PROVIDING FOR A STATE CONSTITUTIONAL CONVENTION

Since the people of Iowa at the general election in 1920 voted in favor of a convention to revise the fundamental law of the State, it becomes the duty of the General Assembly in 1921 to make proper provision in a convention act for the assembling of a constitutional convention. A discussion of what may properly be embodied in such an act, the usages in other States, and the historical precedents in Iowa, is therefore of timely interest.

WHAT MAY PROPERLY BE EMBODIED IN A CONVENTION ACT

When the revision of a State Constitution is deemed desirable, interest at once centers in the procedure preliminary to the meeting of the constitutional convention. In Iowa, constitutional provisions concerning revision of the fundamental law are found in Article X, Section 3, which reads:

> At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention.

From these simple provisions it is clear that the duty of providing for the constitutional convention is imposed upon the legislature which is confronted with the practical ques-

tion of what may properly be embodied in a convention act under the constitutional clause which empowers the General Assembly to "provide by law for the election of delegates".

In the discussion of this question, distinctions in the structure and functions of legislative assemblies and constitutional conventions are important. Both may be classed as law-making bodies. The legislature is intrusted with the enactment of statute law; while the convention undertakes the task of framing or revising the fundamental law of the State. Both the convention and the legislature are responsible to the electorate, although with somewhat different degrees of directness: both are selected by the electorate to perform their particular functions. The legislature is bound absolutely by the provisions of the existing Constitution; while the convention, ordinarily bound by the Constitution, may exercise constituent power, subject to ratification by the electorate.[1] Again, it appears that the modern legislature is usually composed of an upper and a lower house; while the convention is universally composed of a single chamber. Finally, the members of the constitutional convention are, in the absence of constitutional provisions, qualified by legislative act; likewise the time, place,

[1] Judge John A. Jameson in an exhaustive study of constitutional conventions, took the position that a convention is completely bound by restrictions placed upon it in the legislative act. He did this because he thought it necessary that the convention be subordinate to the existing government. But, as Mr. Walter Fairleigh Dodd points out, "even he hesitated to push this doctrine to its extreme limits; for example, he thought that a convention might disregard a legislative requirement that its work be not submitted to the people, and also took the position that the legislative limitations upon a convention 'must be in harmony with the principles of the convention system, or, rather, not inconsistent with the exercise by the convention, to some extent, of its essential and characteristic functions.' "— Dodd's *The Revision and Amendment of State Constitutions*, p. 73; Jameson's *Constitutional Conventions*, p. 364.

and manner of the assembling of the convention are usually statutory.[2]

In the Constitution of Iowa there is no provision which aims to restrain the convention in any way. While the phrase to "provide by law for the election of delegates" would seem to imply the minimum of legislative action, this simple provision necessarily includes the power to define the number and qualifications of delegates and their proper apportionment. Indeed, the most careful consideration should be given to this matter by the legislature in framing a convention act. The *number* of delegates should be such as to provide a convention small enough to assure efficient action and large enough to permit of an adequate representation of State opinion; the *qualifications* of delegates should be such as to obtain the advantage of experience coupled with an intimate knowledge of the requirements of the State; and the *apportionment* of delegates should be so arranged that the convention will contain persons having more than local interests.

Likewise it is essential that proper regulations concerning the nomination and election of delegates be embodied in the convention act. In so far as possible the existing State laws should be utilized; but a careful examination of their applicability will be necessary, and perhaps some changes provided to assure to the convention the safeguards that its high importance demands.

Thus, the time, place, and possibly the manner in which the convention shall convene should be provided with careful attention to the seasonableness of the call, the place in which the convention shall at first assemble, and suggestions concerning preliminary organization and procedure.

Again, it is not to be overlooked that adequate appropriations — both for the proper remuneration of the delegates

[2] Jameson's *Constitutional Conventions*, pp. 356, 357.

and for meeting the expenses incidental to the functioning of a constitutional convention—should be arranged, coupled with an indication of such method of certification as would seem expedient to protect the expenditure of public funds.

In brief, a convention act should provide for all matters that require definite settlement before the delegates convene, and should be of such breadth as to insure in all respects an unhampered convention.[3] Otherwise, the purpose of holding such a convention would be defeated.

With the same purpose in view, the legislature may properly insert in its convention act clauses that tend to facilitate convention procedure; but in doing this it should impose no undue restraint upon independent action. In the convention acts of the last decade such provisions as the following are found: "The Governor shall call the convention to order at its opening session and shall preside over it until a temporary or permanent presiding officer shall have been chosen by the delegates";[4] the delegates "shall proceed to organize themselves in Convention, by choosing a president and such other officers . . . . as they may deem expedient";[5] the "journal and proceedings of the said convention shall be filed and kept in the office of secretary of state";[6] and the "doors of the convention shall be kept open to the public during all of its sessions."[7]

Furthermore, the legislature sometimes assumes to confer upon the convention powers of a positive nature. Thus, the convention "and its committees, shall have the same power to compel the attendance of witnesses, or the production of papers, books, records and public documents, as is

3 Jameson's *Constitutional Conventions*, p. 275.

4 Illinois convention act (approved June 21, 1919), Sec. 7.

5 Massachusetts convention act (approved April 3, 1916), Sec. 6.

6 Ohio convention act (approved June 6, 1911), Sec. 18.

7 Michigan convention act (approved June 27, 1907), Sec. 7.

now exercised by the General Assembly, and its committees";[8] it "shall have authority to determine its own rules of proceeding, and to punish its members for disorderly conduct, to elect such officers as it may deem necessary for the proper and convenient transaction of the business of the convention, and to prescribe their duties";[9] or it is authorized to "make provisions for the publication of its proceedings or any part thereof; and for the securing of a copyright of any such publication for the state".[10] Sometimes express authority for the performance of its functions is found in a clause stating that the convention "may take into consideration the propriety and expediency of revising the present Constitution of the Commonwealth, or making alterations or amendments thereof."[11]

Such restrictions as those above enumerated would seem to have no other purpose than that of facilitating the work of the convention. In so far as this principle is observed, there is little danger of friction. Mr. Walter F. Dodd ably expresses this conclusion in these words:

> Legislative acts are usually necessary for the assembly of conventions, but this dependence of conventions upon legislatures has as yet caused few conflicts. The good sense of the people has ordinarily caused both legislatures and conventions to restrict themselves to their proper spheres. The general obedience of conventions to the legislative acts under which they were called has been due to the fact that legislative acts have usually required only those things which the convention would have done without legislative requirement; cases of conflict arise only when a legislature

[8] Illinois convention act (approved June 21, 1919), Sec. 12.

[9] Ohio convention act (approved June 6, 1911), Sec. 4.

[10] Nebraska convention act (approved March 24, 1919), Sec. 14.

[11] Massachusetts convention act (approved April 3, 1916), Sec. 6.
In Massachusetts there was no constitutional provision for calling a convention. There are at present twelve States that have no express provision covering this matter; but conventions have been held in eight of them without serious difficulty.— Hoar's *Constitutional Conventions*, p. 41.

attempts to restrict a convention in such a manner as to interfere with its proper functions, and such cases have not been numerous.[12]

Sometimes, however, legislatures have incorporated in convention acts provisions that give rise to confusion and delay — although it would seem that such objectionable requirements have been due more to over-zealousness in behalf of the general welfare than to any intention of extending their proper authority. In this connection attention may be called to three such questionable provisions. The first of these has to do with the nature and the necessity of a fidelity oath to bind the convention delegates in the performance of their duties; the second deals with limitations as to the length of the convention session, coupled with a refusal of remuneration after a specified time; and the third concerns detailed requirements as to submitting the findings to the people for approval.

