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Chairman, West Virginia Commission on Constitutional Revision

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HOMER A. HOLT

On this topic it was suggested that I might talk rather "off the cuff," so to speak, and without extended preparation. Knowing that the work of the West Virginia Commission on Constitutional Revision had been presented to the governor and the legislature, I was apprehensive of my ability to present an interesting talk. When I shall have concluded, no doubt many of my hearers will feel that my apprehensions have materialized. Be that as it may, I report to you on the West Virginia Commission on Constitutional Revision and its work.

We begin, of course, with Senate Concurrent Resolution No. 5, adopted by the legislature February 12, 1957. Following a pre-amble, the purposes of the commission were set forth as follows:

"That there be established a West Virginia commission on constitutional revision with the authority and responsibility (1) to make or have made under its supervision and direction a thorough study of all major phases of the constitutional system of the State and from time to time to issue and publish reports thereon to the Governor and the Legislature for the information of the citizens of the State; (2) to determine the most practicable
method of bringing about needed constitutional reforms, whether by means of a constitutional convention or by action of the commission itself, and whether by revision of the entire Constitution or of only particular articles or sections thereof; and (3) to recommend to the Legislature the submission to the people of such constitutional amendments or revisions as may be deemed advisable and practicable."

The composition of the commission was provided: three ex officio members, the governor, the president of the senate, and the speaker of the house, and fifteen members to be appointed by each, including five from the senate and five from the house, with suitable representation of the minority political party. The commission was advised that the intent of the legislature was that the members from the legislature be those who were currently serving as such. Many changes in the membership of the legislature resulted in corresponding changes in the membership of the commission. For various reasons there were from time to time a number of other changes in the personnel of the commission.

The organizational meeting was called for and held on September 30, 1957. The governor was made honorary chairman; the president of the senate and the speaker of the house, vice chairmen; Oshel C. Parsons, a member of the commission, secretary; and your speaker, the permanent chairman.

The resolution authorized the commission to employ a director who should serve as the executive officer of the commission, with authority to employ such research and other assistants as might be needed. The commission chose Dean Clyde L. Colson to be the director. In due season Professors Marlyn E. Lugar and Londo H. Brown of the College of Law were chosen as reporters. Their responsibilities included the direction of research and drafting. Professor Stanley E. Dadisman did not officially serve as a reporter, for the reason that he was a member of the commission, but he did do much work as a reporter in fact.

On October 8, 1957, the chairman informed the membership of the commission of plans for public hearings. On January 20, 1958, the commission held a meeting with the members of the legislature for the purpose of obtaining recommendations, suggestions, and advice in respect of the work of the commission. On May 13-14, 1958, the commission, after extending invitations to many organi-
izations of various types and to a number of individuals who had manifested interest, and after appreciable general publicity, held public hearings.

Following these hearings, the chairman appointed a Committee on Policy and Procedure. This committee was of opinion that at that time it did not favor recommending the calling of a constitutional convention, being then of the opinion that the necessary changes in the constitution better could be effected by a series of amendments. To make certain that the scope of amendments might be quite broad, the commission recommended, and at the 1960 election there was adopted, an amendment to article XIV of the constitution which provides for amendments.

The Committee on Policy and Procedure was of opinion that the study and suggested revision of the several articles of the constitution would of necessity have to be done by committees which would report to the full commission. The recommendations of the Committee on Policy and Procedure seemed to meet with the general approval of the members of the commission, and the work of the commission proceeded accordingly.

There were, however, a few dissents. One member thought the public hearings were a waste of time and that all useful information might be obtained from the National Conference on Government. I believe the views of this member changed later, and certainly the member served well. Another member was likewise of the opinion that the hearings were a waste of time, that all articles of the constitution should be studied instantaneously and simultaneously, and that the commission too quickly had formed the opinion that it was not then ready to recommend a constitutional convention. This member likewise served well and faithfully and, I believe, soon recognized the impracticability of instantaneous, simultaneous study of all of the articles of the constitution by a staff as limited in personnel as that which was available to the commission.

It is true that the response to the invitation for public hearings was not extensive. However, there was response, and the attendance and subsequent interest of the League of Women Voters has been conspicuous and helpful.

