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William D. Workman Jr.

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Committee to Make a Study of the Constitution of South Carolina of 1895

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MINUTES

The Committee to Make a Study of the Constitution of South Carolina, 1895 met on Thursday, December 19, 1968 at 9:30 a.m. in the Wallace Room of the State Board of Health, Columbia, South Carolina.

The following members were present:

Senators -

Richard W. Riley
John C. West, Lieutenant Governor

Representatives -

W. Brantley Harvey, Jr.
J. Malcolm McLendon
Robert L. McFadden

Governor's Appointees -

T. Emmet Walsh
W. D. Workman, Jr.
Sarah Leverette

MR. STOUDEMIRE: Mr. Chairman, I invited Mr. Hoge to come in around 10:30. He is on the Board of Commissioners for Sumter County and is representing the County Association.

CHAIRMAN: Do you want to start on Militia?

MR. STOUDEMIRE: You might recall that the only problem here was making sure that the wordage of the Constitution did not conflict...or usage of terms applying to the National Guard and those not in the National Guard. We have checked that out pretty thoroughly and we think now that we have it where it does not conflict. We made the women part of the Militia. The Adjutant General appointed by the Governor, rather than elected. We kept the old exemptions for arrest when they were actually attending to their soldiering, and we deleted Confederate pensions.

MR. McLENDON: You really haven't exempted them from arrest when you say "breach of the peace" have you?

MR. STOUDEMIRE: If you use the federal ruling on Congressmen, the federal court says that "breach of peace" is so broad as to include almost anything.

MR. WORKMAN: One minor question comes up. Is the rank of the Adjutant General--in this thing here we say "...whose qualifications, rank, duties...shall be prescribed by law" so we don't pin down the rank.

MR. HARVEY: What about the limitation to two classes, the National Guard and the unorganized Militia? During World War II they had a home guard which was really an organized militia.

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MR. WORKMAN: This language coincides with the Military Code, under which we operate. The generic term applies to everybody, so we take everybody, able-bodied citizens and we say the National Guard and the unorganized militia and then if you take from the militia a home guard, then that is in another category and it is available for organization.

MR. STOUDEMIRE: Springs from the unorganized.

CHAIRMAN: Any other questions? Now, impeachment.

MR. STOUDEMIRE: In essence, we just about kept what we had.

MR. WORKMAN: We changed the wording on that to try to make it a little clearer. What does the present Constitution say on that?

MR. STOUDEMIRE: "The persons convicted shall, nevertheless, be liable to indictment, trial and punishment according to law".

MR. WORKMAN: The wording there, we thought, tended to indicate that the guy ought...that he was subject to further prosecution. We want to say you may or may not be subject, but this doesn't affect it one way or the other. Impeachment proceedings are separate and apart from any other normal legal proceedings which might be brought against the individual.

CHAIRMAN: Do you think those adjectives "serious crimes or serious misconduct" add anything? Are they from the old Constitution?

MR. STOUDEMIRE: It's not from the old one. That's from Maryland.

MR. WORKMAN: What does the old one say with respect to offenses?

MR. STOUDEMIRE: Doesn't say.

CHAIRMAN: The term "serious" doesn't really have any meaning.

MR. WORKMAN: There was some discussion, as I recall, as to whether or not to put moral turpitude in there. In lieu of that we put "serious" which would give some indication... We wanted to get around the moral turpitude. We are deficient in South Carolina with respect to distinguishing between felonies and misdemeanors because there is no hard and fast line in there as to the seriousness of it.

MISS LEVERETTE : There wasn't a legal term that we could think of that would do it. Of course, the interpretation by the court would still be there.

MR. WORKMAN: You could just leave that phrase out. "The House of Representatives alone shall have the power of impeachment of officials elected on a statewide basis" if you want to leave impeachment just hanging on its own.

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MR. McLENDON: Well, then you would leave it open for things other than crime and misconduct. The word may be superfluous, but I think it serves a purpose.

MR. STOUDEMIRE: Your original instruction was to redo ours, keeping what we could, but to model it on the Maryland provisions.

MR. WORKMAN: This is essentially the same as what we now have.

MR. HARVEY: In the trial of anyone other than the Governor, the President of the Senate presides. Is that it? It's not spelled out.

MR. STOUDEMIRE: "...be tried by the Senate" though. That would automatically make the presiding officer of the senate preside.

MR. HARVEY: What would be the position of the Lieutenant Governor as President of the Senate in the case of the impeachment of the Governor?

MR. STOUDEMIRE: The Chief Justice would preside. He would stand aside.

CHAIRMAN: All right. Any more on impeachment? All right, we go to Suffrage and Elections.

MR. STOUDEMIRE: All your regulations now are based on the old Constitution. Much of it has been rearranged and you remember that we reduced requirements to elections. A few of the statements on elections we transferred to the Declaration of Rights.

MR. WORKMAN: The title of the Article, Suffrage and Elections, is a change.

MR. McLENDON: We hashed over this thing in D, but refresh my mind again about "next preceding the election".

MR. STOUDEMIRE: Actually you base it on November 7th and go back six months. We said we needed a date to fix it on.

MR. McFADDEN: I have more people, particularly in a presidential election where there is coverage on that election no matter where you live, who feel they are being denied their rights.

CHAIRMAN: Bob, the problem is a practical one. It is done in some states. We felt if you went down to six months that would cure more than half of your complaints.

MISS LEVERETTE: That "next" always fixes it.

CHAIRMAN: All right. Any questions.

MR. STOUDEMIRE: On municipal elections that takes out that current four months thing that they are trying to get amended now. So many of our municipal wards overlap, your municipal boundaries in your

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smaller towns. He's still got to show that he has been in town thirty days.

MR. WORKMAN: Let's ask Russ Mellette. Has the Municipal Association taken any stand on that?

MR. MELLETTE: Yes. We are highly in favor of amending that to make it uniform.

MR. WORKMAN: What this does is equate the residence required in a municipality the same as that required in the precinct. Puts those on parity.

CHAIRMAN: All right, the literacy test.

MR. WORKMAN: We determined to keep it as it was.

CHAIRMAN: Registration.

MR. STOUDEMIRE: Now registration. We tried to word it so that we wouldn't necessarily blackball the current ten year, but we would try not to prevent permanent registration if this is what people want to do in the future.

CHAIRMAN: I think you have done very well by that one.

MR. STOUDEMIRE: Section I is essentially like the one in the present Constitution.

MR. HARVEY: Before we leave H, how about "not previously registered". You're going to have cases where people have been previously registered, but have lost their registration. Have become ineligible to vote. They are stricken from the rolls if they don't vote twice now.

MR. WALSH: Wouldn't it be better to say "Provision should be made for registration during every year for persons entitled to be registered". You could be registered and move out of the state and come back again in a ten year period and then you statute would set up when and why.

MR. STOUDEMIRE: I'll buy that. Where are we now? J and K.

MR. McLENDON: Under that if you are standing in the voting line where it extends for four blocks and it takes two hours to get to the polls, would you be immune from the officer laying hands on you while you are in the lines?

MR. STOUDEMIRE: That's my interpretation. I'm for it myself. Section L, gentlemen, the old dual office holding thing which, I think, in our final draft will be part of a new section on officers. We just left it here until we are sure that we have everything in.

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MR. HARVEY: Under this Section L, "...be eligible to hold any office unless disqualified by age...". We don't have any longer residence requirement on the Governor? Just so he's an elector.

MR. STOUDEMIRE: "Unless disqualified by age or other grounds as prescribed in this Constitution" is what you're saying.

MISS LEVERETTE: On this Section down here, wouldn't it be better to say "...provided this limitation does not apply...".

MR. STOUDEMIRE: I really think you need a broad statement here. "...unless disqualified...".

CHAIRMAN: Just delete "by age", wouldn't that do it?

MR. HARVEY: "...unless otherwise disqualified...".

MR. RILEY: Under K where we are talking about attendance at the polls, do you think it would be something to think about to put in there "for voting" because I know we had some instances of demonstrations at the polls. The people weren't there voting. They were just there to upset the voting.

MR. STOUDEMIRE: In other words you are saying, "...during their attendance at the polls for voting".

MR. WORKMAN: That's a good point that you have raised. The intent of this is to protect the participants in the election and not the demonstrators.

MR. STOUDEMIRE: It would have to be applied, really, as you were going to your regular ward. If the sheriff showed that I was standing over here in ward 10 and I vote in ward 6---

MR. WORKMAN: But you are an elector and you are in attendance at the poll and so you've got a grounds for content in that your presence there is legal.

CHAIRMAN: I would say, "...during their attendance at the poll for voting...".

MR. WALSH: In the explanation, I think it might be well for us to say that this is essentially the same provision and go further and say that we feel that this is something that ought to be retained, but it is not intended to protect anybody who is at the poll for purposes other than voting.

MR. WORKMAN: To make it affirmative, say this is designed for the protection of those people who are participating as bona fide electors at that poll.

CHAIRMAN: Any other questions.

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MR. STOUDEMIRE: Now, gentlemen, you recall that the old Article II perhaps had as much dead weight as any other for its length, going back to the grandfather type of thing and details that we decided to kick out. Such things as the closing of the books. And then, of course, the bonded debt of municipalities.

MR. WORKMAN: We make reference to the fact that the Committee did consider this federal election bit.

CHAIRMAN: Did we discuss recall, too?

MR. STOUDEMIRE: Not really. I think it is caught up in that same thing.

MR. RILEY: Do you think that under Section L that that ought to be under two separate sections?

MR. WORKMAN: Dick, raises the question as to whether or not that should be split after "militia" into a separate section when you go into dual office holding as distinguished between the qualifications. In a sense it's a qualification, one disqualifies the other.

MR. RILEY: I believe I would prefer it to be in a separate section.

MR. WORKMAN: Is it not a separate section now?

MR. STOUDEMIRE: Yes. That agreeable to everyone?

CHAIRMAN: Let's go into the Legislative Department.

MR. STOUDEMIRE: Section A is identical to the current Constitution.

CHAIRMAN: All right, first page. We keep the two houses, we let the House members be elected every two years, fix the number at 24.

MR. STOUDEMIRE: I want to call you attention to "...to be apportioned among the several House election districts..." which can be a county or which can be something else in the event you can't keep your county. The presumption is that there will be counties.

CHAIRMAN: I think that's about as good as you can get.

MR. WORKMAN: This is implication that we keep it on a county basis, but it doesn't require constitutional change if the court orders it to do otherwise.

CHAIRMAN: Down to Section D. Again, it seems to be done as well as it can be done.

MR. WORKMAN: And we inserted in there "...provided that in so far as possible each county shall be entitled to at least one representative".

CHAIRMAN: Section E.

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MISS LEVERETTE: How about that last sentence in E? Up here you said "Each House election district..." and down here you just say "Districts shall consist...". You want to pin that down with "each".

MR. STOUDEMIRE: Yes.

MR. WALSH: We have the assignment of representatives, but we don't have any assignment for senators. Does that mean that each senate district would have one?

MR. STOUDEMIRE: It didn't say. Left it open.

MR. WORKMAN: I think some of the hope was that in respect to the House, it would continue at least one member per county if possible, but we would renew the thing that this would be done on a population basis. In the Senate, it's left more open in case we do have an opportunity to put in on a county or some basis other than population so rather than to fix that, we determined the number of it instead of the mode of it.

MR. RILEY: I like the word "compact" in D and E, but do you think that might raise some question of any arrangement. That's a right generic type term. I think "contiguous" certainly would be.

MR. WALSH: I don't believe there would be any problem and it would be a good protection to put in there. Because we don't have the problem in South Carolina doesn't mean we can't have it.

MR. WORKMAN: We almost had in some of the proposals for Senate redistricting. "Compact and contiguous" is almost a phrase that is being used in most of the drafting.

MR. RILEY: I like the term and I think the district ought to be compact. I just wonder if that's a constitutional type term.

MR. WALSH: I think, as has been held in some of these other cases, the General Assembly's determination on it is pretty final unless it is clearly shown that there is just no connection or continuity between the areas.

MR. RILEY: How about this district, Anderson, Oconee and Abbeville? Is that in violation of the Constitution?

MR. WORKMAN: No, because those three counties abut next to each other but nothing's in between them.

MR. RILEY: They're contiguous, I agree, but are they compact?

