs, University of Texas at Austin, Texas.
IPA publications include several bi-monthly articles,
Public Affairs COMMENT, and monographs of the
Public Affairs Series.





May 1966
Duplicate Presidents
Mailing

Request For ^m for Texas Constitutional Review
^

League of Women Voters of _____

Number of copies _____

Mail copies to: _____
(bulk mailing) Name

_____ Address

_____ City State Zip Code

To be distributed as follows:
List separately

For additional request forms write State Office

Cost per copy 15¢ (handling charges)

TO: Local League Presidents, TCR Chairman and Publications Chairman

FROM: Mrs. Darvin M. Winick

May 1966

RE: Uses for Texas Constitutional Review Booklet

1. Opinion Makers (Local)
2. City-County Library
3. Grade and High School libraries
4. College Government departments
5. Local newspaper and news staff
6. Local bank officials
7. Local radio station
8. Basis for television program
9. Ministerial Alliance
10. County Bar Association
11. County Court House
12. Chamber of Commerce
13. Present to Democratic Women's Club
14. Present to Republican Women's Club
15. Parent Teachers Association
16. Presidents of other Organizations in Town
17. To every Legislator
18. To every Newspaper in Texas
19. Include in Welcome Wagon Material
20. Take to every Speaking Engagement
21. Give to High School and Government classes
22. To Jr. Colleges and or Colleges in the area
23. To labor unions for distribution
24. Distribute to all citizen boards in your community

RE: State Board Distribution of Texas Constitutional Review

1. Legislators in non-League areas
2. 100 Libraries and Jr. Colleges in non-League Areas

II. TEXAS CONSTITUTIONAL REVISION: Support of measures to promote revision of the Texas Constitution.

The continuation of community education and legislative action which will insure appropriate measures for revision is implied in the generalized wording of this item.

The League supports general revision of the Texas Constitution, the revision to be preceded by competent and thorough research. Additional positions are: Support of constitutional provisions for an effective judicial structure* and support for a Constitutional Convention.

League members adopted nine principles in 1959 by which to judge any proposed revision of the Constitution. A tenth principle was adopted in 1959. These principles are not positions but are criteria to use for consideration of revision measures. The ten Constitutional Principles are:

1. A framework of basic law
2. A clear separation of powers with responsibility definitely assigned.
3. Provisions for justice with a minimum of delay
4. Qualifications for voter eligibility and guarantees of fair elections
5. A coordinated finance structure capable of flexibility
6. Maximum home rule for municipal and county government with coordination of overlapping functions
7. Provisions for support of public education
8. Provisions for support of public health and welfare services
9. Provisions for amendment and revision
10. Basic policies regarding state employee selection, retention and promotion

OUTLOOK FOR WORK:

1. Intensive distribution and promotion of the Texas Constitutional Review booklet.
2. Public Relations aimed at educating the average citizen as well as other organizations other than the League.
3. Continue to build political party support.
4. A more intensified news media involvement.
5. Continued pressure for adequate legislation and research.

* This phrase covers the Selection and Tenure Item. Your State Board proposes incorporating this item under Texas Constitutional Revision.

WORKBOOK - PART I
Tenth Biennial Convention
March 1966

STATE CONTINUING RESPONSIBILITY #1: Support of measures to promote Texas Constitutional Revision.

Four years have passed since Texas Constitutional Revision was adopted as a Continuing Responsibility. League members have continued to educate the public on needs for revision, keep their members well informed regarding League positions and status, and engaged in Legislative activity.

In capsule form, events of the past two years follow.

July 1964	Request was made for local Leagues to visit their Legislators and/or plan a Candidates Rally before Election Day. Legislators were asked to comment on the high cost of amending the Constitution.
August 1964	Updated Digest for Texas Constitutional Revision was mailed.
September 1964	Statements to the Democratic and Republican State Platform Committees were made.
October 1964	Taped discussion of the steps that the League must take in order to sponsor a bill for a Constitutional Revision Commission in the 59th Legislature was used at all Area Conferences.
November 1964	Question regarding our Legislative candidates views on Constitutional Revision was included in the Legislative Questionnaire to be used in interviewing for the January session.

Texas Constitutional Revision activity in the 59th Legislative session - 1965

A bill to create a Texas Constitutional Revision Commission was snagged in the Senate and introduced in the House. Despite testimony and our all-out efforts, no revision legislation was passed during this session.