To me, it would seem to be obvious that a constitutional convention assembled without thorough preparation could hardly be
expected to be productive of much good. A comprehensive study of our constitution had not been made since that made pursuant to the House Joint Resolution adopted March 9, 1929, the report of which was made December 1, 1930. In the meantime, we had had the Property Classification and Tax Limitation Amendment of 1932, which necessitated extensive changes in our governmental operations, roads, schools, relief of the needy, and others; additional services had been established and state-federal relations had been extended.

The Commission adopted no formal rules of procedure. In a way this was rather fortunate, since, while we always had a quorum at meetings of the commission, on some occasions the attendance at committee meetings was quite limited. All of the meetings of the commission were held in Charleston, as were most of the committee meetings. Since I was in Charleston and was chairman of the commission, I felt that I should attend and, acting as an ex officio member, participate in as many committee meetings as possible. This I did, although on one occasion my right to vote as a member of the committee was unsuccessfully challenged.

I am not here either to boast of or to defend the work of the commission, though I do not hesitate to say that I believe the commission did a good job.

Though it has given me no particular concern, the attitude of the Bureau of Government Research and the Department of Political Science of the university has perplexed me somewhat. To illustrate, the Bureau of Government Research disseminated an article, attributed to an assistant professor of political science, in which—referring to the State Executive and Budget Amendment as “...originated with the Commission on Constitutional Revision. As amended and adopted by the legislature...”—the writer expressed concern over “...the seemingly careless and slipshod drafting of the proposed amendment...” The article further stated:

“It is unfortunate that the Commission on Constitutional Revision and the legislature failed to write additional reforms into the amendment. These would include extension of the time permitted the governor for the consideration of bills enacted by the legislature, the short ballot principle for the selection of state executive officers, and unrestricted tenure for the governor.”
I wrote a letter to Dean Carl Frasure expressing some comment on this article, and Dean Frasure turned my letter over to the author of the article who wrote me:

"I am, of course, fully aware of the fact that the Commission recommended, not a short ballot, but at least a shorter ballot, and that the legislature reinserted the provision for the election of the Secretary of State, the Commissioner of Agriculture and the Treasurer. Likewise, I am aware that the Commission, in its draft of Article VII extended the time for executive consideration of bills, after the adjournment of the legislature, to fifteen days only to have the legislature restore the current provision. However, the time for the consideration of bills by the governor, before the adjournment of the legislature, remained unchanged by the Commission. The Commission recommended, and the legislature accepted, provision to permit the governor to succeed himself in office once. This does not conform to my suggestion of unrestricted tenure for the governor."

It may be significant that the author said, "I am... fully aware..." He did not say that he was aware when he wrote his article.

A 1963 publication of the Bureau for Government Research entitled, *West Virginia State and Local Government*, has a few kind words for the West Virginia Commission on Constitutional Revision, but concludes:

"The West Virginia Commission on Constitutional Revision is to be commended for its laborious efforts. It has laid the groundwork for some greatly needed changes in the fundamental document. At the same time, one may rightly wonder whether the commission has not delayed the cause of constitutional revision for a decade or more."

The section of that book relating to the Commission on Constitutional Revision was critical of the commission for the alleged reason that the commission did not propagandize its work. Reverting to the purposes for which the commission was established, it is obvious that the duty assigned to the commission was to study and report to the governor and the legislature. The commission was charged with neither the responsibility of propagandizing, nor equipped to propagandize, though all meetings were open to
the public and most of them were attended by representatives of the press.

I return the compliment of the Bureau for Government Research and say that it, too, has done some very good work; but I will add that if the commission has delayed the adoption of some of the suggestions of the Bureau for Government Research, for whatever time the delay has been, the commission has been a success. I will put the draftsmanship of Clyde Colson, Londo Brown, Marlyn Lugar, and Stanley Dadisman up against anything that the Bureau or the Department of Political Science, either or both, can produce.

