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John C. West

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

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INTERIM REPORT
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OF THE
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CONSTITUTION OF 1895

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The Committee created by Concurrent Resolution No. S. 342 consisted of the following members:

SENATORS

JOHN C. LINDSAY
RICHARD W. RILEY
MARION H. SMOAK

REPRESENTATIVES

JUDSON F. AYERS, JR.
W. BRANTLEY HARVEY, JR.
J. MALCOLM McLENDON,
Vice-Chairman

GOVERNOR'S APPOINTEES

HUGER SINKLER
T. EMMET WALSH
WILLIAM D. WORKMAN, JR.

JOHN C. WEST, *Chairman*

TRANSMITTAL LETTER

To

THE HONORABLE ROBERT E. MCNAIR
Governor of South Carolina

and

Members of the General Assembly
of South Carolina

The Committee to Make a Study of the South Carolina Constitution of 1895 created by a Concurrent Resolution of the General Assembly approved April 7, 1966, herewith submits its first Interim Report to the Governor and the members of the General Assembly. In order to consider fully the constitutional needs of the State of South Carolina as stated in the Concurrent Resolution, it will be necessary for the Committee to continue its work at least during 1967. Evaluating constitutional provisions requires detailed study and discussion.

Organizational and operational procedures followed by the Committee are outlined in the Report. For your convenience, a summary of the Committee's recommendations are listed on page one. Following the introduction, the report explains the accomplishments and recommendations of the Committee for the year 1966. In addition to this report, you will receive two additional reports from the Committee in the near future. Following a public hearing, the Committee will submit its recommendations on bonded indebtedness for your consideration. A comprehensive study of the amendments proposed to the 1895 Constitution will also be given to each of you in March.

Respectfully submitted,

JOHN C. WEST, *Chairman.*

January, 1967

RECOMMENDATIONS

The Constitutional Study Committee recommends the following:

1. That the membership of the Study Committee be enlarged;
2. That an amendment revising the indebtedness provisions of the Constitution be approved;
3. That a test case be brought before the State Supreme Court to determine the scope of amendments to the Constitution which may be presented under the current amendment procedure provided for by Article XVI;
4. That during 1967 the subcommittees prepare recommendations based on the evaluation of each Article of the present Constitution;
5. That other areas of the Constitution in addition to local government and indebtedness which may need revision be determined;
6. That, after a full study of the State's needs, the procedures to be used to bring about constitutional revision be decided; and
7. That research necessary to evaluate the existing Constitution and to formulate recommendations for constitutional revision be undertaken.

Each of these recommendations is discussed in the text of this report.

INTRODUCTION

The nine-member Committee to study the Constitution of 1895, created under a Concurrent Resolution of the General Assembly approved April 7, 1966, formally organized on August 25, 1966. The Committee selected the following officers: Senator John C. West, Chairman, Rep. J. Malcolm McLendon, Vice-Chairman, and Mr. W. D. Workman, Jr., Secretary. During 1966, the Committee held eight meetings, averaging two a month.

To maintain continuity in its deliberations, the Study Committee recommends that the Resolution creating the Committee be amended so that there will be 12 members; namely, the Lieutenant Governor, the Speaker of the House of Representatives, three Senators, three members of the House of Representatives, and four appointees of the Governor. A Resolution to effect these changes is being recommended to the General Assembly as a separate proposal. See Appendix A.

According to the Resolution creating the Committee, major shortcomings in the present constitutional system involve the excessive number of amendments which are necessary to meet modern governmental needs and the lack of provision for local county government. The Committee is specifically instructed to evaluate the need for a Constitutional Convention, to determine if broad, general amendments (apparently in the nature of substituting a completely new Article for an existing one or a new Article for several sections of existing Articles) can be used to correct the present deficiencies, and to recommend provisions which should be included in a new Constitution or which should be submitted as amendments. All proceedings of the Committee have been designed to carry out the instructions in the Resolution.