MR. WORKMAN: Within the State geography, they are as compact as could be gained in that section of the State.

MR. STOUDEMIRE: Wouldn't the courts evaluate this from the standpoint of whether or not you could have done better?

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MR. WALSH: I think so.

MR. STOUDEMIRE: And in this case I don't think you could have done better.

MR. WALSH: If you had ignored the county lines and had used a strip in one county to connect two counties on each side, then I think you would raise the question. That has been done in many states. They don't go by county lines or even municipal lines.

MR. WORKMAN: I think this is a proper term in the Constitution because it kinda' mandates the Legislature's desire to have it compact.

CHAIRMAN: I think it provides some reasonable restriction which is probably good. Then Section F with the explanation that we can have staggered terms if it is done by the General Assembly prior to the adoption of this provision. Any questions? G is the same. H. Any question on H? That, perhaps, is the biggest change.

MR. STOUDEMIRE: We say "within one year following the official publication. You know the census comes out at odd times. If it comes out in April, that session can go ahead and get it over with if they want to. The next session would have to have it done by April of the next year.

MR. WORKMAN: It may be clearer there if we say "within twelve months". Then you would avoid any conflict of what is a year.

MR. RILEY: That G is unchanged, is that right? It looks to me like you ought to put "years of age" after the "twenty-five". You've got it after the House. I think we ought to leave it at twenty-five instead of twenty-one because I think that as many differences between the Senate and the House as we are capable of leaving in here, we should.

MR. WORKMAN: You think the distinction is worth keeping. Whatever difference there is, let it be.

MR. WALSH: Whatever difference there is, let it be. I think you ought to have two different Houses even if they're the same district because I believe the separate and independent consideration of measures just outweighs everything.

MR. HARVEY: I expect Dick is right, though I really don't see any basis for making a distinction.

CHAIRMAN: I don't see any real basis, but I think the practical, political aspects might--.

MR. McLENDON: Yes.

CHAIRMAN: This sentence, "No apportionment of Representatives shall take effect until the general election which shall follow such apportionment". That confuses me.

MR. STOUDEMIRE: "...and shall be effective at the next general election." I think that would take care of it.

MR. RILEY: That changes the meaning of it, but I think the meaning should be changed. The way you are amending it, it would be mandatory to have it done and to have it take effect immediately.

MR. WALSH: I think it ought to take effect immediately.

CHAIRMAN: I think this is good.

MR. RILEY: This section will be very controversial in the General Assembly, but it is needed.

CHAIRMAN: This, as I read it now, it simply says that you have to reapportion within a year after the publication and then at the next succeeding general election---I think that's what we are going to have to do so we might as well do it in the Constitution.

MR. STOUDEMIRE: I don't know if you are keeping up with the other states, but in the last two or three years the other states going to annual sessions is really snowballing. We've jumped from about eight of three or four years ago to at least fifteen or sixteen or seventeen now.

CHAIRMAN: You can't plan a budget for two years with all the problems that you have. Section J.

MR. STOUDEMIRE: Takes care of that hang-over.

MR. WORKMAN: Senators actually serve through two General Assemblies, and the House members only one.

MR. STOUDEMIRE: Section K.

MR. WALSH: I think that is a correct thing, but I wonder if you shouldn't add "as provided by law". I think that is assumed. The law is going to have to provide how it is certified. Suppose people just hold up certifying.

MR. WORKMAN: We have tried to provide enough Constitutional mandates in here. The Governor at the top can mandate these people down the line to do those things that they are required to do.

MR. WALSH: That may be the answer.

MR. STOUDEMIRE: Section L, really, is exactly like the old one.

MR. RILEY: I know we had a lot of discussion about when the term ends. We just never say anything about that, do we? We just go into when the other begins.

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MR. WALSH: One begins and the other ends. If you had a contest and one was not certified for two more months, the previous man's term, really, in effect continues.

MR. WORKMAN: It should be. I believe that there have been cases which have held that government abhors a vacuum and where there is no prescribed mode by which an office is filled, the incumbent occupies that office, so that normally until a new man moves in, the incumbent holds on. The phraseology that crops up in the Constitution "until his successor is elected and qualified". This has been the general language on the thing.

MR. McLENDON: The Supreme Court in some Highway Commission contest in the last four or five years simply declared a vacancy.

MR. WORKMAN: That is specified by date.

MR. McLENDON: But you can't hold-over legally.

MR. STOUDEMIRE: Would Section L take care of the thing?

MR. WALSH: I think we are talking here about members of the Senate and House and I think that what we have here would take care of it.

MR. McFADDEN: That problem doesn't always come up when you come down to Columbia. It's the time between November 5th and the second week in January.

MR. RILEY: The only problem, as I see it, is if you do have a close election and a recount, then you have protest of the recount. That could take a period of a couple of months. You have the question during that couple of months as to who is the senator and who is the house member.

MR. WORKMAN: It may be well to put that thing in there, Dick.

MR. HARVEY: Talking about K now. "Upon certification of election and taking the oath of office".

MR. WORKMAN: I was hunting for a place that we could put in one sentence to say "to serve until his successor is elected and qualified", but we deal separately with House and Senate.

MR. RILEY: You could put it in K. You could say when it starts and then say when it stops.

MR. WORKMAN: Certification establishes, in my judgement, the legal right of the individual to the job which he seeks by election. Once certified, he has a claim on that job, but doesn't assume that job until he qualifies.

MR. STOUDEMIRE: Could you say this? That "the term of office of the Senators and Representatives chosen at a general election shall begin upon the certification of election and shall continue until a successor is duly qualified".

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CHAIRMAN: Say that again.

MR. STOUDEMIRE: "...upon certification of election and shall continue until his successor has been duly qualified."

MR. WALSH: That's all right.

CHAIRMAN: To qualify, he's got to be certified and take the oath.

MR. STOUDEMIRE: We're getting into trouble here, gentlemen. How about a multiple district? You have four house members. Three are certified and one isn't. Who is the incumbent? We've been doing all this reasoning based on senators, but it says senators and representative

CHAIRMAN: I think we're probably going to have to go back to the way it was originally written.

MR. McLENDON: That's what I think and leave it there and let the law take its course.

CHAIRMAN: Let's go to M. That's the same, I believe.

MR. WORKMAN: At the risk of incurring some unpopularity, this business of "judging of election returns and qualifications of its own members" and you're going to have that thing crop up over here when this boy from Aiken comes and you get a conflict of Constitutional sections and I think that "the qualification of its own members" relates not to Constitutional qualifications, which should be fixed, but relates to whether or not there be personal qualifications and conduct. I do not think that the Senate or the House can lower the Constitutional qualifications.

MR. STOUDEMIRE: Could you say "qualification of its own members not otherwise fixed in the Constitution"?

MR. WALSH: I do feel you ought to make that clear.

MISS LEVERETTE: Could you use the word "except" in there? And then start a new sentence.

MR. STOUDEMIRE: "except such qualifications which are prescribed in this Constitution." I think you judge if you don't protest.

MR. WORKMAN: I think it's better to say "each House shall be the judge".

MR. STOUDEMIRE: "Each house shall judge the election returns" is good simple English.

MR. WALSH: I think it is.

(Mr. William M. Hodge, Sumter, S. C., representing the Association of Counties was then heard by the Committee.)

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MR. HODGE: I have glanced through this thing. His

Mr. Hodges statement follows:

At the outset, let me say I am sure all of you are more familiar with our constitution and the needed changes than I. However, I do not believe any of you have had any more experience in running the affairs of county government. I have been on the County Board of Commissioners of Sumter County for fourteen years, and during this time, we have constantly run into problems which we could not solve because of our outdated state constitution. If county government is to play the important role that it appears destined to have in local government, and if our state is to progress, we must keep abreast of the changing times. It has appeared to me for sometime that the federal government would like to return to the states and local government more self-determination in state and local affairs.

However, to accept this challenge, it is absolutely necessary that our state make the necessary changes in the Constitution so that we may streamline our State and Local government to meet the needs and challenges of the times. I shall not make a speech here today, because I know all of you are busy people, and have a limited time to spend.

Some changes which I shall recommend may not represent the feelings of all county governments in our state. I think for the most part, they do.

First, we should have a constitutional amendment which would allow the legislature to pass an Enabling Act for county government on a reasonably uniform basis, so that counties may operate similar to municipalities.

1. County delegations should be required under the Enabling Act to submit the question to organize their respective counties under the Enabling Act on petition of 1000 citizens of the representative county; the questions to be voted on at the next general election after petition is presented. It should also provide the following: Elected County Commissioners, preferable elected at large throughout the county. These elected officials would be the ~~first~~ governing board administratively and legislatively, with final authority over all county business and other ^{local} officials, ^{of the county} including Judge of Probate, Treasurer, Auditor, Clerk of Court, County Superintendent of Education, if there need be one, Sheriff, Coroner, Master in Equity, County Service Officer, County Judge, and County Magistrates. And here I would like to say that the system of Magistrates throughout the state is outdated. There is no longer a need for Magistrates spread throughout the county, with our transportation system as it is today. With our courts overcrowded, it appears to me

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that the Magistrates authority should be increased considerably^{to} take out of the high courts so many of the small civil and ^{Examined} equity cases.

2. The Enabling Act should provide the power to tax to the County Commissioners.

3. County Manager. Power of appointment should be given over all bodies which are operated for county purposes, and paid for by county funds. Also, the county governments should be given the right to combine with the city governments within the county, ^{if they so desire} so there might be just one county government for the entire county.

4. More and more, we have overlapping services between the city and county. In some counties public health is handled both by the city and county. Mental health is a county-wide operation. Counties should be authorized to put in water , sewerage, drainage and fire protection, where necessary. There are other areas of duplication which I see no reason could not be handled more simply and efficiently. There should be need for only one Treasurer. Tax Collections and assessments should be handled in one office. We have a duplication in the area of courts. We have the magistrates court for the

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county, and recorders court for the city. Here again, I think these courts should be combined, and more authority given to the court on the local level. At the end of this, if you have any questions in regard to this, I will be happy to discuss them.

There is one other area which I would like to discuss. Apparently if an act sets up a commission just for Sumter County, or any particular county, it seems that the Senator and delegation may transfer their power of appointment to the County Board, if they so desire. However, if a commission is set up by the Senator and delegation as represented by an act of state-wide application, then the transfer would be unconstitutional. What I am trying to say is that even though under the state-wide act, while it affects all the counties, it only does it on an individual county basis, and I see no reason why the Senator and delegation should not have the authority to transfer this authority to their respective county boards if they so desire, especially where there is no conflict state-wide in their doing so. The point is that in either event, the Enabling Act should provide for this transfer of authority.

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In closing, I would like to point out that perhaps, even though it was not intended, the constitutional amendment which was passed in the last general election, I believe, has taken care of some of the problems we are talking about. This amendment was listed as No. 1 on the amendments we recently voted for. This states in the resolution a proposal to amend Article 7 by adding a section to be known as Section 15 which will allow collaboration between counties and municipalities, etc. I am directing your attention to this statement, and I quote, "The governing bodies of counties or municipalities, individually, or in combination with other counties and municipalities, may create, participate in, and provide financial support for organizations to study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate. Participating governments may authorize and provide financial support to such organizations to provide facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies of the participating governments."

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You will note this allows such government authority to study and make recommendations in many areas such as utilities, which are not contemplated by the present interpretation of county purposes. It then goes on in the other sentence to give a participating government authority to provide such recommended facilities and services as a participating government accepts and approves. I take the position this amends the constitution to allow counties individually to make a determination of such needs as utilities, recreational facilities, etc., and based on such findings, to accept and pay for the necessary program to implement the findings. Even if this is found to do what I think it probably does, it should be clarified.

In closing, I would go back to the one proposition which is paramount in my opinion, and that is this: That the constitution of the State of South Carolina should be amended so that county governments can operate as municipalities do today, with the same freedom of self-determination in all areas which affect the ^{local} state programs of the representative counties, and the well-being of its citizens, with the full realization that there are certain functions which the county must perform for the state, and in no way should these be impaired by the proposals I am making.

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CHAIRMAN: Thank you, Bill. I believe that you will find many of your recommendations---

MR. HODGE: In glancing through this, I see that you have considered most of these. I think one of the most important things is that, administratively, in county government there is a lack of control of a central executive over the various offices. We find in Sumter County that we cannot control the help properly. In several offices, we have them sitting around reading books which is not really fair to the taxpayers. Trying to shift people around in the courthouse is an impossibility under the present setup.

