REPORT

DEMOCRATIC COMMITTEE
NEW YORK COUNTY
ON THE
CONSTITUTIONAL CONVENTION

1966

DEMOCRATIC COUNTY COMMITTEE

OF THE

COUNTY OF NEW YORK

HOTEL COMMODORE

LEXINGTON AVENUE & 42ND STREET

NEW YORK, N. Y. 10017

CONSTITUTIONAL CONVENTION COMMITTEE

J. RAYMOND JONES
COUNTY LEADER

October 1, 1966

CONSTITUTIONAL CONVENTION COMMITTEE

Subcommittees	Members	Identification
Administrative Practices:	Joseph Moukad, Chairman	Attorney
	Stanley Lowell	Attorney, Former Commissioner - Commission on Human Rights
	Peter Andreoli	Assistant District Attorney
Authorities:	Alice Sachs, Chairman	Editor, District Leader
	Maxwell Lehman	Former First Deputy City Administrator
	John G. Heimann	President - Investment Firm
	Dr. Joseph Rappaport	- Office of Urban Studies, City University of NY
	Stanley Mailman	Attorney
Conservation:	Orest V. Maresca, Chairman	Assemblyman, Attorney
	Paul G. Reilly	Attorney
Education:	Julius C.C. Edelstein	- Professor, Researc Foundation of the City University of N. Y.
	Martin Begun	Assistant Dean, District Leader
	Robert Connery	Professor
	Joseph Moukad	
	George Osborne	Professor, Attorney, District Leader
	Dr. Joseph Rappaport	
Election Law:	Michael McNulty, Chairman	Attorney
	Maurice J. O'Rourke	Commissioner - Board of Elections
	Robert Brady	Attorney

Subcommittees (cont'd)

Subcommittees	Members	Identification
Governmental Structure:	Victor A. Kovner, Chairman	Attorney, District Leader
	Christopher Niebuhr	Former Aide to Executive Assistant to Mayor Robert Wagner
	Maxwell Lehman	
	Paul G. Reilly	
	Robert Brady	
Health & Hospitals:	Martin S. Begun, Chairman	
	Eugene Thiessen, M.D., - Vice-Chairman	Instructor in Clinical Surgery
	James T. Farley	Vice-Pres., Memorial Sloan-Kettering Cancer Center
	Thomas McLoughlin	Administrative Assist.- Health & Hospitals Div., Catholic Charities
	Dr. Muriel Oberleder	Consulting Psychologist
	Dr. John V. Connorton	former Deputy Mayor
	Leona Baumgartner, M.D.	former Commissioner of Health
	Walsh McDermott, M.D.	Physician
	James M. Edwards	Attorney
	Stanley Mailman	
Home Rule:	Robert Brady, Chairman	
	William Murphy	Attorney
	Robert Paul	Technical Coordinator Archdiocese of N.Y.
Housing:	Hortense Gabel, Chairman	former Administrator, City Rent & Rehabilitation Administration
	Stephen Jarema	Attorney, District Leader
	George Backer	Author
	Robert Paul	
Human Rights:	Stanley Lowell, Chairman	
	Victor A. Kovner, Vice-Chairman	
	Carlos M. Rios	Councilman-at-Large, District Leader
	James Prendergast	Candidate - 26th Sen. District
	Fred Weaver	Public Relations

Subcommittees (cont'd)

Subcommittees	Members	Identification
Judiciary:	Judge James B. M. McNally, Chairman	Judge of the Supreme Court-Appellate Div.
	Mal Barasch	Attorney
	Albert H. Blumenthal	Assemblyman, Attorney
	Stephen Jarema	
	Harvey M. Spear	Attorney
	Andrew R. Tyler	Attorney
	Hugo Rogers	Attorney
	James Prendergast	
Labor:	Frank G. Rossetti, Chairman	Assemblyman, District Leader
	Christopher Niebuhr, Vice-Chairman	
	Lillian W. Upshur	District Leader
	Howard Lichtenstein	Attorney
Legislative Procedures:	Joseph Zaretzki, Chairman	State Senator, Attorney, District Leader
	Albert H. Blumenthal, Vice-Chairman	
	Charles B. Rangel	Candidate-72nd Assembly District, Attorney, District Leader
Motor Vehicle Law Qualifications:	Michael McNulty, Chairman	
Reapportionment:	Manfred Ohrenstein, Chairman	State Senator, Attorney
	Robert J. Levinsohn, Vice-Chairman	Attorney
	Jerome T. Orans	Attorney
	Harvey M. Spear	
	Robert Brady	
	Joseph Zaretzki	
	Hugo Rogers	
Taxation & Finance:	Victor Brudney, Chairman	Professor
	John G. Heimann	
	William Murphy	
	Edward J. Brady	Attorney

Subcommittees (cont'd)

Subcommittees	Members	Identification
Transit & Transportation:	Maxwell Lehman, Chairman	
	James M. Edwards	
	Stanley Mailman	
Uni-Cameralism:	Robert Connery, Chairman	
	Robert Brady	
Welfare:	James Dumpson, Chairman	Dean, former City Welfare Commissioner
	James W. Fogarty, Vice-Chairman	Special Consultant
	Paul Schreiber	Dean

October 1, 1966

CONSTITUTIONAL CONVENTION - STATEMENT

There is an old saying: Mighty oaks from little acorns grow. The Little acorn in question was a decision to appoint a committee of experts to study possible revisions in the New York State Constitution in order to provide material for the use of our candidates for delegate to the Constitutional Convention. From that acorn -- that decision -- grew a mighty oak: the monumental work achieved by this committee.

We were fortunate in being able to induce Dr. John V. Connorton to serve as chairman of this committee, and to secure the similar willingness of a substantial number of eminent New Yorkers to participate in this work. The total number appointed to this committee was 59. These included some outstanding Democrats and some New Yorkers whose party affiliation I never tried to ascertain, but who are acknowledged experts in their fields. The surprising fact is that there was not a single dropout from this undertaking. The 59 members of this committee worked week after week, and month after month, through the spring, the hot summer, and into the fall, and finally arrived at the findings, observations and conclusions which are set forth in the separate reports.

As far as I am concerned, it was an unprecedented accomplishment. I believe it represents a most significant contribution to the basic thinking on the subjects involved. I am as proud of the achievements of this committee as I am of anything which occurred during my service as County Leader. I hasten to acknowledge that these experts didn't do it for me -- not even for the Party -- but for the people of New York State. In the name of the Party organization, I thank them. I commend their work to all the people of this city and state.

J. RAYMOND JONES
County Leader

October 1, 1966

CONSTITUTIONAL CONVENTION - PREFACE

For the eighth time since 1776, the people of New York are preparing through a Constitutional Convention to bring the State Constitution into harmony with the forces of change.

Growth and change have been the hallmark of our national life. During the past 30 years, separate communities and sparsely settled areas have merged into a series of metropolitan complexes, requiring new relationships between federal, state and local governments. Problems once barely within the perimeter of social concern now require either total public solutions, or solutions involving intricate partnership arrangements between government, private enterprise and voluntary civic groups.

A modernized constitution must reflect these momentous changes. Although a revised constitution cannot solve the immense problems which face us in the second half of the 20th century, it can provide a more effective and responsive framework from which these problems may be attacked. A modernized State Constitution must guarantee to all citizens full dignity and equal opportunity for unrestricted participation in the life of the total community; it must clearly acknowledge the responsibility of government to safeguard basic rights and help fulfill the aspirations of all citizens.

The State Constitution must, among other things, enable government to fight slums and poverty in the midst of affluence, bring the benefits of modern medicine to all, and work to eradicate illiteracy and ignorance.

New York's present constitution is encumbered by specific details which ought more properly to be part of statutory law. Unlike the Federal Constitution whose flexibility has underpinned the nation's growth, our State Constitution is a rigid mosaic of minutiae. Clearly our State Constitution must be simplified; its chaotic and bewildering amassment of detail must be reduced to basic guidelines; it must be made a more flexible instrument.

To achieve this is a staggering task. To help in this undertaking, the New York County Democratic Committee, established the Constitutional Convention Committee, made up of experts -- attorneys, educators, political scientists, social scientists, physicians, writers, financial specialists, judges and legislators. This committee met and worked throughout the spring and summer, preparing basic papers and recommendations on the various constitutional aspects.

PREFACE -

Subcommittees covered: Education - Health - Welfare - Human Rights - Labor - Taxation and Finance - Administrative Practices - Structure of the Legislature - Home Rule - Reapportionment - The Judiciary - Election Law - Public Authorities - Transportation - Motor Vehicle Law - Conservation.

A wide variety of opinion was reflected; yet consensus on many fundamental issues and principles was eventually reached. The final recommendations reflect this consensus.

For the achievement of this objective, the members of this committee have given time, efforts and talents, without stint and without measure -- and without hope of compensation, reward or recognition.

To each one of those who served on the committee, I wish to express my sincere appreciation. It is my hope that much of their work will be incorporated in a modernized and liberalized State Constitution.

I want to express my personal appreciation to Mr. J. Raymond Jones, who challenged us to take on this task, and then provided the means -- and the freedom -- for us to perform it.

DR. JOHN V. CONNORTON
Chairman

REPORT OF THE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICES
NEW YORK COUNTY DEMOCRATIC CONSTITUTIONAL CONVENTION COMMITTEE

Article I #1 of the Constitution

It is recommended that "due process of law" be substituted for "the law of the land, or the judgment of his peers".

The Courts have already interpreted the present language to have substantially the same meaning as "due process of law" in the Federal Constitution and the proposed amendment would eliminate any possible contention on that score and give Federal decisional law precedent value in applying this paragraph of the New York State Constitution.

Article I #6 of the Constitution

It is recommended that this section be amended by providing that as to public officers called before a grand jury they shall have the right to counsel and if there is an issue as to whether there was a refusal to sign a waiver of immunity as required by this section, a further right to a notice and hearing on that issue.

The selection of appropriate language is left to the Convention's draftsmen. This section is probably the most profusely litigated in the entire Constitution. In recent years a certain amount of this litigation has centered on

the provisions requiring a public officer (an employee of the State or one of its subdivisions) to waive immunity in testifying before a grand jury regarding his official acts. The intent of this recommendation is to conform the wording of these provisions to the interpretation placed on them by the Courts of this State and the Supreme Court of the U. S. and to remove any possible ambiguities as to the meaning and scope of these decisions.

JOSEPH E. MOUKAD, Chairman

PETER ANDREOLI

STANLEY LOWELL

NEW YORK COUNTY DEMOCRATIC COMMITTEE

CONSTITUTIONAL CONVENTION COMMITTEE

SUBCOMMITTEE ON PUBLIC AUTHORITIES

We deem that public benefit corporations, commonly known as authorities, should be the servants of the regularly constituted agencies of government and should not dictate to such agencies. We are also of the opinion that, in many if not all of the areas in which public authorities operate today, the agencies of government could perform the same functions as competently and as efficiently as authorities, and that therefore the creation of new authorities should be discouraged unless a specific need for them can be adequately demonstrated.

In line with this philosophy, we subscribe to the Constitutional changes recommended by the Transportation Subcommittee:

1) State or local guaranty or subsidy of private corporations

Art. 7, Sect. 8 prohibits gifts or loans of state credit or money to private corporations; Art. 8 Sect. 1 prohibits gifts or loans of property or credit of local subdivisions to private corporations; and Art. 10 Sect. 5 prohibits the state or any political subdivision from guaranteeing obligations of public corporations (authorities). Amendments to Art. 7 Sect. 8 and Art. 10 Sect. 7 adopted in 1961 created an exception for state loans to public corporations to aid manufacturing plants (limit of $40 million); Art. 10 Sect. 6 adopted in 1951 created an exception for public corporations to construct thruways (limit of $500 million); and Art. 10 Sect. 7 adopted in 1961 created an exception for the Port of New York Authority railroad car purchase program (limit of $100 million).

Recommendations:

Except for the authorization for 2 units of government to work together for municipal purposes, we recommend that the above prohibitions in Art. 7 Sect. 8, Art. 8 Sect. 1 and Art. 10 Sect. 5 be eliminated entirely along with the special exceptions referred to. The prohibitions reflect an unwarranted distrust of state and local legislative processes and make public financing of desirable activities too inflexible.