The Convention Oath. — The Constitutions of Colorado, Illinois, and Montana contain express provisions to the effect that delegates to a constitutional convention shall take an oath to support both the State and the Federal Constitution. Where such a provision is found in the fundamental law, there can be little doubt of its propriety — at least it appears that its propriety has not been disputed.[13] Judge Jameson asserts that of the convention proceedings accessible to him, about one-half indicate that an oath has been administered to the delegates.[14] The question, however, does not seem to be so much concerning the propriety of an oath, as the proper oath to be administered.[15]

In the Iowa convention of 1857 a pointed discussion took

[12] Dodd's *The Revision and Amendment of State Constitutions*, p. 91.

[13] Hoar's *Constitutional Conventions*, p. 189.

[14] Jameson's *Constitutional Conventions*, p. 280.

[15] Hoar's *Constitutional Conventions*, p. 188.

place upon this very question. The convention act approved on January 24, 1855, contained no provision in the matter; and the delegates themselves had difficulty in coming to an agreement. As first presented the resolution pertaining to this question provided that the "members elect, of this Convention, be and they are hereby required, severally, to take an oath to support the Constitution of the United States, and to faithfully discharge their duties as delegates to this Convention." An amendment proposing that the words "and the Constitution of the State of Iowa" be inserted after the words "United States", precipitated a heated but rather academic debate. One member asserted that inasmuch as his intention towards the existing State Constitution was "to alter it, break it down, tear it to pieces, and build it up again", he could see no reason why he should swear to support it. The debate, covering almost two pages of the record, resulted in the adoption of the original resolution.[16] Although legislative supremacy was not in this instance at issue, the discussion is indicative of the attitude of the delegates toward such requirements.

Judge Jameson mentions the North Carolina conventions of 1835 and 1875, as well as the Illinois conventions of 1862 and 1869, as important examples relating to this question. The acts under which these conventions assembled definitely prescribed the oath to be taken. In both of the North Carolina conventions the oath was objected to, but was subsequently administered — even though important restrictions were formally placed upon the conventions by the legislature and no delegate was permitted to take his seat until bound by oath. The members of the Illinois convention of 1862, however, refused to take the oath required by the con-

[16] *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, pp. 8, 9.

The member who made the statement quoted in the text was Mr. J. C. Hall of Des Moines County.

vention act, and the members of the convention of 1869 took it only in a modified form.[17]

The Virginia convention of 1901–1902 refused by a vote of fifty-six to thirty-eight to take the oath laid down in the existing Constitution, because it not only required the support of both the United States and the State Constitutions, but also bound the "officers of this State" to accept and to recognize "the civil and political equality of all men before the law."[18] The argument that the delegates were not "officers" within the meaning of the Constitution of 1870 formed a convenient ground for evasion, inasmuch as the principal purpose of the convention was to effectively disfranchise the negro.[19]

The Alabama convention of 1901 was likewise restricted by legislative act both as to functions and to oath. Declaring support of the Constitution of the United States and fidelity to the duties of a delegate, the required oath was taken by the members, but inasmuch as it made no reference to the legislative act, the restrictive provisions therein contained were not fully observed. The controversy led to the positive assertion in the new Constitution that "nothing herein contained shall be construed as restricting the jurisdiction and power of the convention, when duly assembled in pursuance of this section, to establish such ordinances and to do and perform such things as to the convention may

[17] Jameson's *Constitutional Conventions*, pp. 283, 284.

In at least the South Carolina convention of 1835, Judge Jameson indicates that the "Act rested not alone on the authority of the legislature, but on that of the people to whom it had been submitted." This view seems to be the one that finally persuaded the members to take the oath.

[18] McKinley's *Two New Southern Constitutions* in the *Political Science Quarterly*, Vol. XVIII, pp. 506, 507.

The article referred to gives interesting data concerning the Alabama and Virginia conventions that convened in 1901.

[19] Dodd's *The Revision and Amendment of State Constitutions*, p. 81.

seem necessary or proper for the purpose of altering, revising, or amending the existing Constitution.''[20]

The Louisiana act under which the convention of 1913 convened contained elaborate restrictions upon the powers of the convention through an oath which concluded with the words: ''I will observe and obey the limitations of authority contained in the act under which this convention is assembled''. In this instance, the act was previously submitted to the electorate. Since, however, both the provisions for the election of delegates and the question as to the desirability of a convention were embodied in the same statute and submitted at the same time, it can hardly be said that such an act emanated from the people.[21]

In convention acts of the last decade, oaths are not usually prescribed — unless required by higher authority than legislative enactment. The Illinois Constitution of 1870 requires delegates to a convention to ''take an oath to support the constitution of the United States and the State of Illinois, and to faithfully discharge their duties as members of the convention.''[22] In Michigan, Missouri, and New York the State Constitutions — otherwise complete as to provisions for convening a convention — fail to mention the oath.[23] Of some fifteen States that have passed convention

[20] Dodd's *The Revision and Amendment of State Constitutions*, p. 82; *Constitution of Alabama*, 1901, Art. VIII, Sec. 286, in Kettleborough's *The State Constitutions*, p. 51; *Journal of the Proceedings of the Constitutional Convention* (Alabama), 1901, p. 5; McKinley's *Two New Southern Constitutions* in the *Political Science Quarterly*, Vol. XVIII, p. 507.

[21] Dodd's *The Revision and Amendment of State Constitutions*, pp. 75–77; *Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana*, 1913, p. 4.

[22] *Constitution of Illinois*, 1870, Art. XIV, Sec. 1, in Kettleborough's *The State Constitutions*, p. 406.

[23] *Constitution of Missouri*, 1875, Art. XV, Sec. 3, in Kettleborough's *The State Constitutions*, p. 813; *Constitution of New York*, 1894, Art. XIV, Sec. 2, in Kettleborough's *The State Constitutions*, pp. 1001, 1002; *Constitution of Michigan*, 1908, Art. XVII, Sec. 4, in Kettleborough's *The State Constitutions*, p. 708.

acts since 1900, few have required an oath to bind the delegates. It would seem that in the absence of a higher sanction a specified oath has no proper place in the convention.

Length of Convention Session: Compensation of Delegates. — In several convention acts of recent date is to be found an attempt to restrict the length of the convention session, supplemented by a further provision that at the end of a certain time remuneration of the delegates shall cease. The act providing for the Alabama convention of 1901 declared that members should draw pay for not to exceed fifty working days. Upon the expiration of this period the task of the convention was hardly half completed. The members, however, decided to remain in session until the work was finished and to draw pay at the rate authorized by the legislature for the first fifty days.[24] The convention that met in New York in 1894, finding itself in a similar situation, continued its session, but without compensation.[25] In Louisiana the convention act of 1913 stipulated "that no compensation shall be allowed to delegates after fifteen (15) days to which the convention is hereby limited." The convention met on November tenth and obediently adjourned on the twenty-second. In this case it should be noted that the convention act had been submitted to a vote of the people.[26] In the case of New Mexico and

In spite of no mention of the oath in the constitutional requirements for a convention, both the New York act of 1915 and the Michigan act of 1907 mention the administering of "the constitutional oath of office" to the delegates. — Michigan convention act (approved June 27, 1907), Sec. 6; New York convention act (approved March 17, 1915), Sec. 2.

24 McKinley's *Two New Southern Constitutions* in the *Political Science Quarterly*, Vol. XVIII, pp. 509, 510.

25 Dodd's *The Revision and Amendment of State Constitutions*, p. 82.

26 Louisiana convention act (approved September 12, 1913), Sec. 6; *Election Proclamation*, November 7, 1913, in the *Official Journal of the Constitutional Convention of the State of Louisiana*, 1913, pp. 6–9; *Official Journal of the Constitutional Convention of the State of Louisiana*, title page.

