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Carl M. Frasure
West Virginia University

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CONSTITUTIONAL REVISION— THE LEGISLATURE

CARL M. FRASURE*

At the 1966 Conference on Government of the National Municipal League, former Governor Terry Sanford of North Carolina declared that "No state can be strong with a weak legislature. . . ." Earlier the same year, Professor William J. Keefe of Chatham College, declared at the meeting of the American Assembly that "[T]he American state legislature is an institution wanting in everything except resilience."¹

With but few changes the West Virginia Legislature of today is the legislative body created by the constitution of 1872. An essentially nineteenth century institution is, therefore, attempting, as in many states, to solve twentieth-century problems. Using the Virginia government as a model, the framers of the West Virginia constitutions in 1863 and 1872 incorporated the legislative restrictions of the Virginia constitution and added others that have tended further to hamper effective lawmaking in the state. Perhaps in no phase of legislating were these restrictions more obvious than in budget procedures.

Yet in its 1967 session, the Legislature proposed to compromise its budget-making function by approving an "executive-type" budget amendment which would permit the Governor to disapprove any item of the budget or to reduce any item or parts of items contained therein.² As a practical matter this would mean that the Legislature would have little or no chance to consider the Governor's actions since the budget is always passed very late in the session or even during an extended session as was true this year. The saying that the "power of the purse strings is vested in the legislature" hardly applies to West Virginia now; this amendment was ap-

*B.A., M.A., Ph.D., Ohio State University; Professor of Political Science, West Virginia University; former Dean of the College of Arts and Sciences, West Virginia University; former Chairman, Political Science Department, West Virginia University.

¹Address by William J. Keefe, Twenty-ninth American Assembly, on State Legislatures, April 28-May 1, 1966, at Arden House on the Harriman (N.Y.) campus of Columbia University. See also Keefe, *The Functions and Power of the State Legislature*, in the AMERICAN ASSEMBLY, STATE LEGISLATURES IN AMERICAN POLITICS 37. (A Heard ed. 1966).

²H.J. Res. No. 3, Acts of the 58th W. Va. Leg., Reg. Sess. (1967). The amendment was submitted to the voters of the state by Acts of the 58th W. Va. Leg. ch. 15, Reg. Sess. (1968) [hereinafter cited as Acts].

proved by the voters,⁸ and much of the power of the Legislature over finances could be nullified. It so happened in the Legislative session of 1969 that the Governor did not see fit to change the budget in any particular as passed by the Legislature. The budget, as usual, was passed late in the session, in fact in an extended session, and the Legislature had adjourned and gone home before the Governor acted on the budget. This good fortune may have been more the result of a new Governor being in office than an agreement between the Republican Governor and the Democratic Legislature concerning the budget in its entirety or details.

The new budget process in the state is, however, a decided improvement over the previous commission system of budget making.

A growing recognition on the part of legislators that something ought to be done to strengthen the position of the Legislature resulted in the creation of the Citizens Advisory Commission on the Legislature of West Virginia in accordance with Senate Concurrent Resolution No. 12, adopted by the West Virginia Legislature on March 10, 1967. The thirty-two member citizen-legislator body was charged with the duty and responsibility to make a comprehensive study of the West Virginia Legislature, to present recommendations to strengthen and improve the ability of the Legislature to fulfill its responsibilities and to make it more responsive to the demands and needs of the citizens of the state.

There has been a growing awareness of the fact that the state legislatures are restricted unduly and unreasonably by constitutional provisions and statutory regulations. The means must be provided to attract qualified people to serve in state legislatures. They must in turn be provided with the means to attract and retain qualified staff personnel and to obtain the physical tools they require to perform their functions.

Most states in the Union have become aware that state legislatures need to be revitalized. Many have or are now conducting studies of their legislative process. Several national organizations, such as the Council of State Governments and the Citizens Conference on State Legislatures are aiding states in their efforts.

⁸The amendment was ratified on November 5, 1968, and is commonly known as the "Modern Budget Amendment". See W. VA. CONST. art. VI, 51.

The West Virginia Legislature is aware that we live in a time of change and that it must keep pace in order to fulfill its proper role as the lawmaking body of West Virginia.