MR. WALSH: We do have the biggest portion of what you mention.

MR. STOUDEMIRE: Mr. Hodge, we are proposing to take out old 10-6, the ordinary county purpose which would eliminate many of your problems on services.

CHAIRMAN: All right, M. Why can't we throw a fellow out the second time for the same cause?

MR. WALSH: What's the purpose of that?

MR. STOUDEMIRE: Same as the old Constitution.

MR. McLENDON: You mean the same offense. What if he's re-elected and comes back?

MR. STOUDEMIRE: Not a second time for the same cause.

MR. WORKMAN: The question is the cause. Whether it's the same incident, in which it would be double jeopardy. Whether it is the same cause, which is a class of offenses. If he embezzled money this year and the next year he embezzled money again---

MR. WALSH: You ought to be able to throw him out.

CHAIRMAN: Suppose a fellow just gets drunk and disorderly and everything else and you kick him out and the people re-elect him.

MR. STOUDEMIRE: Has the right to sit. The next one is from the old Constitution and I think has been used on one or two occasions. Now, all that page, P, Q, R, is a pick-up from the old Constitution which you want to retain. I will say that in the final re-shifting--some of these things are not in the proper sequence they ought to be.

CHAIRMAN: Extend the time in T the time the Governor has from three to seven days.

MR. STOUDEMIRE: Remember the last time, you moved to take that out of the Executive Article and put it here. It reads the same except the Governor has seven instead of three days. I added here, about six lines down, "...if the Governor shall not approve any one or more items or sections contained in any bill appropriating money...". The old Constitu-

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tion just said "any bill" and the reference is not quite clear as to what it is referring back to.

MR. WALSH: In other words, he doesn't have the item veto except on money bills. I guess that is right because another bill ought not to deal with but one subject.

MR. STOUDEMIRE: That's what we decided. To leave it and that's the way it has been interpreted.

MR. HARVEY: Why do you not have to have the concurrence of the Governor on a motion to adjourn?

MR. STOUDEMIRE: He could tell the Legislature that they couldn't go home.

MR. HARVEY: He can call them back in special session.

MR. STOUDEMIRE: He can't make you come.

MR. WORKMAN: The Presiding officers can send the Sergeant at Arms after you, but the Governor has no power to do that.

MR. STOUDEMIRE: I don't believe the Governor can make them act and if they come, he certainly can't make them pass the law he called them to pass. Now, some states say that the Governor can specify the agenda and the legislature constitutionally cannot go beyond the agenda of the special session, but that seems to be unduly restrictive.

CHAIRMAN: "All elections shall be public."

MR. STOUDEMIRE: Adjournments is the same thing. The yeas and the nays is the same thing. Doors open is essentially the same.

MR. WORKMAN: I think the intent here is that the proceedings of the General Assembly will be open to observation by the public. And if the rules say that the members have to stay in, they have to thrash that out with the Speaker.

MR. STOUDEMIRE: Now, vacancies, gentlemen, I think is identical with the old Constitution except the last sentence. "The filling of any vacancy where there is less than one year remaining in the term may be determined by laws enacted by the General Assembly". In many cases, it is not worth having an election, especially after the General Assembly has adjourned. That was the thought here. This would allow laws to regulate that.

CHAIRMAN: I think that's a good thought.

MR. STOUDEMIRE: Now, if you're ready for Z. Now, this is a new thought altogether you recall, where the Comptroller would be elected by a joint vote of the General Assembly and where the Comptroller would be the post-auditor and would be the financial agent of the General Assembly.

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MR. WORKMAN: This sets up what is, in effect, a general accounting office at the state level and I think it's a good move.

MR. WALSH: Actually, the office as it is now operating doesn't perform the function.

MR. WORKMAN: This gives the Legislature some investigative audits, budgetary resources that they don't now have.

MR. STOUDEMIRE: It makes an official actually submit a report each year to the Legislature that says that your will, according to the appropriation bill has been fulfilled or it has not been fulfilled.

MR. HARVEY: What's the difference between a post-audit and an audit?

MR. STOUDEMIRE: Post-audit is an audit after the funds have been spent. You want to say audit?

MR. WORKMAN: I think it might be better because there may be occasions where you want the Comptroller General to look into the adequacy of funds before they are spent.

CHAIRMAN: All right.

MR. WALSH: What you are saying is that as it is now the Comptroller General determines whether the money is there in the first place. This officer really determines whether or not it has been properly and legally spent after it's already done and if not, then where and why.

MR. STOUDEMIRE: Yes. You would assume that the State auditor would be transferred to a budget officer and he would do the preliminary.

MR. HARVEY: And who is going to perform the job that the Comptroller General now performs?

MR. STOUDEMIRE: Through the budget office.

MR. WORKMAN: There is, and I don't know to what degree, an intimation in the Moody Report that you move toward an executive budget which is kinda' now a split budget where you've got legislative and executive.

MR. STOUDEMIRE: 43 states have an executive budget. I think your federal programs have done more than anything else to make the Governor your budget officer.

CHAIRMAN: All right. Extra compensation not permitted.

MR. STOUDEMIRE: That's the same thing. The special laws has been re-done. Your decision was that we do away with special laws except forestry and game.

MR. WORKMAN: The clause "whether a general act is, or can be made applicable, shall be a matter for judicial determination", what's the thinking--

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MR. STOUDEMIRE: It is, anyway, Bill.

CHAIRMAN: I don't agree that it is entirely. Isn't it a legislative determination as to whether a special law is necessary or desirable? It is presently.

MR. STOUDEMIRE: I think this is in here to show clearly that you have a right to test them in court. That is from the Model Constitution.

CHAIRMAN: You are giving the judiciary, and it may be what we want to do, the right to make a policy or a fact finding determination.

MR. McLENDON: If you left out that whole phrase, you would be right where we are.

MISS LEVERETTE: Or you could say "may be a matter for judicial"

MR. WORKMAN: What legal right now exists to challenge the applicability of local or special legislation? Wouldn't be impaired by it, so there's not much need of putting it in there.

MR. STOUDEMIRE: You are quite true because we have had any number of them taken to the court. Is the will to leave this out?

MR. WORKMAN: I don't think it's necessary.

MR. STOUDEMIRE: "The General Assembly shall pass no special or local act when a general act is or can be made applicable" and then jump down "provided that special laws may be enacted to provide for forestry and game zones".

CHAIRMAN: Is that necessary?

MR. WORKMAN: Yes because your game zones and your forest zones are not uniform.

MR. WALSH: Let's leave it in there.

MR. WORKMAN: To do it properly, as it is now, you would have to amend the Constitution every time.

MR. STOUDEMIRE: All right. Codification. We cut out a bunch of that useless stuff. Now, Homestead exemption, gentlemen. Professor Means is the best authority that we could find on that and he has the flu. His off-hand opinion is that this homestead exemption is not needed, a statute would be adequate. Most of your Southern states do have something like this and a few others.

MR. WORKMAN: --exemptions from attachment.

MR. HARVEY: You can't take the shirt off a debtor's back.

MR. McLENDON: Is there any harm in leaving it in? This is one of those sensitive areas. I agree with you that it has no business in there.

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MISS LEVERETTE: Don't you think that by pointing out that all of this is included in the statute would be sufficient?

CHAIRMAN: Let's do this, since we have somebody studying it, let's go ahead.

MR. STOUDEMIRE: That brings us back to Local Government.

CHAIRMAN: Let's start Local governments continue.

MR. STOUDEMIRE: I believe that first section--the editorial committee caught, but we have't decided definitely, but we thought we better reword that thing that "The powers possessed by all" these things now "continue until changed in a manner provided by law". That we didn't want to take a gap that a city somewhere was relying on old charter powers partly--that someone would argue that the Constitution was saying that we set this aside.

CHAIRMAN: It's a question of whether we could or not, but certainly it is better to have it. I can see a gray area where the Constitution makes changes and it is doubtful whether it is in direct conflict or not.

MR. WORKMAN: That's why we thought that the Legislature ought to address itself to these areas and then if they determine that there is a conflict, then by law say that new or old shall prevail.

CHAIRMAN: All right, Local governments continue.

MR. STOUDEMIRE: County boundaries stay unless changed by law.

CHAIRMAN: And no more than 46 counties..- Everybody agree to that?

MR. STOUDEMIRE: Now, here's another one that is hard to word, but we think we've gotten it down after quite some deliberation.

CHAIRMAN: In other words, there are two systems of merger. Two ways it can be initiated. 10% of the population of each county.

MR. McFADDEN: Why not say every ten years? "...but no election shall be held for such merger more frequently than once in four years..."

MR. STOUDEMIRE: The old four year gimmick is in the present Constitution. That's where the four years came from.

MR. WALSH: I think four years coincides with a new group of people.

MR. STOUDEMIRE: I question the whole clause.

MR. WORKMAN: No limitation at all.

MR. STOUDEMIRE: "shall vote therefor in each of the counties involved" and the General Assembly by law would spell out.

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CHAIRMAN: Do you think that this restriction is necessary on the General Assembly?

MR. WALSH: I'd be inclined to take it out.

CHAIRMAN: Just say "The General Assembly shall provide by law for the merger of adjoining counties".

MR. WORKMAN: The feeling was, in our initial discussion, that there should be some limitation on that so that the Legislature would not be given carte blanche to go in and mess up with the counties, without the approval of the people therein.

MR. HARVEY: Two powerful legislative delegations of two counties that wanted to merge could come and get practically anything through the General Assembly.

CHAIRMAN: I think the procedure here is good, but I just wondered if it should be statutory instead of Constitutional.

MR. WORKMAN: Our thinking was that it should be Constitutional in that it would put a check on the Legislature...

CHAIRMAN: I think you're right.

MR. STOUDEMIRE: Now, the next is sort of a deep thing, too.

MR. WORKMAN: Now, you struck from "involved" on, didn't you?

MR. WALSH: I'd say leave it out. Leave it up to the General Assembly, really. Times are moving fast.

MR. HARVEY: You're still going to leave in there that "a majority of the electors" must vote.

MR. WORKMAN: All that would be stricken would be "no election shall be held...more frequently than once in four years".

MR. HARVEY: Is "governing bodies" as used in Section D sufficiently defined elsewhere?

MR. STOUDEMIRE: Would "boards" be better?

MR. WORKMAN: I think "governing bodies" because in some counties it is Board of County Commissioners, Board of Administrators, County Councils all of which are governing bodies, but none of which have the same name.

MR. McLENDON: Aren't you going to run into problems because some counties don't have a governing body. If this goes through and there is still no change in the local government, this wouldn't give anybody the authority to make decisions, unless you adopt this local legislation.

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MR. WORKMAN: It is part of the same thing.

MISS LEVERETTE: Right now, under the Constitution, there's no provision for legislative delegations anyway.

MR. McLENDON: That's very true.

MR. STOUDEMIRE: There is going to have to be a local body if the rest of it goes through. "The General Assembly must provide", Section G.

CHAIRMAN: All right. Let's get on to the merger of part of one county with another. Isn't this basically the present provision, abbreviated?

MR. STOUDEMIRE: Yes.

MR. WALSH: The only question I have on it, is two-thirds correct? I see nothing wrong with a majority.

MR. WORKMAN: Our earlier discussion went to the fact that this is a right momentous change affecting local government and if it is not carried by a reasonably substantial margin, then you could be buying an awful lot of grief. This was to beef to make a fairly substantial margin that showed the dominant will of the people.

MR. STOUDEMIRE: Two-thirds is the current Constitutional requirement. County seats. We sweated blood over this one, but I think it's clear. Now, we are back to the four years again. "...removed or established". We've got a new word in here to take care of this business of a section with a county seat moving across. This leaves your old county with establishing a new one.

MR. WORKMAN: This was to protect in an eventuality like the York community, the community around the county seat of York, were to join Cherokee, and then the remainder of York County would be without a county seat so therefore one would have to be established. It would be done by a vote of two-thirds of the electors in what remains in the county.

MR. WALSH: Suppose York says that they want to cut off Cherokee and it requires two-thirds for that. Now, the rest of the people don't have a county courthouse and they want to establish one. 60% of them vote to put it in Rock Hill. You don't have one. You can't get two-third

MR. WORKMAN: That's a valid point that I don't think we have considered. You are going to have to make it a majority or else you could stalemate.