Arizona it appears that in the enabling act which permitted the people to elect delegates to draft a Constitution, Congress provided protection against possible dilatory conventions. The sum of $100,000 was appropriated with the provision that any expense incurred in excess of that amount should be paid by the "State" and that the delegates should receive compensation for the period they were actually in session "but not for more than sixty days in all."[27] The Michigan convention act of 1907 declared that "no per diem shall be paid for any services rendered after January thirty-first, nineteen hundred eight." Here the convention met on October 22, 1907, and completed its work on March 3, 1908.[28]

It would seem that such restricting provisions are, for the most part, unnecessary. Where a State Constitution provides that no money shall be paid from the treasury otherwise than through legislative act, legislative restrictions in the convention act may prove to be annoying.[29] Practically all convention acts of the last two decades have fixed the compensation of the convention delegates and made adequate provision for certification and payment. Sufficient safeguard is found in such phrases as, "The delegates of the convention shall be entitled to the same compensation and mileage for their services as is allowed by law to members of the general assembly for one year";[30] "The members of the Constitutional Convention shall receive the same pay and mileage as members of the Legislature receive for a regular Session";[31] or the convention

[27] Enabling act for Arizona and New Mexico (approved June 20, 1910), Secs. 2, 17, 20, 35, in *United States Statutes at Large,* Vol. XXXVI, pp. 558, 568, 569, 578, 579.

[28] Michigan convention act (approved June 27, 1907), Sec. 6.

[29] Dodd's *The Revision and Amendment of State Constitutions,* pp. 103, 104.

[30] Ohio convention act (approved June 6, 1911), Sec. 20.

[31] Nebraska convention act (approved March 24, 1919), Sec. 19.

"shall establish the compensation of its officers and members, which shall not exceed seven hundred and fifty dollars for each member of the Convention as such."[32]

Time and Manner of Submitting the Constitution.— Among the most annoying restraints placed upon conventions by legislatures is the provision requiring that the proposed Constitution shall be submitted at a prescribed time and in a particular manner. A recent controversy on this subject took place in the Virginia convention which assembled in 1901. The convention act required the submission of the work of the convention to the people, although the Constitution of 1870, under which the convention was called, was silent on the subject.[33] Debate arose concerning the propriety of disregarding the injunction. "The consciences of the members were burdened not only by the general custom in earlier Virginia conventions and by the solemn promises of the last Democratic state convention, but also by the precise terms of the act of the legislature calling the convention."[34]

After much debate the convention took a recess, and the delegates returned to constituent mass-meetings for popular expression as to the proper course of action. On May 22, 1902, the convention reconvened, and a few days later voted in favor of the promulgation of the Constitution through proclamation. Regarding this action it has been said that "The law of the legislature was more easily set aside, in the opinion of the majority of the convention, than the party pledge; and some of those who to the last favored submission, on the grounds of the pledge, admitted the

[32] Massachusetts convention act (approved April 3, 1916), Sec. 7.

[33] Dodd's *The Revision and Amendment of State Constitutions*, p. 86.

[34] McKinley's *Two New Southern Constitutions* in the *Political Science Quarterly*, Vol. XVIII, pp. 507, 508.

right of the convention to act independently of the enabling acts of the legislature.''[35]

The broader question might be raised — in Iowa, for example — as to whether in the absence of constitutional provisions a legislature may, in its convention act, require that the findings of the convention be submitted to the people. There appears to be little authority for such action on the part of the legislature. To accept the proposition that the legislature may dictate how the work of the convention is to be submitted, would be to impair seriously the efforts of that body as an independent organ of the electorate.[36]

In this connection the Michigan case of Carton *v.* Secretary of State is of special interest.[37] The Constitution of 1850 under which the constitutional convention of 1907 was called, contained provisions on amendment and revision very similar to those found in Article X, Sections 1, 2, and 3 of the present Constitution of Iowa. Both documents give the legislature authority to provide by law for the election of delegates, and neither contains any express provision that the work of the convention shall be submitted to the people, although both instruments specifically provide that amendments originating through legislative action shall be subject to popular ratification.

The Michigan convention act of 1907 stipulated that ''The revised constitution shall be submitted by the convention to the people for adoption or rejection as a whole, on the first Monday in April, nineteen hundred eight.'' Since, however, the convention did not complete its work until February 21st, the convention deemed it expedient to extend the time of submission to the following November. George A.

[35] McKinley's *Two New Southern Constitutions* in the *Political Science Quarterly,* Vol. XVIII, pp. 507–509.

[36] Dodd's *The Revision and Amendment of State Constitutions,* pp. 87, 88.

[37] Carton *v.* Secretary of State, 151 Michigan 337.

Prescott, the Secretary of State, refusing to act under the order of the convention, a mandamus was sought to compel compliance. The question at issue was: "Which body [the legislature or the convention] has the power and is charged with the duty to prescribe the time and manner for submitting to the electors?"

After reviewing the precedents in the constitutional history of Michigan and pointing out that the convention act of 1907 was "the first attempt on the part of the legislature to fix the time and manner of submission" of a State Constitution, Chief Justice Grant in his opinion observed:

> The sole power conferred upon the legislature, in regard to changes in the Constitution, is confined to three things: (1) To submit to the people single amendments. Section 1, article 20. (2) To submit to the electors the question whether they desire a general revision of the Constitution. Section 2, article 20. (3) If the electors so desire, to "provide by law for the election of such delegates to such convention." Section 2, article 20.
>
> By necessary implication, the legislature is prohibited from any control over the method of revising the Constitution. The convention is an independent and sovereign body whose sole power and duty are to prepare and submit to the people a revision of the Constitution, or a new Constitution to take the place of the old one. It is elected by the people, answerable to the people, and its work must be submitted to the people through their electors for approval or disapproval . . . . I find no language in the Constitution from which any implication can arise that this power was vested in the legislature.[38]

From a study of the case it seems that the question whether or not the Constitution must be submitted to a vote of the electors was never for a moment in doubt. The statement by Chief Justice Grant that the work of the convention "must be submitted to the people" was simply the expression of an accepted fact. To anyone who is inter-

[38] Carton *v.* Secretary of State, 151 Michigan 337, at 340, 341, 343.

ested in this aspect of the convention problem the opinion of Chief Justice Grant and the opinions of Justices Blair and Carpenter, who agreed with the Chief Justice in granting the writ, are worth careful reading.

There is little danger that a convention in Iowa would refuse to submit its work to the people. In the early period of our country's history, the promulgation of Constitutions without ratification by the people was common enough to be termed frequent. Since 1890, however, only six such documents appear to have been promulgated without ratification by a vote of the people; and when it is noted that these came from conventions in Mississippi, South Carolina, Delaware, Louisiana (twice), and Virginia, it would seem that such practice has been decidedly sectional, and may, in view of the known attempts to disfranchise the negro, be treated as exceptions.[39] In fact, conventions in the South have many times taken to themselves greater powers than similar bodies in the North — especially in regard to this matter of convention promulgation of fundamental law. During the Virginia controversy a convention was at the same time in session in Connecticut; but, though the defeat of its new Constitution seemed imminent (a foreboding later fulfilled at the polls), not a hint concerning promulgation by the convention was entertained.[40]

Seventeen State Constitutions require that no new fundamental law shall go into effect unless ratified by the electorate.[41] Since the year 1900, some fifteen States have held

[39] Dodd's *The Revision and Amendment of State Constitutions*, p. 68.

The Constitution framed by the Kentucky convention of 1891 was altered by the convention without submission to a popular vote, after the new document had been ratified by the people.— Dodd's *The Revision and Amendment of State Constitutions*, p. 86; Dealey's *Growth of American State Constitutions*, pp. 144, 145; Cleveland's *Organized Democracy*, p. 278.

