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Administration, January 1971**

Judicial Reform Committee

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HISTORY

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RECOMMENDATIONS BY THE
JUDICIAL REFORM COMMITTEE
FOR THE REVISION OF
ARTICLE V OF THE
SOUTH CAROLINA CONSTITUTION
OF 1895



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**RECOMMENDATIONS BY THE
JUDICIAL REFORM COMMITTEE
FOR THE REVISION OF
ARTICLE V OF THE
SOUTH CAROLINA CONSTITUTION
OF 1895**

To
HIS EXCELLENCY, THE GOVERNOR
and
THE GENERAL ASSEMBLY
of the
STATE OF SOUTH CAROLINA

January, 1971

Published By The
INSTITUTE OF JUDICIAL ADMINISTRATION

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The Honorable Barbara Babb
Executive Secretary
South Carolina Bar Association
Secretary

The Honorable H. Faye Bell
State Representative
Chesterfield County

Harold R. Boulware

The Honorable J. William Davenport
Judge of Probate
Spartanburg County

The Honorable Robert McC. Figg
President
South Carolina State Bar

The Honorable L. Marion Gressette
State Senator
Eleventh Senatorial District

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The Honorable Julius W. McKay
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Judge
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Resident Judge
Fourteenth Judicial Circuit

C. M. Scarborough, Jr.

The Honorable Clarence E. Singletary
Resident Judge
Ninth Judicial Circuit

The Honorable Frances H. Smith
Clerk
The Supreme Court of South Carolina

B. O. Thomason, Jr.

The Honorable E. N. Zeigler
State Senator
Sixteenth Senatorial District

The Honorable Joseph R. Moss, Ex Officio
Chief Justice
The Supreme Court of South Carolina

TRANSMITTAL LETTER

To

THE HONORABLE JOHN C. WEST
Governor of South Carolina

and

MEMBERS OF THE GENERAL ASSEMBLY
OF SOUTH CAROLINA

The Judicial Reform Committee, acting under the auspices of the Judicial Council, has been created to make a comprehensive study of the judicial system of the State and to formulate recommendations for its improvement to the Governor and the General Assembly. To this end, with funds obtained from the Law Enforcement Assistance Program, State Planning and Grants Division of the Governor's Office, through the Omnibus Crime Control and Safe Streets Act of 1968, and the Judicial Council, the Committee has retained The Institute of Judicial Administration to provide necessary staff services.

The work of the Committee has been divided into two phases:

(a) An analysis of Article V of the South Carolina Constitution, coupled with detailed recommendations for its amendment to provide the flexibility to permit necessary statutory reform essential to the creation of a court system which can effectively meet the future judicial needs of the State.

(b) An in-depth study of the entire judicial system of the State and the preparation of detailed statutory recommendations and proposed rules for the creation of a modern, efficient court structure.

The first phase of the Committee's work has been completed. The Institute of Judicial Administration has prepared and submitted to the Committee for evaluation a detailed analysis of Article V of the South Carolina Constitution, the proposed amendment thereto authored by the Committee to Make a Study of the South Carolina Constitution of 1895, and the Model Judicial Article sponsored by the American Bar Association.

The Committee was impressed with the proposals relating to Article V made by the Constitutional Study Committee and concurs with its recommendation as to the procedure to be followed to accomplish constitutional revision. It was the opinion, however, that certain addi-

tional flexibility should be incorporated in the Article; chiefly in regard to the possible future creation of an intermediate appellate court and the structuring and jurisdiction of the Circuit Court.

Accompanying this letter is a comparison and analysis of the proposals and comments relating to Article V of the South Carolina Constitution made by the Constitutional Study Committee and by this Committee.

The adoption by constitutional amendment of the Constitutional Study Committee's draft of Article V, as modified by this Committee, as Article V of the South Carolina Constitution is urged.

The second phase of the Committee's work is well under way and completion is anticipated before the commencement of the 1972 legislative session. Periodic reports will be submitted as the work progresses.