MR. WALSH: As a practical matter, you're not going to be moving county seats and unless you are going to merge two counties the question is not going to come up.

MR. WORKMAN: I believe Emmet is right. In this instance, it ought to be a majority so you get a decision. In the other one, unless you get a substantial majority things stay as they are.

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MR. STOUDEMIRE: That's right.

CHAIRMAN: Where are we?

MR. STOUDEMIRE: "...except by a vote of a majority of the qualified electors..."

MR. WORKMAN: To be consistent, should we not strike that four year limitation?

MR. HARVEY: I think I would personally leave two-thirds to remove it or change it and just have another sentence for a majority to establish a new one in the event the old one was cut off.

MR. WORKMAN: "No county seat shall be removed except by a vote of two-thirds or established except by a vote of a majority...". That's the intent.

CHAIRMAN: I go along with Brantley and Bob on that. All right. Classes of Counties.

MR. McLENDON: Under G, when you say, "No more than one system of classification shall be in effect at any one time...", you mean a city can't be in but one classification at a time. That's what you're saying, isn't it?

MISS LEVERETTE: The idea here was one system of classification.

CHAIRMAN: In other words, if you use population and something else, you've got to stick with population and something else. If you use population as the sole criteria, it's got to apply to all classes. Is that right?

MR. STOUDEMIRE: You couldn't have certain counties between 30,000 and 40,000 based on density of population and other relevant criteria and at the same time have all counties of 30,000 to 40,000. You've got to pick one or the other.

MR. RILEY: I don't think we'd ever use anything but population and I just wonder if it would not be advisable just to strike all this out and just say "based on population". Looks to me like the General Assembly could base it on density of population and that would still be on population and let's not go into the different systems.

MR. STOUDEMIRE: I don't see where it particularly matters, for two reasons. One is, you do have five choices. You are not limited from establishing all types of options within a choice. I could see where you could put in here that the local area, itself, could decide whether it's going to pick a, b. or c.

MR. WALSH: I'm not so sure that saying five--is that what you're saying is necessary?

MR. RILEY: I'm saying the different systems. In other words, system 1 will be a county with a population in excess of such and such. System 2 would be a county with a population in excess of so and so, with a density of so and so. I think when you get that refined in these various

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systems that it's just cluttering up the thing. I would prefer it better if you say that it would be based on population.

MR. STOUDEMIRE: The five is put in there to prevent having forty-six. There is a law which says "towns between 7500 and 9000 by the 1960 census shall be able to have the manager form of government except Union" which means Aiken and Cayce, you see. I believe some of the cities adopted the manager government on their own. All have special laws.

MR. HARVEY: If you set 40,000 as a cut off. All counties having a population of 20,000 to 40,000 shall be class 2. 40,000 to 60,000 in class 3. Class 2 shall have such and such type government. Class 3 shall have such and such type. If a county has a population of 39,000, they are irrevocably bound to this type.

MR. WORKMAN: There are options within each class. The options exist as to whether you want a county manager form of government, board of administrators or whatever, but within these various counties that fall into a classification, there are certain options that they can adopt with respect to their local government. It achieves some degree of uniformity, but retains a fair degree of flexibility as to whether they are going to elect a county manager or whether he be appointed. This, I think, is the thinking.

MR. HARVEY: Why/^{not}specify, then, five options and don't put anything in about population?

MISS LEVERETTE: Population was the purpose of it. It's to show that in some counties that a type of government would be best suited to a lesser population.

MR. RILEY: The options would be kind of geared to different populations.

MR. WORKMAN: Simpsonville and Fountain Inn could have certain options of how they want to run their affairs, but they wouldn't be the same options that Greenville would have because of the different level and structure of government required. Greenville, Columbia and Charleston would have options which would be common in those areas.

MISS LEVERETTE: Your options would be geared to the population class for that particular group.

MR. STOUDEMIRE: Mr. Chairman, we have two things here at issue. Whether you want to restrict to one system which someone has developed an opposition to.

MISS LEVERETTE: What I was talking about was that it just didn't make sense to say it shall not exceed five in number, five classes. I realize that classification indicates that a classifying has been done, but it didn't make sense to say "no more than one classification shall be in effect at any one time". It relates, also, to what John said about population. If you say, "no more than one classification" you sound like you're talking about the whole works.

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MR. WORKMAN: Why should we prescribe the basis on which the General Assembly establishes. Could we not just say, "The General Assembly shall establish by law classes of counties not to exceed five in number".

MR. RILEY: That's good.

MR. WORKMAN: The Legislature determines that density is a factor, then they can write it in. Population would be the obvious one, but there may be certain things like density that comes into it.

MR. HARVEY: "The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and responsibilities of the county governing bodies in each of the counties established", isn't it? Rather than "of the counties". You're talking about the governing bodies of the county, aren't you?

MR. STOUDEMIRE: We're talking about power to a county per se. You may set up a special board, even independent from the governing body.

MR. HARVEY: "powers of the county". Suppose the General Assembly got capricious and said the county falling in class 1 with a population of less than 20,000 didn't have the power of eminent domain.

MR. WORKMAN: For brevity, you can say, "The General Assembly shall provide by general law for the governing of counties in each of the classes established".

MISS LEVERETTE: I think there's a philosophy here, though. This thing strikes me as being a balance between the State and local government propositions. You're giving this power and authority to the counties and if you're going to insert "the governing of" or "governing bodies" then you're losing what I interpret to be the intent of this. Balancing off of your State government as it relates to local government.

MR. STOUDEMIRE: I think you need to say that they have to provide for the organization, the duties and the functions of a local government.

MISS LEVERETTE: You're talking about the authority of the county as a unit of the State. That may not be the intent of it.

MR. STOUDEMIRE: We thought it would be foolish to do all this by class because there's going to be another thing applying to everybody. In other words, that you make a general law applicable to all classes of counties like the right to levy property taxes.

MR. RILEY: Doesn't that partly satisfy what you were concerned about, Brantley?

MR. HARVEY: No, I think I prefer what Bill is talking about. I think we're talking about the governing of the counties here.

MR. STOUDEMIRE: You're talking about their powers and functions.

MR. HARVEY: Powers of a county of 15,000 shouldn't be any different from the powers of a county of 200,000.

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MR. STOUDEMIRE: You may want to give a bigger one much stronger zoning rights than you would a small one.

MR. WORKMAN: You aren't going to give the county council the burden of the right to levy taxes, are you?

MR. STOUDEMIRE: One way I would shorten it, "The General Assembly shall provide by general law for the structure, organization and powers of counties". I like the way it is, myself.

MISS LEVERETTE: I do, too.

CHAIRMAN: Anybody got a better suggestion than the way it is?

MR. McLENDON: Seems all right to me.

MR. STOUDEMIRE: This, to me, gives the General Assembly the right to set up a complete local system of county government.

MR. WORKMAN: Let me make one final suggestion. For the last sentence start off by saying, "The structure and organization, powers, duties, functions and responsibilities of the counties and of the several classes shall be established by general law".

MISS LEVERETTE: Bill, if you do that, are you going to get that mixed up with the general law applicable to the entire state as opposed to general law for the counties?

MR. WORKMAN: Well, what they do with respect to counties has to be done with respect to classes. They can't go out and determine that one county is going to do something within a class that another county in that same class can't do.

MR. STOUDEMIRE: Maybe the old Constitution on municipalities handles our problem for us. "The General Assembly shall provide by general law for the organization and classification" (and in this case) "of county government". "The powers of each class shall be defined so that no such county shall have any powers or be subject to any restrictions other than all counties of the same class provided", we would have to add, "that general laws can be made applicable".

CHAIRMAN: That sounds right.

MISS LEVERETTE: What is the major objection to the present wording?

MR. WALSH: Seems a little wordy. That's the only objection. We're all in agreement on the general principle.

CHAIRMAN: I think it does substantially what we wanted done. It just isn't smooth.

MR. HARVEY: I'll tell you what my objection is. Having served in the General Assembly, I think sometimes--well, let's take your big counties. They may feel they know what's best for counties between 10,000 and 30,000 population. We're going to say you don't need to have (of course, I realize they can't violate what else is in the Constitution) a five

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man governing body, all you need is a one man governing body.

MISS LEVERETTE: You're objecting to the whole section.

(Break for lunch)

CHAIRMAN: All right. Did we get a fresh look at counties, classes of counties?

MR. WORKMAN: We determined that the intent and content was what was generally agreed upon. It's a question of perhaps eliminating a superfluous "General Assembly" which shows up two or three times.

MR. McLENDON: I think so, too.

CHAIRMAN: Let's go back to our old system of telling Bob that we think he's got it, but to polish it a little bit.

MR. HARVEY: I think I have a basic difference with the Committee in that I believe we should establish five forms or types of county government and say that then each county must opt to come under one of those, regardless of its size. I would leave this choice up to the citizens of that county, rather than the Legislature saying, "this is best for you".

MR. McLENDON: Brantley, then you would have Cedar Creek in Marion County the same as Spartanburg.

MR. HARVEY: We're talking about county government.

MR. STOUDEMIRE: One thing you are interpreting incorrectly, I think. Although you've got five classes, you still can set up options within each class. You can still give the local people the right to have a manager or not have a manager.

MR. McFADDEN: I think Brantley's concern goes to the power that would be granted to the General Assembly.

MISS LEVERETTE: But those powers are powers of the State to grant and the General Assembly is the State.

MR. WORKMAN: And they can't do them now.

MR. STOUDEMIRE: There is really not too much difference between the powers of a little town and a big one except on property tax limitations for your small ones and so many exceptions have been made to that, that that's not really germane.

MR. WALSH: I am inclined to agree with Brantley. I think that the size of South Carolina and the number of its counties that if you set up five systems and Beaufort County wanted to go in the same system that Greenville had--I don't believe you'd have that much of a problem, really. I think you're going to have four or five big counties and they will want a system that is more refined that will give them more power, zoning power and things of that nature--

MR. WORKMAN: Isn't that what we're doing, though?

CHAIRMAN: Brantley, doesn't this answer your argument? There's nothing here to say that a small county can't get in a classification with big counties.

MR. STOUDEMIRE: We're not measuring it on a thing.

MR. HARVEY: Why are you establishing classes of counties?

CHAIRMAN: Simply because you will want general laws applicable to certain classes of counties.

MR. WORKMAN: What we're trying to get around is special law that relates only to one county. Instead of having forty-six counties, as against the whole State which is 46 to 1, we say that we're going to divide it up into five categories and then the General Assembly simply and grant whatever options it wants to, make whatever regulations they want to, but it has got to be in these different five levels so that it can be done by general law instead of by special law. What we've got here now, actually, gives a greater leeway to the counties than they now have. They cannot now do certain things because it takes special legislation to let them do it.

MR. HARVEY: We agree with the basic premise, of course, to give the counties some power as far as local government and number two is to create some degree of uniformity. Instead of establishing the classes of counties, I would establish five types or classes of government, county government and let the county elect which one of those it wants to come under.

MR. McLENDON: You are taking the position that forms of government are different from counties.

MR. STOUDEMIRE: What he's saying is that it should establish at least five optional forms of county government.

MR. HARVEY: Each county shall adopt one of these.

MR. WORKMAN: This, in effect, is permitted under what you've got. What we're simply saying is that the Legislature shall determine, within these five categories, what options the counties may have. It may be that the Legislature could say, "We find that five systems of government are all that are available, each county can adopt any one of these it wants to".

MR. McFADDEN: That's not what the language says. The problem is the language says that you can limit your powers by your classes and therefore you can limit, if you've used population as one of your guidelines, you can limit its basic powers. It can't elect the form of government that gives it the broader powers because it's limited by the class itself.

MR. WORKMAN: This is more than you've got now.

MISS LEVERETTE: I'll admit that the counties ought to be able to choose. I'm in favor of leaving population in there, for that matter. But it seems to me that there are certain small counties who cannot support a viable certain type of government. They might want home rule and they can't even support it. They just are not in a position. They don't have the leadership. That's just an example and it seems by the Legislature setting like this, based on population, then they can give this broad classification with the options in there and give us uniformity and yet give the powers that should go to a certain size county, and you get uniformity and flexibility under this set-up. You don't get the hodge-podge that we now have.