2) Restrictions on local indebtedness:

Art. 8 restricts the power to local subdivisions to incur indebtedness and provides for various exceptions such as indebtedness incurred by New York City for transit purposes. (Art. 8 Sect. 7-a).

Recommendations:

We recommend the elimination of Art. 8 in its entirety except for authorization mentioned before, in Sect. 1, for two units of government to work together for municipal purposes. Since the state is not liable for local debt, the market will regulate local debt by increasing interest costs when local resources for repayment become strained.

3) Home Rule

Art. 9 Sect. 2(c) (5) and (6) permits local governments to acquire and manage streets and highways and to acquire, own and operate "transit facilities" unless inconsistent with the Constitution or general laws or unless restricted from doing so by the legislature.

Recommendations:

(a) We recommend that Art. 9 be clarified to ensure that local subdivisions have full power to acquire, own, operate and regulate all forms of transportation facilities and services (notonly "transit facilities").

(b) We further recommend, consistent with the home rule principle, that Art. 10 Sect. 5 be amended to state that:

(i) Where an authority is contained within a city and its functions relate to the city, a majority of the governing bodies of all existing and future such authorities must consist of persons named by the city;

(ii) No future such authorities may be created except with the consent of the city.

(iii) The present requirement of Art. 10 Sect. 5 that an authority with power to impose real estate taxes and to furnish services and facilities of a character formerly furnished by the city must be created by city-wide referendum, should be amended to permit a city to consent to the creation of such an authority by whatever means it chooses, consistent with its own governing statutes.

(c) Furthermore, no new authorities shall be established within the boundaries of any municipality, county, town or incorporated village unless approved by the respective city, county, town or village.

4. Authorities

Art. 10 Sect. 5 provides that public corporations with "power to collect rentals, charges, rates or fees for the services or facilities furnished or supplied by it" can be created only by special act of the legislature, and if the corporation is to have the power to impose charges on the owners or occupants of real estate and is to furnish services or facilities of a character formerly furnished by the city, it can be created only pursuant to a city-wide referendum (except in the case of a corporation created by interstate compact). The accounts of such public corporations are "subject to the supervision of the state comptroller, or, if the member or members of such public corporation are appointed by the Mayor of a city, to the supervision of the comptroller of such city; provided, however, that this provision shall not apply to such a public corporation created pursuant to an agreement with another state or foreign power, except with the consent of the parties to such agreement or compact." Guarantees of obligations of such corporations by the State and political subdivisions are prohibited with the exception of up to $500 million of thruway bonds (Art. 10 Sect. 6), $100 million of obligations of the Port of New York Authority issued for financing the purchase of railroad passenger cars (Art. 10 Sect. 7), and $50 million of obligations of a public corporation to provide loans for manufacturing plants. If authorized by the legislature, the state or a political subdivision may acquire the properties of any such corporation and pay the indebtedness thereof.

Recommendations:

(a) Creation of authorities should continue to require a special act of the legislature in each case. A requirement of a greater than majority vote to adopt such an act is on balance undesirable since it would permit a minority of the legislature to block possibly desirable projects. In any case, the incentive to create new authorities should be diminshed if the Art. 7 and 8 prohibitions upon the guarantee of obligations and the indebtedness of local subdivisions are eliminated.

(b) The prohibitions of state and local guaranty of authority obligations should be eliminated.

(c) The Constitution should require that the act of the legislature establishing the authority set forth with reasonable specificity the activities which may be carried on by the authority and prohibit activities not so set forth.

(d) The Constitution should continue to require that authority accounts be subject to the supervision of the state or city comptroller, as the case may be, and in addition should require that all authorities shall be subject to such requirements as may be enacted from time to time by the legislature relating to:

(i) accounting standards and disclosure of financial condition, earnings and surplus.

(ii) maximum accumulations of surplus.

(iii) annual reports on budgets.

(e) The Constitution should also provide that all authority bonds may be called by the state or appopriate local subdivisions at any time at face amount plus a premium necessary to ensure just compensation to bondholders.

By guaranteeing authority bonds or, if necessary, calling them, the state and appropriate local subdivisions should be able to make use of authority surpluses and integrate authorities with other entities, notwithstanding provisions in the contract of the authority with bondholders, if that should prove desirable.

5. Interstate Compacts

The Constitution does not make any reference to interstate compacts except to provide in Art. 10 Sect. 5 that interstate compact authorities need not be established by city-wide referendum and except for the provisions referred to above permitting guarantee of up to $100 million of Port Authority bonds.

Recommendations:

(a) The Constitution should specifically provide for the creation of interstate compacts by special act of the legislature. Since the interstate compact overrides New York law, there is a strong argument, by analogy to the requirement that U. S. treaties be approved by two thirds of the U. S. Senate, that acts of the legislature approving interstate compacts should require a greater than majority vote. However, the subcommittee believes that on balance such a requirement would give a minority vote too much power to block interstate cooperation.

(b) The Constitution should require that the powers conferred by the interstate compact must be set forth and limited with reasonable specificity.

(c) The Constitution should require that authorities established by interstate compact also be subject to such requirements as may be enacted from time to time by the New York State Legislature relating to accounting standards and disclosure of financial condition, earnings and surplus.

This concludes the parts of the transportation report relevant to authorities. We would add:

Compliance with restrictions:

We urge that the legislature enact legislation obliging authorities to comply with the same restrictions that apply to any other governmental or non-governmental body. (For example, authorities should not be exempt from adherence to building codes.)

Payments by Authorities:

We think it imperative that there be some change in the haphazard and frequently costly procedure whereby municipalities such as New York City must constantly negotiate with authorities for equitable in-lieu-of-tax payments; or for a share of the authorities' net revenues. This undermines both long-range fiscal planning and the city's financial well-being; and as a practical matter seldom results in payments the equivalent of what taxes at normal assessments would be. (Since a different set of considerations applies to Housing Authorities, they are not being considered here.)

We therefore recommend that in the future, wherever feasible and consistent with any contracts or agreements presently in effect, there be no tax exemption for authorities having revenues in excess of their financial requirements for the performance of their defined functions and the meeting of their legal obligations, including obligations under bond covenants.

Alice Sachs (Chairman)
John G. Heimann
Maxwell Lehman
Stanley Mailman
Dr. Joseph Rappaport

August 17, 1966

NEW YORK COUNTY DEMOCRATIC COMMITTEE

CONSTITUTIONAL CONVENTION COMMITTEE

SUBCOMMITTEE ON CONSERVATION

OREST V. MARESCA, Chairman
PAUL G. REILLY

ARTICLE XIV - CONSERVATION

The State Constitutional Convention of 1894 recommended an amendment now found in Article XIV, Section 1, that all lands owned by the state constituting forest preserves as now fixed by law, shall be forever kept as wild forest lands.

The expression "as now fixed by law" referred to the definition of forest preserves as it then existed in the Forest, Fish and Game Law in existence in 1894. This definition is now contained in Section 63 of the Conservation Law.

The amendment of 1894 further provided that the forest preserves shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber therein be sold, removed or destroyed.

This concept of "Forever Wild" has been rigorously adhered to and reaffirmed by the Constitutional Convention of 1938. cf. Association Protection Adirondacks vs. Mac Donald 253 N.Y. 234, (1930).

As Article XIV restricted special needs or uses, various attempts have been made to incorporate exceptions. A cursory review of proposed exceptions indicate interest in some recreational facilities and highway needs.

Since the Convention of 1938, about 6 of those proposals were adopted and approved by the People. These involved ski trails, highways and in one instance, an exchange of lands with the Village of Saranac Lake to provide the community with garbage disposal facilities (dumps).

As to all the amendments previously authorized and approved by the people and now consummated, we recommend elimination of the references thereto.

To the extent that recreational facilities should impinge upon the principle of "Forever Wild" we suggest serious consideration be given to the proposal of Assemblyman Louis E. Wolfe, introduced and passed in the Assembly in the 1966 Legislative session, (Intro. 1952, Print 6374). This bill died on the Senate floor when it was starred by the Majority Leader.

This bill amends Section 2, Article 14, Constitution, to permit the legislature by general laws to provide for use of forest preserve lands for recreational use and improvement and utilization of adjoining areas for such purposes, including but not limited to public camp sites, within the 3 per cent limit now

specified as available for reservoirs and maintenance of canals.

Section 2 of Article XIV pertaining to reservoirs and canals now authorizes the legislature by general laws to provide for the utilization of not more than three per centum of forest preserve lands for such purposes.

As will be noted this proposal does not diminish the existing protection of the forest preserves but merely allocates an existing exception between Municipal reservoirs and public recreation.

The Wolfe amendment would permit valuable experimentation on the unutilized lands up to 3 percent and still be within the long standing exception to the principle of "Forever Wild".

REPORT OF THE EDUCATION SUBCOMMITTEE

Having reviewed the references to education in the present Constitution, your Subcommittee recommends that the following positions be taken:

I CHURCH-STATE ISSUE

The issue in education often referred to as the church-state issue is posed by the following language in the Constitution (Article XI, Section 3).

"Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning."

This language dates back to the end of the last century, except for the proviso on transportation which was adopted at the Constitutional Convention of 1938. This section in its present form, is highly controversial and under increasing attack. It could become one of the most embattled issues before the convention.

Recent federal enactments authorizing grants both to pupils and to educational institutions seem clearly less restrictive than would be allowed by Section 3, Article XI of the Constitution of New York State. In recent months a substantial range of federal legislation -- educational, vocational and anti-poverty -- has authorized public assistance directly to non-public institutions as well as to students attending such institutions. Our own State Legislature has moved in the same direction, with the recently-enacted Textbook Law.

Seeking to compose critical differences and to arrive at a tenable constitutional position -- a new position which will still adhere to the underlying principle of the separation of church and state as reflected in the First Amendment of the Federal Constitution, your Subcommittee recommends that the present language of Article XI, Section 3 be set aside. In order to assure adherence to the principle of church-state separation while recognizing the reality of the increasing measure of federal leadership in the field of education, we recommend that the New York State Constitution follow the language of the First Amendment of the Federal Constitution.

We recommend that there be inserted in the appropriate section of the State Constitution, without making direct reference to education, language as follows: Neither the legislature nor any political subdivision of the

state shall make any law, ordinance or regulation respecting an establishment of religion, or prohibiting the free exercise thereof."*

Especially in view of the expanding role of the Federal Government in financing and supporting both public and private education, it would seem sensible for the pertinent language of the New York State Constitution to follow that of the First Amendment, so that the court interpretation of church-state separation, insofar as it affects state aid to education, could conform to federal aid-to-education policy, to the maximum extent possible. It would surely be confusing if the policy on state aid to New York schools were more restrictive than that for federal aid.

Recognizing that this recommendation would relax to an unestablished extent the present restrictions on state aid to education, and recognizing further that the precise limits to be established will depend upon court interpretations, the majority of the Subcommittee agree that the Constitution should, by appropriate language, establish the right of taxpayers to bring suit in respect to legislation, ordinances and regulations arising out of this relaxation of the present constitutional restriction.

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* If deemed necessary, appropriate language should be added authorizing the continuance of the present authority of the State Legislature to incorporate or dissolve corporations organized for religious-social-eleemosynary purposes. This is a time-hallowed practice by the Legislature which might possibily be considered to be prohibited by the language of the First Amendment unless an appropriate exception is made.

II ESTABLISHMENT OF A SYSTEM OF COMMON SCHOOLS

The constitutional mandate that the Legislature shall provide for a system of free-state-supported common schools should be retained. The Subcommitttee recommends that this provision include a requirement that the Legislature provide a state-aid formula which will reflect the varying per-pupil operating costs, -- and also capital costs -- in the various urban, suburban and rural school districts.

III HIGHER EDUCATION

At the present time the State Constitution contains no general language on higher or post-secondary education. The major specific reference, in Section 19 of Article VII, consists of an authorization for up to $250 million in debt, without submission to referendum, for construction, rehabiliation, etc. for (1) the State University and (2) for locally sponsored institutions of higher education approved and regulated by the State University trustees.