Respectfully submitted,

Harold W. Jacobs, *Chairman*

Barbara Babb, *Secretary*

H. Faye Bell

Harold R. Boulware

J. William Davenport

Robert McC. Figg

L. Marion Gressette

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Joseph R. Moss, *Ex Officio*

**COMPARISON OF RECOMMENDATIONS
FOR ARTICLE V OF THE COMMITTEE TO MAKE A
STUDY OF THE SOUTH CAROLINA CONSTITUTION
OF 1895 AND OF THE
JUDICIAL REFORM COMMITTEE**

**RECOMMENDATIONS OF THE CONSTITUTIONAL
STUDY COMMITTEE**

Section A. Judicial power vested in unified judicial system.
The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such courts of uniform limited jurisdiction as may be provided for by general law. (Section 1, Article V, 1895, revised.)

Comments

The Committee discussed at great length the nature of the state court system, who should control the system, and the courts which should be granted constitutional status. The Committee feels that there should be a unified court system, under the supervision of the Chief Justice. After much deliberation, the Committee believes that the Supreme Court and the Circuit Court—in the sense that they now function—should be named in the Constitution. The Committee feels that there is no need for an intermediate court of appeals and decides against permitting the General Assembly to establish such courts.

County, juvenile, probate, domestic, magistrate, municipal, and traffic courts may be established under this provision. Moreover, a special system could be developed for areas where counties and cities may have merged into a single government. Any courts listed in this paragraph, however, must be established by general law, the jurisdiction must be the same throughout the State, and the jurisdiction must be inferior to that of the Circuit Court. This provision would permit an inferior court to have jurisdiction in more than one county.

It is anticipated that the General Assembly would enact laws providing for the courts authorized by this section. The laws could be drafted so that local areas may determine which of these courts would be established.

The Article on the Schedule should determine the status of existing courts which are inferior to the Circuit Court. A time limit may be set for the General Assembly to act under this section.

Note that the sections in the present Constitution providing for the magistrate's court have been deleted.

**COMPARISON OF RECOMMENDATIONS
FOR ARTICLE V OF THE COMMITTEE TO MAKE A
STUDY OF THE SOUTH CAROLINA CONSTITUTION
OF 1895 AND OF THE
JUDICIAL REFORM COMMITTEE**

**PROPOSED REVISIONS BY THE JUDICIAL REFORM
COMMITTEE**

Section A. Judicial power vested in unified judicial system.
The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided by general law.

Comments

Although it is agreed that an intermediate appellate court is not needed at the present time, the Committee is concerned about requiring a constitutional amendment to create such a court should the need for one arise in the future. Section A as amended would permit the General Assembly to create such a court when needed. It is the opinion of the Committee that the procedure provides desirable flexibility.

**RECOMMENDATIONS OF THE CONSTITUTIONAL
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Section B. Supreme Court. The Supreme Court shall consist of a Chief Justice and four Associate Justices, any three of whom shall constitute a quorum for the transaction of business. The Chief Justice shall preside, and in his absence the senior Associate Justice. In all cases decided by the Supreme Court, the concurrence of three of the Justices shall be necessary for a reversal of the judgment below. (Parts of Section 2 and Section 12, Article V, 1895.)

Comments

This section continues the five-member Supreme Court and the quorum necessary to transact business and to make a decision. The Committee feels that five members are adequate for the Court and that there is no need for additional judges. Other parts of Section 2 are treated later, but the provision in Section 12 calling for an *en banc* court or the use of Circuit Judges under certain circumstances has been deleted. This procedure has been used so rarely that the Committee does not feel it should be continued. Furthermore, such a provision if used could weaken the prestige and responsibility of the Supreme Court.

Section C. Election of Supreme Court members. The members of the Supreme Court shall be elected by a joint public vote of the General Assembly for a term of ten years, and shall continue in office until their successors shall be elected and qualified, and shall be classified so that the term of one of them shall expire every two years. (Section 2, Article V, 1895, revised.)