[40] McKinley's *Two New Southern Constitutions* in the *Political Science Quarterly*, Vol. XVIII, p. 510.

[41] Dodd's *The Revision and Amendment of State Constitutions*, p. 69.

conventions, and it appears that in all except Virginia in 1901 and Louisiana in 1913 the findings of the conventions were submitted to a vote of the people. In the case of only two States, Delaware and Mississippi, can it be said that the practice of long years seems to sanction constitutional change through proclamation. "Submission of a constitution to the people", writes Mr. Dodd, "may be and is the more proper policy, but it would seem to be a matter within the discretion of the convention itself, unless submission is required by the existing constitution."[42] There can be little doubt that in view of the political temperament of the people and the constitutional precedents in this State, an Iowa convention would have no thought other than to refer its work to the electorate. Thus, it would seem that the proper procedure for the General Assembly would be to leave the time and manner of submission entirely to the convention.

Summary. — From this discussion of what may properly be embodied in a convention act, one seems justified in drawing the conclusion that constitutional conventions exercise constituent power, subject to the ratification of the people. In actual practice they are limited by both the Federal and the State Constitutions, and, in the absence of a defined sphere, are subject to such limitations as are implied from their functions — that is, as "a regular organ for the expression of state will with reference to the state's fundamental law."[43] Thus a convention act may properly contain (1) provisions essential to the nomination and election of delegates; (2) provisions facilitating procedure, but which in no way unduly hamper the convention; (3) provisions conferring discretionary power in matters pertaining to organization, records, and ratification by the electorate;

[42] Dodd's *The Revision and Amendment of State Constitutions*, pp. 70, 92.

[43] Dodd's *The Revision and Amendment of State Constitutions*, p. 72.

and (4) provisions for the remuneration of the delegates and the expenses incident to the convention.

CONVENTION ACTS OF RECENT YEARS

Between the years 1900 and 1920 the States have shown considerable activity in the matter of constitutional revision. Conventions have been held in Alabama and Virginia in 1901; Connecticut in 1902; Oklahoma and Michigan in 1907; Arizona and New Mexico in 1910; Ohio in 1912; New Hampshire in 1902, 1912, and 1918 (the latter convention adjourned until after the war and planned to reconvene in 1919); Louisiana in 1913; New York in 1915; Massachusetts in 1917; Arkansas in 1917; Nebraska in 1919; and Illinois in 1920. In addition, the legislatures of Indiana and Connecticut, in 1911 and 1907 respectively, proposed Constitutions.[44]

As a whole the work of these constitutional conventions has been successful: new Constitutions were adopted in Alabama, Virginia, Oklahoma, Michigan, Arizona, New Mexico, and Louisiana — although in New York, Connecticut, and Arkansas the work of the conventions was rejected. The work of the Indiana legislature in drafting a Constitution in 1911 was never submitted, owing to a legal injunction; and the Connecticut proposal of 1907 was rejected by the people. In Ohio and Massachusetts, and in New Hampshire in 1902 and 1912, amendments were submitted rather than complete revisions of the fundamental law. The Nebraska convention of 1919 submitted forty-one amendments to the electorate; while the Illinois convention has not yet completed its work. The Virginia and Louisiana conventions did not submit their findings to the people, but adopted and promulgated new Constitutions upon their own

[44] Dealey's *Growth of American State Constitutions*, pp. 89–115, gives an excellent summary of constitutional activities between 1886 and 1914. See also *Constitutional Convention Bulletins* (Illinois), 1920, p. 36.

authority. In view of this activity, legislative acts from which to draw comparative data as to modern methods of providing for a constitutional convention are abundantly available; and it is the purpose to present in this paper such usages in the several States as may serve to indicate general practices in recent times.[45]

Number and Apportionment of Delegates. — The number of delegates composing constitutional conventions in recent years may be said, generally, to approximate 100; but one finds such extremes as 413 in New Hampshire and 52 in Arizona.[46] A fair per cent show such figures as 96, 102, 119; while several record an even 100. These numbers seem to suggest, first, a desire to provide a flexible body thoroughly representative of the State; and second, an endeavor to recognize as far as possible existing political divisions. The first of these considerations is a matter of judgment based on a knowledge of State conditions, particularly the number and distribution of the population, the character and extent of the revision or amendment contemplated, and contemporary usage under similar conditions; the second involves the question of apportionment — the number of delegates being determined, in part, by the number of State divisions from which they are to be elected.

As to the political units from which delegates are to be chosen, convention acts have quite uniformly designated either the State senatorial or the State representative districts. If the senatorial division is selected, it seems usual to provide for the election of two or more candidates from

[45] *State Constitutional Developments since 1900* in *Constitutional Convention Bulletins* (Illinois), 1920, p. 36.

[46] Updyke's *New Hampshire Constitutional Convention* in *The American Political Science Review*, Vol. VII, p. 134; Enabling act for Arizona and New Mexico (approved June 20, 1910), Sec. 19, in *United States Statutes at Large*, Vol. XXXVI, p. 568.

each district; while in utilizing the smaller representative division, it is generally required that each district shall choose delegates equal to the number of representatives to which such district is entitled in the State legislature. It would seem that the senatorial district as a basis for apportionment is in general the more satisfactory. Within certain limits the larger district will provide men of higher qualifications in point of interest and acquaintance, thereby tending to assure candidates of wide experience coupled with a knowledge of both State and local needs. The convention act sometimes emphasizes this point with a provision that the "Delegates shall possess the same qualifications as State senators",[47] or with greater laxity it may simply provide that the delegate be a "male citizen of this state above the age of twenty-one years, who is a resident of the district in which he is chosen."[48] The choice of the senatorial district will also generally permit, as has been indicated, the selection of two or more delegates from each district. This latter advantage tends to destroy the strict partisan alignment that might result from a convention of the same composition as the State legislature[49] — a condition to be avoided, if possible, since State parties, divided as they often are on transient issues, have little place in a convention whose function is to write fundamental and lasting regulations.

Time and Place of Meeting. — As to the time at which the convention is to convene it is necessary to consider carefully the seasonableness of the call — that is, to provide for the assembling of the members at such a time as will most nearly suit the convenience of the delegates. With this end

[47] Illinois convention act (approved June 21, 1919), Sec. 2.

[48] Michigan convention act (approved June 27, 1907), Sec. 5.

[49] Dealey's *Growth of American State Constitutions*, p. 144.

in view the late fall or winter is frequently stipulated, particularly in agricultural States. The provisions generally allow an interval of from thirty to sixty days between the election of delegates and the assembling of the convention, and a period varying greatly from one month to a year between the approval of the convention act and the election of delegates. It is evident, however, that local conditions will considerably influence these provisions. Moreover, the time should be so arranged as to avoid conflict with the session of the State legislature; for aside from the fact that some members of the legislature will be almost certain to have seats in the convention, practically every convention act provides that the place of meeting shall be in the Hall of the House of Representatives. Moreover, it is sometimes provided, in order to assure adequate preparation for the delegates, that the "Secretary of State shall take such steps as may be necessary to prepare the hall of the Representatives for the meeting of the convention",[50] or the "board of state auditors, previous to the meeting of the convention, shall prepare the hall of representatives and the senate chamber and the rooms connected therewith, for the use and occupation of the convention during its session."[51] In some instances there is no mention of such preliminary preparation, the matter evidently being left to the authorities ordinarily responsible for such arrangements.