Your Subcommittee recommends that the above language be eliminated in its entirety, and that the matter of authority for the contraction of debt for all public higher education facilities be convered in the general section on this subject.

The Subcommittee's view on this matter is that authority should be

clearly vested in the Legislature to authorize the issuance of bonds and to contract indebtedness for educational purposes without a statewide referendum. Local Governing bodies should also have the power to contract indebtedness for educational purposes, subject, however, to regulation by the Legislature.

By appropriate language, the Constitution should require the Legislature to provide for post-secondary education and training for New York residents, either in public or in private institutions, inside or outside the State.

The Constitution should require the Legislature to provide appropriate financial support both for the State University and also for public institutions of higher education and training sponsored by local government units. Such provision shall reflect consideration of the role of private institutions of higher education and training in meeting the overall needs of the State.*

Financial support for institutions of public higher education sponsored by local government units shall be equivalent, on a per-pupil basis, with support for the State University. Local control and operation of such institutions shall not be prejudiced or diminished by virtue of state support, although standards of instruction and operation may be established by the Board of Regents or the Legislature.

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* New matter -- on basis of discussion at last committee meeting.

IV BOARD OF REGENTS

Affirmative provision shall be made for continuing the present autonomous status of the Board of Regents, with appointments to be made by the Legislature. This section should cite general qualifications for appointment to the Board of Regents, to include eminence in such fields as education, science, the arts, the learned professions,etc.

Legislative action to create an appropriate panel of citizens authorized to submit lists of eminent individuals for the consideration of the Legislature in electing members of the Board of Regents is recommended by the Subcommittee.

In order to assist the Board of Regents in properly discharging its functions, mandatory provision should be made in the Constitution for adequate staff resources for the Board.

The present provision in the Constitution for the State Commissioner of Education to be selected by the Board of Regents should be retained.

Julius C. C. Edelstein - Chairman
Judge James B. M. McNally
Martin Begun
Robert Connery
Joseph Moukad
George Osborne
Judge George Timone
Dr. Joseph Rappaport

September 21, 1966

CONSTITUTIONAL CONVENTION COMMITTEE

Subcommittee on Election Law

This report relates to the suffrage provisions set forth in Article II of the Constitution.

1. Voter Qualifications. In State and local elections, Article II, section 1 now requires that a voter must at least be:

-- 21 years of age;

-- if naturalized, a citizen 90 days before the election;

-- a resident for four months of the county, city or village and for 30 days of the election district where he votes; and

-- able to read and write English.

In presidential elections, Article II, section 9, permits the legislature to allow voters that have become inhabitants of the State or who have moved from or within the State during the 90-day period before the election to vote for presidential electors.

The subcommittee believes that today's youth have demonstrated sufficient maturity to justify reducing the minimum voting age from 21 to 18.

The present residence requirements, especially that of a one-year period for State residence, are not warranted either (a) to acquaint the new voter with State and local candidates or issues or (b) to allow the Board of Elections a sufficient opportunity to determine whether a registration is bona fide. While the selection of any specific period

as a minimum residence requirement necessarily involves an arbitrary choice, the subcommittee believes that a 90-day period, for residence both in the State and in the local unit (county, city or village), would ensure ample time for the exposure of candidates and issues. Since a 90-day residence requirement is already in effect for presidential elections, the adoption of this period as the general residence requirement would result in the use of the same standard for State and all Federal elections.

The subcommittee favors the elimination of the present requirement that a voter must be able to read and write English. The Voting Rights Act of 1965 has eliminated this requirement in the case of voters who have successfully completed the sixth grade in a school in the Commonwealth of Puerto Rico where the language of instruction was other than English. More than 25 states, among which are such highly urbanized states as Illinois, Michigan, Ohio and Pennsylvania, do not require a literacy test. Whatever justification may have existed when the literacy test was first proposed at a constitutional convention in 1915, it does not exist today. Today, television and radio, as well as foreign language newspapers, provide the information necessary for the electorate to make an informed choice at the polls.

Accordingly, the subcommittee recommends:

-- Reducing the minimum voting age to 18 years of age;

-- Eliminating the requirement that a citizen, if naturalized, must serve a 90-day waiting period before being allowed to vote;

-- Reducing the required State and local residence period to 90 days before the election;

-- Retaining the requirement of 30 days residence in the election district from which a person may vote, but permitting a person who moves within the State during the 30-day period before election to vote from the address where he was previously registered;

-- Abolishing any literacy requirement for all voters.

2. Absentee Voting. The legislature is required by Article II, section 1 to provide a method of absentee voting for members of the United States armed forces and their relatives. Article II, section 2 permits the legislature to provide a method of voting for other absentees and persons physically unable to vote. While the subcommittee does not take any position at this time whether the Constitution should mandate a requirement of absentee voting for use in significant or even in all primary elections, it recommends that the Constitution specify that the legislature has power to provide for absentee voting in primary as well as general elections.

3. Registration Requirements. Article II, section 5 requires three different types of registration:

1) For cities or villages having more than 5,000 inhabitants -- by personal application only;

2) For localities having fewer than 5,000 inhabitants -- personal registration is prohibited;

3) For town and village elections -- no registration is required, except by express provision of law.

Article II, section 6 permits the legislature to provide one or more systems of Permanent Personal Registration.

The subcommittee believes that the requirement of non-personal registration is a throw-back to an era when rural transportation was far less advanced than it is now. The inconvenience, if any, arising from requiring voters in the rural areas to register personally could be ameliorated by the adoption of Permanent Personal Registration.

The subcommittee recommends, therefore, that the Constitution require the legislature in all cases to provide for personal registration, including one or more systems of Permanent Personal Registration.

4. Voter Identification. Article II, section 7 requires that the legislature must provide for the signatures, at the time of voting, of all persons voting in person, by ballot or voting machine. This requirement has been criticized as unnecessary where voting machines are used. Accordingly, the subcommittee

recommends that the Constitution state merely that the legislature shall provide appropriate means to ensure the proper identification of all voters and that the specific requirement of using signatures as the sole method of voter identification be eliminated.

Michael J. McNulty, Chairman
Maurice J. O'Rourke
Robert B. Brady

THIS SUBCOMMITTEE REPORT WAS ADOPTED BY THE COMMITTEE AT ITS MEETING ON SEPTEMBER 21, 1966.

NEW YORK COUNTY DEMOCRATIC COMMITTEE
CONSTITUTIONAL CONVENTION COMMITTEE

SUBCOMMITTEE ON GOVERNMENTAL STRUCTURE

EXECUTIVE REORGANIZATION

The last major reorganization of New York State government became effective on January 1, 1927. At that time, 122 independent boards, commissions, and offices were coordinated into 65 departments and agencies, as the result of work done at the 1915 Constitutional Convention. The number of State departments (as distinguished from independent commissions, authorities, etc.) was reduced to 18.

Today there are roughly 150 independent or semi-independent agencies and departments, although the limitation on departments (raised to 20 in 1960) remains in the Constitution, Art. VI, Sec. 2. The overlapping responsibilities and the insulation from political accountability that has marked the rapid growth in the number of State agencies presents a major burden to effective government. The subcommittee believes that the constitution should offer the broadest freedom for reorganization by the chief executive, with the approval of the legislature. We therefore recommend the deletion of the fixed limit in the number of departments, recognizing that an expanded number of departments may be the best route to agency consolidation. Since every agency of State government should be responsible, to some degree, to one of the departments, an expanded number of departments could facilitate an effective redistribution of responsibility.

The designation of certain critical departments, such as justice, audit and control, education, taxation and finance, health civil service, and others would assure some continuity to the basic structure of government while leaving the flexibility for future organization.

See: "The Proposed Reorganization of the Executive Branch of the New York State Government", a report to Governor Rockefeller by William J. Ronan, Secretary to the Governor, 1959, the 1960 Public Papers of Governor Rockefeller, p. 1331 et seq.

THE OFFICE OF ATTORNEY-GENERAL

The haphazard nature of our State government is nowhere more apparent than in the Office of Attorney General. The Ronan report indicates how badly divided are the State's legal services. The lack of a coordinated system of crime control is obvious to even the unsophisticated layman.

The subcommittee believes that a complete reorganization of the office along the lines of the Federal Department of Justice is in order. The new responsibilities ought to include the supervision of State Police and investigatory personnel. Since the office thus enlarged would be involved in the most fundamental actions of government, the committee recommends that consideration be given to making the office appointive, and thus leaving the chief executive of the State reponsible for its actions and eliminating the possibility of political divisiveness at this level of State government.

Such a department of justice could also assist in coordinating the local prosecutors throughout the State, and reduce the number of part-time law enforcement officials. In this connection, the subcommittee believes that there should be a reconsideration of that portion of Art. 13, Sec. 13 (a) which mandates a separate district attorney for each county within New York City.

GUBERNATORIAL SUCCESSION

The provisions of Art. IV, Secs. 5-6 relating to gubernatorial succession should be rewritten in the light of the many recent studies of the problems of Presidential incapacity and succession.

CONSTITUTIONAL AMENDMENT AND PERIODIC REORGANIZATION

While a great many suggestions for periodic reorganization of State government have been made, the subcommittee favors mandating a constitutional convention every twenty years, in place of the present twenty-year referendum. The intensive attention devoted to each constitutional convention, together with the caliber of delegates selected, offers the most reliable review of the structure of State government.

The subcommittee finds the present procedure for specific amendment adequate, assuming the adoption of the major simplifications suggested for other portions of the constitution. Most of the plethora of recent amendments were made necessary only by the unduly specific and restrictive language of the present constitution. To create different categories of

amendment with different requirements for each would appear to raise more problems than would be solved. The subcommittee supports the Legislative Procedures Subcommittee's recommendation for the establishment of a Constitutional Council.

Victor A. Kovner, Chairman
Maxwell Lehman
Paul G. Reilly
Robert Brady
Christopher Niebuhr

NEW YORK DEMOCRATIC COUNTY COMMITTEE
CONSTITUTIONAL CONVENTION COMMITTEE
SUBCOMMITTEE ON HEALTH AND HOSPITALS

Introduction

The current status of health sciences; the trend in social thought regarding health needs of the population; the various health programs in force, both State and Federal; as well as several other factors have been considered by this subcommittee. In addition, we have studied the various Articles in the Constitution wherein references to "health","public health", "sickness" or "mental disorder" are made.

In the past 30 to 50 years advances in our knowledge of the health sciences have been spectacular and present trends indicate that the tempo will be the same, if not greater, in the future. New understandings, new techniques, new medicines in all areas of the "health sciences" have shown many diseased and infirmities to be preventable, controllable or curable. The application of this knowledge has made life better for many citizens; nevertheless, for a variety of reasons, large segments of the population do not enjoy the full benefit of this knowledge.

At present and in coming years both Federal and State government will be playing an increasing role in the organization, administration and financing of health services. The exact nature of this role can only be determined in the future. Nevertheless, this involvement is an implicit acknowledgement of society's obligation for the health needs of its individual members.

The subcommittee feels that the current constitution and public health legislation, though in parts open to remarkably "liberal" interpretation, is essentially "preventive" and "custodial" in orientation. Exceptions can certainly be cited, but these do not alter our opinion concerning this basic orientation. The fact that the only specific section on "health" in the constitution is con-

tained in Article XVII, Social Welfare, further supports, we feel, our contention regarding this orientation.

We feel that this aspect of "social welfare" is distinctly separate and distinguishable from the present and future problems of "health" and "health services" of the State's population as a whole.

Finally, there appear to be provisions in the constitution that unnecessarily restrict the State and local governments from financially assisting and participating in proper health programs.

I

The subcommittee recommends a complete separation of all sections concerning "health", including mental hygiene, from the Social Welfare article of the Constitution. (Article 17, Sections 3 and 4). A separate Constitutional article on "Health and Health Services" should be established. The language of this article should be broad enough to allow existing public health and mental hygiene services; to allow future unification or diversification of these services, if desirable; and to allow state action in health problems as the future might indicate. There appears to be sufficient flexibility in Section 3 of Article V to permit reorganization or consolidation of the appropriate health and health services department as may be needed. Such specific language as appears in Article XVII, Section 4 concerning the visitation and inspection of institutions should be omitted as unnecessary and inappropriately detailed.