I will now endeavor to give you a bird's-eye view of some of the matters considered by the commission, and the recommendations of the commission. Since we are a lawyer group, naturally interested in the judiciary, as well as because article VIII, relating to the judiciary, was the article chosen for first thorough study, I refer to it here. The commission proposed that article VIII, relating to the judicial department, be rewritten as a whole. This of course does not mean that basic concepts would be abandoned, it does mean that a complete revision is necessary to effect many obviously desirable changes.

In proposing the draft on the judicial department, the commission considered very thoroughly a number of interesting matters. One such matter was the manner of the selection of judges. As you know, under the present provisions of our constitution, judges are elected by the people. At the present, judges are also nominated in primary elections, though such is not required by the constitution, and judges formerly were nominated by conventions.

Time does not permit a review of the many manners of selection of judges in the various states—appointment by the governor, selection by the legislature, the Missouri Plan, and others. Our commission concluded, and I think wisely, that the best that could be done would be to eliminate from the constitution the requirement of the selection of judges by popular election and to make it possible for the legislature to provide some other manner of selection if and when the public may be ready for any such change. In the meantime, both nominations and selections by popular election would continue.
Another recommendation of the commission was that many courts of theoretically limited jurisdiction—but in reality exercising circuit court functions—, commonly called intermediate, common pleas, criminal, domestic relations, and the like, be dispensed with, and that in lieu of such courts there be provided such additional circuit court judges as might be required to handle the work. Most, if not all, of you know that the reason for such courts of so-called limited jurisdiction is that under the present constitution there can be only one circuit judge—except in the first circuit, where there are two. Obviously, in a number of counties, unless the counties be divided into separate judicial circuits, which would be entirely impractical, one circuit judge could not possibly handle the judicial business of the circuit. Even in the first circuit, where the constitution provides for two circuit judges, it is clear that two circuit judges cannot take care of the judicial responsibilities. Hence, there have developed the courts of so-called limited jurisdiction.

There is another interesting aspect in this connection. Our constitution, as it now is, provides for appeals from circuit courts to the Supreme Court of Appeals. So, where there are courts of so-called limited jurisdiction, appeals must first be taken from the court of limited jurisdiction to the circuit court before being presented to the Supreme Court of Appeals.

This practice led to another consideration. If there should not be the step from the court of limited jurisdiction to the circuit court and thence to the Supreme Court of Appeals, would it be advisable to have an intermediate appellate court between the circuit court and the Supreme Court of Appeals? Under our present plan, there is no intermediate appellate court between the circuit court of original jurisdiction and the Supreme Court of Appeals in circuits in which there are no courts of so-called limited jurisdiction. So, the absence of an intermediate appeal would not be new. We would simply return to the original procedure in providing for direct appeal from the trial court to the Supreme Court of Appeals.

Closely related is the question: Is our Supreme Court of Appeals so manned and equipped as to carry the appellate load? Some said yes and some said no. Our commission proposed that it be provided that the legislature might increase the number of judges...
of the Supreme Court of Appeals from five to seven. While I do not believe that our proposal expressly so provided, I am inclined to believe that a provision that three judges might constitute a quorum of the Supreme Court of Appeals—except in cases of major import such as by way of illustration cases involving constitutional questions and possibly cases involving conviction of a felony—would go a long ways toward resolving the matter of appeals. With seven judges, only three being required for a quorum, our Supreme Court of Appeals in most cases could sit in divisions.

Under our present constitution justices of the peace are constitutional judicial officers with constitutional jurisdiction. The commission’s proposal would eliminate justices of the peace as constitutional judicial officers, and would make possible the abolition of the office. While I have not recently checked, I believe I would be safe in saying that less than fifty per cent of the constitutional justice of the peace positions are now filled. The reason is apparent. As a constitutional judicial office, the justice of the peace has served its time.

In lieu of justice of the peace courts there would be provided for each county, or a combination of counties as circumstances required, a “peoples court”, a court of some dignity and qualifications. One of the commission’s most difficult problems in this respect was the choosing of a name to designate such court. “Peoples Courts”—all courts are peoples courts. In submitting a proposal for some amendments in 1939, the proposed amendment called such courts “summary courts”. No court should be “summary”, because justice should not be administered summarily. Perhaps we should have a prize contest of some kind to receive suggestions for the name of courts of limited jurisdiction. A label sometimes is of real significance in an approach to a desired end.