MR. STOUDEMIRE: As I read it, this does not prevent the General Assembly from providing five options for each of five classes.

MR. WORKMAN: Let me try to cite the advantages, as I see it, stemming out of this. Right now, if Greenville County proposes to adopt Charleston County's Council plan of government, it would have to do it by Constitutional amendment and the Legislature cannot empower Greenville County to do these things that Greenville wants to do because it would be special legislation. So what's proposed here is to say that we take our forty-six counties, we arrange them in sections of five each, then we can provide by general law that counties having a city or town in excess of 75,000 population can enter into a pattern of home rule or they can, on vote of the people, set up a county council form of government. And this is general law which doesn't relate necessarily to Greenville, to Spartanburg, to Charleston, but to all of them. That they could come in on their own motion and do any of these things that they want to, but it cuts down the necessity of having to tailor a piece of legislation which goes to an artificial type of category. It puts five legitimate classifications that the General Assembly can treat uniformly, but not deny the participants in that category the right to choose whatever form of government that the General Assembly determines ought to be made available to them.

MR. HARVEY: Why let the General Assembly determine what type is best?

MR. WORKMAN: It puts you in a class, but it doesn't put you in a form of government. You can pick out whatever is available within that class.

MR. HARVEY: Then you're going to have a hodge-podge, aren't you?

MISS LEVERETTE: There would be minor differences within that option.

CHAIRMAN: You might have an option of either three or five commissioners in a county. Or you could have a manager or not within almost any of the categories.

MR. HARVEY: What I'm saying is why not set up these different types or forms and then let the county choose which of these it comes under.

CHAIRMAN: I think you would have many more practical difficulties. If you are going to set a form that Jasper County might adopt and Greenville. Obviously, you couldn't get a form, probably, that would suit both of those in the general form.

MR. HARVEY: You would have one form which was designed generally for large counties with large municipalities in it, but if a medium size county felt that this suited it, that's its decision to make.

CHAIRMAN: I don't think we're going to find that there is that much difference, really, as a practical matter. We selected five as sort of an arbitrary number. We probably could have gotten by with three. We're probably arguing over something that would rarely arise.

MR. HARVEY: You're going to design, certainly one of them is going to be the combination of city and county together--metro type government. I'm afraid then you're going to say, "but no county which has less than 100,000 population can use this".

CHAIRMAN: The General Assembly would be subject to the will of the people.

MR. STOUDEMIRE: Remember, now, this Constitution makes merger self-executing for your larger counties.

CHAIRMAN: As a practical matter, it just wouldn't happen. That's really local legislation.

MR. HARVEY: That's my argument--to set up the forms, whether it be three or five, and let the county, whether it be Florence or Beaufort or what size county, decide which one it comes under.

MISS LEVERETTE: If this was originally intended to basically balance off the powers that the State is going to grant to counties--of course, that is probably what you object to, but I think it is the function of the General Assembly to do that.

CHAIRMAN: It may come that we want to give the right to classes of municipalities to enact a sales tax. All right, I, for one, am certainly very reluctant to give carte blanche authority to all counties to put on a sales tax. There might be some justification for a metropolitan area, combined city-county, to put it on.

MR. WORKMAN: I think we're losing sight of what, to me, is a fundamental principle of government here. That there are no powers inherent in a county. And the county can do only those things that the sovereignty of the State allows it to do. What we are trying to do here is to say that in allotting certain powers to counties, we're going to do it systematically by dividing the counties into these categories and then, within the wisdom of the General Assembly, there will be made available to the counties certain options which is true right now, except it's restricted because the General Assembly, under the Constitution, can't make exceptions from one county against another. This allows exceptions to be made within different categories. So, what we're doing is saying that the sovereignty which is granted into the State, the powers that the State has, are herewith delegated in these various areas to the counties divided up 1, 2, 3, 4, 5, within which the local people make their decision as to what they're going to do. You've got a savings clause over here at the back which says, "The

provisions of this Constitution and all those concerning local government shall be liberally construed in their favor." So, the whole emphasis here is toward local government, but it has to come by a grant of powers from the Legislature because there's no power there in the county to start with.

MISS LEVERETTE: That's my thought. That's what the purpose of this thing is, is to set up a system whereby the State can grant these powers on a rather uniform, and yet flexible, basis.

MR. STOUDEMIRE: Let me throw this out. I don't know whether it will help, but you will notice on your municipal laws, a great portion of that really is permissive only. For instance, Camden does not have to have a zoning plan, but the law says that towns the size of Camden may have. You may enact a business license ordinance, but the law does not compel any town to have a business license ordinance and I would assume that would be same thought when you draft a county set of laws. You authorize them to have a health board and therefore the local council would enact whatever they wanted to under the permission of the law.

MR. WORKMAN: It would not be sensible in the field of health that you're talking of that counties all the way down the line or the municipalities would have the right to set up boards of health. There would be a breaking point at which it would make sense and below which it wouldn't make sense.

MR. STOUDEMIRE: Another difference in here is that you may be fortunate in a small county to get three good health board members whereas a big county like Richland, in order to give health proper representation, you may want a board of fifteen members. These are variations that would be allowed here.

MR. HARVEY: Therein is where the basic difference lies.

MISS LEVERETTE: What you are doing now, you are giving each county the power to tell the State what powers it should have when the State is the granting--

MR. HARVEY: Giving it the power to select within three or five options.

MR. WORKMAN: That's what is protected here.

MR. McLENDON : As a practical matter, if we applied Brantley's theory to the present law which breaks down the cities into class populations, maybe, for instance, there's a 5 to 10 classification and the City of Marion, we'll say, falls within a 5 to 10 classification and there are a whole host of laws which apply, but there's also a whole host of laws, Brantley, which apply to cities above 100,000 which have no relevancy to my problem and your problem. Is it right for the City of Marion with 8,000 people to just arbitrarily say that it wants these powers that have been given to these cities above a 100,000. That's the theory you're talking about. What would that do now? If we did that now. If we did that, then this legislation for cities between 5,000 and 10,000 population, the general law which applies to that group--I'm opting to go and get into this classification. It would create a worse situation, I think, that this if you allow yourself to move from class to class at your own option. Seems like it would create untold confusion.

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MR. McFADDEN: Isn't it true that as a matter of practice the counties have exercised this option in terms of what they pass as local laws.

MR. McLENDON: The counties are no different from the cities as far as their governmental structure and responsibilities. They're creatures of the Legislature and they're answerable to the State just like the city is.

MR. WALSH: For all practical purposes, most county governments are de facto governments not sanctioned even by Constitutional law.

CHAIRMAN: I think we've got a difference here so we may as well recognize it. How many want to keep the present philosophy and thought---Do you want to pass over temporarily on this and go on and look at the rest.

MR. STOUDEMIRE: New Section. "No laws for a specific county shall be enacted, and no county shall be exempted from the laws applicable to counties of its class or the general law provisions applicable in all counties enacted pursuant to Section G of this Article".

MR. WORKMAN: That's a re-statement of the current prohibition against special legislation.

CHAIRMAN: Section I. Municipalities, changing of municipal boundaries. Incidentally, Russ Mellette is sitting in with us and Russ if you have anything---

MR. MELLETTE: I did have a question. South Carolina is one of the few remaining states where it takes a petition and election process to annex. I am informed by the National League of Cities that in all of those other few states except South Carolina, the Legislature by special act can increase the size of a specific city. I take it by that language of this, we would maintain the status quo. The Legislature would be prohibited from enlarging the size of a specific city.

MR. STOUDEMIRE: Yes, for a specific city.

CHAIRMAN: It's up to the General Assembly to set the procedure, but it has to be done on a general basis. All right. Section J.

MR. STOUDEMIRE: Russ, you know that this doesn't require a petition. It just requires whatever criteria the General Assembly wants.

MR. MELLETTE: This would prohibit the General Assembly from increasing the size of the City of Columbia except using a general law.

MR. STOUDEMIRE: Now, we're back to the same thing we had for the counties, John.

CHAIRMAN: Any questions? Then we get to Section K. That answers your question, Russ, more specifically. Anybody argue with that?

MR. McFADDEN: Under our present system, we have a class of say, 5,000 to 10,000. We are not enacting laws---

CHAIRMAN: There are certain general classifications and then we'd pass a law, for example, saying that all cities with a population of 8,908, according to the 1960 census. That's creating a different classification and we're limiting that to five.

MR. McFADDEN: Under this draft, you can no longer do that.

MR. STOUDEMIRE: I would speak to that on two points, only. The limitation for millages on towns, I think those of 5,000, there is just amendment after amendment after amendment until about ten years ago somebody got wise and just upped the limitation for everybody and all of a sudden these special things have stopped. Also, this business of how long can a council be elected. All these exceptions and once you do it by a general law it keeps down all that ballyhoo.

MR. WALSH: I think your general law is good.

CHAIRMAN: There's no real reason why a mayor should have a four year term in one town of 5,000 and a two year term in another. Is there any real reason why a town of 5,000 should have a ceiling of 50 mills and another town of 6,000, 20 mills?

MR. STOUDEMIRE: The next Section takes care of a lot of people with their own problems. Section L. Home rule. Now, we agreed on 25,000. There will probably be some talk as to whether that should be lowered.

MR. MELLETTE: We are officially on record now as recommending to this Committee, cities over 10,000. The reasoning being that there's just not a lot of difference in that respect between Newberry and Sumter.

CHAIRMAN: Anybody have any other questions on that?

MR. McLENDON: What's the advantage of a charter form of government, Bob?

MR. STOUDEMIRE: This would mean---this is where you could get all the variation that you might want that would not necessarily be specified in the law. The charter thing, by and large, would pertain to the structure of your mayor and your council, provide for a manager, maybe. If you really want to know, look up the manager laws for Aiken, 7,000 to 12,000, is the best answer I can give you. That law was drafted in Aiken and brought up here and treated as a local piece of business and the Aiken law does have a lot of details on municipal regulations like the Civil Service Commission, that no elected official can serve on any other governmental payroll, they have a detailed procedure in there as to how the books are to be audited and on down the line. Really, the Aiken--the City Manager law for towns 7,000 to 12,000 is, in effect, the same thing as a home rule charter except to be legal in this State it had to go through the Legislature.

MR. HARVEY: If you lower the number of population to 10,000 so that any incorporated municipality with a population in excess of 10,000 can do this, then you don't really need but one or two classes for those under 10,000.

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MR. MELLETTE: Some of them may not want this.

MR. STOUDEMIRE: The big thing about home rule is that it really doesn't work if you don't have an active city. Your local people have got to be on the ball. The general law says that everybody's got to be elected at large, which gives you the chance to put it by wards or stagger the terms maybe. Then you have the right to specify.

MR. HARVEY: But you're not going to give counties that authority?

MR. STOUDEMIRE: If they merge. A county really is closer to the State than a city. The State does look to the county in South Carolina for everything it wants done.

MR. WALSH: But basically under the 1895 Constitution the county was simply that instrumentality used to carry out State functions on a local level. They were not independently organized government as such.

MR. STOUDEMIRE: I think the State of South Carolina would want to have more control over the county simply because the State uses the county in the welfare programs--

MR. WORKMAN: Well, by title and by function it is a political subdivision of the State.

MR. McLENDON: It is almost an arm of the State that the city is not.

MR. STOUDEMIRE: I would say that if South Carolina would enact a good series of class laws, I would be very surprised if we had many going under the home rule.

MR. WALSH: I'm for it.

MR. STOUDEMIRE: All right. Merger of governments in metropolitan counties. "...with a density of population in excess of one hundred inhabitants per square mile..." If you've forgotten now, that would by 1970 take in everything like Aiken and Anderson and Florence on up, but would hardly go beyond that.

CHAIRMAN: Section N.

MR. WORKMAN: What's going to have to be sold here is the fact that it's permissive and not mandatory.

MR. WALSH: Again, I don't know whether you ought to put that "one in four years" because my experience with annexation has been that sometimes you educate them on annexation after it's defeated and very often in a very short period of time realize that it wasn't such a bad thing after all.

MR. STOUDEMIRE: If we take that out, the General Assembly could limit it, couldn't they?

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MR. WALSH: If they wanted to, they could. But this ties it if you put it in the Constitution.

MR. STOUDEMIRE: Section N. This is essentially what we voted on in the last election plus a little bit more. I don't want to get us off on the wrong subject, but Mr. Hodge was interpreting far more in that amendment than what can be interpreted.