The Legislature created the Commission in order to utilize the varied knowledge, skills and experience of a representative cross-section of the citizens of West Virginia in proposing recommendations for strengthening the Legislature of West Virginia in its role of the state policy-making body, and as the body most representative of the people of the state.

The declared policy of the Legislature of West Virginia is to improve its legislative process to the end that it may become in the fullest sense an equal and coordinate branch of the government of West Virginia. The Citizens Advisory Commission was appointed to aid in implementing this policy.

The Citizens Advisory Commission has concluded its efforts. It proposed fifty-three recommendations which are designed to provide the legislative process with more flexibility and efficiency, which in turn will bring about economy.⁴

Included in the Commission's recommendations are proposed changes to the constitution of West Virginia, to the statutes that pertain to the legislative process, and to the roles and procedures which the legislative process is governed and by which it functions.

These changes will provide the Legislature with the flexibility it needs to meet the state's and its citizens' needs today.

The recommendations suggest salaries and expenses that should attract qualified persons to seek the office of state Legislator.⁵ The Commission recommends that these legislators then be provided with the constitutional and statutory framework and tools necessary to do the job for which they are elected. Foremost in importance is that the legislators meet often enough and long enough to enact the legislation required in the fast-placed modern world of today.

The proposed constitutional amendments must, of course, first be approved by the Legislature and then be approved by the citizens of West Virginia. One of the recommendations dealt with the time and place of the legislative session.⁶

⁴RECOMMENDATIONS FOR STRENGTHENING THE WEST VIRGINIA LEGISLATURE, EXCERPT FROM FINAL REPORT OF THE CITIZENS ADVISORY COMMISSION ON THE LEGISLATURE OF WEST VIRGINIA (1968) [hereinafter cited as RECOMMENDATION].

⁵RECOMMENDATION 3, *Compensation and Expenses of Legislators* 8-9.

⁶RECOMMENDATION 1, *Time and Place of Legislative Session* 7.

It was proposed that article VI, section 18 of the West Virginia constitution be amended to provide that the Legislature, in odd-numbered years following each general election, convene on the second Wednesday in January; that each house proceed to organize by the election of its officers for two year terms; and that both houses in joint assembly receive and publish the certificates of election results as prescribed by the West Virginia constitution and by general law. Each house could then conduct such preliminary committee meetings and briefings as are deemed appropriate. After these matters are completed in odd-numbered years, the Legislature would adjourn until the second Wednesday of the February following, at which time the regular legislative session would be held. In even-numbered years, the Legislature would convene on the second Wednesday in February for its regular session.⁷

It was proposed that article VI, section 18 be further amended to provide that the budget and budget bill for the next ensuing fiscal year be submitted to the Legislature on the second Wednesday of February of each year, unless a later time is fixed by the Legislature.⁸

This procedural arrangement would allow the Legislature, in odd-numbered years, following each general election, to organize and conduct all of its preliminary business prior to the time the sixty-day legislative session begins, thereby saving time during the session for law-making activities.

Providing for the actual working session of the Legislature to begin on the second Wednesday in February of each year would allow time for a newly elected Governor to bring his influence into the budget process even though budget work would begin prior to his taking office. The incoming Governor would have sufficient time to review the budget prepared by the outgoing Governor, hold additional hearings and revise the budget prepared by the outgoing Governor as he desires.

The Commission recommended that article VI, section 22 of the constitution be amended to provide that commencing on the second Wednesday in February of each year the Legislature convene

⁷H.J. Res. No. 16, Acts of the 59th W. Va. Leg., Reg. Sess. (1969). The proposed amendment, to be voted upon in November, 1970, provides that the split session idea is limited to the regular session of the legislature immediately following the election of a governor; the Commission had recommended that it apply in the odd-numbered years following each state election for members of the Legislature. RECOMMENDATION 1, *Time and Place of Legislative Session 7*.

⁸*Id.*

and remain in session for sixty calendar days and that during any regular session the Legislature could consider any matter or course it desires.⁹

Present compensation of legislators of \$1500 per year is inadequate for the amount of time they must be away from home at their own expense, the amount of work they must do, and the responsibilities they shoulder.