Another matter of importance is that the commission would recommend that the remaining judicial functions of the county court—probate, the appointment of personal representatives, guardians, committees, curators, and the settlement of their accounts, and all matters relating to apprentices—be terminated and that such jurisdiction be placed in the circuit courts. Such present jurisdiction of county courts is a left over from the time when county courts had jurisdiction in both law and equity, including jurisdiction for the trial of crimes.
This transfer of jurisdiction in such matters would call for some administrative changes. In most cases of probate and administration, matters purely judicial in nature do not arise. Yet, in the relatively few cases in which judicial questions do arise, the matter would ab initio be in a court of competent jurisdiction. Provision would be made for the designation of officials, acting under the jurisdiction of the appropriate courts, to issue warrants and accept bail, much in the manner in which justices of the peace do now, but without jurisdiction to try cases.

Our commission proposed the designation of a member of our Supreme Court of Appeals to be chief justice, rather than that we continue our former practice of having a president of the Supreme Court of Appeals customarily rotated from year to year. As mere terminology, I think this would be of little or no significance, but coupled with this terminology would be the placing upon the chief justice the responsibility of administering a unified judicial system, in all probability utilizing an administrative director somewhat comparable to the functions of the "Administrative Office of the United States Court".

Next, let us take a look at article VII, the “executive department”. Prior to the 1934 election, section 1 of article VII provided that the executive department should consist of a governor, secretary of state, superintendent of free schools, auditor, treasurer, and attorney general. When the so-called Lame Duck Amendment, which changed the time for the taking of office from the 4th day of March to the first Monday after the second Wednesday of January, was proposed and adopted, there was added to the offices of the executive department the commissioner of agriculture.

Now, of some special significance, by the amendment of 1958 known as the “State Superintendent of Free Schools Amendment”, the state superintendent of free schools was wholly removed from the executive department except that he would continue as a member of the board of public works for the preparation and submission of the budget—pursuant, not to article VII, the executive department, but to subsection B, section 51, of article VI, the legislative department. Instead of having a state superintendent of schools a member of the executive department, the amendment established a constitutional body, “The West Virginia Board of Education”, of which the state superintendent of free schools became an employee subject to the will and pleasure of the board.
Thus, while section 5 of article VII provides that the chief executive power shall be vested in the governor, we, nevertheless, have an executive department of divided responsibility. This is not considered to be good. The public generally looks to the governor, as of right it should, and the governor should have authority commensurate with the expectations of the people.

Accordingly, the commission recommended the "short ballot" which would make the governor the chief executive in fact as well as in common acceptance. For independent financial and legal checks, there would be elected an independent auditor and an independent attorney general, but they would be responsible only for their respective departments, and, except as checks upon the governor and his appointees, would not participate in or be chargeable with general executive or administrative responsibilities. I have referred to the "short ballot". I think this proposal presents a ballot just about as short as is practicable, though the Bureau of Government Research was critical because the short ballot was not short enough.

Commensurate with the responsibilities cast upon the governor as chief executive, would be his responsibility for the preparation of the budget and its submission to the legislature, ample provision being made for the preservation of the financial independence of the legislative and judicial branches of the government. Instead of a simple majority vote to override the governor's veto of legislation, the commission would have required a two-thirds vote of each house.

The commission would have given to the governor fifteen days, instead of five days, after the legislature had adjourned within which to act upon bills enacted by the legislature and not presented to the governor five days prior to adjournment. This was because usually a great number of bills reach the governor's office just about the time of the adjournment of the legislature, while during the legislative session the enacted bills do not come to the governor en masse, and five days ordinarily affords ample time for the governor's consideration.

Louisiana and Governor Earl Long were having their difficulties at the time the committee and the commission had under consideration article VII, the executive department, so the committee recommended and the commission presented a provision for the
judicial determination of a vacancy in the governorship in the event of the disability of the governor. The recommended procedure provided complete safeguard against impetuous action, though, as everyone will recognize, this could be a very delicate situation.