II

Several articles of the Constitution, not specifically under study by our subcommittee, contain references to matters affecting health services.

Our recommendations concerning wording in these articles are subject to the approval of the specific subcommittees in their study.

The subcommittee concurs with other subcommittees that there should be eliminated from Article VII, Section 8 and Article VIII, Section 1, the present limitations on the giving or loaning of money or the giving of credit by the State or local subdivisions to private corporations, etc. The prohibitions reflect an unwarranted distrust of State and local legislative processes and unnecessarily limit the public financing and promotion of desirable public services including health services. Alternatively, the subcommittee recommends a blanket exception from the above prohibition in the case of private and public corporations engaged in providing or supporting health (including mental health) facilities and services. As a last alternative, the subcommittee notes exceptions contained in these prohibitions for providing health and welfare services for all children and for the "education and support of the blind, the deaf, the dumb, the physically handicapped and juvenile delinquents." The subcommittee recommends a minor change in wording, substituting "health services and welfare services" for "health and welfare services" and the addition of the word, "treatment", before "education and support and the addition of "mentally ill or handicapped, and emotionally disturbed" after "juvenile delinquents".

Article IX (Local Government), section 2, part c (10) concerning home rule in health matters should be retained as written.

Martin S. Begun, Chairman
Eugene Thiessen, M. D., Vice-Chairman
Dr. Muriel Oberleder
Dr. John V. Connorton
James T. Farley
Thomas McLoughlin
Walsh McDermott, M.D.
Leona Baumgartner, M.D.
James Edwards & Stanley Mailman

NEW YORK COUNTY DEMOCRATIC COMMITTEE

CONSTITUTIONAL CONVENTION COMMITTEE

REPORT ON
HOME RULE AND LOCAL GOVERNMENT

PROPOSED CHANGES

The subject of local autonomy and municipal government powers and immunities will probably be among the liveliest matters considered at the Constitutional Convention. Although at one time a matter of concern principally if not exclusively to New York City, the subject now has attained widespread interest throughout the State. The Temporary Commission appointed in 1956 to consider subjects which would be considered at the Convention which, it was then thought, would be called in 1959, said:

> "More attention was given by spokesmen at the hearings to constitutional issues relating to local government and state-local relations than to any other subject."

Since that statement was made, interest in the subject matter under consideration has increased.

Present Constitutional Provisions -

The principal provisions in regard to the subject are contained in Article IX of the Constitution which, was revised in 1964, and, insofar as municipal debt limits and real estate tax limits are concerned, in Article VIII, of the Constitution. Other provisions of significance are in Article III, §17 and Article XIII, §5.

Article IX, §1, declares that "effective" local government and intergovernmental cooperation are purposes of the people of the State. It sets forth a "bill of rights" for local governments guarantying to each of them an elective legislative body, requiring that their officers shall be locally elected or appointed and empowering them "as authorized by act of the legislature" to enter into arrangements for cooperative services and facilities with each other, and with other governments, state or federal and arrange to share costs. It prohibits the annexation of territory to localities without both referendum and the consent of each local government involved. Counties outside New York City are permitted to adopt forms of government and transfer functions between towns, cities and villages and to the county.

Section 2 - empowers each city, county, town and village to adopt local laws in regard to its "property, affairs or government", provided they are "not inconsistent" with State laws which apply alike to all cities or all counties or all towns or all villages, and, subject to the same limitation, in regard to a series of other categories of areas including its roads, transit facilities, collection of taxes and the police power. It provides for the granting of additional powers by a "statute of local government", subject to withdrawal only by two successive legislatures.

Section 3 - limits the restriction of the article upon the State legislature so as to exclude education, the courts and "matters other than the property, affairs or government" of

localities. It also provides that granting of power and immunities to localities in the local government articles of the Constitution "shall be liberally construed", which provision was inserted in the Constitution in 1964.

The Appearance vs. The Reality of Local Autonomy -

The Constitution's grant of powers and immunities are far less real than they appear to be. In the first place, all local legislation is required to be "not inconsistent with general laws". In the second place, the seemingly broad terms "property, affairs or government" has been narrowly construed by the courts so as not to mean either "property", "affairs" or "government" in its dictionary or commonly-used sense. In the third place, a judicial concept of "matters of State concern" has further limited the scope of the grant of powers and immunities.

In a series of decisions over the years since Constitutional Home Rule was provided for, the Courts have excluded from the area of constitutionally-protected rights of localities a whole range of subjects of predominantly local significance, such as, for example, municipal water supply, municipal rapid transit systems, health regulations, regulation of municipal dwellings, local parks and parkways, local taxes and the power to incur indebtedness, licensing of theatre ticket-brokers and plumbers. Notwithstanding the adoption in 1964 of the "liberal construction" provisions which were designed to offset the so-called "Dillon Rule" that grants of power to localities must be narrowly construed, the Courts have persisted

in this tendency and have been quick to find inconsistency between local legislation and so-called "general" State laws, which are really "special" in any real sense, and hold invalid attempts by localities to legislate in regard to matters of their proper concern.

New York City has been the special, although not the only victim of this pattern of Court-approved state interference with local affairs. The 1966 State Legislative Session provided a typical instance of the manner in which this practice operates: upstate legislators were in a position to compel an increase in the rate of fare charges to New York City's people on New York City's transit system as the price of a grant to New York City of necessary tax-enabling legislation.

Effect of State Legislative Control

There are two principal mischievous consequences which flow from the present state of the law in regard to municipal autonomy: In the first place, municipal officials are hampered in the performance of their duty to govern their own localities and are provided with a means to escape responsibility. In the second place, State legislators, acting as though they are a combination of councilmen, supervisors and selectmen for every city, county, town and village in the State, consider literally thousands of bills each year dealing with the special problems of individual localities and groups of localities -- ranging from the frequency of pay-days for local employees to building fences around municipal parking lots to the size of light-bulbs

in tenement homes to the appointment of dog-enumerators, to the upkeep of rundown cemeteries to the removal of El. structures, etc., etc. This makes for neither good government nor good sense. It shifts responsibility for the conduct of local affairs from local officials to State legislators who are neither responsive to nor familiar with the needs of the localities whose affairs they regulate.

The Committee urges substantial reforms in the Constitution dealing with local governments and their governmental and fiscal powers. The Committee suggests the following:

-A-

NEW YORK CITY

We believe that the Constitution should contain special provisions dealing with New York City in recognition of its unique position in the pattern of State and Local government.

1. Such provisions should grant to the City broad taxing power and power to contract indebtedness, without constitutional limitation.

2. Such special provisions in regard to New York City should vest in the City full power to operate and control its own transit facilities without interference at the State level.

3. Such special provisions should grant to New York City government an overall legislative power to deal with its governmental problems, exempt from State interference and provide limitation on the doctrine of "State Concern" in the operation of municipal facilities, including municipally owned hospitals and health agencies.

4. New York City should be authorized in the Constitution to enter into inter-local agreements with bordering communities.

5. New York City should be provided with a check upon the establishment of public authorities operating within its area and such authorities should not be permitted to be created without the City's consent.

-B-

OTHER LOCALITIES

The Committee believes that localities throughout the State should be accorded a higher degree of autonomy and immunity from State interference with their affairs. The insertion of strong and definite language in the Constitution which will compel the Courts to give a liberal and rational interpretation to constitutional provisions designed to protect localities in their autonomy is a principal need. The Committee believes that localities should have the clear right to provide for taxation of real property within their borders and the power to enact local legislation for the enforcement and administration of such tax laws. It believes that localities should have the unqualified power to incur indebtedness for their municipal undertakings. It believes that localities should have clear power to acquire and dispose of its property, including local parks and parkways; to control their own water supply and sewage systems, to regulate building construction and inspection, to create and enforce health regulations, and to establish housing agencies.

The Committee further believes that the Constitution should impose upon localities the obligation to reapportion themselves periodically on a districted basis so as to preclude domination of County governments by town governments and the imposition of "at large" representation which is often designed to preclude minority representation in local governments.

Robert Brady, Chairman
William Murphy
Robert Paul

NEW YORK COUNTY DEMOCRATIC COMMITTEE

CONSTITUTIONAL CONVENTION COMMITTEE

REPORT OF THE SUBCOMMITTEE ON HOUSING

Hortense Gabel - Chairman
Stephen Jarema
George Backer
Robert Paul

The subcommittee on Housing was guided in its recommendations, by two principles:

1. The desire to give utmost flexibility to the State Legislature in enactment of legislation to provide the state's residents with decent homes in a suitable living environment.

2. Modern principles of home rule to permit the broadest grant of authority to localities to provide for the housing of their residents.

In its examination of Article XVIII, the subcommittee, while acknowledging the pioneering significance of the Article, noted many anachronistic constraints which have prevented the development of an effective housing program. These includes:

1. (Refers to Art. XVIII Sect. 2) While loans to housing corporations regulated by law as to rents, profits, dividends and disposition of their property are authorized by Article XVIII, Section 2, there is no authorization for any form of subsidy or capital grant to such corporations. This means that these voluntary housing groups can not obtain the benefits of state interest subsidies, capital grants, etc., except through appropriations to municipalities or other public bodies. The net effect of this restriction is to confine state aided-non-profit or limited profit housing to middle income families.

2. (Refers to Art. XVIII Sect. 2) Failure to authorize counties to incur indebtedness or subsidize housing programs. This has compelled unnecessary fragmentation of housing action, interfered with orderly county growth, complicated relocation problems, and permitted the continuation of one-class, one-race enclaves in many parts of the state.

3. (Refers to Art. XVIII Sect. 6) Anachronistic requirements compelling the provision of low rent housing to be tied to slum clearance. The subcommittee, conscious of the need to rehabilitate slum areas, is equally conscious of the necessity of increasing the total supply of standard housing by building on vacant and under-occupied land and on sites occupied by obsolete industrial facilities. In fact, the subcommittee believes that the necessity for equivalent elimination thereby lightening the housing vacancy ratio has actually served to prevent such overall expansion and compels high rents for substantial housing.

4. (Refers to Art. XVIII Sect. 3) Limitations of loans to rehabilitate low rent housing to multiple dwellings. In many parts of the state loans to low income home owners are equally necessary to prevent the deterioration of neighborhoods and provide their owners with adequate housing.

5. (Refers to Art. XVIII Sect. 2) Provision for referenda for state indebtedness and annual subsidies. The subcommittee believes there is no affirmative reason for such requirements and that they imply that the provision of housing for low income families is in some fashion different from the more traditional obligations of a modern state. It believes that the legislature can be fully trusted to assume prudent responsibility for such debt incurring authority within the general debt incurring provision of the Constitution. This is even truer of the power to appropriate out of the general fund, which is also subject to general constitutional restrictions. In recent years we have noted the opportunities for misleading and anti-social propaganda which housing referenda have afforded entrenched and reactionary groups in the state. We believe that legislative action to incur indebtedness and subsidize living by the state's elected representatives, with appropriate public hearings, will serve the interests of our communities far more effectively.

6. (Refers to Art. XVIII Sect. 4) Limitations on the indebtedness which may be incurred by localities for housing purposes to two percent of the assessed valuation. While we approve authorization to incur indebtedness outside the local debt limit, we believe that the state and local legislatures, with their greater flexibility, will give sufficient protection to the fiscal integrity of localities and there is no necessity for the establishment of any percentage formula.

7. (Refers to Art. XVIII Sect. 4) Restrictive requirements on the manner of debt repayment and formulas for exclusion of projects from housing debt limits, even after they are almost totally self sustaining, have resulted in higher rents for state-aided low rent public housing than those in Federally aided public housing. Such mechanical formulas have no place in the state's organic law.

Constitutional authorizations for the enactment of housing legislation should be as broad as is necessary to permit the state to create improved and more flexible institutions for the provision of standard housing to all of its residents. We therefore, urge that all arbitrary restrictions be eliminated and that the state and its political subdivisions be given full powers to provide decent homes in well balanced communities for all.