March 1965	Testimony to the State Affairs Committee of the House of Representatives in support of H.B. 767 (for a Constitutional Revision Commission) was presented.
April 1965	New Texas Constitutional Revision flyer "What You Should Know About the Facts of Life in Texas" was distributed at the opening session of Presidents' Council. Local Leagues were given a list of ideas for statewide distribution.
June 1965	Adoption of 27 proposed Constitutional Amendments made urgent our need for immediate press releases. Local Leagues received copies of releases and a push for public awareness was again strongly urged.

WORKBOOK - PART I
Tenth Biennial Convention
March 1966

October 1965

Local Leagues alerted that Texas Historical Period will be observed in March.

Mimeographed speech on Constitutional Revision by Bo Byers of the Austin Bureau of the Houston Chronicle was sent to local Leagues.

Preliminary plans for introducing resolution at the May precinct conventions for systematic study and revision of the Texas Constitution was called to the attention of local Leagues.

January 1966

Updating of the Texas Constitutional Review booklet was completed.

Final plans for precinct Resolution for Party Platforms was sent to all Leagues.

February 1966

Preparation of Texas Constitutional Review packets for display during Texas Historical Period was completed. Local Leagues were requested to take the packets to their libraries and arrange for display. Packets were to be mailed to a list of libraries and Junior Colleges in non-League areas.

May 1966

Revised Texas Constitutional Review was published. ~~Distribution made in conjunction with Texas Historical Period.~~

March 1966

Questions to be considered at Fort Worth Convention:

1. What will the League do if a Con Con (Constitutional Convention) is actually called?
2. Is additional Constitutional research needed at this time?
3. What is our "New Vision" for the 1966-68 biennium?

May 10, 1966

TO: Brownscombe, Joor, Winick, Casperson
FROM: Brown
RE: TEXAS CONSTITUTIONAL REVIEW

I have just returned what I think is the next to the last proof to Mr. Nystrom. He wants me to see the revisions that the printer makes based on the corrections I made this time and then the photo copies from which the run will be made. Elizabeth's painstaking and thorough work on the second proof was the most valuable contribution that has been made to the reading of the various drafts that have been made of TCReview. There were only a very few and very minor revisions necessary this time. In fact, I got this proof at 3:00 yesterday afternoon and was able to return it to Mr. N. at 3:00 this afternoon. I had made just as thorough and just as painstaking work on it as was necessary and found it in extremely good shape.

Ruth knows but I'm not sure that she has had time to tell the rest of you the number of copies that we are going to get for our \$3500. There are 60 pages in the completed version - less than the number on which Mr. N. made his first estimate. Therefore, he will be able to supply us with 13,500 copies instead of the 12,000 we had expected. This does not include the cost of shipping them to Houston which was not in the original estimate but the 15¢ handling charge allowed by the Education Fund will take care of that.

5/12/66
15¢ is
right,
Loraine
says

May I make a request and a suggestion? I request at least 10 ~~XXXX~~ copies for my personal use and the privilege of making a trip to Dallas to present a copy to Mr. Plain of the Sears Foundation in person. Without his initial interest, we would not have been able to accomplish the publication of the booklet because we had simply never even considered asking the EF for financial assistance. There are some other people that I want to present copies to personally - and I will let you know, of course, who they are.

The suggestion is this: each person who worked on this project should also receive ten copies to distribute or use in any way they see fit. This includes Elizabeth, Veta, Beulah, Ruth, Peggy, Janice, Betty Pettis, Mary Fran, Kay Baden (she worried with the bookkeeping required by the EF until she nearly went crazy in the beginning of the project), Dr. Emmie Craddock, Dr. J. William Davis, Prof. Wilbourn Benton, two profs at SWTSC who read it with Emmie Craddock, Glen Boller, Cookie Smith, Eleanor Richards. The latter three names are there for a different reason: Glen because of her membership on the CAC, Cookie for that same reason and her original authorship, Eleanor because she was state president when the first edition was published.

I have many ideas of persons to whom the original distribution should be made but I'll make them the subject of another memo later. It's going to take quite a bit of concentration and original thought to find uses for 13,500 of these things! The 4000 for League members will help, of course.

For right now, however, I think it's in order for me to say thank you to all of you for the work you have done up to now. We've all worked tremendously hard and it has been tedious work most of the time but I think it's going to be worth it.

I think the first 5,000 copies should reach the SO by about May 23. The remaining copies by the end of the month.....