In the interest of effective administration, the commission recommended that executive and administrative officers, departments, and instrumentalities, other than the attorney general, the auditor, and the governing boards of higher education, be allocated by the legislature—not by the governor—with not more than twenty principal departments according to major purposes so far as practicable. Such principal departments were to be under the supervision of the governor who, with the advice and consent of the senate, would appoint the heads of such principal departments under his supervision.

This may be an appropriate place at which to comment upon the charge that the adoption of the commission's proposal would have resulted in the governor's superseding the State Board of Education as the appointing and controlling authority of the state superintendent of free schools. Keeping in mind that the commission's proposal related to the "executive department", from which the State Superintendent of Free Schools Amendment of 1958 had extracted the state superintendent of free schools and in article XII had established the State Board of Education as a constitutional body charged with the responsibility of selecting a state superintendent of free schools, it would indeed require some unusual constitutional construction and interpretation to reach the conclusion that the state superintendent of free schools, without even being mentioned in the proposed amendment of article VII, relating to the executive department, was by implication brought back into the executive department, from which he had so shortly been removed, and made subservient to the direct control of the governor.

The commission proposed that the governor be permitted to serve two consecutive terms.

Having mentioned schools, I believe brief comment on article XII, "education", is appropriate at this time. So far as "education" is concerned, our constitution has never dealt with any aspect other than the "free schools". Not even the 1958 amendment extended the constitutional scope.
Our commission proposed the continuation of section 2 of article XII as adopted by the 1958 amendment; that is to say, the establishment of the West Virginia Board of Education as a constitutional body charged with the responsibility of employing a state superintendent of free schools. Whether or not needed, our commission would expand article XII to take cognizance of “other institutions of learning” as well as of the free schools.

I next mention some of the considerations and recommendations of the commission in respect of other articles of the constitution.

**ARTICLE I**

Section 1 of article I simply states that West Virginia shall be one of the United States of America. Section 2 reads as follows:

“The Government of the United States is a government of enumerated powers, and all powers not delegated to it, nor inhibited to the States, are reserved to the States or to the people thereof. Among the powers so reserved to the States is the exclusive regulation of their own internal government and police; and it is the high and solemn duty of the several departments of government, created by this Constitution, to guard and protect the people of this State, from all encroachments upon the rights so reserved.”

(This section is largely based upon the tenth amendment of the federal constitution, which reads as follows: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”) I regret that this provision seems to have become a dead letter. Perhaps such was inevitable; yet I would retain this section, at least for sentimental reasons.

**ARTICLE II**

Article II simply sets forth the territorial boundaries of our state by naming the counties as they existed in 1872, and, except for not mentioning Mingo County, which was formed after 1872, is now complete. Mingo was formed from other counties which encompassed the area, and the lack of the name of Mingo does not detract from the area of the state. If we should have complete constitutional revision, no one would fail to mention the name of Mingo in which there have been frequent demonstrations of “Montani Semper Liberi”.

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 ARTICLE III  

Bill Of Rights

Generally speaking, the provisions of this article are so fundamental as to suggest few basic changes. However, from the procedural point of view, there were some aspects in which the commission felt that there could be improvement from both the standpoint of one accused of crime and the standpoint of the public interest. Criminal procedure can become a matter quite technical, so care must be taken.

One matter considered by the commission related to the situation of one accused of crime subject to prosecution only by indictment or presentment. In some counties grand juries are not convened with marked regularity, and sometimes there is an accused who has no possible explanation or defense and who would prefer to begin promptly to pay his debt to society without awaiting presentment or indictment. This situation is most impressive when the accused is unable to give appropriate bond. Without going into details, the commission would recommend that provision be made, of course with very carefully considered safeguards, to enable such accused to have a disposition of the charge against him determined without waiting possibly several months for the convening of a grand jury.

Section 14 of article III provides that trial shall be in the county in which the alleged offense was committed. In the light of modern traveling facilities, air and highway, it is frequently difficult if not impossible to determine in what county the offense was committed. To illustrate: Was the murder committed in the county where the body was found or elsewhere?

