

1969

SCCRC 1966-1969 Document 33: Working Draft of the Final Report Introduction

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INTRODUCTION

A. Creation, Organization and Schedule of the Committee

The committee to make a study of the Constitution of South Carolina, 1895, was created by Concurrent Resolution S. 342 of the General Assembly approved April 7, 1966. The creating Resolution authorized establishment of a nine-member committee to consist of three members from the Senate, three members from the House of Representatives and three members appointed by the Governor. Citing as major deficiencies in the present constitutional system the excessive number of amendments necessary to meet modern governmental needs and the lack of provision for local and county government, the Resolution assigned the following responsibilities to the committee:

The committee shall study the Constitution and shall make recommendations to the General Assembly which shall include, but shall not necessarily be limited to:

- (1) Whether a convention should be called for the purpose of drafting a new Constitution;
- (2) Whether a series of general amendments can be proposed which will eliminate the archaic provisions of the existing Constitution and strengthen it in such other areas, so that it will provide a workable framework with proper safeguards for sound State, County and local governments.

The committee shall in either event recommend (a) provisions which in its judgment should be included in a new Constitution; or (b) the amendments necessary to accom-

plish the strengthening and revision of the present Constitution.

The committee was formally organized on August 25, 1966, and subsequently selected Mr. Robert H. Stoudemire, Bureau of Governmental Research, University of South Carolina, as staff consultant.

During 1966, the committee held eight meetings and in January, 1967, made a first Interim Report to the General Assembly, including therein a recommendation that its membership be enlarged to twelve, through the addition of the Lieutenant-Governor of the State, the Speaker of the House of Representatives and one member to be appointed by the Governor. By Concurrent Resolution H.1044 of the General Assembly, approved on March 22, 1967, the committee was continued and enlarged accordingly.

On July 21, 1967, the committee met and reorganized electing the following officers: Lieutenant-Governor John C. West, Chairman; Representative J. Malcolm McLendon, Vice-Chairman; Mr. W. D. Workman, Jr., Secretary; Mr. Robert H. Stoudemire was selected to continue as Staff Consultant and Research Director.

A series of ten full Committee meetings and several conferences of members working on specific assignments were conducted during the year.

In May, 1968, a second Interim Report was submitted to the General Assembly in which the Committee made the following recommendations:

1. That the General Assembly approve a proposal sponsored by the Committee to change the procedure for amending the state constitution. This recommended change permits the submission of an entirely new article as a substitute for an existing article.
2. That the Committee be continued by the 1968 General Assembly in order to permit:

- (A) The holding of public hearings so that the citizens of the State can give their views on recommendations of the Committee pertaining to each Article.
- (B) The careful drafting of a proposed new Constitution, along with full explanations of each section, to be submitted to the General Assembly in January, 1969.

Under Concurrent Resolution H. 2898 of the General Assembly, approved May 14, 1968, the Committee was continued, and directed to make a report to the General Assembly during the 1969 Session.

The recommendation of the Committee to amend the Constitution of South Carolina, 1895, so as to permit submission to the electorate, through the amendment process, an entire article, including related subject matter, as a substitute for an existing article, was implemented in limited form through passage of Joint Resolution H. 2659 (No. 1381 of Acts of General Assembly, 1968) during the 1968 Session of the General Assembly. The measure as passed by the General Assembly contained a proviso limiting the use of this method of revision to the general elections of 1970 and 1972. It was approved by the electorate in this form in the general election of November-- ,1968 and subsequently ratified by the General Assembly on February 18, 1969. The full text of the amendment is included in the Appendix to this report.

After a total of--full-Committee meetings, the proposed draft of the Constitution was completed in January, 1969, and copies circulated to interested citizens and organizations together with an invitation to appear before the Committee during public hearings held on March 4 and 5 1969. Appearing before the Committee were:

The South Carolina Municipal Association, Mr. William Ouzts
The League of Women Voters of South Carolina, Mrs. Sherrod Baumgardener
The South Carolina College Council Incorporated, Mr. J. Lacey McLean,
Ex-Secretary and Mr. Paul Hardin, President of Wofford
General Frank Pinckney, South Carolina Adjutant General
The South Carolina Highway Department, Mr. Kenneth Crowson
Mr. Grier H. Kester, Jr., Attorney-At-Law, Columbia
Rev. G. E. Hinson, First Baptist Church, Andrews, S. C.
Mr. L. S. James, S. C. Council on Human Relations
Mr. James Dreher, Law School, University of South Carolina
Mr. Sterling Smith, Management Consultant, Greenville
Mr. E. W. Brooks, S. C. Farm Bureau
Mr. Thomas Linton, S. C. Legislative Council

Following the hearings, the Committee met to consider questions posed by the above representatives and to make final determination on a recommendation for a method of revision.

The Proposed Revised Constitution was approved by the Committee on 1969, and is presented in full text in Part B of this report.