FINAL REPORT, SUB-COMMITTEE ON HUMAN RIGHTS, NEW YORK COUNTY DEMOCRATIC COMMITTEE CONSTITUTIONAL CONVENTION COMMITTEE.

STANLEY H. LOWELL, Chairman
VICTOR KOVNER
CARLOS M. RIOS

ARTICLE I - BILL OF RIGHTS

Sec. 9: Transfer bingo authorization to another Article.

Sec. 11: Add at the end of this section the following language. "Notwithstanding the provisions of this section, the state, or any agency of subdivision of the state, or any person, firm, corporation or institution may take affirmative action to eliminate existing discrimination by reason of race, sex, color, creed or religion and such action shall not be considered a violation of this section."

Note: Sec. 5: Inquiry indicates that no additional provision is required to prevent bail excesses.

Sec. 6: No additional provision is required to protect method of selection of petit jurors.

ARTICLE II - SUFFRAGE

Sec. 1: In the light of recent Court decisions, no additional provision is required to prohibit "language" as a barrier to the right to vote.

ARTICLE XVIII - HOUSING

Language to provide that "safe, sanitary and decent" housing is a State responsibility, or its equivalent, has been provided by the housing sub-committee.

THE JUDICIARY

PROPOSALS FOR CHANGES IN THE STATE CONSTITUTION

Report of the Committee
established by the Democratic County Committee
of New York County

With respect to the provisions of the Constitution governing the judiciary, changes are recommended: (1) to facilitate and encourage the strengthening of the bench by improvements in the mechanism and procedures by means of which judges are proposed and named to the bench; (2) to make the bench as broadly representative as possible; (3) to help the courts serve as dynamic and not static dispersers of justice; (4) to strengthen public confidence in the judges as to their understanding of and devotion to impartial justice.

The committee was unanimous in affirming the desirability of constitutional changes which would contribute to these purposes.

There was also a strong and likewise unanimous sense that change in these directions must come.

There was, however, a substantial divergence of views as to the specific means required to achieve these goals, although there was at the same time a substantial consensus as to the general directions to be followed.

The basic divergence was on whether the state judges now named by election (State Supreme Court and Court of Appeals) should continue to be chosen by popular election.

It was agreed and recommended that if the elective process for these judges is to be retained, there should be a substantial strengthening and democratization of the nominating procedure. There was unanimous support (if the elective system of choosing such judges is to be retained) for an open primary to replace the judicial convention.

In addition, there was considerable support for the interposition of a screening process. One proposal was for the establishment of a broadly based, highly qualified and representative judicial selection panel which, in the case of vacancies at impending elections, would issue lists of qualified judges, including some identified with all parties. If the political party then recommended or otherwise designated candidates outside these lists, the commission could enter a candidate of its own designation in the primary, and the ballot would reflect that designation by a proper identification.

Another version of this same proposal was for the establishment of the selection panel with the mandate to make public its recommendations but without the power, on its own volition, to enter a designated candidate on the ballot.

In summary, a majority of the committee appeared to support the continued use of the elective process -- including the open primary -- for the naming of the members of the Supreme Court bench and members of the Court of Appeals, although the reservation was expressed that this would give the candidate with the greater financial resources a major advantage. It was felt, however, that the advantage of adhering to the democratic elective process, in an open primary and thereafter at a general election, outweighed the fiscal disadvantage.

Those who favored the continuation of the elective process in regard to state judges proposed that the judges on the State Court of Claims and the Family Court -- now appointive -- should be selected and elected in the same manner as judges of the State Supreme Court and of the Appeals Court.

As previously stated, the major divergence was over whether the state judges now subject to election should be made appointive. It was strongly urged by some that all state judges now subject to election be made subject to appointment by the appointing authority -- state judges by the Governor, City judges by the Mayor or by the County Executive, as pertinent.

These appointments would be subject to confirmation by the appropriate legislative body -- by the State Legislature in the case of state appointments -- by the City Council in the case of city appointments -- by the Board of Supervisors in the case of county appointments.

In connection with this system, a judicial screening and selection system was also proposed -- by a separate judicial commission for the Court of Appeals and separate judicial commissions for each judicial district in the state.

As to other provisions of the Article on the Judiciary, there was no preponderant support for changing the present court structures or for further consolidation of any of the present courts. But it was proposed that authorization be included in the Constitution for the Legislature to create arbitration courts, to be used on a voluntary basis by litigants.

MEMBERS OF THE SUBCOMMITTEE:

Judge James B. M. McNally, Chairman
Mr. Mal L. Barasch
Mr. Alfred Blumenthal
Mr. Stephen Jarema
Mr. Harvey Spear
Mr. Andrew Tyler

Edited by Julius C. C. Edelstein
for the Editorial Committee
September 26, 1966

Frank G. Rossetti, Chairman
Christopher Niebuhr, Vice-Chairman
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Howard Lichtenstein

July 13, 1966

SUBCOMMITTEE ON LABOR
CONSTITUTIONAL CONVENTION COMMITTEE
OF THE NEW YORK COUNTY DEMOCRATIC COMMITTEE

Article I, Sec. 17 provides:

1. Labor is not a commodity and shall never be considered an article of commerce. (No change)

2. Eight hour day and prevailing wage rates for contract labor in the performance of public work. (Eliminate as section of the Constitution and make it a Section of the Labor Law).

3. Right to self organization and collective bargaining. (No change)

Article I, Sec. 18 authorized the legislature to enact Workmen's Compensation Laws:

This section was originally put in the Constitution in 1913 as a result of adverse Ives vs. South Buffalo Ry. 201 NY 271 (1911) decision. The subcommittee believes that the section should be shortened to:

"Nothing contained in this Constitution shall be construed to limit the power of the Legislature to enact laws for the protection of the lives, health, or safety of employees; or for the payment, either by employers, or by employees and otherwise, either directly or through the state or other system of insurance".

Article V, Sec. 2 authorized (among others) the creation of a Labor Department.

Article V, Sec. 6 provides for civil service appointments and promotions, together with Veterans' preference credits.

Keep first sentence on civil service but remove detail on veterans' preference credits.

"that the Legislature may provide and establish a system of veterans' preference in the civil service of the State and all the civil subdivisions".

Setion 7 provides that membership in any pension or retirement system of the State or Civil division shall be a contractual relationship, the benefits of which shall not be diminished or impaired. (No change)

NEW YORK COUNTY CONSTITUTIONAL CONVENTION COMMITTEE

SUBCOMMITTEE ON LEGISLATIVE PROCEDURES

REPORT

JOSEPH ZARETZKI, Chairman
ALBERT H. BLUMENTHAL, Vice-Chairman
CHARLES B. RANGEL

In this report, consideration will be given to all matters contained in Article III of the Constitution except those which concern the methods and mechanics of reapportionment and the continuation of a bicameral legislature. These items are being considered by other sub-committees.

1. Number of Districts. At present, the number of Assembly districts is fixed by Article III, Section 5 of the Constitution at 150; and the number of Senate seats, while flexible in theory under Sections 3 and 4, is in fact fixed at 58.

In determining the size of the legislative body which this committee will recommend, we should consider a) the political effect reapportionment has already had in reducing the immediacy of representation in many upstate communities, b) the effect the number of members will have on the effectiveness of the body itself, and c) the cost of maintaining the legislative branch of government.

Some information on this subject is available. New York ranks eighth among the states in comparing the size of the respective legislatures, tenth in terms of legislative expenditures per capita, and second in terms of gross amount of legislative expenses (California is first). Finally, in terms of the comparative increases in the cost of maintaining the legislative branch of government, the average national increase between 1950 and 1965 was 193.6%. In New York, the 15-year increase was exactly 100% whereas in California the increase was almost 500%.

These possibilities exist: a unicameral legislature, or a bicameral legislature with a fixed number of seats in both houses, or a bicameral legislature with a flexible number of seats in at least one house and which will permit slight increases in the membership as the population increases.

Recommendation: This Committee is for a two house legislature; the upper house with a fixed number of seats; the lower house with a flexible number of seats (see Report of Reapportionment subcommittee).

2. Terms of Office. Should the present two-year term of one or both houses (as provided in Section 2) be changed? Some have proposed a four-year term for both houses, or for the Senate only, or for the both houses but with one house being elected in gubernatorial year and one being elected in the presidential year; or another proposal that in the Senate, at least, half of that body would be elected in a gubernatorial year and half in the presidential year.

Those who argue for the continuation of a 2-year term (for the lower house at least) feel that the electorate is entitled to frequent public expression on the performance of the party in power. Those proposing longer terms cite lack of stability, too great a response to public and political pressures, and increasingly higher campaign costs. To meet both positions, a compromise is feasible.

Recommendation: That members of both houses serve for a four-year term with Senators to be elected in a gubernatorial year and the Assembly to be elected in the presidential year.

3. Compensation of Members. Present increases in legislative salaries, both in Congress and locally, have raised a public debate concerning the status of state legislatures. Questions have arisen about full time (or professional) legislators as against part time (or so called "citizen") legislators; salaries and expense allowances have weighed heavily on the public mind : : : and pocket book.

In recent years, the length of legislative sessions has doubled --- from 1 and 2 days per week to 3 and 4 days per week; from 50 days per session to more than 100; from 3 month sessions to more than 6 months.

Of the 260 working days in each year, New York legislators spent more than 100 in Albany during 1965 and 1966. When added to committee work, efforts on district and constituent problems, and re-election efforts, more than one-half of a legislator's available income producing time is devoted to his or her office, in addition to innumerable after hours efforts. The time investments of the legislative leadership and of committee chairmen is even greater.

The expenses of a legislator average out at about $30 per day to live in Albany, about 30 round trips to Albany, and between $2000 and $3000 of out-of-session expenses not including campaign expenses which vary too widely to discuss here. In 1966, legislators received salary of $10,000, payment in lieu of expenses of $3000 (which are taxable if not spent) and travel allowances of 9 cents per mile. For the average New York City legislator, it meant gross receipts of $13,700, expenses of approximately $6500, leaving a taxable net of $6700. If doubled to represent full time service, legislative compensation remains at less than half of that received by the commissioners of most state agencies.

Section 6 provides for all members to be paid the same salaries, with extra allowances to legislative leaders. In order to permit changes in the methods of compensation, Section 6 should be revised.

Recommendations:

a) Legislative leaders should receive same salary as Lt. Governor;
b) Salary differentials for committee chairmen should be permitted;
c) Standard travel, per diem, and other expense reimbursement rates for all state officials including legislators shall be provided by such manner as the legislators may determine.

4. Convening the Legislature. The Legislature now convenes on the first Wednesday in January. It normally takes about 3 weeks to organize the committees and to proceed with the business at hand. Faced with a backlog of bills accumulated during the pre-filing period and the problem of considering a budget which is submitted in January and which must be adopted by March 31st, the committees of the legislature and the body, itself, has found it difficult to function.

Recommendation: That at the outset of each new term the Legislature convene on the first business day in December for the purposes of organization only; that it remain in session long enough to elect the officers of both houses, to appoint committee chairmen, and to employ the necessary staff. Thereafter, the Legislature should reconvene and be ready to do business in January.

5. Journal of the Proceedings. At present an journal is published which does not include the debates on bills. Transcriptions of the debates may not be obtained by the public without the consent of a member.

Recommendation: That the full proceedings including actual debates be published periodically and that the requirement of a member's consent to the publishing of his remarks be eliminated.

6. Members Immunity for Remarks on the Floor.

Recommendation: That such immunity be continued.

7. Bills May Originate in Either House.

Recommendation: That such provision be continued.

8. Quorums and Majorities. The present quorum to do business is a majority of the full membership. The present requirement to pass a bill is a majority of the full membership. Both houses are installing electronic voting which will encourage greater attendance at all sessions. However, the requirement of a constitutional majority combined with electronic voting prevents the use of the consent calendar similar to that used in Congress to expedite business particularly with respect to non-controversial bills.

Recommendation: That a quorum of a majority of all the members be continued but that the necessary majority to pass a bill be changed to a majority of the members present in order to permit the use of the consent calendar.