I do not attempt to answer this question of venue. I do know that some time ago I had occasion to consider venue as related to larceny and found the principle to be quite well established that larceny followed the stolen goods and that there was venue where the goods were found in the possession of the accused, as well as where they were originally taken by him. However that may be, the subject is one deserving of consideration, and our commission has recommended that the legislature be authorized to provide for venue in such cases of confusion. As to whether this would present any federal constitutional questions, I express no opinion.

Another matter of appreciable interest was whether, when one
accused of crime is convicted of a lesser offense embodied within the higher offense charged and successfully appeals from the conviction of the lesser offense, upon re-trial he may be convicted of the higher offense embodied in the original charge? In other words, did the conviction of the lesser offense constitute an acquittal of the higher offense and would trial again for the higher offense constitute double jeopardy?

As drafted, the commission would propose that the new trial be upon the basis of the original charge, broad as it might be. However, the commission recognized that this position might involve a federal question, and I believe that Professor Dadisman was of the opinion that the Supreme Court of the United States had already held that re-trial of the higher offense originally charged would constitute double jeopardy in a state court as well as in a federal court and would violate the federal constitution.

For the trial of alleged offenses not felonious, the commission would recommend that jury trial might be by less than twelve but not less than five, and also would authorize waiver by the accused of trial by jury. Again, I would hesitate to predict the position which might be adopted by the Supreme Court of the United States.

Provision would be made for appeal by the state in certain cases, including an appeal from an order in a habeas corpus case discharging the accused or the convicted, an order holding an accusation to be invalid, an order directing a verdict of not guilty or granting the accused a new trial, an order arresting judgment, and a ruling on a question of law adverse to the state where the accused appealed from a judgment of conviction.

**Article IV**

**Elections and Officers**

Section 1, as it now exists, in providing the qualifications of voters makes eligible male citizens. The Woman Suffrage Amendment of 1920 extended the franchise to female citizens, and since such amendment was self-operating, the word “male” in our constitution is no longer of significance. Accordingly, in any revision of said section 1, the word “male” would be removed.

At a meeting of the committee studying this article, there was considerable discussion as to whether the age for voting should be
reduced and as to whether paupers should be denied the right to vote. The provision as submitted would enable the legislature to define by general law the terms "pauper" and "minor". This would make possible the lowering of the age for voting from the traditional twenty-one years. Conversely, this would make possible the raising of the voting age as well.

Section 2 would be so amended as to take appropriate cognizance of absentee voting and voting by machine, both practices being already sanctioned. The present provision gives the voter the right to vote by either secret or open ballot, as he may elect. There was some appreciable thought that voting by open ballot should be prohibited, but the committee and the commission concluded that this right of the voter to elect should be preserved.

The present section 4 provides that only citizens entitled to vote may be elected or appointed to office. The commission would limit this restriction to elective offices. It will be recalled that few years ago an appointee to an important office, an office for which rather strict qualifications had been provided by the legislature and one for which few persons so qualified were available, was disqualified for the reason that he had not been in the state long enough to qualify to vote. The commission felt this qualification in respect of appointive office should be removed.

Without recommendation, the commission presented drafts of possible amendments of section 7, which sets the time for general elections, which would make possible "off-year elections"—meaning general elections in years other than those in which there is a presidential election.

**Article V**

*Division of Powers*

This single section of article V, which provides that the legislative, executive, and judicial departments should be separate and distinct, would remain unchanged, though in section 8 of article VIII, relating to the judiciary, as proposed by the commission, in setting forth the jurisdiction of circuit courts, it would be provided that such courts might have such jurisdiction "including that not strictly of a judicial nature" as may be prescribed by law. Our
courts over the years have been exercising some such powers, such as reviewing property assessments, exercising powers relating to the incorporation of municipalities and the establishment of boundaries, and other comparable functions usually thought of as administrative or legislative. Matters of this type do have judicial aspects, and sometimes participation by the courts is inescapable. The commission was of opinion that cognizance should be taken of some of these necessities and that such a provision was not incompatible with the basic separation of powers.

**ARTICLE VI**

*The Legislature*

The commission recommended few changes in the legislative article. Should the executive budget be adopted as proposed by the draft of article VII, the present provisions of article VI relating to the budget would be eliminated.