PROPOSALS AND ACCOMPLISHMENTS

Under the guidance of Chairman West, the Committee has discussed in detail the procedures it should use to fulfill its responsibilities and the means of identifying the shortcomings of the existing document. More specifically, the Committee has:

1. Established 9 subcommittees so that the weaknesses of the present Constitution could be carefully studied and detailed attention given to recommending new provisions. Each article of the Constitution has been assigned to a subcommittee. The subcommittees currently functioning are:

Legislative—Articles 3 and 15

Executive—Articles 4 and 13

Judiciary—Articles 5 and 6

Taxation and Finance—Articles 10 and 12

Individual Rights—Articles 1, 2, and 14

Local Government—Articles 7 and 8

Revision—Article 16

Education—Article 11

Miscellaneous—Articles 9 and 17

2. Recognized that the debt provisions within the Constitution need immediate and special attention—regardless of the final recommendation on the technical procedure suggested to bring about constitutional revision. Excluding those involved in the 1966 election, almost 250 proposals have been submitted to the voters to amend Article VIII, section 7, and Article X, section 5, and more than 160 amendments have been added to the two sections of the Constitution. These changes not only complicate the ballot and confuse the voter, but indicate that the debt provisions in the 1895 Constitution are unrealistic and fail to meet financial requirements of modern government. Working through its subcommittee, the Committee has approved a new constitutional provision regulating governmental debt. This proposed change in debt regulations should eliminate or greatly reduce the necessity of constantly amending the Constitution. Briefly, the proposed amendment removes the present debt limitations, which are based on fixed percentages of the assessed property values within the various governmental districts, and instead recommends that a vote of the people be required to issue most general obligation bonds. Revenue bonds are excluded. Bonds pledging the gasoline and sales taxes also may be issued

without a referendum, unless extraordinary amounts are required. The Committee feels that a public hearing should be held on this proposed amendment. Consequently, the Committee will submit its specific recommendations on bonded indebtedness to the General Assembly in a separate document, just as soon as the results of the public hearing can be evaluated.

3. Decided that there should be a test case brought before the South Carolina Supreme Court to determine the type of amendments which may be submitted under Article XVI of the Constitution of 1895. Historically, amendments submitted to the voters have involved relatively simple changes in the existing wording of the Constitution and most often have dealt only with one section of the Constitution. Some such amendments, however, have made changes in as many as three separate articles; for example, one amendment revised debt limitations in Article II, section 13, Article VIII, section 7, and Article X, section 5. If constitutional provisions pertaining to indebtedness are revised through the amendment process, major changes must be made in the Articles mentioned in the previous sentence. In fact, these Articles, particularly Article VIII and Article X, would have to be essentially rewritten insofar as indebtedness is concerned. Consequently, the Committee feels that an opinion from the South Carolina Supreme Court is needed on such questions as: (a) May a new Article in its entirety be substituted as one amendment for an existing Article? (b) May a new Article submitted as a single amendment make broad or extensive changes in more than one Article of the existing Constitution? The answers to these questions are essential to determining the method or methods to be used in bringing about extensive changes in the existing Constitution, without the necessity of using a series of short, piecemeal amendments. To accomplish this purpose, the Committee recommends to the General Assembly a single constitutional amendment on indebtedness which proposes many broad changes in current debt provisions found in several different Articles of the 1895 Constitution. In the near future, the proposed amendment suggested for the test case will be submitted to the General Assembly. The Committee believes that the proposed amendment is needed. If the court sustains the recommended procedure, then the amendment as drafted by the General Assembly could be submitted to the voters and, if approved, added to the Constitution. If a convention should be called, the convention could use the proposed or adopted amendment, which-

ever the case may be, as a guide to its thinking, perhaps simply re-incorporating it in a new Constitution.

On the other hand, if the Supreme Court should reject the plan to amend the present Constitution by submitting broad changes in one or more Articles, then some other means would have to be found to bring about major adjustments in the existing document. Under such circumstances, it may be desirable to amend Article XVI so that extensive changes may be submitted to the voters as a single amendment, without the necessity of holding a constitutional convention.