In many instances legislators must meet a part of their expenses from their compensation or from their own pocket. Expense allowances should be liberalized to the extent that legislators are reimbursed for all necessary expenses and travel costs actually incurred in the performance of their duties, but not to exceed specific maximum amounts. Actually salaries and expense allowances should be subject to statutory law and not constitutional provision. It is not easy to convince the voters on this point.

The Commission recommended that article IV, section 33 of the West Virginia constitution be amended to provide that legislators shall receive such compensation and shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided by general law.¹⁰ The salary proposed by the Amendment is \$3000, certainly not out of line with the salaries of legislators in other states of comparable population.¹¹ Increasingly, states are amending their constitutions to provide for payment of compensation and expenses of their legislators by general law and at the same time increasing the salaries of their lawmakers.

The Citizens Advisory Commission on the Legislature recommended that Article VI, Section 13 of the constitution be amended to provide that those persons who hold any other lucrative office or employment under this State, the United States, or any foreign government be prohibited from holding a seat in the Legislature and that the constitutional provision prohibiting salaried railroad officers from holding a seat in the Legislature be removed.¹² The proposed amendment also bars Congressmen, sheriffs, constables and clerks of any courts. At the same time, it makes no reference to

⁹RECOMMENDATION 2, *Length of Legislative Session* 8.

¹⁰RECOMMENDATION 3, *Compensation and Expenses of Legislators* 8-9.

¹¹H.J. Res. No. 16, Acts of the W. Va. Leg., Reg. Sess. (1969).

¹²RECOMMENDATION 4, *Eligibility to Seat in Legislature* 9.

the constitutional provision prohibiting salaried railroad officers from holding a seat in the Legislature.¹³

The Governor of West Virginia can now exercise the veto on any bill.¹⁴ Until the Modern Budget Amendment was ratified on November 5, 1968, the Governor could not veto the budget bill but he could veto all others.¹⁵ After the Legislature adjourns, the Governor must exercise the veto within five days, Sunday excepted.¹⁶

The Advisory Commission recommended that the time limit in which the veto can be exercised be extended to fifteen days after adjournment *sine die*, Sundays excepted; that the Legislature have the power to override any veto by a two-thirds vote of the members elected to each house even if in an extended session; and if the bill upon reconsideration by the Legislature be amended and re-enacted, that it be presented to the Governor as a new bill for his consideration.¹⁷ The proposed amendment retains, however, the provision that a veto may be overridden by a majority of the members elected to each house of the Legislature.¹⁸

At the present time proposed amendments to the Constitution may be submitted to the people only at the general election when candidates for many offices are on the ballot.¹⁹ Experience has shown that under these circumstances proposed amendments often become political footballs of parties or individual candidates for public office.

Some years ago a movement was started to permit the submission of proposed amendments to the voters at special elections as well as general elections. Such a proposal was approved by the 1969 Legislature and will be on the ballot in the 1970 election.²⁰

Constitutional revision in West Virginia has made slow progress. It has, however, occupied a particularly prominent part in a consideration of the organization and operation of state government since 1957. In that year the Legislature adopted a concurrent resolution establishing the West Virginia Commission on Constitutional Revision.²¹ The Commission was charged with the responsi-

¹³H.J. Res. No. 16, Acts of the W. Va. Leg., Reg. Sess. (1969).

¹⁴W. VA. CONST. art. VII*, 14-15; W. VA. CONST. art. VI, 51.

¹⁵See W. VA. CONST. art. VII, 14-15; W. VA. CONST. art. VI, 51 (prior provision).

¹⁶W. VA. CONST. art. VII, 14.

¹⁷RECOMMENDATION 7, *The Governor's Veto Power* 11.

¹⁸H.J. Res. No. 16, Acts of the 59th W. Va. Leg., Reg. Sess. (1969).

¹⁹W. VA. CONST. art. XIV, 1.

²⁰H.J. Res. No. 7, Acts of the 59th W. Va. Leg., Reg. Sess. (1969).