Referring to section 13 relating to the qualifications of members of the legislature, the commission was of opinion that the reason for disqualifying one who is a salaried officer of any railroad company from legislative service no longer exists, and this disqualification would be removed.

Section 35 is the section which provides that the state shall not be made a defendant in legal proceedings. The commission was of opinion that this total inhibition should be dispensed with and that the legislature should have the power to prescribe cases in which, and conditions under which, the state might be sued.

Section 39(a) relates to municipal home rule which was introduced into the constitution by an amendment adopted in 1936. This provision would be clarified and made more explicit. In making this study the commission had the benefit of the experience of Mayor Lugar of Morgantown, one of the commission's reporters.

Section 47 which inhibits the incorporation of any church or religious denomination, would be so amended as to permit the incorporation of a body to hold title to, manage, transfer, and sell church property, though the inhibition against incorporating a church or religious denomination would be continued.

Section 48 relates to the homestead exemption, and this would be so amended as to include among those entitled to establish a
homestead the "wife", in addition to husband or parent as is now provided. The legislature would also be empowered to increase the amounts of the homestead and personal property exemptions above the present amounts of 1000 dollars and 200 dollars, respectively.

Section 52, which now provides that all revenues derived from motor fuels shall be used for highway purposes, would be amended to permit such revenues as may be derived from aviation fuel to be used for airports and air navigation facilities.

Section 43 which provides: "The legislature shall never authorize or establish any board or court of registration of voters", would be omitted, this section having been originally adopted to do away with the "test oath" provisions which existed for some time after the War Between The States. Without expressly repealing this provision, an amendment of article IV, by adding section 12 thereto—which reads: "The Legislature shall enact proper laws for the registration of all qualified voters in this State"—was adopted in 1901.

(Article VII on "the executive" and article VIII on "the judiciary" have been previously covered.)

**ARTICLE IX**

*County Organization*

Under the commission's proposals there would be only one county constitutional office or body. This would be the "Board of County Commissioners" composed of three members. The proposal would continue offices as now provided for until such time as such offices might be changed by the legislature; and of course the legislature could continue existing offices indefinitely, and add others. However, if this suggestion should be adopted, the legislature would not be prevented from rearranging or dispensing with various county offices. Generally speaking, the Board of County Commissioners would succeed to the powers and duties of present county courts.

That the legislature should have flexibility, at least in respect of county officers, whether or not exercised, would seem to be desirable, since over the years the actual functions of a number of constitutional county officers have changed materially. The state
department of public safety has become the principal law enforce-
ment agency of the state; whereas in earlier days the sheriffs were
the principal law enforcement officers.

For some years the state tax commissioner has had authority to
virtually supplant the assessor, and more recently legislative enact-
ments for the survey of properties for purposes of taxation under
the direction of the office of the state tax commissioner have largely
curtailed the powers of the assessor. State expenditures for purposes
previously supported by local taxes, such as schools and roads, have
made imperative a better equalization in valuations as among the
various counties. Possibly the assessor should be a representative
of the state tax commissioner's office rather than a constitutional
county officer. I am not making such a recommendation but merely
using this reference as an illustration.

The draft of proposed amendment would provide that no new
county should be formed except by the consolidation of counties or
parts thereof. Consolidation could be effected only with the con-
sent of a majority of the voters of each county affected. Certainly
some consolidation of counties is desirable. However, I doubt that
much along that line will be accomplished so long as it is condi-
tioned upon the popular vote of each county affected.

The proposed amendment would also authorize the legislature to
provide for the merger or consolidation of city and county govern-
ments. This, too, would require approval by the voters. There are
some counties and cities in respect of which such consolidation
would seem to be both practicable and desirable, though I make
no prediction as to when there may be any realization of this
seemingly worthy objective. Under the commission's draft the
legislature could provide "home rule" for counties.