MR. WORKMAN: He was stretching it, but he raised an interesting point of interpretation.

MR. STOUDEMIRE: I need to add here to my note that this does embrace the amendment.

CHAIRMAN: Bob, is this sufficiently specific to allow, say York County to negotiate with the City of Charlotte or Mecklenburg County?

MR. STOUDEMIRE: "Nothing in this Constitution shall be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State." We drafted it that way showing that we knew that there is such a thing as the federal government and compacts. The only conflict I see here would be the interstate compact idea which must be approved by Congress.

MR. MELLETTE: The amendment that passed in November specifically said that these regional councils would not have the authority to tax.

MR. STOUDEMIRE: Section O is to limit your home rule, really.

MR. HARVEY: Back to this Section N. When you speak of "any county" this would be the county governing body, county council. It wouldn't require a vote of the people. I assume, though, that the Legislature could act and they could put a proviso in there requiring a referendum.

MR. WORKMAN: Bob, in Section N. This is a policy determination as to whether we want to approach it negatively or affirmatively. "Any county, incorporated municipality, or other political subdivision may and you have "except to the extent prohibited by law, agree with the State...". Would it not be "to the extent permitted by law..!"?

MR. STOUDEMIRE: All right. And that will take care of Brantley's question altogether, won't it? Yes, that would make it clear. Now, over here in Section O we thought that nobody should have the right to tamper with them locally. In essence, your bill of rights, election and suffrage would be statewide, bonded indebtedness, the judicial system, criminal laws and penalties therefore no home rule person could set aside a State criminal law. We worked and worked on this one and the best we could do "the structure and the administration of any governmental service or function responsibility for which rests with the state government or which requires statewide uniformity". The best illustration here would be water pollution and welfare programs. Even though the localities are involved, that a home rule charter couldn't say that there shall be no old age assistance in this municipality or area.

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MR. HARVEY: This Section O doesn't say anything to me. You have spelled out your Bill of Rights which is your freedoms guaranteed the people. You've spelled out your elections and suffrage, haven't you and under that section it's said that the General Assembly may make certain general---

MR. WALSH: Aren't what we're meaning to say here is that if it's not clear in these other sections, these are things imposed by general law. Then we're going to say that home rule really cannot tamper with these.

MR. WORKMAN: I think that this, in contrast with the other, should be prohibitive.

CHAIRMAN: I think you should say that "the General Assembly shall not by grant of home rule powers or by legislation applicable to municipalities or counties, or any classes thereof, infringe upon"--

MR. STOUDEMIRE: All right. "The General Assembly shall not by home rule authority permit" the following categories of things to be done.

CHAIRMAN: Right.

MR. STOUDEMIRE: Section P. That's your old franchise right.

MR. MELLETTE: Is that wording "local authorities" the same as it was?

MR. STOUDEMIRE: You might say "local governing bodies". Would that be better? That's a new word. Or "the local governing bodies of the political subdivision" might be better. Section Q.

MR. HARVEY: That would include counties?

MR. WALSH: Any county that consolidates with a municipality. They couldn't do it unless they consolidated.

MISS LEVERETTE: Would you say "local subdivisions" or would there be any chance of interpreting that to some State commission or something of that sort?

MR. STOUDEMIRE: I think you would want it to the governing body.

MR. MELLETTE: Do counties now have the right of franchise for public utilities?

MR. STOUDEMIRE: No. This wouldn't affect them unless they merge. Now Q. "Any incorporated municipality and any county which consolidates with its political subdivisions may acquire..." and this is picked up from the old Constitution. I think our reason was really not to advocate public utility systems, but to protect the ones that already have them.

CHAIRMAN: Section R. "The provisions...shall be liberally construed".

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MR. STOUDEMIRE: Otherwise, it would be construed in favor of the State, wouldn't it?

CHAIRMAN: Right.

(Break)

MR. HARVEY: I would prefer it to read "The General Assembly shall establish uniform forms of county government not to exceed five in number. Each county shall adopt one of these forms of government". Then you could even use the last sentence.

CHAIRMAN: Emmet, you'd better listen to this. I guess we'd better take a vote on this particular section. Section G. As you recall, we passed over Section G. All right, how many prefer Brantley's language?

MR. WALSH: Let me ask you this. As I would interpret that, that would be much more restrictive than what we have suggested here.

MR. McLENDON: I think so, too. Brantley, I think you would be defeating what you're trying to accomplish.

MR. HARVEY: Maybe it would. What I'm trying to accomplish is to give the county the option of which type or form of government it wants to adopt, though.

MR. WALSH: I'm impressed a little bit with his argument and yet I'm not so sure that I'm sufficiently in possession of enough facts and experience here today to say that there's that much difference in South Carolina between a county the size of Greenville and a county the size of Beaufort. It may be that both of them would like to do some of the same things and maybe they ought to have that right.

MR. WORKMAN: What disturbs me is that you are, in effect, assuming that the General Assembly is going to deny them that right whereas I'm assuming that the General Assembly is going to look and see the whole picture and say that there are areas in health, in tax collections, and in bookkeeping in which certain accepted procedures ought to be followed by all counties and we make this available within the options.

MR. WALSH: Say that any county by such and such a procedure may elect to do these things. Just like zoning in a city now.

MR. WORKMAN: And this is the type of thing that I think the Legislature will build in to the forms of government available to the cities as they fall within these five classes. It may well be that in certain areas with respect, arbitrarily I'll say finances, that there will be a method which would be, the same method available to all five.

MISS LEVERETTE: The object of this is not for the General Assembly to restrict, but the General Assembly to permit according to this particular need.

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MR. HARVEY: Well, give me an area where you think there is a distinction and should be a distinction, or a classification by counties. An area where you think one class of county should be able to do something and another class should not.

MR. WORKMAN: You move into that, perhaps, in the area of health. Where the health problems of metropolitan areas with heavy congestion, the opportunity to enact certain local regulations with respect to health, not contravening the State thing. Bonded indebtedness, for example. I think you might have legitimate distinctions--not bonded indebtedness, but finance in general, between a county the size of Jasper and a county the size of Greenville when it comes to the conduct of its fiscal affairs. The most specific one that I can think of relates to the experience in Georgia. Counties having cities with populations in excess of 50,000 or 75,000 would be permitted to enact either occupational taxes or sales taxes or something of this type where the county's need for county funds is great enough that you've got to think in terms of a special county tax in an area which is not normally acceptable. Sales tax. No counties I know of in South Carolina are thinking about a sales tax. But a lot of them are thinking about automobile taxes, county automobile taxes. This is not precisely in point, but it could well be that counties where the need for county funds is greater than the ordinary property tax would take care of, that you ought to open up certain additional areas either by automobile license or by sales tax and this would be an area in which a county could operate on its own. Has that permissiveness to go in without making the same thing applicable down in small counties. One of our difficulties here is that we are in general agreement as to the necessity, almost the urgency, of providing a mode of local self government because the old mode, whether we liked it or didn't like it, is now falling to pieces under reapportionment. So we've got to provide an area of local self government. Within that, as we grope around in South Carolina within this Committee for some experience which is new to us, we see Charleston which is first in South Carolina and others and then we turn to see what other jurisdictions have done, and in almost every one that we've turned to that have this, they've set up classes of counties and within that they've tried to achieve some degree of uniformity. Not impose uniformity, but voluntary uniformity in that they have certain options that they can take.

MR. STOUDEMIRE: It would appear to me that in South Carolina that most authority given to counties will be done under this last clause. "The General Assembly may enact general laws applicable to all classes." I think that most of your things are going to fall under that. I would think most of your variations would come in such things as managers, getting boards at large or by district, size of boards, things of this nature.

MR. WALSH: I think we might be worrying over something that is not there.

MR. McFADDEN: I think that whether you start from the abstract that the county is a subdivision of the State government--that may well be and we may be doing things now that we can't do under our present Constitution, but as a practical matter there needs to be some protection,

if that be the proper word, for your county as a unit of government. You're going to have your flexibility that you're talking about. Taking the approach that Brantley outlined, gives the option to your local people to choose its form of government and to assure it that they can act effectively within the scope of their powers. The General Assembly could also make it possible that a county that wanted to go beyond that by its general laws could do so. In your basic forms of government, you're not going to have the differences that you now have.

MR. STOUDEMIRE: One thing, I think, where you people disagree with us, you don't see the possibility of variation that I see. Now, what would you say if we added this short clause "The General Assembly shall establish by law classes of counties not to exceed five in number, provided that optional forms of organization may be provided for each class" which would make it clear that if you have a class under 30,000 then the laws could say (a) "The Chairman of the Commission shall be the Chief Administrative officer (b) they shall have a manager" in this set-up if they wish. "(c) elect all board members at large (d) elect by wards", you see. That's what I think, the way it's worded now, they can do anyway, but that would make that portion of it clear.

MISS LEVERETTE: Option within classes.

MR. HARVEY: I have not yet seen any reason to classify county, and we've discussed it, we've left open what you're going to classify it on--where those are absolute, should be the criteria whereby you set forth the powers that these various forms of county government are going to have.

MR. WORKMAN: There's no problem if you've got a category where 40,000 is the breaking point and you anticipate that on one side there is a favorable form of government below 40,000, substantially below, and there's another form of favorable government substantially above 40,000. Well, the General Assembly quite handily can incorporate both options on both sides, so if there's a desire to move in either direction it can do so, but it moves by virtue of arriving at that class and it does so on its own motion because by being within that class it is allowed this flexibility whereas under what we've got now, our present Constitution is almost devoid of any reference to county government except insofar as it says "That the General Assembly shall not enact local or special laws where general laws may be made applicable". What we are trying to do is to let the Legislature say we make general laws applicable, reserving these options, and then so that we, the General Assembly, in order to cope with county government don't have to constitute ourselves as the governing bodies of 46 different counties. Instead, we say within these things, to counties you are off and running on your own with certain restrictions, but with certain options.

MR. STOUDEMIRE: I see here the General Assembly enacting two classes of law for counties the size of Fairfield on down. I would break it at 30,000. I have a hunch that they're going to be almost identical up to the point where somebody wishes to give your larger counties more financial freedom.

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MISS LEVERETTE: I can't anticipate the General Assembly keeping any county---

MR. STOUDEMIRE: I would say that if you are going to make laws for big counties and little counties that Beaufort would be among the big counties.

MR. HARVEY: I realize the basic principle you are arguing is that the county is a creature of the State, but I still don't see what's wrong with local option. People in that county, through their elected officials, selecting which type of county government, from among the types spelled out and specified by the General Assembly.

MR. WORKMAN: This is exactly what we're trying to do.

MR. RILEY: That's what it is.

MR. HARVEY: Then don't classify the counties.

MR. RILEY: You have to classify the counties or either you have to have laws pertaining to each particular county or either just one kind of law.

MR. HARVEY: No, you have several types of county government. We've talked about five and you say to the county you must select one of these five.

MR. WALSH: Brantley, if I understand what they do in some other states correctly, though, what you say you want can be done exactly the way we're saying here. They say type 1 municipality. You could call this a type 1 county and Beaufort could be a type 1 county. They might not classify it on population. They might just say type 1 counties. All counties who desire to do these things will have these powers. And you just select what type you want to become. I think you can really do what Brantley's talking about in the language we have here.

MR. McLENDON: This spells out the power of the General Assembly to classify counties and to chop off the power of a smaller county, as the case may be, to do certain things. To say that this county below a certain population can't have its own county health department. Force it to go into a regional health department.

MR. WORKMAN: You can't create special things like that now without Legislative authority.

MR. McFADDEN: But as a matter of practice--the language here is a more radical departure from what we have now. I agree that there should be more of a uniformity in county government, but you can achieve that uniformity by mandating the counties to select certain specified forms of government.

MR. WORKMAN: Which is certainly wide open.

CHAIRMAN: I don't want to put off any debate. As many as favor Brantley's

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proposal, his revised wording, raise your hand.

MR. RILEY: Brantley, what is your wording?

MR. HARVEY: "The General Assembly shall establish uniform forms of county government not to exceed five in number. Each county shall adopt one of these forms of county government" and then "The General Assembly shall provide for the structure, organization, powers, duties, functions and responsibilities of the various forms".

