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*West Virginia Supreme Court of Appeals*

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## A PROPOSED NEW JUDICIAL ARTICLE FOR WEST VIRGINIA

THORNTON G. BERRY, JR.\*

Judicial reform is long overdue in West Virginia. The need for such reform or modernization of the judicial system in West Virginia has been felt by many people for quite some time, and several attempts have been made in the past to have the legislature submit to the voters of the State a new judicial article as a constitutional amendment. At long last, the legislature, on March 9, 1974, passed a committee substitute for Senate Joint Resolution Number 6, which will submit to the voters of West Virginia, at the general election in November of this year, a proposed amendment to the constitution to modernize the judicial system of this State.

The Constitution of West Virginia, which is the basic law of the State, is over one hundred years old, the first constitution having been adopted in 1863 and the present constitution in 1872. Article VIII, the judicial article of this latest constitution, has been changed very little since its adoption. The only major change came in 1902 when the size of the Supreme Court of Appeals was increased from four judges to five, permitting a majority of three judges to provide a decision which would be binding authority upon all inferior courts in the State.

The move toward constitutional revision in the various states of this country in the past decade has turned into a boom. Most of the states are doing something about their basic document and many have adopted new constitutions. Others are in the process of obtaining new and modern constitutions. Apparently these states feel compelled to follow the advice of former Governor Terry Sanford of North Carolina who wrote: "State constitutions, for so long the drag anchors of state progress, and permanent cloaks for the protection of special interests and points of view, should be revised or rewritten into more concise statements of principle." However, constitutional conventions, necessary to obtain new constitutions, are expensive and time consuming, and their products are not always favorably received. The voters have rejected convention drafts in several states. In New Jersey, for example, the State supreme court struck down a part of that State's convention draft after voters had given it their approval. In 1965, the West Virginia Supreme Court of Appeals held an attempt of the Legisla-

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ture of West Virginia to provide for a constitutional convention to be unconstitutional under the State constitution because of malapportionment of delegates to the proposed convention.

An entirely new constitution for West Virginia would be the ideal answer to many of the State's problems. There are those who are working toward such a solution, but there are many difficulties to be overcome in obtaining it.

The best approach to the modernization of the judicial system in West Virginia is to propose an entirely new judicial article to the present constitution. In the revision of state constitutions, either by adoption of new constitutions or amendments to the existing constitutions, there should be contained only basic principles, with all other matters left for the statute books. While it is true that many reforms and modernizations in this State can be accomplished by statute, it is much better that the basic principle be contained in an amendment of the entire judicial article to the constitution, leaving the refinements to be enacted into law by the Legislature.

In 1967, a citizens conference was held in Charleston, sponsored by the various bar associations, the State Bar, the West Virginia University College of Law, and the American Judicature Society. Invitations were extended by the Governor to prominent citizens from all sections of the State, and, from this meeting, a modern judicial article was proposed. Another citizens conference for the same purpose and in the same manner was held in Charleston in 1968, after which, with the technical aid and assistance of a committee composed of members of the State Bar and the West Virginia Bar Association, a completed draft approved by the conference was prepared. It was this draft that was presented to the Constitutional Revision Committee of the House of Delegates on several occasions, but with little success.

The currently proposed amendment to Article VIII of the constitution is a compromise of the original proposed draft referred to above. In fact, it is a compromise of the draft submitted in Senate Joint Resolution No. 6. The present proposal does not contain many of the original suggestions made by the citizens conference, such as a merit selection of judges, a commission on judicial qualifications for the removal, suspension, and retirement of judges, the placing of probate matters in the circuit courts instead of the county courts, and the method of replacing the justice of the peace system. However, if passed in November, it would be a great stride

forward toward modernizing the judicial system in this State. The proposed amendment would afford a unified court system for this State. This is the essential requirement for modernizing all court systems. Such an arrangement was first proposed by Dean Roscoe Pound in 1906, and many states have recently, or are now, adopting such systems, either in whole or in part.