²¹S. Con. Res. No. 5, Acts of the 53rd W. Va. Leg., Reg. Sess. (1957).

bility of (1) making a thorough study of the major phases of the constitutional system and reporting their findings to the Governor and the Legislature; (2) determining the most practical method of bringing about constitutional reforms whether by constitutional convention or by amendments to the present constitution; and (3) recommending to the Legislature for submission to the voters such constitutional amendments as the Commission might deem advisable and practicable.²²

The members of the Commission were appointed by the Governor, the President of the Senate, and the Speaker of the House. Upon organization, the Commission named former Governor Homer A. Holt as chairman and several meetings were held through 1962. The Commission moved slowly and with little publicity concerning its activities. Finally, it recommended a complete revision of the executive branch with budget-making authority to be vested solely in the Governor who would be permitted to succeed himself in office for one term.²³ Following approval by the Legislature²⁴ this proposed amendment was submitted to the voters in 1962, but was defeated. A thorough revision of the judicial article was proposed by the Commission,²⁵ but it was never acted upon by the Legislature. The Commission ceased to function in 1963.

In the election campaign of 1962, constitutional revision was advocated by many of both the Democratic and Republican nominees for the Legislature. Whether this was to be accomplished by constitutional convention or by proposed amendments was not quite clear. The 1963 Legislature considered a constitutional convention, but no action was taken. Action did not come until the 1965 session when legislation was enacted calling a constitutional convention to meet in July, 1966.²⁶ This call was subject to the approval of the people, to be determined at a referendum in November, 1965. In providing for membership of the convention, the Legislature apportioned the delegates in a manner so as to assure no less than one delegate from each county regardless of population.²⁷ The legislation was challenged in the West Virginia Supreme

²²*Id.*

²³FIFTH REPORT OF THE WEST VIRGINIA COMMISSION ON CONSTITUTIONAL REVISION, APPENDICES NO. 5-A (1963).

²⁴Acts ch. 3, Reg. Sess. (1962).

²⁵FIFTH REPORT OF THE WEST VIRGINIA COMMISSION ON CONSTITUTIONAL REVISION, APPENDICES NOS. 6-A and 6-B (1963).

²⁶Acts ch. 18, Reg. Sess. (1965).

²⁷*Id.*

Court of Appeals upon the basis that the "one man, one vote" principle applied to constitutional conventions as well as legislatures. In the summer of 1965, the court, in invalidating the act, ruled that the "one man, one vote" principle did apply and strongly suggested that the number of delegates to the convention should be determined by adding the number of present members of the House of Delegates (100) to the number of present members of the Senate (34) as was done for the convention which wrote our present constitution.²⁸

It should be noted, however, that the West Virginia Supreme Court of Appeals based its 1965 decision on provisions of the West Virginia constitution and not upon the Federal Constitution.²⁹ In light of recent United States Supreme Court decisions,³⁰ it is doubtful that an apportionment made according to the state court's decision would hold up in federal courts because of the malapportionment resulting from the application of West Virginia's constitutional provision which allots a county a delegate when its population reaches three-fifths of the ratio of representation.³¹

In 1966 the Legislature was expected to correct the apportionment provisions of the 1965 legislation. The Governor, however, advised the Legislature that he could find little enthusiasm in the state for a convention. With this, the Legislature proposed five amendments, all of which were defeated in the 1966 election.

On March 11, 1967, the West Virginia Senate voted down a proposal that called for submitting to the voters in November the question as to whether a constitutional convention should be held in 1968. Thus ended, at least for the time being, the movement to write a new constitution to take the place of the present one that is nearly a century old. If we may judge by the latest action of the Legislature and that of the voters who rejected five proposed amendments in the November 1966 election, we must conclude that a new constitution or important amendments to the present one are matters for the indefinite future.

²⁸State *ex rel* Smith v. Gore, 150 W. Va. 71, S.E. 2d 791 (1965).

²⁹*Id.* at 75-76, 143 S.E. 2d at 794-95.

³⁰*See e.g.*, Moore v. Ogilvie, 394 U.S. 814 (1969); Well v. Rockefeller, 394 U.S. 542 (1969); Kirkpatrick v. Priesler, 394 U.S. 526 (1969).

³¹W. VA. CONST. art. VI, 6.

³²Acts chs. 10-14, Reg. Sess. (1966).