MR. RILEY: I know you are entertaining a motion, but would there be any objection to submitting his language to Professor Bain and asking him to give us his criticism on it or suggestions on it. I know we might not meet again.

CHAIRMAN: The only question is that we are struggling to get a draft that we can submit. Actually we've gone through this once, you see. We will have a public hearing and we'll have another chance and I think for the sake of getting this behind us we ought to take a vote on it.

MR. RILEY: What Brantley says sounds good to me, but I think there's some problem there in that you're talking about the difference between special and general law and I don't quite understand it.

CHAIRMAN: Those in favor of Brantley's position, raise your hand. Two. In favor of existing? Five. I think Dick's idea may be a pretty good one. Brantley, would you like to propose this question to Professor Bain? All right, let's get on. Finance and Taxation.

MR. McLENDON: I don't know what the program might be. Mr. Sinkler is so vitally interested in this and the people are going to look to him for a word of wisdom in connection with it. Is there any virtue in putting it down the line? Are we up against such a deadline that we need to move?

CHAIRMAN: I think we can finish this afternoon. I believe it was our intent to finish this proposed, tentative revised version and we would then circulate it to the interested members of the public and invite their comments and lead up to a public hearing. Shall we set a target date of about the middle of January to have this ready to mail? It was mentioned earlier that we would like to get the Governor to make a favorable comment in his State of the State address which is going to be on the 15th.

MR. RILEY: John, I would be inclined to think that the best time to push it in the General Assembly would be next year because we can't have anything take effect until after the general election and even if we pass something this year, we could find ourselves getting back into it next year.

CHAIRMAN: I'm inclined to think that the big push will, assuming we go the amendment route, the big push would come next year.

MISS LEVERETTE: Don't you think that there's an element of public education in there, though.

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MR. STOUDEMIRE: You still want to submit the completed document.

MR. WORKMAN: We'll recommend some priorities on the articles and we'll make a determination as to what the Committee will recommend by way of procedure on revision. I think that those of us who favor Constitutional Convention would simply say so. Whatever the prevailing thought of the Committee is, at this moment it looks to be article by article, in making that recommendation we establish certain priorities and recommend that the Legislature move rapidly in clearing up these articles so that they can be submitted in 1970. My personal evaluation is that the public, generally, is expecting us, as a Committee, to pretty well terminate what we've been laboring on since April of 1966. What I would like to do is to see us, after the public hearing, turn over to the General Assembly the completed results of our work and whether or not we're discharged as a Committee, give the results of our work to the Legislature and then thereafter take a part wherever we can individually,--all of us continue our interest in pushing this thing. The Committee complete its work as early as possible in this next Legislative session.

CHAIRMAN: I don't know whether it would be appropriate to mention it in our report, but one thing that has been encouraging to me is the fact that we will have accomplished what we set out to do at a cost which is only a fraction of what the average cost is in most other states.

MR. WORKMAN: We're thinking now in terms of completing our work, with public hearings on or around February 1st. And that we hope to have, on or around March 1st, the final printed version of our report in the hands of the Legislature.

MR. STOUDEMIRE: Last year I did a short working paper on what brought all this about and what we set out to accomplish and our methods of procedure. You still have not discussed how you are going to recommend to the General Assembly to bring about these changes or if you are going to make a specific recommendation.

CHAIRMAN: We will take a vote on what our recommendation will be after the public hearings. Then, if these votes--even if it's only a minority for the article by article revision, there should be a listing of priorities and a segregation of articles, saying this article should be voted on and so on down the line. All right, let's get on Finance, Taxation, and Bonded Indebtedness.

MR. WORKMAN: Section A is no major changes.

MR. STOUDEMIRE: Only we deleted the income tax statement. We saw no reason to include, and I don't think the Committee ever discussed this, any direct grant to the General Assembly on the income taxes because you can impose it unless something says you can't.

MR. WALSH: I agree with that.

MR. STOUDEMIRE: The Committee agreed not to classify property. Also

we left out this business about the right to tax intangibles at a lesser rate. Now, under the Exemption article over here the General Assembly can do that if it sees fit. Now, I really think, Mr. Chairman, it might pay us to do A, B, and C together because a lot of the things that are left out are taken care of in B. You remember your original decision was that things now exempt by taxation in the Constitution ought to be spelled out once again. Therefore, we left the exemption of taxes pertaining to governmental units within the state, schools and colleges and we re-worded that to bring it up to modern language.

MR. WORKMAN: Let me raise a question because it may come up. Let's revert just a second to the income tax. Now it was necessary on the federal side to pass the sixteenth amendment which gave the federal government the right to levy a graduated income tax. Was that done because of the feeling that this was a power which had not been delegated to the State?

MR. STOUDEMIRE: No, it was a direct tax therefore it had to be apportioned equally among the states.

MR. WORKMAN: That's right. My question is--the feeling is that it is not required, a similar statement, within the State Constitution because the State has that inherent right in the absence of any prohibition against it.

MR. STOUDEMIRE: We're giving property taxes the sanctity of the Constitution and we're not doing that for any other tax and I could argue unequal treatment.

MR. McLENDON: In B, subsection b, I think we ought to insert the word, in addition to "charitable institutions", I think we ought to insert the word "charitable trusts and charitable institutions". There is a distinction.

MR. STOUDEMIRE: Is a charitable trust subject to property taxes? That's all we're talking about, property taxes.

MR. WALSH: Your situation would not be cured by this because it was hit first by the federal.

MR. WORKMAN: I would like some legal counsel on this business about charitable institutions in the nature of hospitals and institutions. You say "except where the profits of such institutions are applied to private uses". The three of us wrestled with this thing at considerable length trying to differentiate between hospitals which are genuinely public and those which are operated by individuals for whom it makes a living, of good or bad degree and the question of degree could seriously jeopardize whether or not it should be tax exempt. Can you think of a better language to use on it? Some of these drying out homes can be considered in the nature of a hospital, but some of them I know have made quite substantial sums of money for their owners.

MR. STOUDEMIRE: Mac, we came to the conclusion in doing this thing, to keep the same type of language as the old Constitution, but we could not prevent court cases.

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CHAIRMAN: As to Section B, are these generally the re-stated provisions of the existing Constitution?

MR. STOUDEMIRE: Yes, but we had to break them down differently because it is so hard in the old Constitution to figure out what it does say.

MR. McLENDON: If you are going to put "charitable institutions", what's the harm of putting "charitable trusts"?

MR. STOUDEMIRE: I have no objection.

MR. HARVEY: Wouldn't Mac's be answered by adding a (d) here and saying "trusts, the income from which is used for any of the three, a, b or c"?

CHAIRMAN: Do you mean to exempt all schools whether they are profit making or not?

MR. STOUDEMIRE: "And the property of all schools, colleges, institutions of learning..." is the way it is spelled in the old Constitution. "The exemptions granted under subhead "b" and "c" insofar as such exemptions apply to real estate shall not extend beyond the buildings...except where the profits of such institutions apply to private..." John, that would take care of it.

MR. McLENDON: Have you decided whether or not you are going to insert my "charitable trusts"?

MR. WORKMAN: We're finding on a national level that there have been tremendous abuses of these things. There are some 18 to 20 people who draw income in excess of a million dollars a year who don't pay any taxes by virtue of funneling it to them through foundations where it's not susceptible to being taxed. There are other enterprises, other foundations set up which ostensibly are charitable, but which actually are tax dodges that accrue to the benefit of some individual, or group of individuals or a family, by which they evade taxes. There are dangers in what we're doing.

MR. RILEY: In "a" part here where the final language "if the property is used for public purposes" would cause some problems where perhaps you could use the same language as "b" "except where the profits of such... are applied to private uses" because of the city auditorium where they have wrestling matches and the State buildings and so forth where they are private purposes, but the money is used for public usage. You see the distinction I'm talking about.

MR. WORKMAN: We thought we had that covered, I believe, by making it "public purposes" because the operation of the Township Auditorium and the derivation of revenue thereat is a public purpose in the sense that this defrays the cost of the building. Nobody profits by it so it's a public purpose although it is rented out for private use. The Coliseum is going to fall in the same category. The Township Auditorium, the Coliseum will be used for revenue, so we put "public purposes" in there in the sense that this would be where the earning of revenue would be attached to public purpose in the payment of rent.

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CHAIRMAN: Where do we stand? Have any proposed amendments?

MR. STOUDEMIRE: The only thing is whether we add another section "d" to take care of Mac's suggestion.

MR. McLENDON: If you're going to use the word "charitable institution", I don't see any harm in adding another term called "charitable trusts". It's just as difficult to determine what a charitable institution is as a charitable trust.

CHAIRMAN: Just say "charitable trusts and institutions"?

MR. STOUDEMIRE: "All charitable trusts and foundations".

MR. HARVEY: Go back to Section A. Your note on the right says, "The provisions on intangible personal property have been omitted. See the explanations in Sections B and C."

MR. STOUDEMIRE: Section C. "In addition to the exemptions listed in Section B of this Article, the General Assembly may provide for exemptions from the property tax, but only by general laws applicable uniformly" (according to Joe Allen, now) "to property throughout the State and in all political jurisdictions." It is our reasoning, then, that stocks and bonds, household furnishings, manufacturing property all could be enacted under this C if the General Assembly saw fit.

MR. HARVEY: Still, why leave out intangible personal property from Section A?

MR. STOUDEMIRE: Because nobody taxes it now.

MR. McFADDEN: By the Constitution and by a decision by the State Supreme Court about 1932, it's not subject to taxation.

MR. STOUDEMIRE: Unless the General Assembly activates it.

MR. McFADDEN: The General Assembly can do it now.

MR. WALSH: And you could do it under this.

MR. STOUDEMIRE: In effect, it is taxable, unless you pass a law to exempt it.

MR. WALSH: There is no tax imposed now.

MR. HARVEY: You say personal property and real property are specifically subject to tax.

MR. STOUDEMIRE: Unless you pass a law to exempt it, by general law throughout the State. The way we've got it drafted now is that intangible would be taxable like anything else unless the General Assembly passes a law exempting it.

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MR. McLENDON: But the General Assembly, under your proposal here, has got to take the positive step. You still would have to have an affirmative act to tax it.

MR. WORKMAN: Unless in your counties the assessor, under this thing, could come and add that to your property.

MR. STOUDEMIRE: You can't possibly exempt all of these things in the Constitution without an ungodly long section and detail.

MR. HARVEY: I'm not talking about exempting, I'm talking about why you didn't make it as the third category under Section A.

MR. STOUDEMIRE: Because we didn't think it deserved any more treatment than anything else.

MR. HARVEY: The first category is real property. It's taxable. Personal property is taxable. Now, you tell me that intangible personal property is taxable. Why didn't you say so?

MR. WORKMAN: That's personal property. It's a variety of personal property which would be taxable.

MR. HARVEY: O.K.

CHAIRMAN: O.K., we're down to D now.

MR. STOUDEMIRE: Mr. Allen suggested this change here. "Taxes shall be levied on that assessment" he says, rather than "on the same".

CHAIRMAN: Section E.

MR. RILEY: If a county wanted to have a homestead exemption, they couldn't do it.

MR. STOUDEMIRE: It would have to be done by general law uniformly applied throughout the State.

CHAIRMAN: If a county wished to give an exemption to a new industry for five years, it would have to be by general law.

MR. McFADDEN: Under this provision, to exempt intangible personal property, the General Assembly would then have to come back and positively enact legislation exempting intangible personal property.

MR. STOUDEMIRE: All property is taxed unless it is exempt.

MR. WORKMAN: Who determines the tax to be levied on my property? It's what I return. If I don't return everything that I properly should return, then the county auditor can come back and say that you also have this property which is subject to tax. It doesn't require legislative action. Action can be taken by the county auditor in assessing your property.

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MR. STOUDEMIRE: Takes legislative action not to be taxed. All auditors could. I would assume that if this were enacted the General Assembly as the first order of business, would pass a law saying household furnishings, stocks and bonds, manufacturing are hereby exempt. Those are the three thoughts that are in the Constitution now.

MR. WALSH: Under this Section A, do you say that if you tax personal property you've got to tax it the same way you tax real property?

MR. STOUDEMIRE: That's right. That was the decision the Committee made. They did not wish to classify property. The decision you made was that no property would be classified. Keep it like you've got it now, 100% assessment.

CHAIRMAN: We spent a half a day on that.

MR. McFADDEN: You say 100% assessment. That's not our present law now.