The basic changes which are contained in this proposed constitutional amendment are as follows:

It would provide for a unified system of courts to be established in the State. All of the lower State courts would be under the general supervision of the Supreme Court of Appeals, the highest court in the State. The Supreme Court of Appeals would continue to be composed of five members designated as justices. One of the justices would be designated as chief justice by the other members of the court and would serve as the administrative head of all the courts in the State. The Supreme Court of Appeals would have the power to appoint officers and employees of the court and to promulgate rules and regulations concerning the proceedings in all of the courts. The chief justice could assign judges from one court to another court on a temporary basis when the need arose, or when desirable, in addition to having the authority to appoint an administrative assistant or director to serve at the will and pleasure of the court at a salary to be fixed by the court. If, at any time, a justice is temporarily disqualified, or for any reason unable to serve, the chief justice could assign a judge of an intermediate appellate court or of a circuit court to serve on the Supreme Court of Appeals during such disqualification or disability.

The Supreme Court of Appeals would have appellate jurisdiction of criminal and civil cases and original and appellate jurisdiction in extraordinary proceedings. In civil cases, the matter in controversy must be of greater value or amount than three hundred dollars, exclusive of costs, unless such amount is increased by the Legislature, in order to confer jurisdiction. The Legislature would be empowered to establish an intermediate appellate court which would, if and when established, be subject to supervision of the Supreme Court of Appeals.

Under the unified court system, the only courts of general jurisdiction would be the circuit courts, some of which may have several judges, depending on the needs of the circuit. The number would be determined by the Legislature, and where the circuit court is authorized to have more than one judge, the manner in

which the business of the court would be divided would be determined by the Supreme Court of Appeals. Courts of record of limited jurisdiction, heretofore established by the Legislature, would become an integral part of the circuit court and the judges thereof would continue as judges of the circuit court until the expiration of their terms—either December 31, 1976 or December 31, 1984, depending on when the present terms expire. Where a circuit court has more than one judge, one of the judges would be designated as chief judge.

Circuit courts would have original and general jurisdiction of all matters at law where the value or amount in controversy, exclusive or interest and costs, exceeds one hundred dollars, unless such amount is increased by the Legislature. Such courts would have jurisdiction in extraordinary proceedings and all crimes and misdemeanors. Circuit courts would also have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error, or supersedeas is allowed by law to the judgment or proceedings of any court of limited jurisdiction, unless such jurisdiction is conferred by law exclusively upon an intermediate appellate court or the Supreme Court of Appeals.

Subject to the approval of the Supreme Court of Appeals, each circuit court would have authority and power to establish local rules to govern the court. In addition, subject to the supervisory control of the Supreme Court of Appeals, each circuit court would have general supervisory control over all magistrate courts in the circuit. Under the direction of the chief justice of the Supreme Court of Appeals, the judge of the circuit court, or the chief judge thereof, if there be more than one judge for the circuit, would be the administrative head of the circuit court and all magistrate courts in the circuit.

The Legislature would establish in each county a magistrate court, or courts, with the right of appeal as prescribed by law. Such court, or courts, could be courts of record if the Legislature so designated. The Legislature would determine the qualifications and the number of magistrates for each court and whether the election of such magistrates would be on a partisan or nonpartisan basis. The same legislative authority applies to the election of justices and judges. However, any person serving as a justice of the peace of this State at the adoption of this amendment, and who has served as a justice of the peace for at least one year prior to such adoption, would, insofar as any qualifications established by the Legislature for the office of magistrate are concerned, and not-

withstanding the same, be deemed qualified for life to run for election as a magistrate. Furthermore, the Legislature would not have the power to require that a magistrate be a person licensed to practice the profession of law. The magistrates would hold their offices for the term of four years unless sooner removed or retired as provided in the proposed amendment. The Legislature would also determine the number of officers to be selected for each magistrate's court and the manner of their selection. A magistrate or officer of such court would be required to reside in the county for which he was elected or selected. The Legislature would prescribe the manner of filling any vacancy in the office of a magistrate or officer of the court.