Purpose and Procedure. — Nearly every recent convention act contains a clear declaration of the purpose for which the convention is called, procedure for calling the meeting to order, and the manner of selecting its officers, along with some indication of the rules of procedure to be followed. Concerning the first of these provisions, usage

50 Illinois convention act (approved June 21, 1919), Sec. 1.

51 Michigan convention act (approved June 27, 1907), Sec. 7.

shows little variation: "to revise, alter or amend the Constitution of the State of Illinois";[52] to "take into consideration the propriety and expediency of revising the present Constitution of the Commonwealth, or making alterations or amendments thereof";[53] or "for the purpose of making a general revision of the constitution of the state of Michigan."[54]

The regulations concerning the call to order are equally uniform, differing principally in regard to the official to whom the task is intrusted. The Governor, the Chief Justice, the Secretary of State, or the oldest delegate present may be designated for this duty; or the act may simply stipulate that the convention "shall organize by the election of one of their own number as president and one as president pro tem."[55] Occasionally a convention act contains the further requirement "that the Secretary of State shall attend the opening of the said convention and call the roll of delegates",[56] or he shall "call the roll thereof according to the returns on file in his office, which shall be certified to the convention by him, to administer the constitutional oath of office to the members, and to preside at all meetings thereof until a president has been elected and has taken his seat".[57]

Closely related to the preliminary organization of the convention is the selection of officers. This is uniformly left to the convention itself; but mention of the matter is usually made in some such phrase as to "organize by electing a president and all other necessary officers";[58] or "the

[52] Illinois convention act (approved June 21, 1919), Sec. 1.

[53] Massachusetts convention act (approved April 3, 1916), Sec. 6.

[54] Michigan convention act (approved June 27, 1907), Sec. 1.

[55] Michigan convention act (approved June 27, 1907), Sec. 6.

[56] Louisiana convention act (approved September 12, 1913), Sec. 5.

[57] Michigan convention act (approved June 27, 1907), Sec. 6.

[58] Indiana convention act (approved February 1, 1917), Sec. 13.

delegates shall elect one of their own number as president of the convention, and they shall have the power to appoint a secretary and such employes as may be deemed necessary'';[59] or there may be a still more elaborate provision, as in the Michigan act of 1907 which directs that the convention ''shall also choose such secretaries, sergeants-at-arms, clerks, and official stenographer, who shall choose his assistants, messengers and other attendants as they may deem necessary for the proper transaction of business.''[60]

A single phrase is usually deemed sufficient to provide that the convention shall have full authority to determine its own rules of procedure; but frequently more detailed regulations are embodied in the convention act, such as the requirement that a majority shall constitute a quorum, that the journal and proceedings shall be filed in the office of the Secretary of State, or that such proceedings shall be kept and printed daily. In the same category one finds permissive clauses to the effect that the convention shall be the sole judge of the election and qualifications of its members, that it may compel the attendance of witnesses, or punish its members for disorderly conduct. But more generally such provisions are left to the convention itself as part of the discretionary power proper to any assembly of a representative character.

Ratification by the Electorate. — Among the most important provisions of a convention act are those relating to the ratification of the proposed Constitution by the people. It has already been pointed out in this paper that a constitutional convention is a constituent assembly, and as such can not be bound absolutely by legislative requirements. Any regulation imposed by the convention act can have, there-

[59] Illinois convention act (approved June 21, 1919), Sec. 7.

[60] Michigan convention act (approved June 27, 1907), Sec. 6.

fore, only a facilitating influence. The moment a stipulation is made that restricts the convention in its proper work, it ceases thereby to facilitate, and so defeats the purpose for which it was provided. While practically all convention acts contain some liberal injunction concerning the ultimate disposition to be made of the work of the convention, it is safe to say that the usual practice is to leave the time, place, and manner of submission of the newly drafted Constitution to the determination of the convention itself. Often the process of ratification is embodied in some such phrase as "The Convention shall fix and prescribe the time and form and manner of submitting to the electors of the state any proposal to revise, amend or change the Constitution",[61] or, as the Massachusetts act of 1916 provided, "Any such revision, alterations or amendments, when made and adopted by the said Convention, shall be submitted to the people for their ratification and adoption, in such manner as the Convention shall direct".[62] Sometimes, however, regulations of a general nature are included, requiring, perhaps, that "the election at which said submission shall be made, shall be held and conducted the same as elections for members of the house of representatives, so far as practicable, and the vote for and against such proposed revision, alterations or amendments . . . . shall be entered on the tally sheet, counted, certified, transmitted and canvassed and the result thereof declared in the manner prescribed by law . . . . for the election of members of the house of representatives so far as applicable";[63] or, to give assurance that every phase of the process will receive adequate protection, a provision is inserted stating that "all laws in force governing elections and not inconsistent with the pro-

[61] Nebraska convention act (approved March 24, 1919), Sec. 16.

[62] Massachusetts convention act (approved April 3, 1916), Sec. 6.

[63] Ohio convention act (approved June 6, 1911), Sec. 5.

visions of this Act, or with powers exercised under the terms hereof, shall apply to and govern elections held under the terms of this Act."[64]

It would seem that since the convention usually would have no desire other than to utilize to the fullest possible extent the existing election machinery in submitting its work to the voters, such provisions in the convention act are entirely proper as indicating to both the convention and to the electorate the procedure that should be regularly followed to secure the best results. If, however, in the absence of constitutional provisions, restrictions as to the time of submission, or a detailed method as to how the convention's findings were to be presented, or a kindred requirement that might be difficult or impossible to meet, should be placed in the act, unnecessary friction might result.

Preliminary Preparation: Collection of Information and Research. — At this point mention may be made of a question which, while not strictly a matter of procedure, has much to do with the ease and efficiency with which the convention may carry on and complete its work. It is of the utmost importance that information and materials relating to the subject-matter of modern Constitutions be made accessible and available for the immediate use of the delegates when they convene. Frequently the convention acts recognize this necessity by providing that "it shall be the duty of every State, County and municipal officer in the State to transmit without delay, any information at his command which the Convention by resolution or otherwise, may require of him";[65] and a penalty for disobedience is sometimes provided. Such a provision is doubtless both desirable and effective, and may properly appear in the

[64] Illinois convention act (approved June 21, 1919), Sec. 10.

[65] Nebraska convention act (approved March 24, 1919), Sec. 20.

convention act; but unaided, it would fail to place at the disposal of the convention, without great loss of time, the particular data requisite for an intelligent handling of the important problems involved in a revision of the fundamental law. The Nebraska act of 1919 frankly recognized this condition by providing that "for the purpose of aiding the Convention in the discharge of its duties, the supreme court of the State of Nebraska, shall, within thirty days after this act takes effect, appoint a preliminary survey Committee to consist of five members. The committee so appointed shall compile and tabulate information relative to State Constitutions of the different States or of other constitutional governments and such other information as the said Committee shall deem pertinent to the problems to be dealt with by the Constitutional Convention."[66] Traveling expenses and other charges incurred in the performance of duties, and an additional remuneration of $1200 were provided for each member of the committee.[67] Other States have adopted similar arrangements either through special statute or through the provisions of the convention act itself. The convention of Michigan in 1907–1908, of Ohio in 1912, of New Hampshire in 1902 and 1918, of New York in 1915, of Massachusetts in 1917–1919, and of Illinois in 1920, all enjoyed the advantages of extensive preparation made previous to their assembly.[68]

Sometimes, to do this important preliminary work, a special board has been created; in other cases an existing agency of the State has been utilized. The Indiana convention act of 1917 (although never put into effect) directed that "the bureau of legislative and administrative

[66] Nebraska convention act (approved March 24, 1919), Sec. 21.

[67] Nebraska convention act (approved March 24, 1919), Sec. 22.