MR. WORKMAN: That's the law.

MR. STOUDEMIRE: The members of the General Assembly are going to be faced with that one before long.

MR. McLENDON: It's in the Constitution, too.

MR. McFADDEN: Doesn't the Supreme Court interpret our Constitution? It doesn't say that there's a 100% assessment on property.

MR. WORKMAN: I don't think the 100% has been presented to the Court. The inequity has been presented if you're taxing one class at a rate different from others. The relief sought was to be taxed at the same rate, but I don't think anybody has gone in there yet and said that we need to be assessed at 100%.

MR. RILEY: Governor, maybe we should suggest that Bob put in his notes a limited discussion on the intangible situation and the fact that it would call for additional legislation.

MR. STOUDEMIRE: When the Committee discussed it the first time, I think everybody went on the basis that nobody was going to tax intangibles

MR. WORKMAN: Let me make one thing clear. The decision not to have classification of personal and real property, but there is provision for exemption so long as the exemptions are to be made uniform. The question as to whether or not intangibles should be taxed is a question for legislative examination and enactment of exemption if they so choose, but there's no sanctity given intangibles in the Constitution. That's about where we stand.

MR. RILEY: I think this is covered.

CHAIRMAN: Then we go to Section E and F. Of course, you've got to have a law to state public purpose. You say that's substantially what it is.

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MR. HARVEY: We couldn't come back here where we say "based upon actual value" and say "based upon such percentage of actual value as shall be established"?

MR. WORKMAN: This, in itself--"based upon" is the saving word in here because you can take the actual value as a level against which you operate, but you can say 10% or 50%.

CHAIRMAN: All right. Section E and F. That's largely a re-statement of what we have.

MR. WALSH: In Section F, I raise the question which I have raised before. I think it is somewhat answered in the Debt part. If we have no substantial change in our present county-city set-up, does this permit a county--we've enlarged the public purpose doctrine--to tax a city for something they do out in the county and give it no service from it. Take recreation, for instance. A city has a recreation program. The county says they want one and they add on top of all city residents to pay for the county program.

MR. STOUDEMIRE: This doesn't exactly give you that protection. The only protection you would have is where you issue bonds.

MR. WALSH: Where you borrow money. You may not borrow any money for something like that. That is one of the things that is creating the great financial crisis in this State.

MR. STOUDEMIRE: The sheriff is your best example, really. We have it on debt, but not for general purposes.

CHAIRMAN: We agreed that there is no real way that we could do it. Let's go on to G which has been there since 1868. This Section H is a little broader, but very worthwhile. Section I. Claims against the State. Section J. Section K. We will go on to L. We're striking out in new territory here.

MR. STOUDEMIRE: I believe in our earlier discussion that we came to the conclusion that while we put them all in one big pot, this would not prevent the General Assembly from saying, by law, that the Highway Department, from its special revenues shall pay 50 million if that's for the highway bonds. I would think that no-one would ever expect the State to levy a property tax to take care of this thing. Mr. Sinkler says that's good underwriting.

CHAIRMAN: It's strictly a bond sales provision. All right, Bonded indebtedness of counties, school districts, special districts.

MR. McLENDON: Bob, in Section M, what about school bonds, or hospital bonds, or airport bonds that are issued where there is no tax levied, no licenses collected? How does this affect a situation like that? About how much they can borrow?

MR. STOUDEMIRE: Is it pledged by full faith or is it revenue bonds? If it's revenue it's not bothered. They are under whatever unit holds title to the bonds. If the county issued for the hospital, then they're caught

within this limitation.

MR. McLENDON: School districts don't collect taxes.

CHAIRMAN: School districts do collect taxes.

MR. McLENDON: We had to borrow, I think, a half a million dollars. We simply levied a tax.

MR. WORKMAN: That's it. Don't we mean "or levied in behalf of"?

MR. STOUDEMIRE: Yes. We have to in this case. "Indebtedness in excess of the maximum amount permitted herein shall be issued only upon the approval of the qualified electors...".

CHAIRMAN: In other words, you've got to have a vote.

MR. McLENDON: Reeves Township, for instance, wants to build a \$200,000 addition to its hospital. Reeves Township is collecting no taxes. They collect no licenses, but it issues \$300,000 worth of bonds and then it tells the delegation to levy on Reeves Township five mills annually to retire this over a twenty or thirty year period. They've never collected any taxes.

MR. STOUDEMIRE: You would have to have a vote of the people, according to this.

MR. McLENDON: What I'm trying to find out is, from this, how do you determine how much you can borrow because up to the time they issued the bonds, they had never collected a cent.

CHAIRMAN: You can borrow any amount you want provided the people approve it. We said that the local governments ought to have some discretion and shouldn't have to go to the people on every bond issue, but if it appeared that it was going to amount to a substantial increase in taxes then the people ought to have the right to vote on it.

MR. HARVEY: We collect taxes from townships.

MR. WALSH: Your county is your unit of government.

MR. McLENDON: No. The Legislature created the Reeves Hospital District as a political subdivision of the State.

MR. RILEY: They ought to have a vote if they've never levied any taxes before.

MR. WORKMAN: The problem would probably take care of itself. When you've got a special taxing district for hospital or anything else where taxes are being levied and collected in behalf of that district, then you've got a yardstick against which you can measure. When you go into it for the first time, then you've got no taxing yardstick so then you've got to go to the people and get your vote.

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MR. STOUDEMIRE: You recall now, we had some members of the Committee who didn't want to issue anything without going to a vote of the people and this is sort of a compromise stand here.

MR. HARVEY; Bob, you have got "three times the total amount of taxes collected...in the three preceding years". You haven't got the "average". You've got three times three.

MISS LEVERETTE: I think there was a difference on the part of the Committee on that.

MR. WALSH: I think we talked about this very same thing and I think we put three times.

MR. WORKMAN: What we tried to do was to build in here something that would allow the governing authorities to issue money without having to run to the people on everything.

MR. STOUDEMIRE: The Committee agreed to strike the word "average".

MR. McLENDON: That's right. That may cure my problem.

MR. STOUDEMIRE: Maybe we ought to put "three times the taxes collected in the preceding year".

MR. WORKMAN: That gives you considerably higher ratio than you've got.

MISS LEVERETTE: I don't think anybody ever voiced the thought that it would equal nine times. Seems to me like we were thinking in terms of three times---

CHAIRMAN: Let's keep it as it is with a request to Mr. Sinkler to give us his judgment on it.

MR. RILEY: He knows what they've all borrowed up to now.

MR. WORKMAN: We have, in effect, done away with reference to assessed valuation as a yardstick. We've gone to tax collections and we've done away with revenue bonds, have we not?

MR. STOUDEMIRE: No. What you have done is you have let, especially the municipalities, have a choice between a general obligation and a revenue bond which is right because everybody believes that on the same day, the same set of circumstances, an obligation bond ought to bring a little bit less interest than a revenue bond. But right now, the way the laws are, all the towns go the revenue route simply because they don't have to vote.

CHAIRMAN: O.K. Let's go to amendments.

MR. STOUDEMIRE: Gentlemen, you remember on your amendments you agreed to four things. First, keep the old fashioned small amendment. To take the article by article approach, to have the Constitutional Convention and four, to permit the General Assembly to draft a Constitution to be submitted to the voters. The Committee agreed to do away with the ratification and therefore you've got to spell out an effective date

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unless the amendment does. As we see it, that would take care of changing the Governor's term of office from four to six or to write a whole new Executive Article. "Two or more amendments submitted to the voters". Now, Constitutional Convention is about the same thing that we have in the current Constitution.

MR. McLENDON: When it says "...it shall be submitted", who submits it? Who takes the initiative to submit it?

MR. HARVEY: The Secretary of State.

MR. STOUDEMIRE: Election Commission now, but we argued back over here before that really we should give this function to the Secretary of State as a constitutionally elected officer rather than to an election commission.

CHAIRMAN: Did we agree on that thirty year thing?

MR. STOUDEMIRE: Some wanted it not more than twenty years and I believe some didn't want it at all. The argument was that if the General Assembly has the right to propose a new Constitution, then certainly the people ought to have the right to vote on it. Section D. "General Assembly to propose a new Constitution." That would let you make part of it become effective this year-- I think we drafted what the Committee decided on D. Mr. Chairman, we've got this Miscellaneous. Divorces. You agreed to keep divorce like it was. Lotteries. Voted to keep in. Continuity of governmental operations. We decided to use the shorter approach of New Jersey rather than that long thing we put in the Constitution by amendment. It says the same thing, but it is much shorter. Alcoholic liquors. You agreed to keep it like it was. That's it.

MR. WORKMAN: Well, reserving all right, I'm going to serve notice that I will put in our Report my conviction that this ought to be left out as being improper matter for a Constitution. We are on a kind of dilemma in here because we've got to move from the standpoint of principle to try to devise a Constitution, as it should be devised, realizing that we are not starting from scratch so that we are bound by case law, precedent and a lot of other things we're trying to protect, but at the same time I don't think we, as a Committee, should lose sight of our obligation to try to clean this thing up as far as we can clean it up and, in this area, though it may be impossible to do anything about it, I think the statement ought to be made that there is a feeling within the Committee that this should be left out.

MR. STOUDEMIRE: I'm sorry. We've got two more hold-over items. Administrative Procedure first. We decided that the best we could do on the thing--there seemed to be most objections to "nor shall it be denied the benefit of technical assistance.." and also that a mode of procedure be prescribed by the General Assembly. We changed it around a little bit. "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard", I believe

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everybody agreed to that, "nor shall be subject to the same official for both prosecution and adjudication nor shall be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly".

MR. WALSH: I think that's good.

MR. STOUDEMIRE: Now, on this urban renewal. You recall that the amendment says that we've got it now, but the General Assembly can provide for urban renewal and so on. So if the General Assembly doesn't provide, that still could leave Spartanburg and York and perhaps Greenville out on a limb so we thought that maybe the sentence up here would do it. "Any political subdivision possessing the powers of urban renewal and slum clearance, including the right to resell or dispose of slum areas to private enterprise for private uses by a prior Constitutional or statutory provision may continue to exercise such authority."

MR. WALSH: What about air rights? It was submitted at two different times. Greenville defeated it, but Spartanburg passed it.

MR. STOUDEMIRE: Did you do it the same time you did the urban renewal?

MR. WALSH: No, this election.

MISS LEVERETTE: The State passed it.

MR. WALSH: I believe that something like this is probably the answer. Anybody that now has it has it and those that don't have it are going to have to get it the hard way.

MR. McFADDEN: Isn't this language here in addition to some other language?

MR. STOUDEMIRE: We said the General Assembly can do all these things.

MR. McFADDEN: The General Assembly can do all these things and this language was put on the end of it to protect Spartanburg and York.

CHAIRMAN: This really vests the rights of Spartanburg and York.

MR. STOUDEMIRE: This Article by Article thing has a major defect. What if by some fluke they approve all the amendments except the schedule?

MR. WALSH: I believe we could probably take something like this provided we also included the air rights and sub-surface rights in it.

MR. STOUDEMIRE: All right.

MISS LEVERETTE: The air rights and sub-surface rights amendment was made to the same section, wasn't it?

MR. WALSH: I believe it was.

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MR. WORKMAN: Does not this air rights and sub-surface rights apply to publicly owned buildings and public land, whether or not involved in urban renewal?

MR. WALSH: Yes.

MR. WORKMAN: In other words, you can sell air rights above or below the courthouse if you wanted. Let's look to our next step.

CHAIRMAN: Bob, you are authorized to go ahead, within the framework of what we've done. Just as a precaution, first mail copies of your revised draft to each member. Give us a couple of days to go over that. If you have any objections, call Bob or Bill or me, and if it is serious enough we will call another meeting of the Committee, but we will not plan to have a meeting of the Committee until we have a public hearing which will be arranged sometime after the general distribution of the revised version.

MR. STOUDEMIRE: What shall we call it?

MR. WORKMAN: I would say, Committee Draft.

MR. STOUDEMIRE: I believe that we agreed on last time that we would stick to the A, B and C through the public hearing and then when we go to the printer, then we'll go back to 1, 2, 3; 4.

There being no further business the meeting adjourned at 4:45 p.m.

W. D. WORKMAN, Jr.
Secretary

Nettie L. Bryan
Recording Secretary