4. Agreed that constitutional provisions on local government, in addition to debt provisions, need special attention. The Committee had its staff consultant prepare a survey of local governmental jurisdictions within the State. This survey disclosed the rapid growth of special districts which perform municipal type services, the creation of many semi-independent boards to perform services, and the expansion of county purposes to include many new functions.

In 1962 there were 46 counties, approximately 260 municipalities, 109 school districts, and 142 special districts in South Carolina. Since 1962, the number of counties, municipalities and school districts has remained essentially the same, but the General Assembly has authorized the creation of almost 100 additional special districts such as fire fighting, sewer, and water conservation. Many of these districts have not been activated, but the passage of enabling legislation does point out the rapid growth in the demand for local services. Moreover, the counties of the State each year assume new governmental functions, many of which are difficult to justify under the constitutional provision of Article X, section 6, which prohibits counties from levying taxes except for "ordinary county purposes."

Because of the rapid developments in local government and the increase in governmental jurisdictions authorized to provide public services, the Committee believes that special consideration must be given to the role of the municipality in local government, the nature of county government in this era, and the need for special districts. The interrelationships among these governmental jurisdictions and the alternate methods through which the State may grant governmental authority to them are scheduled for priority considerations early in 1967. Generally, the Committee recommends that the Constitution be revised in the area of local government so that modern needs can be met with as little friction as possible among local,

state, and national levels of government. The Committee recognizes the vital interest that the State of South Carolina maintains in good local governmental practices, especially in administering state programs for local citizens, issuing bonds, maintaining sound revenue and expenditure programs, and avoiding unnecessary overlapping and duplication. The Committee also is aware of the desire for local control of governmental activities by municipalities, counties, and special districts. Consequently, the exact nature of the revision and the procedure to be used to accomplish these objectives will be proposed later, after a thorough inquiry into the problem of local government has been completed.

5. Selected Mr. Robert H. Stoudemire, Bureau of Governmental Research, University of South Carolina, as staff consultant. In order to fulfill its duties as outlined in the Resolution, detailed research must provide the information needed to evaluate constitutional questions, to propose new provisions to the Constitution, and to determine the best method for constitutional revision. The research needs cannot be entirely determined until the various subcommittees have had time to study each Article in detail, however, a staff study into the area of local governments is already underway.

6. Encouraged and cosponsored a publication prepared by the Bureau of Governmental Research, showing the proposed and adopted amendments, Article by Article, to the 1895 Constitution. This study shows that prior to 1966, 425 amendments have been submitted to the voters and that almost 100 of these proposed changes to more than one section of the Constitution. Nearly 300 of the 425 propositions submitted to the voters have been added to the Constitution—not taking into consideration those which proposed more than one change. Almost 60 percent of the amendments adopted have been made to Article VIII, section 7, and Article X, section 5. Except for the 1924 election, when many proposed amendments as well as a \$10,000,000 state general obligation bond issue were rejected, the voters of the State have generally approved proposed constitutional amendments. A study of this research report aids in understanding the areas of the Constitution which complicated governmental processes in the past and in determining the type of provisions which should be avoided in constitutional drafting. Copies of this study will be made available to each member of the General Assembly.

7. Analyzed the efforts toward constitutional revision which have been made or which are currently underway in other states. The experiences in other states serve as useful guides to South Carolina, especially in determining the method of constitutional revision which should be followed. The Committee has also studied a number of documents related to constitutional change. These include the many publications of the National Municipal League, and especially the Model State Constitution, the reports on constitutional revision in Kentucky, the background papers for the 1961 Michigan Constitution Convention, the proposals of the Maryland Constitutional Convention Commission, and excerpts from these relating to South Carolina local governmental powers prepared under the supervision of the Political Science Department of the University. Such reports provide background information essential to evaluating constitutional changes and requirements.

8. Recognized the need for public hearings before the full committee as well as the subcommittees. The Committee feels that the public should be heard on the general question of constitutional revision and the proposals for specific recommendations before action is instigated. Through individuals and groups, the public should be given the opportunity to suggest areas of change and the type or revision that it considers wise. Without full support from the citizens of the State, constitutional revision will hardly be possible.