[68] *Work in Preparation for the Constitutional Convention* in *Constitutional Convention Bulletins* (Illinois), 1920, p. 9.

information shall collect, compile and prepare such information and data as it may deem useful to the delegates and the public, including digests of constitutional provisions of other states and an annotation of the present constitution", and further stipulated that the "Indiana historical commission shall furnish for the use of each member a copy of the volume entitled 'Constitution Making in Indiana' printed by the commission if the same shall be available."[69] In Illinois, this work, in accordance with statute law, was intrusted to the Legislative Reference Bureau, and a very complete and adequate set of bulletins was provided for the use of the convention.[70] It would seem that the best results from both the standpoint of economy and of service would be obtained by placing such work in the hands of a well organized and experienced State agency — some body thoroughly familiar with the methods of research and equipped to do the work. Extensive library facilities, highly trained researchers, and sufficient time for thorough study of the problems seem to be the principal requirements.

Nomination of Delegates. — The provisions that usually receive detailed attention in convention acts are, of course, those which deal with the nomination and election of delegates. This is a question with which the convention has nothing to do. The entire procedure is provided either in the general election laws of the State or in special provisions contained in the convention act. As has been indicated, the existing election machinery is, as far as possible, usually employed; but modifications, especially in methods of nomination, may be found necessary.

Since the advent of the primary, the States have com-

[69] Indiana convention act (approved February 1, 1917), Sec. 17.

[70] *Constitutional Convention Bulletins* (Illinois), 1920, Introduction.

monly used, at least in a modified form, that method in selecting candidates for constitutional conventions. In Illinois in 1919 a blanket clause was placed in the convention act to the effect that "all provisions of law in force at such time, and applying to the nomination of candidates for the office of State senator, shall to the extent that they are not in conflict with the terms of this Act, apply to the primary election herein provided for."[71] This was supplemented with general provisions providing for the filling of vacancies, independent nominations, qualifications of voters, registration, and protection against fraudulent voting, each usually in accordance with the stipulations of existing laws. Some convention acts, however, have gone into much greater detail.

The more recent provisions frequently start with a statement that "candidates for members of the Constitutional Convention shall be nominated by nominating petitions";[72] and sometimes a phrase "without party or political designation" is added.[73] The next requirements usually embrace the directions that all petitions shall be in writing; that they shall be signed by "not less than two per cent of the qualified electors of said county",[74] or "signed by not less than five per cent (5%) of the qualified electors of the representative district", but "in no case shall the number of signers . . . . be less than one hundred";[75] that they shall, when properly signed, be addressed to some designated officer (usually to the County Clerk, or his equivalent, in districts that include a single county, or to the Secretary of State if the district includes more than

[71] Illinois convention act (approved June 21, 1919), Sec. 3.

[72] Nebraska convention act (approved March 24, 1919), Sec. 3.

[73] Massachusetts convention act (approved April 3, 1916), Sec. 3.

[74] Ohio convention act (approved June 6, 1911), Sec. 7.

[75] Nebraska convention act (approved March 24, 1919), Sec. 3.

one); and that such petition shall be filed on or before a certain day. The petitions themselves are sometimes specified in detail; and any special declaration or provision that may be required is carefully set forth. In some acts, however, the matter is disposed of by a general provision that the "nominations of candidates for members of the convention may be made by nomination papers, as now provided by law for members of the House of Representatives, and that all qualified electors, whether their party affiliation is registered or not, may sign such papers."[76] In all these requirements it is evident that each State has its own peculiar problems which must be decided in accordance with local conditions, and through an intimate knowledge of the election laws.

As a general rule the more recent convention acts that designate nomination by petition make provision for the subsequent primary. Sometimes, however, a primary is provided by inserting a provision in substance as follows: "If in any representative district, the number of persons nominated by nominating petitions, equals or exceeds three times the number to be elected delegates to the Constitutional Convention from such district, a non-partisan primary shall be held in such district on the third Tuesday after the first Monday in September."[77] It seems that such a requirement has the value of providing that only in those districts where a large number of candidates file petitions (in the above instance, three times the number to be elected), will a primary be held; otherwise, the petitioners' names will appear on the election ballot. It would appear that such a regulation offers the advantages (1) of materially reducing the expense of nomination, (2) of avoiding the discouragement of attempting to secure a popular ex-

[76] Louisiana convention act (approved September 12, 1913), Sec. 8.

[77] Nebraska convention act (approved March 24, 1919), Sec. 9.

pression when there is a number of candidates equal or only slightly in excess of the positions to be filled, and (3) of discouraging, through the threat of a primary, a promiscuous filing of petitions. The process of the primary itself is usually arranged by a general provision that it shall be "held under the general primary election law";[78] or there is a more elaborate direction to the effect that "the primary and other elections provided for in this Act shall be held at the places fixed by law for the holding of general elections and shall be conducted by the officials, judges and clerks charged with the duty of conducting general elections."[79]

Election of Delegates.— The regulations governing the election of delegates seem subject to the same general considerations that appear to govern the primary, that is, there is evidenced an attempt to conform with the existing election laws. In almost every instance a proclamation giving notice of the election is provided, and the proper person to issue such proclamation is designated. Sometimes this provision is a general statement to the effect that it shall be made by the "same persons and in the same manner, as in general elections",[80] or, more definitely, "the Governor shall make proclamation, giving notice of the election to be held under this act, at least twenty (20) days before the date of the said election."[81]

The qualifications of the electorate are usually contained in a general provision to the effect that, "Every person who, at the time of the holding of any primary or other election provided for in this Act, is a qualified elector under

[78] Louisiana convention act (approved September 12, 1913), Sec. 8.

[79] Illinois convention act (approved June 21, 1919), Sec. 10.

[80] Nebraska convention act (approved March 24, 1919), Sec. 2.

[81] Louisiana convention act (approved September 12, 1913), Sec. 7.

the Constitution and laws of this State, shall be entitled to vote in such election."[82] Registration, fraudulent voting, and the tabulation, returns, and canvass of the ballots are also generally embraced in phrases designating in effect that "the election shall in all respects be conducted, the returns thereof made and the result thereof certified as is provided by law in the election of representatives to the Legislature, except as otherwise provided herein."[83] Vacancies in the convention are generally filled as provided by law in the case of a similar situation in the General Assembly; and contested elections, when mentioned at all, are generally left to the convention itself. The day upon which the election is to be held is, of course, designated; and it is commonly placed in the fall of the year — in September, October, or November. For the reason that so important a task as selecting delegates to a constitutional convention should be, as far as possible, unhampered by the multitude of candidates and issues presented at the regular elections, special elections are frequently provided.

In an endeavor to exclude partisan influence or the undue advantage resulting from a favorable position on the election ballot, some States, notably Ohio, Indiana, and Nebraska, have in their convention acts gone into detail concerning the preparation of the ballots. The following Nebraska provisions are typical of the regulations enacted: "The whole number of ballots to be printed for the County shall be divided by the number of candidates for members of the Constitutional Convention. The quotient so obtained, shall be the number of ballots in each series of ballots to be printed. The names of candidates shall be arranged in alphabetical order and the first series of ballots printed. Then the first name shall be placed last and the

[82] Illinois convention act (approved June 21, 1919), Sec. 10.

[83] Nebraska convention act (approved March 24, 1919), Sec. 2.

next series printed, and the process shall be repeated in the same manner until each name shall have been first. These ballots shall then be combined in tablets with no two of the same order of names together, except where there is but one candidate."[84] Other States, however, relying upon the laws already in force, insert a clause to the effect that "such election shall be conducted in conformity with the laws then in force relating to elections for State senators, to the extent that such laws are applicable."[85]

Appropriations for Expenses of Convention and Compensation of Delegates.— All convention acts provide in some manner adequate appropriations to defray the necessary expenses of the convention; but usage differs widely as to details. The Nebraska convention act of 1919 provided that delegates should receive "the same pay and mileage as members of the Legislature receive for a regular Session";[86] the Illinois act of the same year required that "each delegate shall receive for his services the sum of two thousand dollars, payable at any time after the convention is organized. The delegates shall be entitled to the same mileage as is paid to the members of the General Assembly, to be computed by the Auditor of Public Accounts. The delegates shall receive no other allowance or emoluments whatever, except the sum of fifty dollars to each delegate, which shall be in full for postage, stationery, newspapers, and all other incidental expenses and perquisites."[87] In the same act the salary of the secretary of the convention was placed at $15.00 a day.[88] In Massachusetts in 1916 a still different course was followed by stipulating that the

[84] Nebraska convention act (approved March 24, 1919), Sec. 18.