9. Time for passage of a Bill. The present requirment is for 3 calendar legislative days before a bill may be passed. The same rule applies to an amended bill.

Recommendation: That the present requirement be continued with respect to all bills except that with respect to amendments such bills be amenable for immediate passage upon unanimous consent.

10. The Life of a Bill. At present a bill is only good for the session in which it was filed. This encourages needless reprinting each year of most bills which were introduced for the record only. It also encourages committees to defeat bills when towards the end of the session the committee lacks adequate time to consider them fully.

Recommendation: That the life of the bills be for the length of the term rather than for the length of the session.

11. Discharging Bills from Committee. At present bills are reported on either favorably or unfavorably by the committees. After unfavorable action the only method to bring the bill to the floor for a vote is a motion to discharge, which must receive the affirmative votes of a majority of the members. Such motions are never successful. Some have recommended that a lesser vote be necessary to discharge a committee from consideration of a bill. Other have called for a petition procedure which would relieve the house of the necessity of a debate on every such motion.

Recommendation: That a petition procedure be created as an additional method for discharging a committee from consideration of a bill upon the signatures of a majority of the members ofeither house.

12. Establishment of a Constitutional Council. This would be a bi-partisan group of legislators from both houses, to review on a year-round basis various provisions of the Constitution and with the benefit of a full-time staff, constitute something similar to a permanent "Peck Commission".

Recommendation: That such a council be established.

13. Bill Signing Periods. Under the Constitution during the session the Governor has 10 days within which to consider a bill and 30 days after the conclusion of the session. There have been many complaints that both periods are inadequate.

Recommendation: That the bill signing periods both during and after the session be doubled, with the further provision that the Governor may not sign or veto a bill during the first half of each such period, so that the public will have adequate time to express its views, except in such cases as the Governor shall declare to be emergency situations based upon public necessity.

July 19, 1966

SUBCOMMITTEE ON MOTOR VEHICLE LAW QUALIFICATIONS
REPORT
NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE

Article V, section 2 of the State Constitution provides that the Department of Motor Vehicles is included among the "civil departments of the state government." This is the only provision in the Constitution referring directly to motor vehicles.

Thus the issue is not what existing provisions should be reexamined but whether additional clauses relating to motor vehicle law qualifications should be included in the Constitution. The subcommittee considered the following areas:

1. A restriction upon the use of motor vehicle taxes and fees to highway purposes. Such a restriction is included in state constitutions of several important states, including California, Iowa, Michigan, Minnesota, Missouri and Pennsylvania. A restriction of this type was favored by the Automobile Club of America Inc. (AAA) at the last constitutional convention, but was rejected by the delegates. As of last week the AAA had not yet decided whether it would take the same position at the forthcoming convention. The theory of such restrictions

is that automobile users should benefit directly from all automotive taxes.

According to the governor's 1966 budget message, the estimated automobile user taxes and fees for the fiscal year 1966-1967 amounted to $489 million and proposed expenditures for highways and highway safety were $634 million. The Temporary Commission on City Finances stated in its second interim report that the City spends roughly twice as much for streets, traffic control, etc., as it receives from City taxes and charges paid by highway users and from its share of state highway-user tax collections. In short, the advocates of earmarking highway user revenues have failed to prove their claim that highways and related purposes are being short changed.

Moreover, as a matter of fiscal policy it seems unwise to restrict general revenues in this manner.

2. Automotive Safety and Design and Driver Training Standards. The current interest both in Congress and by the New York State Legislative Committee on Motor Vehicles, Highway and Traffic Safety in these issues raises the question whether the Constitution should mandate safety standards and norms for driver training. The subcommittee believes that these areas are more proper for legislative - either federal or state -

action and for administrative determination, and should not be included in the Constitution.

Michael J. McNulty
Chairman
Subcommittee on Motor Vehicle
Law Qualifications

CONSTITUTIONAL CONVENTION COMMITTEE OF
NEW YORK COUNTY DEMOCRATIC COMMITTEE

SUBCOMMITTEE ON REAPPORTIONMENT

Summary of Final Recommendation

I. Size of House. There shall be a two house legislature. The size of the Senate shall be fixed at a number to be specified in the Constitution; we recommend a size of between 50 and 60. The size of the Assembly shall be flexible, based on a formula which will preserve separate representation for the same relative number of counties as under the present apportionment. Such a formula, for example, might provide that the ratio for determining the number of assemblymen shall be arrived at by taking the population of the county ranking 25th in size, plus 1/9 of such figure. The resulting population ratio (assuming a permissable 10% variation up or down from the ratio as recommended below) will permit separate representation for the same number of counties as under the existing apportionment (25 out of the 62 counties under the 1960 census). This formula would produce the following numbers of assemblymen under the previous census and presently available projections for the next three censuses:

1960	1970	1980	1990
155	160	162	154

II. Relationship Between Size of Houses. There will be no fixed relationship between the size of each house; therefore, Assembly districts will not be wholly contained within Senate districts.

III. Frequency of Reapportionment and Timetable. Reapportionment shall be required after each decennial census. The commission referred to below shall be appointed by September 1 of the census year (e.g. 1970). It shall complete and publish its report in preliminary form for public comment no later than September 1 of the year following the census (e.g. 1971). It shall promulgate its report in final form no later than November 1 of that year. The intent is that the new apportionment plan shall be completed in time for use at the first election after the census (e.g. 1972).

IV. How Reapportionment to be Accomplished.

1. Composition of Commission. Reapportionment shall be by a commission consisting of six members. Four members shall be appointed by the majority and minority leaders of the Senate and Speaker and Minority Leader of the Assembly, one by each. Two shall be appointed by the Governor, one each from each of the two largest political parties. (A majority of the committee recommends giving the Governor complete freedom in making these appointments. A minority view would require that he make the appointments from a panel of nominees submitted by some non-partisan source, such as the presidents of the two largest private universities in the State, but still subject to the requirement of no more than one from each party.)

2. Limitations on Membership. No member of the legislature may be a member of the commission.

3. Procedure in Event of Failure to Act. In the event the commission deadlocks or fails to act by the specified time, the Constitution shall require that a plan of apportionment be promulgated by the Court of Appeals.

4. Finality of Commission's Proposal. The commission's proposal, if and when finally promulgated, shall be final except for judicial review to insure conformity with the Constitution, at the suit of any citizen.

5. Commission Procedures. The Constitution shall require that the commission publish its proposals in advance of final approval with opportunity for comment by the public before the plan is made final.

V. Constitutional Provision of Guidelines for Apportionment

1. The Constitution shall require that districts be as nearly equal in number of inhabitants as may be, provided that in no event may Senate districts vary from the mean by more than 5% up or down, nor may Assembly districts vary from the mean by more than 10% up or down, nor may the average population of all the districts in New York City vary by more than 1% from the average population of all the districts outside the City.

2. No Senate or Assembly District may overlap New York City and an adjacent county.

3. The following anti-gerrymandering rules shall be complied with insofar as consistent with the population variation limitations set forth in V 1 above:

(a) Districts shll be compact.

(b) Districts shll be contiguous.

(c) Districts shll be convenient.

(d) No district shall contain a greater excess in population over an adjoining district than the population of a county on the border adjoining each district.

(e) Where a district boundary line is within a county, no district shall contain a greater excess in population over an adjoining district in the same county than the population of a town on the border adjoining each district.

(f) Where a district boundary line is within a town or city, no district shall contain a greater excess in population over an adjoining district than the population of a block on the border adjoining each district or 1% of the ratio for apportionment, whichever is larger.

(g) No block shall be divided in the formation of districts, redefining block as an area enclosed by streets or public or private ways.

(h) No county, town, city, or portion of incorporated village within a town may be divided in forming a district where it is smaller than the ratio of apportionment.

(i) Where a political unit (county, town, city, or portion of incorporated village within a town) is larger than the ratio, it shall be apportioned that number of whole districts equal to the number of ratios within its population, with a fractional remainder which may form part of an adjoining district or districts where necessary to comply with the population variance limitations.

4. Consistently with the foregoing requirements, the Constitution shall spell out rules for determining the number of whole seats to be apportioned to counties having more than one seat, to the extent that the population variance requirements do not require the division of districts between counties.

VI. Measure for Apportionment. The measure for apportionment shall be total population, rather than citizen population as at present.

VII. Effective Date. The present apportionment shall remain in effect until a plan is adopted in accordance with the new system after the next decennial census.

Robert J. Levinsohn, Vice-Chairman
Manfred Ohrenstein, Chairman
Jerome T. Orans
Harvey M. Spear
Robert Brady
Joseph Zaretzki
Hugo Rogers

NEW YORK COUNTY DEMOCRATIC COMMITTEE

CONSTITUTIONAL CONVENTION COMMITTEE

SUBCOMMITTEE ON TAXATION AND FINANCE

Fundamentally the provisions of the New York State Constitution dealing with taxation and finance raise problems in two areas of fiscal operations.

I. What, if any, should be the limitations or restrictions on (A) the State's and (B) the local governments' powers to raise money by taxation or by incurring debt? Are the present limitations and restrictions necessary or appropriate?

II. What, if any, should be the limitations and restrictions on the powers of the State or the local governments to spend money for, or extend credit to, private persons or undertakings? Are the present limitations and restrictions necessary or appropriate?

I. TAXATION AND DEBT

A. Power of State

(1) So far as the State's power to raise money by taxation is concerned, there is rarely any valid reason for

express Constitutional limitations. The limitations contained in the Bill of Rights, which effectively prohibit discriminatory or arbitrary taxation, seem to be quite sufficient. In the New York Constitution, the limitations on the State's taxing power are embodied in Article XVI. They are relatively modest, and for the most part are addressed to procedural matters. There is no pressing reason to urge changes in either the provisions affirming, or those prescribing procedures with respect to, the legislature's exercise of the taxing power, such as Article III, Section 22, Article XVI, Sections 2, 4 and 5.

However, a different problem is presented by the substantive limitations on legislative power. Those limitations may well be desirable as expressions of legislative policy, but, except possible for the continuation of previously granted tax exemptions to religious, educational and charitable institutions referred to in Section 1 of Article XVI, it is difficult to conclude that the restrictions prescribed are so "fundamental" as to be entitled to enshrinement in the Constitution. In particular, this is true of the disconnected provisions of Article XVI, Section 3, which exclude (a) intangible personal property from the reach of any ad valorem or excise tax, (b) undistributed profits from

the reach of any tax, and (c) the "money, securities and other intangible property" deposited by, or held in trust for, persons not domiciled in the State from location in the State for purposes of taxation. However understandable may be the considerations supporting the last prohibition as a legislative matter, they hardly rise to the dignity of constitutional commands. And certainly, the prohibitions against tax on undistributed profits and on residents' intangibles, even if justifiable as a matter of legislative policy, have no legitimate claim to constitutional embodiment. Residents' intangibles are subject to ad valorem tax in many States. New York may well disagree with those States as to the wisdom of such taxes. But the fact that other States impose such taxes suggests that the question, even if it is to be answered in the negative, does not call for a constitutional mandate.

(2) So far as the State's power to incur debt is concerned, there it is difficult to find any valid reason for perpetuating the Constitutional prohibitions and limitations, and the resulting complex array of exceptions thereto and restrictions thereon, which are embodied in Sections 9 through 19 of Article VII of the State Constitution, in the Housing Article (Article XVIII) and the Public Corporation Article (Article X, Sections 5 and 6). Broadly speaking the debt

provisions (a) restrict the State's power to incur debt to such specific debts as are authorized by referendum (Article VII, Section 11), except for an array of special kinds of debts, such as debts in anticipation of tax receipts, or to repel invasion or to suppress insurrection or forest fires or for grade crossing elimination, veterans' bonuses, housing loans, etc, and (b) prescribe modes of refunding and repayment. To the extent that limitations on the State's power to incur debts are designed to protect the credit of the State, there is no need for Constitutional requirement. That credit status will reflect the economic condition of the State and the terms of particular borrowings rather than Constitutional provisions. To be sure, the absence of debt limitations may enable today's Legislature to mortgage tomorrow's taxes. But all State debts mortgage the future. The question is whether the Legislature should be given the power and the responsibility in this area or whether the cumbersome and complicated referendum procedure with exceptions for a large variety of specific kinds of debts should prevail.