Comments

This section is identical with the present Constitution except for a slight change in the procedure for voting on judges.

Members of the Committee feel that a ten-year term is sound, that terms should be staggered, and that a judge should continue until his successor has been duly qualified.

Committee members discussed fully the best method of selecting judges. Primarily, discussions centered around the method recommended here as compared to procedures which utilize a nominating committee to recommend judges to the Governor who would make the final selection, but having the Governor's nomination later confirmed at an election. A majority of the Committee feels that the

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COMMITTEE**

Section B. Supreme Court. No recommended change.

Section C. Election of Supreme Court members. No recommended change.

**RECOMMENDATIONS OF THE CONSTITUTIONAL
STUDY COMMITTEE**

current method should be continued, however, several members favored a system whereby a nominating agency would make recommendations to the Governor who would then appoint the judges.

Section D. Administrative head of the unified judicial system. The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State. The Chief Justice shall have the power to assign any Judge to sit in any court. The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the law, the Supreme Court shall make rules governing the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted. (New Provision.)

Comments

The Committee believes that a modern state court system needs to be under control of some administrative officer who can supervise the whole system. In fact, a unified court system demands such a procedure. Therefore, the Committee feels that the Chief Justice is the logical person to head the court system. Naturally, the Chief Justice cannot personally attend to all the details of such supervision, consequently, the Committee proposes that he be permitted to have an administrative assistant for this purpose. The Chief Justice would have supervision over all courts in the unified system.

Under this section the Supreme Court is given the rule making power to supplement the rules enacted by the General Assembly. Furthermore, the Supreme Court is given authority over admission to the bar and disciplining members. The Chief Justice would also have the power to hear complaints, to determine circuit schedules, to control overcrowded circuits, and to give other supervision needed.

The Committee makes these recommendations so that there will be one person responsible for the administration of the court system and the assignment of judges.

Section E. Jurisdiction of the Supreme Court. The Supreme Court shall have power to issue writs or orders of injunction,

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COMMITTEE**

Section D. Administrative head of the unified Judicial system. No recommended change.

Section E. Jurisdiction of the Supreme Court. No recommended change.

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mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs. And said Court shall have appellate jurisdiction only in cases of equity, and in such appeals they shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside, and shall constitute a Court for the correction of errors at law under such regulations as the General Assembly may by law prescribe. (Section 4, Article V, 1895, revised.)

Comments

The Committee feels that the existing section of the Constitution on the jurisdiction of the Supreme Court is a good one and should be continued. The Court has functioned well under this jurisdiction and therefore no change is proposed except the substitution of the word "equity" for "chancery" to conform to modern usage.

Section F. Reporter and Clerk. There shall be appointed by the Justices of the Supreme Court a Reporter and a Clerk of said Court, whose term, duties, and compensation shall be prescribed by law. (Section 7, Article V, 1895, revised.)

Comments

The Committee recommends that the present section be continued with one exception. Instead of having the Reporter and the Clerk appointed for a four-year term, the Committee feels that the term for these officials should be set by law. The Court should not be restricted by the Constitution.

Section G. Jurisdiction of Circuit Court. The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases. It shall have appellate jurisdiction in all cases within the jurisdiction of inferior courts, except from such inferior courts for which the General Assembly shall provide an appeal directly to the Supreme Court. (Sections 15 and 18, Article V, 1895, revised.)

Comments

The Committee feels that the jurisdiction of the Circuit Court should be treated as a single section, rather than having two sections. The proposal made here essentially keeps the jurisdiction as it is cur-

**PROPOSED REVISIONS BY THE JUDICIAL REFORM
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Section F. Reporter and Clerk. A Supreme Court Clerk and a Supreme Court Reporter shall be appointed by the Court to perform such duties as prescribed by it.

Comments

It is the Committee's opinion that the Court should have complete flexibility in the selection of its staff and assignment of duties, subject to limitations imposed by appropriations. The Committee, therefore, recommends that the Reporter's and Clerk's duties and terms should be controlled by the Court rather than by statute.