[85] Illinois convention act (approved June 21, 1919), Sec. 4.

[86] Nebraska convention act (approved March 24, 1919), Sec. 19.

[87] Illinois convention act (approved June 21, 1919), Sec. 6.

[88] Illinois convention act (approved June 21, 1919), Sec. 7.

convention itself "shall establish the compensation of its officers and members, which shall not exceed seven hundred and fifty dollars for each member of the Convention as such";[89] while the Michigan act of 1907 required that "the compensation of the delegates of said convention shall be ten dollars per day during the session of the convention, and ten cents per mile for every mile traveled by the nearest practicable route in going to and returning from the place of holding the convention". It would seem, in spite of the wide differences as herein noted, that the provision most common to the convention acts of recent years makes the pay and mileage of delegates the equal of that received by members of the General Assembly for a regular legislative session.

The payment of such compensation or expenses incidental to the functions of the convention is generally protected by either providing that it shall be paid "in the same manner as is provided by law for the payment of similar claims in the legislature",[90] or by prescribing that particular preparation be made for certification by some specified officer. In this particular in the Ohio act it was provided that "no warrant shall issue on the state treasurer for such compensation, or for money for uses of the convention, except on order of the convention and certificate of the presiding officer thereof";[91] and the Illinois legislation provides with equal clarity that "the sum of five hundred thousand dollars ($500,000), or so much thereof as may be necessary, is hereby appropriated for the payment of salaries and other expenses properly incident to the constitutional convention. The Auditor of Public Accounts is hereby authorized and directed to draw warrants on the

[89] Massachusetts convention act (approved April 3, 1916), Sec. 7.

[90] Michigan convention act (approved June 27, 1907), Sec. 6.

[91] Ohio convention act (approved June 6, 1911), Sec. 20.

State Treasurer for the foregoing amount or any part thereof, upon the presentation of itemized vouchers certified to as correct by the president of the constitutional convention or the acting president of the convention."[92]

CONVENTION ACTS IN IOWA

Iowa is not without experience in preparing for and holding constitutional conventions: four convention acts have been placed upon the statute books and three constitutional conventions have been held in this State. Moreover, the documentary sources of information relative to the several conventions and constitutions have been published by The State Historical Society of Iowa in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, pp. 131–287; and more recently the pages containing these documents have been bound separately under the title of *Some Documentary Material Relating to the History of the Constitutions of Iowa.* A narrative account of the four convention acts, the three conventions, and the three Constitutions may be found in Shambaugh's *History of the Constitutions of Iowa.*

The first legislation in Iowa relative to a constitutional convention was embodied in "An Act to provide for the expression of the opinion of the people of the Territory of Iowa as to taking preparatory steps for their admission into the Union."[93] Approved by the Governor on July 31, 1840, this legislation provided only for a vote of the electors on the question of calling such a convention. The returns of the election, which was held in August, 1840, showed a large majority against the proposition.[94]

[92] Illinois convention act (approved June 21, 1919), Sec. 13.

[93] *An Act to provide for the expression of the opinion of the people of the Territory of Iowa as to taking preparatory steps for their admission into the Union* (approved July 31, 1840), reprinted in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 135.

[94] Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, pp. 136, 137.

Convention Act of 1842.— Two years later the Legislative Assembly passed another act which, besides enabling the people to vote on the propriety of a constitutional convention, contained provisions regulating the election of delegates and the holding of such convention in the event of a favorable vote on the convention proposition.[95] Thus the act of 1842 was properly a convention act, containing provisions usual to such legislation. It provided for a convention consisting of eighty-two delegates to be elected from the organized counties of the Territory. A maximum of eleven delegates each was to be chosen from the counties of Lee and Van Buren, and a minimum of one delegate each from the counties of Jones and Delaware. The manner of issuing the proclamation for the election, which was to be held on the second Tuesday in October following the approval of the convention by the people, and all proceedings connected therewith were to be "in accordance with the provisions of the law, providing for the election of the members of the Council and House of Representatives in this Territory, so far as the same may be applicable."[96]

Delegates chosen under the convention act of 1842 were to meet at Iowa City on the first Monday in November. It was provided that the Secretary of the Territory should secure a "suitable room for the meetings of the Convention", and that he should "provide the same with furniture, stationery, and all other things necessary"[97] for the comfort and convenience of the delegates. The act clearly states the process to be followed in submitting the Constitution to a vote of the people after its adoption by the convention. Following such adoption by the convention the new document was to "be published in all the newspapers

[95] Iowa convention act (approved February 16, 1842), Secs. 1–3, 4–14.

[96] Iowa convention act (approved February 16, 1842), Secs. 4, 5.

[97] Iowa convention act (approved February 16, 1842), Secs. 7, 13.

printed in this Territory;" and "at the next general election . . . . the electors . . . . who are qualified to vote for members of the Legislature . . . . shall be and they are hereby authorized, to vote 'For the Constitution,' or 'Against the Constitution.' "[98]

The vote in 1842 again showed marked opposition to a constitutional convention, as each of the seventeen counties participating in the election returned a majority against it. Indeed, it was not until 1844 that the people of Iowa through a favorable expression at the polls, sanctioned the calling of a constitutional convention.[99]

Convention Act of 1844.—The convention act of 1844 was very similar to the one of 1842, notwithstanding several differences in detail. As voted upon by the electors the act provided for the election of seventy delegates. The largest representation was allotted to Lee, Des Moines, and Van Buren counties which were to elect eight delegates each; while Wapello, Davis, Keokuk, and Mahaska were to elect one each.[100] Subsequently, however, the original act was amended so as to provide that the convention should consist of seventy-three members and that "the counties of Davis, Wapello, and Mahaska shall each be entitled to two members".[101] The election of the delegates was to be conducted "in accordance with the provisions of the law providing for the election of members of the Council and the House of Representatives in this Territory, as far as the same may be applicable";[102] and the delegates so chosen were in-

[98] Iowa convention act (approved February 16, 1842), Sec. 8.

[99] Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, pp. 141–143, 147–149.

[100] Iowa convention act (approved February 12, 1844), Sec. 5.

[101] Amendment to Iowa convention act (approved June 19, 1844), Sec. 1, reprinted in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 149.

[102] Iowa convention act (approved February 12, 1844), Sec. 4.

structed to meet at Iowa City on the first Monday in October following their election "and proceed to form a constitution and state government for the Territory of Iowa."[103] The Secretary of the Territory was to make suitable preparation for the meeting and to provide all things necessary for "the comfort and convenience of the Convention."[104]

Provisions for popular ratification of the Constitution drafted by the convention were substantially the same as those of the convention act of 1842. Thus, publication of the new fundamental law in all newspapers of the Territory was required; and at the township elections in the April following the session of the convention the electors qualified to vote for members of the legislature were authorized to vote for or against the proposed Constitution.[105] One provision not found in the legislation of 1842 appears in the act of 1844: "the members of said Convention shall be entitled to such compensation as the Convention may direct, not exceeding three dollars per diem, and three dollars for every twenty miles travel to and from the place of holding said Convention."[106]

When the Constitution as drafted by the convention of 1844 was submitted to Congress that body passed an act to admit Iowa to statehood with several qualifying conditions, one of which provided for the curtailment of the boundaries of the new State on the north and west; and so great was the dissatisfaction caused by this provision that a majority of the people voted against the adoption of the new Constitution when it was submitted to them for ratification. In view of this fact the Governor in his message to the Legislative Assembly on May 5, 1845, stated that the rejection of

[103] Iowa convention act (approved February 12, 1844), Sec. 7.