ARTICLE X

Taxation and Finance

The commission caused to be prepared a draft of section 1 of
article X which would consolidate with the present provisions of
said section 1, including the property classification and tax limita-
tion amendment provisions, subsequent amendments which in effect
have modified the provisions of the Property Classification and Tax
Limitation Amendment as adopted in 1932, especially the Better
Schools Amendment and the Bank Deposits and Money Amend-
ment. The commission made no recommendation, for the reason that such consolidation is not needed, but in the event a complete revision of the constitution should be undertaken, such consolidation should be made, and this draft would be valuable for consideration.

Section 6 of article X, which inhibits the lending of the state's credit and provides that the state shall not become a joint owner or stockholder in any company or association, would be so amended as to permit the state and the agencies thereof to accept gifts of corporate stocks and to hold the same or dispose of the same and re-invest the proceeds of sale in such property, including corporate stocks, as deemed advisable.

**ARTICLE XI**

**Corporations**

Section 4 is the section which originally provided that every stockholder in a corporation should have the right to vote cumulatively for the election of directors or managers. This section was amended in 1958, so as to permit the issuance by a corporation of one or more classes and series within classes of stock with full, limited, or no voting powers. Cumulative voting was continued in this amendment. The commission proposes a further amendment of this section so as to authorize the legislature to make such provisions in respect of cumulative voting as it may deem advisable. The provision would provide that any deviations from complete cumulative voting for directors be contained in the charter of the corporation. The draft would also make it clear that the terms of directors may also be staggered to preserve continuity of management. The right to issue classes of stock with or without voting rights would be continued, and the draft would also make it express that some directors might be elected by one or more classes of stockholders having voting rights and others by another class or another combination of classes.

(Article XII on “education” has been previously covered.)

**ARTICLE XIII**

**Land Titles**

In article XIII matters of land titles and taxation are intermingled. The commission caused a study of the subject to be made but concluded that since the present provisions are, and throughout the
history of the state have been, of such significance in respect of land titles, it would be unwise to make any changes at this time. Sometime in the future some changes may be desirable, possibly the separation of the land title and taxation functions, but it is believed that any such changes should be made only after a most thorough study by a commission or committee constituted for that particular purpose.

**ARTICLE XIV**

**Amendments**

Section 1 of article XIV provides for constitutional conventions. This calls for the enactment by the legislature, by the affirmative vote of a majority of the members elected to each house, of a law which would submit to the voters the question of calling a convention. It is further provided that such convention shall not be held unless a majority of the voters be in favor of calling the same, and that if the vote be in favor, the members to be elected to such convention should not be elected until at least one month after the result of the vote shall have been ascertained and published. Thereafter, if a convention be held, the constitution proposed by the convention must be submitted to the voters of the state. The commission proposed no change of this section 1 of article XIV.

Section 2 of article XIV relates to amendment; and as proposed by the commission said section 2 was amended in 1960 to make it clear that a single amendment might amend as many sections and articles as should be appropriate to accomplish a desired objective.

**Conclusion**

There is no magic in a constitution, and amending or re-writing a constitution cannot be looked upon as a cure-all of governmental ills to effect a governmental utopia. There will always be that human nature which demands governmental services but is reluctant to pay the cost thereof. We must not be complacent, but we must be realistic and understand that improvement is a worthy objective while perfection would be visionary. I am convinced that some changes in our constitution can be of great utility in contributing to the improvement of our governmental services and to the promotion of efficiency and economy therein.
The work of our commission was regrettably slow. There were many reasons. The assembling of the commission of forty-eight members from throughout the state and the assembling of committees, the membership of which was correspondingly scattered, necessitated some consideration of the convenience of the members. Our staff was limited in numbers, though most efficient. Its members had other responsibilities which could not be put aside entirely. An orderly, comprehensive study inevitably required time. Be that as it may, there is now available a recent and comprehensive study of the Constitution of West Virginia.

I am not opposed to a constitutional convention, if one be deemed advisable. Should a convention be called, it would have the study and recommendations of the commission with and from which to work. I do caution that unless there be strong and active nonpartisan or bi-partisan political support dedicated to a well-formulated and defined program, little good may be expected of a constitutional convention. There are some of our political leaders who, I am confident, are fully aware of the problems of both substance and procedure in constitutional revision, and are dedicated thereto. There are others who would hasten a convention who have demonstrated little understanding of either a constitution or a convention.