Section G. Jurisdiction of Circuit Court. The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.

Comments

In view of the fact that an intermediate appellate court may be created at some future date, and that it then may be determined that more efficient judicial administration would require divesting the

RECOMMENDATIONS OF THE CONSTITUTIONAL STUDY COMMITTEE

rently given in the Constitution, except that it is treated in broad terms instead of spelling out authority in detail. Being a general trial court automatically gives to the Circuit court all of the specific authority mentioned in the current Constitution.

Note that the original jurisdiction in civil and criminal cases given to the Circuit Court is not exclusive, therefore, the General Assembly may grant similar powers to other courts.

The Committee feels that court sessions in the various counties should be determined by law rather than the Constitution.

Section H. Probate functions. Jurisdiction in matters testamentary and of administration, in matters appertaining to minors and to persons mentally incompetent, shall be vested as the General Assembly may provide. (Section 19, Article V, 1895, revised.)

Comments

The Committee feels that the last clause of the present section should be deleted, since it really adds nothing of importance. It should be noted that this Section permits the General Assembly to make decisions on the Probate Court. Under this provision, the General Assembly may provide for the selection of the Probate Judge and may provide that the court be a branch of the Circuit Court or be left independent as it is now.

PROPOSED REVISIONS BY THE JUDICIAL REFORM COMMITTEE

Circuit Court of part or all of its appellate jurisdiction and vesting it in the appellate court, it is the opinion of the Committee that the necessary flexibility to accomplish this goal should be provided for in the Constitution. Giving the General Assembly the power to set up the appellate chain, provided in the Section as redrafted, rather than setting it out in the Constitution, accomplishes this purpose.

The Committee was also concerned about the effect of establishing unrestricted original civil and criminal jurisdiction in the Circuit Court. Such a constitutional grant would make it impossible to relieve the general trial court, for example, of small claims, domestic and probate cases, should the General Assembly create specialized courts to handle these classes of litigation. Under the provisions of this Section, as proposed by the Constitutional Study Committee, a litigant could insist that the Circuit Court try a case involving a fifty dollar dispute even though the General Assembly had created a small claims court to handle such matters. The language recommended by this Committee would permit the General Assembly to channel the more trivial matters and certain specialized classes of litigation into courts created specifically to handle those types of cases, thereby permitting the Circuit Court to devote its energies to general litigation of a more serious nature. This is the approach taken in Section 18 of Article V of the current Constitution in protecting the Court of General Sessions from having to handle minor criminal matters.

Section H. Probate functions. Jurisdiction in matters testamentary and of administration, in matters appertaining to minors and to persons mentally incompetent, shall be vested as the General Assembly may provide, consistent with the provisions of Section A of this Article.

Comments

The Committee sees no need for this Section because the power to provide for a Probate Court is set forth in Section A. If the Section is included, however, it is recommended that the phrase "consistent with the provisions of Section A of this Article" be added to the end of the sentence. This would insure statewide uniformity in the Probate Courts as in other courts. Otherwise, this Section might be construed as an exception to the "uniformity" requirement of Section A.

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Section I. Judicial circuits and selection of judges. The General Assembly shall by law divide the State into sixteen judicial circuits of reasonably equal volume of judicial business and each circuit shall be composed of compact and contiguous territory. For each circuit a Judge shall be elected by a joint public vote of the General Assembly. He shall hold office for a term of six years, and at the time of his election he shall be an elector of a county of, and during his continuance in office he shall reside in, the circuit of which he is Judge.

The General Assembly may by law provide for additional Circuit Judges, not to exceed five in number, to be assigned by the Chief Justice. Such additional Circuit Judges shall be elected in the same manner and for the same term as provided in the preceding paragraph of this section for other circuit judges, except that residence in a particular county or circuit shall not be a factor in determining qualifications. (Section 13, Article V, 1895, revised.)