[104] Iowa convention act (approved February 12, 1844), Sec. 12.

[105] Iowa convention act (approved February 12, 1844), Sec. 8.

[106] Iowa convention act (approved February 12, 1844), Sec. 13.

the Constitution by the people imposed upon the Assembly "the necessity of further legislation preparatory to presenting anew to Congress, our claims to admission into the Union"— that is to say, in his opinion a new convention act, a new convention, and a new Constitution were necessary.[107]

There were, however, many who favored a resubmission of the rejected Constitution. And so, an act to resubmit this instrument to the people was passed over the Governor's veto and declared to be a law on June 10, 1845.[108] It contained the provision "That the ratification of the Constitution, as aforesaid, shall not be construed as an acceptance of the boundaries fixed by Congress in the late act of admission, and the admission shall not be deemed complete until whatever condition may be imposed by Congress, shall be ratified by the people."[109] The August election of 1845 resulted in another defeat for the Constitution as drafted by the convention of 1844. In his message of December 3, 1845, the Governor deplored the result of the August election; and, while asserting it to be "the recorded judgment of the people", he promised "hearty co-operation" in any steps that might be taken towards the incorporation of Iowa into the Union.[110]

Convention Act of 1846.— The third convention act, which

[107] *An extract from the Governor's Message of May 5th, 1845,* reprinted in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, pp. 177–179.

[108] Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 182.

[109] *An Act to submit to the people the draft of a Constitution formed by the late Convention* (declared a law June 10, 1845), Sec. 8, reprinted in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, pp. 181, 182.

[110] *An extract from the Governor's Message of December 3rd, 1845,* reprinted in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, pp. 182, 183.

appears in the statute books above the date of January 17, 1846, states quite definitely in its title that it was "to provide for the election of Delegates to a Convention to form a Constitution and State Government."[111] According to its provisions the proposed convention was to consist of thirty-two delegates, elected one from each county, except that Des Moines, Lee, and Van Buren were to have three each; Jefferson and Henry were given two each; and Dubuque, Delaware, Buchanan, Fayette, and Black Hawk were to be collectively represented by two.[112] The delegates elected were to convene at Iowa City on the first Monday in May, 1846, and "proceed to form a Constitution, and State Government for the future State of Iowa."[113] The Secretary of the Territory was, as usual, intrusted with the necessary preparations for the meeting. The method of election of delegates was provided in the customary requirement that it should be "in accordance with the provisions of the law providing for the election of members of the Council and House of Representatives in this Territory, so far as the same may be applicable."[114] Members of the convention were to receive three dollars per day and three dollars for every twenty miles traveled to and from the place of meeting, and the money was "to be paid in the way and manner as may hereafter be provided for by the Legislative Assembly of the Territory or State of Iowa."[115]

Upon the adoption of a Constitution by the convention, it was required that the document be published; and at the next general election the qualified electors were authorized to vote for or against the new document.[116] Upon ratifica-

[111] Iowa convention act (approved January 17, 1846).
[112] Iowa convention act (approved January 17, 1846), Sec. 2.
[113] Iowa convention act (approved January 17, 1846), Sec. 4.
[114] Iowa convention act (approved January 17, 1846), Secs. 1, 9.
[115] Iowa convention act (approved January 17, 1846), Sec. 10.
[116] Iowa convention act (approved January 17, 1846), Sec. 5.

tion the new Constitution was to be presented to the Congress of the United States as a step preliminary to the admission of Iowa into the Union.[117] The Constitution drafted in accordance with the provisions of this act was approved by the people on August 3, 1846, by a safe majority; and subsequent acceptance by Congress permitted the admission of Iowa to statehood on December 28, 1846.[118]

Convention Act of 1855.— Hardly had the new State government been organized before agitation was begun having for its object the amendment or revision of the Constitution so recently adopted. A clause prohibiting the organization of any corporation whose function was to exercise "the privileges of banking"[119] had been inserted in the Constitution to protect the State against the evils of paper money that had proved so serious in the banking operations of the time. In practice, however, this inhibition denied the benefits of properly controlled banks without curtailing the evils, since neighboring States easily circulated their depreciated paper money in Iowa. In accordance with what appeared to be wide dissatisfaction concerning this provision, the Fifth General Assembly in 1855 passed an act providing — subject to popular approval — for the "revision or amendment of the Constitution of this State."[120] The procedure as set forth in this fourth convention act was based on the Constitution of 1846, Article XI of which contained the following provisions:

> If at any time, the General Assembly shall think it necessary to

[117] Iowa convention act (approved January 17, 1846), Sec. 8.

[118] Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 185, 186.

[119] *Constitution of Iowa*, 1846, Art. IX, Sec. 1, reprinted in Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 205.

[120] Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 217–221.

revise or amend this constitution, they shall provide by law for a vote of the people for or against a convention, at the next ensuing election for members of the General Assembly, in case a majority of the people vote in favor of a convention, said General Assembly shall provide for an election of Delegates to a convention, to be held within six months after the vote of the people in favor thereof.[121]

In accordance with the provision to "provide for an election of Delegates" the convention act of January 24, 1855, stipulated that the number and apportionment of delegates to be elected should "correspond to the number of Senators in the General Assembly, according to the apportionment at the time of the election of said delegates, and each senatorial district shall constitute a district for the election of delegate."[122] The election was to "be conducted, and the returns made according to the provisions of the Code, regulating general elections."[123] Delegates were to have the same qualifications as State senators. The convention was to meet at Iowa City in "the then Capitol of the State, on the third Monday in January, A. D. 1857, for the purpose of revising or amending the constitution of the State."[124] Due preparations for the convention were to be made by the Secretary of State.[125] In case of vacancies in the convention, the Governor was directed to issue writs of election in the manner prescribed for similar action in case of vacancies in the General Assembly.[126] Each delegate was to

121 *Constitution of Iowa,* 1846, Art. XI, Sec. 1, reprinted in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 207.

122 Iowa convention act (approved January 24, 1855), Sec. 5. Thirty-six delegates were elected to the Convention.— Shambaugh's *History of the Constitutions of Iowa,* p. 335.

123 Iowa convention act (approved January 24, 1855), Sec. 4.

124 Iowa convention act (approved January 24, 1855), Sec. 6.

125 Iowa convention act (approved January 24, 1855), Sec. 12.

126 Iowa convention act (approved January 24, 1855), Sec. 7.

receive three dollars "for each day's attendance" and three dollars for every twenty miles traveled in attending the convention.[127]

The convention was given the power to appoint its own officers, to fix their compensation, and to provide for necessary printing. It was directed to keep a journal of its proceedings, and upon completion, to file such journal in the office of the Secretary of State.[128] A further provision required that the revised or amended Constitution should be submitted to a vote of the people — the convention to fix both time and manner of submission with the qualification that "all elections contemplated in this Act, shall be conducted, as nearly as practicable, in the same manner as provided by law for the regulation of general elections in this State."[129]

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THE STATE UNIVERSITY OF IOWA
IOWA CITY

[127] Iowa convention act (approved January 24, 1855), Sec. 8.

[128] Iowa convention act (approved January 24, 1855), Sec. 9.

[129] Iowa convention act (approved January 24, 1855), Secs. 10, 11.