In the past, constitutional restrictions and exceptions have not precluded substantial increases in State debt and taxes,

They have simply complicated the fund raising process and made it difficult to evaluate intelligently what is in fact being done by way of debt creation. As the National Municipal League has pointed out (Model State Constitution, p. 91):

> "Despite elaborate constitutional limitations upon the legislature designed to insure fiscal prudence, state revenues, expenditures and outstanding debt have grown enormously since World War II. State revenues in 1960 were five times their pre-World War II level and state expenditures and outstanding state debt have grown in the same proportion. Legislatures have been resourceful in circumventing tax and debt limitations."

Whatever may be the historical origin of the fears of legislative irresponsibility or corruption and the resulting restrictions on legislative taxing and debt incurring power, today such mistrust of the Legislature is as misplaced as the restrictions on the Legislature are impediments to effective government. Again, as the National Municipal League has suggested (Salient Issues of Constitutional Revision, pp. 133-134):

> "Today, no one doubts that the states are spending more, taxing more, borrowing more, hiring more and doing more than at any other time in their history. No one disagrees that the national government has forced a great expansion of functional responsibility on the states and that all the traditional functions - law enforcement, highway, health, welfare and, above all, education - have similarly increased. * * *
>
> "This transformation makes it more necessary than ever that the policymaking organs of the state -

particularly the legislature - be freed of the bonds which historically were placed upon them in too many of the states. Constitutional restrictions upon state power - originally designed to curb governmental corruption and excesses - deny legislatures the elbow room for confronting and treating the problems coming to them. This is not a plea that the states should reform themselves so that once again they may take their places in a federal system of the kind envisaged by James Madison a century and a half ago; that system, founded upon a rural base and greatly restricted governmental functions, has been made obsolete by an industrialized and highly urban society. Rather this is an assertion that constitutional structures must be modernized if the states are to play effectively their rightful roles in the federal system of the mid-twentieth century."

Accordingly, we recommend the elimination of Sections 9 through 19, inclusive, of Article VII.

B. Power of Localities

The same considerations which suggest the elimination of express Constitutional restrictions and limitations on the State's power to impose taxes and to incur debt apply with no less force to the powers of local governmental subdivisions to impose taxes and to incur debt. Under the present Constitution, the taxing power of local governments is more restricted than the State's power, because the former's power to tax real estate is limited to a specified percentage of the full valuation of taxable real estate (Article VIII, Sect. 10). A comparable limitation is imposed on the power of local government to incur

indebtedness (Article VII, Sect. 4). But precisely because those restrictions have precluded localities from raising necessary funds, a vast and complicated pattern of exceptions to, and circumventions of, those limitations has developed.

As the functions of local government increase - and there is little reason to doubt that the next fifty years will see an increase in those functions more substantial than the past fifty years - the need for revenues will increase. As the need for revenues will increase, the Constitutional limitations on the localities' powers to obtain those revenues will impede the ability of localities to perform necessary services. Moreover, the considerations which impelled the imposition of limitations on localities - fear of imprudent or corrupt expenditures - have become less substantial. As the Advisory Commission on Intergovernmental Relations, established by Congress in 1959, has pointed out (State Constitutional and Statutory Restrictions on Local Taxing Powers (1962), p. 6) :

> "The comprehension level of the electorate, the competence of public officials, and the general quality of the entire apparatus of local government have made great strides since constitutional and statutory limitations on local taxation were first invented to safeguard property owners against bureaucratic and political abuse. Modern communication media provide public officials with tools to inform their constituents. An informed electorate

can insist on high quality and efficient governmental performance. It no longer needs the kind of protection that is purportedly afforded by crude and cumbersome property tax limitations."

In the words of the Commission, "The case against imposed restrictions on the taxing power of local government is that they are incompatible with responsible local government responsive to the needs of a rapidly growing, constantly changing mobile community".

To the extent that the power of local governments to tax or incur debts exists only by reason of a grant from the State Legislature, there is even less reason to impose Constitutional limitations on local governments than on the State itself. Any limitations on local power which may be thought desirable can be imposed by the Legislature. The real question in the case of local governments is not whether the State Constitution should restrict their power to tax or incur debts, but whether the State Constitution should positively affirm - and preclude the Legislature from curtailing - their power to impose at least certain kinds of taxes and to incur debts. That question is more appropriately considered in the Report of the Sub-Committee on Home Rule. But however that question may be resolved, we see no basis for any express Constitutional limitations on local taxing power or power to incur debts.

Accordingly, we recommend the repeal of Sections 2 - 12 of Article VIII.

II. SPENDING

The State Constitution, in Article VII, Section 8, and Article VIII, Section 1, prohibits, respectively, the State and the local governments from giving or lending the money or credit of the State or locality to any private corporation, association or undertaking; but in recognition of the welfare and other kinds of obligations of the State and localities, there are excepted from this prohibition a number of activities designed either to provide care and aid for the needy or to provide welfare (e.g. unemployment benefits, Social Security, etc.) or to assist private enterprise.

Historically, unhappy experiences with legislative and local officials' imprudence or corruption impelled the enactment of these prohibitions. But, as the above quoted authorities have noted, the level of legislative and official responsibility and responsiveness to their constituencies appears to be rising, so that the weaknesses of the past are less likely to recur. Moreover, in the light of the foreseealbe expansion of State and local expenditures in aid of private individuals or undertakings, the presence in the Constitution of

a general prohibition coupled with specific exceptions can create difficulties of a significance which would not have existed in the past, when the State played a considerably smaller role in the lives of its citizens. Future types of welfare or assistance or aid to private business may not be covered by the exceptions, or there may be, as there has been in the past, troublesome litigation over the scope of the prohibitions or of the exceptions.

On the other hand, it is difficult to appear to be arguing in favor of sin. Any effort to repeal the general prohibitions against "give-aways" will sound like such an argument. While ideally the Legislature and localities ought to be free to act in such matters, and certainly no cloud ought to appear on legislative or local programs of emerging types of private aid or assistance, it may be that the existing provisions are flexible enough to survive for another two generations.

In balance, the Sub-Committee recommends elimination of Article VII, Sect. 8 and Article VIII, Sect. 1. If, however, those provisions are not repealed, attention will have to be given to expanding the exceptions to the general prohibition contained in those provisions so that they cover educational, housing and other assistance to be suggested by the Committee for inclusion in the Constitution.

III. THE EXECUTIVE BUDGET

The provisions on the executive budget which are embodied in Article VII, Sections 1 - 7, appear to be unexceptionable. We are aware of no reasons to change them.

John G. Heimann - Chairman
Victor Brudney - Vice-Chairman
William Murphy
W. Bernard Richland
Edward J. Brady

August 10, 1966

CONSTITUTIONAL CONVENTION COMMITTEE

SUBCOMMITTEE ON TRANSPORTATION

Report

The Subcommittee believes that transportation is largely a matter to be dealt with by the legislature and local subdivisions, free from unwarranted constitutional restraints. It has therefore sought, primarily, to determine whether or not adequate powers are provided for in the Constitution to enable the legislature and the local sub-divisions to regulate, create and coordinate transportation facilities and services in the public interest, including the use of subsidies, debt guarantees, eminent domain takings, taxation and tax exemptions. The Subcommittee has given particular attention to the role of public corporations (authorities) in the transportation field, to the need for metropolitan area cooperation with neighboring states, and to the desirability of further integration of transportation facilities and services owned or operated by local subdivisions and by various authorities.

1. Eminent Domain

Art. 1 Sect. 7 governs the taking of private property for public use, and Art. 9 Sect. 1(e) provides for the taking of property by local governments. The Subcommittee believes that adequate power exists to meet transportation needs and does not believe that any constitutional restraints should be placed on the power so far as transportation is concerned.

2. State or local guaranty or subsidy of transportation corporations.

Art. 7 Sect. 8 prohibits gifts or loans of state credit or money to private corporations; Art. 8 Sect. 1 prohibits gifts or loans of property or credit of local subdivisions to private corporations; and Art. 10 Sect. 5 prohibits the state or any political subdivision from guaranteeing obligations of public corporations (authorities). Amendments to Art. 7 Sect. 8 and Art. 10 Sect. 7 adopted in 1961 created an exception for state loans to public corporations to aid manufacturing plants (limit of $50 million); Art. 10 Sect. 6 adopted in 1951 created an exception for public corporations to construct thruways (limit of $500 million); and Art. 10 Sect. 7 adopted in 1961 created an exception for the Port of New York Authority railroad car purchase program (limit of $100 million).

Recommendations:

The Transportation Subcommittee recommends that the above prohibitions in Art. 7 Sect. 8, Art. 8 Sect. 1 and Art. 10 Sect. 5 be eliminated entirely along with the special exceptions referred to. The prohibitions reflect an unwarranted distrust of state and local legislative processes and make public financing of desirable activities too inflexible; in practice, they have prohibited aid to privately owned transportation, notably rail and bus transportation, at a time when billions are being spent on competing modes, notably roads for the private automobile. Alternatively, the Subcommittee recommends a blanket exception from the above prohibitions in the case of private and public corporations engaged in constructing public transportation facilities or providing common carrier transportation services pursuant to public franchise.

3. Restrictions on local indebtedness:

Art. 8 restricts the power of local subdivisions to incur indebtedness and provides for various exceptions such as indebtedness incurred by New York City for transit purposes (Art. 8 Sect. 7-a).

Recommendations:

The Subcommittee recommends the elimination of Art. 8 in its entirety with the exception of that portion (Art. 8, Sect. 1) authorizing two or more local units of government to join together to provide a municipal facility or service. Alternatively, the Subcommittee recommends a blanket exception from Art. 8 in the case of debt incurred for the construction of public transportation facilities or for the providing of common carrier transportation services pursuant to public franchise. Since the state is not liable for local debt, the market will regulate local debt by increasing interest costs when local resources for repayment become strained.

4. Home Rule:

Art. 9 Sect. 2(c)(5) and (6) permits local governments to acquire and manage streets and highways and to acquire, own and operate "transit facilities" unless inconsistent with the constitution or general laws or unless restricted from doing so by the legislature.

Recommendations:

(a) The Subcommittee recommends that Art. 9 be clarified to ensure that local subdivisions have full power, subject to the limitations of Art. 9, to acquire, own, operate and regulate all forms of transportation facilities and services (not only "transit facilities") including without limitation, buses, rail transit and railroads, parking facilities, terminal facilities, bridges, water and air transportation facilities and services.

(b) The Subcommittee believes that the home rule principle requires that the following constitutional provisions be adopted with respect to authorities established primarily to carry out activities within the boundaries of New York City (or other of the state's largest cities):

(i) a majority of the governing body of all existing and future such authorities must consist of persons named by the city;

(ii) no future such authorities may be created except with the consent of the city; and

(iii) the present requirement of Art. 10 Sect. 5 that an authority with power to impose real estate taxes and to furnish facilities and services of a character formerly furnished by the city must be created by city-wide referendum, should be amended to permit a city to consent to the creation of such an authority by whatever means it chooses, consistent with its own governing statutes.

5. Authorities:

Art. 10 Sect. 5 provides that public corporations with "power to collect rentals, charges, rates or fees for the services or facilities furnished or supplied by it" can be created only by special act of the legislature and, if the corporation is to have the power to impose charges on the owners or occupants of real estate and is to furnish services or facilities of a character formerly furnished by the city, it can be created only pursuant to a city-wide referendum (except in the case of a corporation created by interstate compact).

The accounts of such public corporations are "subject to the supervision of the state comptroller, or, if the member or members of such public corporation are appointed by the mayor of a city, to the supervision of the comptroller of such city; provided, however, that this provision shall not apply to such a public corporation created pursuant to agreement with another state or foreign power, except with the consent of the parties to such agreement or compact." Guarantees of obligations of such corporations by the state and political subdivisions are prohibited with the exception of up to $500 million of thruway bonds (Art. 10 Sect. 6), $100 million of obligations of the Port of New York Authority issued for financing the purchase of railroad passenger cars (Art. 10 Sect. 7), and $50 million of obligations or a public corporation to provide loans for manufacturing plants. If authorized by the legislature, the state or a political sub-division may acquire the properties of any such corporation and pay the indebtedness thereof.