Comments

This section continues the present 16 judicial circuits now authorized. The Committee feels that this is a good number to give proper representation of the court system to the whole State. The Committee feels, however, that the Constitution should require that the volume of court business should be a primary element in determining the boundaries of each circuit. Furthermore, the Committee feels that each circuit should be a compact, contiguous area.

The majority of the Committee believes that judges should be selected by the General Assembly. Others members feel that some other method is better and advocate the system described under Section C for the Supreme Court. All members think that the term of office should be extended to six years. Four years is a very short term. The Committee endorses the present provision of the Constitution requiring that a judge live within the circuit.

The Committee evaluated carefully the need for additional judges in the State. All members agreed that the State needed additional judges to alleviate overcrowded dockets. The Committee feels that five additional judges may be elected if the General Assembly sees fit and that each such judge should be assigned by the Chief Justice.

**PROPOSED REVISIONS BY THE JUDICIAL REFORM
COMMITTEE**

Section I. Judicial circuits and selection of judges. The General Assembly shall by law divide the State into judicial circuits of compact and contiguous territory. For each circuit a Judge or Judges shall be elected by a joint public vote of the General Assembly. Each Judge shall hold office for a term of six years, and at the time of his election he shall be an elector of a county, and during his continuance in office he shall reside, in the circuit of which he is a Judge.

Comments

To have the flexibility to meet future needs, it is the recommendation of the Committee that neither the number of circuits nor the numbers of Circuit Judges should be established by the Constitution. It was also felt unwise to carry forth the present constitutional limitation of one Judge per circuit. The Section as drafted permits the creation of additional circuits, or the addition of Judges to existing circuits, as judicial work load demands.

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Section J. Interchange of circuits. Judges of the Circuit Court who are elected to serve designated circuits shall interchange circuits with each other. (Section 14, Article V, 1895, revised.)

Comments

This section is essentially the same as the present regulation, except that the phraseology is changed to distinguish the regular 16 Circuit Judges from the additional ones.

Section K. Qualification of judges. No person shall be eligible to the office of Chief Justice, Associate Justice, or Judge of the Circuit Court who is not at the time of his election a citizen of the United States and of this State, and has not attained the age of twenty-six years, has not been a licensed attorney at law for at least five years, and has not been a resident of this State for five years next preceding his election. (Section 10, Article V, 1895, revised.)

Comments

The Committee feels that the qualifications for the judges of the major courts should be given in the Constitution and that the existing requirements are good ones. The qualifications for judges of the courts of limited jurisdiction should be set by law, so that requirements may be varied according to the type of court.

Section L. Compensation of judges and restriction on dual officeholding.—The Justices of the Supreme Court and the Judges of the Circuit Court shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. They shall not, while in office, engage in the practice of law, hold office in a political party, or hold any other office or position of

**PROPOSED REVISIONS BY THE JUDICIAL REFORM
COMMITTEE**

Section J. Interchange of circuits. Judges of the Circuit Court shall interchange circuits as directed by the Chief Justice.

Comments

It was feared by the Committee that Section J as proposed by the Constitutional Study Committee might be construed as a codification of the present rotation system of Circuit Judges. Although the desirability of judicial rotation was recognized, the need for judicial stability within circuits to accomplish sound administration was also recognized. A proper balance between these two desirable goals is considered the function of good judicial administration to be exercised by the Chief Justice as the administrative head of the Courts of the State. This section, as amended, provides the desirable flexibility necessary for proper administration, while at the same time establishes a constitutional mandate for rotation of Circuit Court Judges compatible therewith.

Section K. Qualification of judges. No recommended change.

Section L. Compensation of judges and restriction on dual officeholding. No recommended change.

**RECOMMENDATIONS OF THE CONSTITUTIONAL
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profit under the United States, the State, or its political subdivisions except in the militia, nor shall they be allowed any fees or perquisites of office. Any such Justice or Judge who shall become a candidate for a popularly elected office shall thereby forfeit his judicial office. (Section 9, Article V, 1895, revised.)