The jurisdiction of magistrate courts would extend throughout the county for which it was established and would be uniform for all counties of the state. The Legislature would determine what original jurisdiction these courts would have in criminal matters, with the exception that no person could be committed or sentenced for a felony in these courts. They would have original jurisdiction in all civil cases wherein the value or amount in controversy, exclusive of interest and costs, did not exceed fifteen hundred dollars, unless this amount be increased by the Legislature. Such courts would not have jurisdiction in proceedings involving the title to real estate or in other civil matters that may be excluded from their jurisdiction by the Legislature.

In a jury trial in a magistrate court, the jury would consist of six members, and no magistrate or other officer of a magistrate court would be compensated on a fee basis. The compensation for all such officers would be by salaries prescribed by law. After January 1, 1977, justice of the peace courts would cease to exist.

Other courts of limited jurisdiction would be municipal police or mayors' courts. The Legislature would control the establishment and manner of the selection of judges of such courts. These courts' jurisdiction would be limited to the enforcement of municipal ordinances, with the right of appeal as prescribed by law. All such courts presently in existence would continue until January 1, 1977, at which time they would cease to exist.

All justices would be required to have been admitted to practice law for not less than ten years and all judges, except magistrates, municipal police, or mayors' judges shall have been admitted to practice law in the State for not less than five years. The salaries of all justices, judges, and magistrates would be paid entirely by the State.

The Supreme Court of Appeals would have the power to censure or temporarily suspend any justice, judge, or magistrate for any violation of the Judicial Code of Ethics or the Code of Regulations and Standards of Conduct and Performance heretofore adopted or to be adopted, or to retire any justice, judge, or magistrate who is eligible for retirement, and who, because of any physical or mental incapacity should not, in the opinion of the Supreme Court of Appeals, continue to serve as justice, judge, or magistrate. A magistrate could be removed from office in the manner provided by law for the removal of county officers.

A retired justice or judge may, with his consent and with the approval of the Supreme Court of Appeals, be recalled by the chief justice of the Supreme Court of Appeals for temporary assignment as a justice of the Supreme Court of Appeals or a judge of the intermediate court, a circuit court, or a magistrate court.

The Legislature would designate what courts or officers thereof would have the authority to issue process and before what court or officer thereof the process would be returnable. The Legislature would also designate what court or officer would have the power or authority to admit persons to bail. No person exercising such power would be compensated for such service on a fee basis.

All laws of this State in force at the time this amendment takes effect, and not repugnant thereto, would continue as the law of the State until altered or repealed by the Legislature. In addition, all matters pending in any court at the time this amendment takes effect would remain and would be prosecuted in the court in which they are pending.

All persons interested in the improvement and modernization of the administration of justice in this State should actively work for the passage of this proposed constitutional amendment. The executive committee set up by the citizens conference, headed by Mr. Paul Ney of Jane Lew, West Virginia, I am sure, will be active, and will lend its wholehearted support toward the passage of this important amendment to the constitution of the State of West Virginia. The various organizations which have sponsored this proposal in the past should confine their efforts under a committee set up for such purpose and employ, if possible, a professional public relation consultant to coordinate and direct the campaign for the ratification and passage of the proposed amendment.

The American Judicature Society, I am confident, will be glad to offer its services, as it has done in the past, in this cause. Promi-

ment speakers from other states should be invited to come into this State to explain to the voters the importance of the passage of the amendment.

We now have the opportunity to update the courts of this State and to modernize the judicial system, and I firmly believe that if all the interested citizens, both laymen and members of the legal profession, put their shoulders to the wheel and do their part, we will be successful in this endeavor at the election this fall.

The proposed amendment, as it will appear on the ballot, will be numbered "Amendment No. 2" and designated as the "Judicial Reorganization Amendment," and the purpose of the proposed amendment is summarized as follows: "TO AMEND THE STATE CONSTITUTION TO PROVIDE A UNIFIED COURT SYSTEM WHICH ASSURES THE PROMPT AND EFFICIENT ADMINISTRATION OF JUSTICE IN WEST VIRGINIA."