Recommendations:

The Subcommittee recommends as follows:

(a) Creation of authorities should continue to require a special act of legislature in each case. A requirement of a greater than majority vote to adopt such an act is on balance undesirable since it would permit a minority of the legislature to block possibly desirable projects. In any case, the incentive to create new authorities should be diminished if the Art. 7 and 8 prohibitions upon the guarantee of obligations and the indebtedness of local subdivisions are eliminated.

(b) The prohibition of state and local guaranty of authority obligations in Art. 10 Sect. 5 should be eliminated.

(c) The Constitution should require that the act of the legislature establishing the authority set forth with reasonable specificity the activities which may be carried on by the authority and prohibit activities not so set forth.

(d) The Constitution should continue to require that authority accounts shall be subject to the supervision of the state or city comptroller, as the case may be, and, in addition, should require that all authorities shall be subject to such requirements as may be enacted from time to time by the legislature relating to:

(i) accounting standards and disclosure of financial condition, earnings and surplus; and

(ii) maximum accumulations of surplus.

(e) The Constitution should also provide that all authority bonds may be callable by the state or local subdivisions at any time at face amount plus a premium necessary to ensure just compensation to bondholders.

By guaranteeing authority bonds or, if necessary calling them, the state and local subdivisions should be able to make use of authority surpluses and integrate authorities with other entities in the transportation field, notwithstanding provisions in the contract of the authority with bondholders, if that should prove desirable.

6. Interstate Compacts:

The Constitution does not make any reference to interstate compacts except to provide in Art. 10 Sect. 5 that interstate compact authorities need not be established by citywide referendum and except the provisions referred to above permitting guarantee of up to $100 million of Port Authority bonds.

Recommendations:

(a) The Constitution should specifically provide for the creation of interstate compacts by special act of the legislature. Since the interstate compact overrides New York law, there is a strong argument, by analogy to the requirement that U. S. treaties must be approved by two-thirds of the U. S. Senate, that acts of the legislature approving interstate compacts should require a greater than majority vote. However, the Subcommittee believes that on balance such a requirement would give a minority too much power to block interstate cooperation, which is most likely to be desirable in the New York City metropolitan area.

(b) The Constitution should require that the powers conferred by the interstate compact must be specifically set forth and limited.

(c) The Constitution should require that authorities established by interstate compacts also be subject to such requirements as may be enacted from time to time by the New York Legislature relating to accounting standards and disclosure of financial condition, earnings, and surplus.

7. Canals:

Art. 15 restricts the disposition of canals and canal properties, the imposition of tolls upon canal users and the payment by corporation to contractors working on canals.

Recommendation:

The Subcommittee recommends the elimination of Art. 15 from the Constitution.

8. Taxation:

Art. 16 Sect. 1 relating to taxation governs taxation and exemption from taxation. The subcommittee believes that adequate state power exists to meet transportation needs and does not believe that any Constitutional restraints should be placed upon the power to tax or exempt from tax so far as transportation is concerned. The Subcommittee is leaving to other subcommittees the question of local subdivision taxing powers.

Submitted by Transportation Committee

Maxwell Lehman, Chairman
James M. Edwards
Stanley Mailman

Robert Connery, Chairman
Robert B. Brady

The Report of the
Sub-Committee on Unicameralism

New York County Democratic Committee
on the State Convention

Unicameralism is really not the question with which we should be concerned. Unicameralism is simply a structural change in the existing framework of government, and however appealing it may seem because of simplicity, it will not insure that the legislature's problems will be solved.

The principal problem New York State confronts is how to obtain able, intelligent, honest and representative legislators, and how to provide them with adequate facilities to do a good job as a responsible legislative body. Unicameralism may or may not be a step forward in solving our problems. Let's look at the record.

The Nebraska Experience

Brief History: A movement to convince Nebraskans to adopt a one house legislature was initiated in 1913 by Senator George Norris and others. Two decades later during the worst days of the depression, the campaign for unicameralism succeeded in securing a statewide vote on the constitutional amendment to merge Nebraska's 33-member Senate and 101-member House into a single legislative body. Carried by a large margin, the amendment instituted a unicameral legislative body of not less than 30 nor more than 50 members (Currently 49) elected from single member districts. The Nebraska unicameral legislature has operated ever since without any serious attempt to return to bicameralism. But Nebraska remains the only state to function on the unicameral system.

The Principal Arguments for Unicameralism based on the Nebraska experience are the following:

(1) Cost: One house has functioned less expensively than two. It has been estimated that the first unicameral legislature operated at a cost of 24% less than the bicameral legislature. (Total cost $140,000.)

(2) Responsiveness and Visibility: Rules of procedure have been adopted by the unicameral legislature that are simple and deliberate. Mandatory public hearings are held on all bills and even committee executive sessions have been opened to the press. Under present procedures bills introduced and reported by committees can be observed, followed and reported by the press. Furthermore, the average number of bills introduced during the unicameral session has been reduced by 50% over the bicameral sessions, while the number of laws enacted by the unicameral legislature has increased. Proponents of unicameralism attribute the change in the system to a smaller legislative body which has placed more direct responsibility upon each member.

(3) Checks and Balances: Advocates of unicameralism have asserted that a better functional system has been produced, for checks and balances are more visible and direct in the hands of a governor's veto, court review, voter referendum and initiative and a more publicly aware voter. Allegedly, checks and balances are best exercised among the three branches of government, not within just one.

(4) Improved Personnel: A decade following the introduction of the unicameral system, supporters of the new system argue that a better educated, more widely experienced legislators have been the rule in the Nebraska legislature.

On the Other Side of the Nebraska Experience:

(1) Quality of Legislation: It should be recognized that an adequate evaluation of any state government must consider the kind and quality of legislation which it has enacted, rather than the techniques used in enactment. In Nebraska's case:

"The unicameral Nebraska legislature continues to bear all the distinctive marks of a conservative mid-west assembly. It still adheres to the property tax and has fended off attempts to impose general sales and income levies. During this session (1963) it outlawed the Communist Party and lacked only one vote of ordering an investigation of school books as to their degree of "Americanism." It holds the purse strings tightly and had the University of Nebraska and other state institutions and agencies on edge as it dealt with the budget. In the face of charges of gross gerrymandering,

it reduced the state's congressional districts by one, but failed to touch its own legislative districts." (presently based on the 1930 census)

(2) Economy: Annual salaries of Nebraska legislators had been constitutionally limited to $872 until 1958, when a constitutional amendment increased salaries to $2400. Besides a minimum annual salary legislators were required to informally convene between sessions to conduct their own research and prepare bills for the following session. Under these hardships, frugality at the expense of knowledgeable advice and skilled preparation hardly justifies the saving.

(3) Personnel: More recent estimates of the Nebraska legislature have assessed their present membership "as about the same caliber of men that can be found in other state legislatures" with not as many lawyers. If anything, many of the legislators have found themselves overworked, and due to meager financial compensation, have returned to private life.

Summary of the Findings: Unicameralism as a structural change, does not guarantee good government, nor does it necessarily provide forward-looking, progressive government. The Nebraska unicameral arrangement has removed some of the more procedural obstacles and restraints which had impeded the functioning of its bicameral legislature. However, many of these same procedural improvements could be made within a bicameral system. On the whole, the record remains inconclusive. Nebraska's historical antecedents, constituencies and problems are qualitatively and quantitatively different from those of a more urban state. Comparisons are difficult to make.

A Proposed New York State Plan

Purpose: A New York Plan has as its stated objective the transformation of New York legislators from their present part-time citizen role to the position of full-time professional legislators closely following the system of the National Congress.

Specific Proposals:

(1) Reduction in present Legislatures' Size: Reduce the present size of the New York State Legislature.

-Senate from 65 members to a suggested size of 25 to 28.

-Assembly from 165 members to a suggested size of 90 to 105 members.

-This would mean an overall reduction in both houses of 97 to 115 members, or roughly half the present size.

(2) Simplify procedural rules and provide greater public participation in committee hearings.

(3) Improved Salaries: Raise the present salaries of members of both Houses from $10,000 to $25,000 annually.

(4) Offices and Staffing: Provide finances over and above salaries for individual offices and staff in both Albany and the home district for each representative.

Provide finances for staff in each House of the legislature, staff for committees and staff for the majority and minority leaders.

Summary: Support of unicameralism is based more on theory than extensive legislative practice. The Nebraska experience, as has been cited, is not justification alone for revamping our entire state governmental structure. It does suggest, in conjunction with recent Supreme Court directives, that strategic and well-timed changes may be implemented to strengthen the functioning of our state system. The New York Plan addresses itself to the heart of these conditions--the necessity for a full-time legislature, reduced in number, but increased in staff and provided with links to individual constituencies. This proposed plan ensures a framework for increased competency and furnishes the means for responsiveness to the needs of this state.

References

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CONSTITUTIONAL CONVENTION COMMITTEE

Sub-Committee on Welfare

From: James R. Dumpson, Chairman, James W. Fogarty and Dr. Paul Schreiber

The Sub-Committee have met and reviewed the State Constitution with reference to provisions relating to Social Welfare. Specifically, we reviewed the following articles and sections:

Art. I	Sec. 9
Art. V	Sec. 2
Art. VI	Sec. 32
Art. VII	Sec. 8
Art. VIII	Sec. 1
Art. XVII	Sec. 1, 2, 6

We agreed on the following observations:

The Constitution as related to Social Welfare (excluding Education, Housing, and similar areas frequently included broadly under the term Social Welfare) is sufficiently general and uninhibiting in its statement as to permit considerable latitude and flexibility on the part of the Legislature to act in the best interest of the people of this State. We consider this as positive and would not wish it otherwise.

The language of certain sections is archaic and might well be rewritten with this in mind. We suggest a clearer statement concerning the executive responsibility of the Commissioner of Social Welfare in relation to the State Board of Social Welfare. We suggest a more positive statement of the State's responsibility for people in need. As presently stated, it does not reflect the concept of State responsibility for the protection and promotion of the welfare and well-being of all of the people. We believe that it should.

The protection and social well-being of the people of the state are matters of public concern and provision shall be made to assure this protection

and social well-being. In pursuance of this, a comprehensive program of social services, available to all citizens as a matter of right, regardless of financial status, is essential to effective functioning of the citizenry of the State.

Continuing changes in modern life have sharply reduced the capacity of the family and the neighborhood to aid its members in dealing with a variety of social and family problems. The elderly, the sick and disabled, newcomers to urban life, youth, men and women seeking to adapt to a changed market for their labor, members of minority groups and, in fact, most people are confronted at times with problems requiring a new type of community service. These problems are not restricted to persons of low income or of little education.

Financial assistance, while of primary importance in many instances, is but one answer to the variety of problems spawned by the rapidly changing patterns of modern society. A basic guarantee of social services to help individuals and families resolve or prevent problems must be regarded as equally essential in a responsive and modern public welfare program. Ways must be found to bring the comprehensive social services that modern living requires to all who need them, when and where they are needed.

In brief, by appropriate language, the Constitution should direct provision for a comprehensive program of social services, governmentally assured under public and voluntary auspices, in addition to adequate income support, universally available, easily accessible, and as a matter of right. The manner in which this obligation is to be implemented shall from time to time be determined by the Legislature.

We would call to your attention Art. VII, Sec. 8, dealing with payments to voluntary agencies, and of Art. VI, Sec. 32, dealing with religious protection of children in placement. We recommend that Art. VII, Sec. 8, remain as stated. We support Art. VI, Sec. 32. We do believe it should be amended to read, "when practicable and/or in the best interests of the child," and also amended to take into account those persons who do not fall within the established major sectarian groupings, and those who by choice profess no religion - and should be free to have the custody of their children treated accordingly. The article as presently stated denies a small group of persons their right of choice in the area of religious identification.