Comments

The Committee feels that judges of the major courts should be constitutionally restricted from practicing law. The Committee has expanded the present regulation to include a prohibition against serving a political party or running for office.

The Committee believes that judges should be protected from having their compensation reduced while in office. This helps to insure the independence of the judge. The Committee, however, does not recommend that the same protection be granted to the retirement pay of judges. Retirement is normally fixed by law and in good faith cannot be reduced. The special protection against retirement was not a part of the original 1895 Constitution and was added by amendment in 1959.

Section M. Removal of judges. Within the unified court system, the Supreme Court shall have power after hearing, to remove any judge from office upon a finding of misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding of disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character. A Justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement of this section may be by rule or order of the Supreme Court. (New Provision.)

Comments

The Committee feels that there should be some agency empowered to hear misconduct and other charges made against judges as well as to determine disability. The Committee believes that the Supreme Court is the proper agency for these purposes. Of course, this power would not interfere with the right of the General Assembly to impeach.

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Section M. Removal of judges. No recommended change.

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Section N. Vacancies in judgeships. All vacancies in the Supreme Court or Circuit Court shall be filled by elections as prescribed in Section C and Section I of this Article: Provided, that if the unexpired term does not exceed one year such vacancy may be filled by the Governor. When a vacancy is filled by either appointment or election, the incumbent shall hold office only for the unexpired term of his predecessor. (Section 11, Article V, 1895.)

Comments

This section is essentially the same as the one in the present Constitution. The Committee feels that appointments should be made only for the unexpired term. The Committee recommends that only constitutionally designated judges be included in this section and that vacancies for other judges be filled in a manner determined by the General Assembly.

The Committee feels that the portion of Section 11 charging judges to be conservators of the peace should be deleted. In its literal sense judges cannot carry out the charge.

Section O. Powers at chambers. Each of the Justices of the Supreme Court and Judges of the Circuit Court and of all other courts of record shall have the same power at chambers, to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and interlocutory writs or orders of injunction as when in open court. The Judges of the Circuit Court and other courts of record shall have such additional powers at chambers as the General Assembly may provide, except in matters required to be determined in a public trial. (Section 25, Article V, 1895, revised.)

Comments

This section is almost identical with the present Constitution, except that "powers at chambers" has been extended to include all judges of courts of record. As a precautionary measure, the Committee feels that there is a need to include a statement which says that a judge's power in chambers does not apply to matters which must be determined in a public trial.

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COMMITTEE**

Section N. Vacancies in judgeships. No recommended change.

Section O. Powers at chambers.—No recommended change...

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Section P. Officials to enforce the laws. The General Assembly shall provide by law for the selection, duties, and compensation of appropriate officials to enforce the criminal laws of the State, to prosecute persons under such laws, and to carry on the administrative functions of the courts of the State. The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record. (A new provision substituted for Sections 27, 29 and 30, Article V, 1895.)

Comments

The Committee feels that a number of officials now included in the Constitution should not be. Therefore, this section is suggested to cover such positions as the sheriff, coroner, solicitor, and clerk of court. If all of these positions were left to the General Assembly to regulate, changes which may be needed could be made without having to amend the Constitution, especially in the forming of metropolitan governments which involve the merging of counties and municipalities. Please note that removing the officials from the Constitution does not imply in any way that the Committee is recommending a particular manner for the selection of these officials. The issue here is: Are these positions constitutional in nature and not how these officials should be selected: The General Assembly would be free to prescribe any manner of selection that it saw fit.

Section O. Publication of decisions. The General Assembly shall provide for the publication of the decisions of the Supreme Court. (Section 32, Article V, 1895, revised.)

Comments

The Committee recommends the retention of this section except for the deletion of the word "speedy." Retaining the word will have no effect on publication.

**PROPOSED REVISIONS BY THE JUDICIAL REFORM
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Section P. Officials to enforce the laws. No recommended change.

Section Q. Publication of decisions. No recommended change.