B. Committee Procedures

Addressing itself first to the deficiencies of the Constitution cited in the creating Resolution, the Committee early in its deliberations sought an analysis of amendments that had been appended to the Constitution of 1895 since its proclamation. (The results of this analysis are contained in the Appendix to this report.) It further directed the Staff Consultant to prepare a survey of local governmental jurisdictions within the State. A study of the results of both areas indicated that:

1. The bonded debt provisions of the Constitution of 1895 are unrealistic and fail to meet the financial requirements of modern government.
2. Local government provisions, and lack thereof, in the Constitution of 1895 prevent the county, as a governmental unit, from meeting the rapidly growing demand for local services and call for a reassessment of the role of the county and the municipality in relation to State government.

In January, 1967, the first Interim Report as submitted to the General Assembly included a discussion of the findings noted above and recommended that the Committee determine, through evaluation of each Article, other areas of the Constitution that may be subject to revision; that the Committee prepare recommendations based on this evaluation for each Article of the Constitution; that after a full study of the State's needs, it determine the procedures necessary to bring about constitutional revision; and, that the research necessary to evaluate the present Constitution and to formulate recommendations for constitutional revision be undertaken.

To implement these recommendations, the Committee, meeting July 21, 1967, determined that each section of the Constitution of 1895 should be thoroughly studied, and agreed that the best results could be achieved by the Committee working as a whole. Heretofore, the committee had used the subcommittee approach to the study of individual Articles.

Meeting every three weeks from September, 1968, through February, 1969, the Committee undertook a section by section analysis and evaluation of the entire Constitution. Discussions were based upon a Working Paper prepared for each Article by the Staff Consultant and other qualified faculty members of the University of South Carolina. The Working Papers contained a section by section analysis of the Article in question and included, where applicable, discussion as to lack of clarity, difficulties experienced in application of the section in the past, conflicts within the Constitution and key court cases interpreting the section; also, the manner in which other state constitutions treated the subject matter, proposals made by constitutional study groups in other states and alternate proposals designed to resolve problems noted therein. Each paper contained related material and suggested proposals not included in the existing Article of the Constitution of 1895. Fifteen Working Papers were prepared and distributed to Committee members for study prior to consideration at scheduled meetings. In addition to the Working Papers, informational material included written evaluations and guidelines submitted at the request of the Committee by state officials and others qualified in the various subject areas.

With this material as background, the Committee proceeded with the evaluation of each section individually, determining whether it should be revised, retained, transferred, or deleted.

The study was completed in February, 1968. Each Article was then revised, where necessary, and redrafted in accord with the decisions made thereon by the Committee. Explanation of Committee recommendations and reasons therefor

were included for each section of the draft. A three-man subcommittee was assigned the task of reviewing each Article as redrafted, checking content, phraseology and possible omissions and conflicts. The draft was then submitted to the full Committee, reviewed, and finally approved as the Committee Draft of a Proposed Revised Constitution in , 1969.

On March 4 and 5, 1969, the Committee held public hearings on the Draft and reviewed the testimony presented at the hearing on March 12, 1969. [To be completed when the Committee finishes its work]

C. General Principles and Objectives Which Guided the Committee in the Preparation of the Proposed Revised Constitution

"...Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times."

Thomas Jefferson

1. State Constitutional Principles

State governments are plenary powers, possessing all of the original, inherent powers of government not surrendered to the national government under the United States Constitution. Consequently, a state constitution does not grant powers to the State, nor create powers. Rather, it regulates and restricts, it divides power among the branches of government, it emphasizes areas of concern, it protects citizens. States have the right to act in governmental areas unless forbidden by the United States Constitution, or the state constitution. Under the American system of state government, the legislature controls most of the power reserved to the states, unless it is restricted by the state constitution or unless governmental authority is assigned by the constitution to the executive or judicial branches, or regulated in some other manner.

2. Standards for Drafting

A state constitution should embody fundamental law and is not intended to perform the function of statutory law. Unnecessary detail, not involving fundamental matters, should be contained in statutes and regulatory enactments. It should be brief, to the point and written in simple, intelligible language. A constitution

should be coherent and consistent, with related provisions presented in an organized and correlated structure. To fulfill its purpose, it should be adapted to the particular state for which it is devised, while recognizing that it should not attempt to anticipate all future change, a constitution, to avoid inflexibility and the necessity for continuous amendment, should insofar as possible, create a framework of government which can cope with future economic, social and political developments.

3. Application of Principles and Standards in Drafting the Proposed Revised Constitution for South Carolina

The Committee in reaching its decisions on constitutional revision has accepted at full value the basic principles of state constitutional government and has attempted to follow closely the accepted standards of constitutional drafting, keeping in mind that the constitution as a document of the people should reflect the will of the people. The Committee proceeded on the belief that the people do not want drastic changes in the basic fundamental outline of government as contained in the Constitution of 1895, but that they do desire revision that would strengthen the document and render it capable of meeting modern needs and future expectations. Thus, it has not produced a new constitution entirely unrelated to the old, nor has it merely retained the old with only a few minor changes, but has proposed revisions that maintain the values of the Constitution of 1895, while providing a viable document that can meet current and future demands.

- (a) The Committee agreed that certain areas of governmental power should be regulated and the rights of citizens firmly stated. Therefore, articles in the constitution pertaining to the Declaration of

Rights, Elections, Civil Authority, constitutional revision, and related subjects have been up-dated and the language revised whenever necessary. Basically, all of the fundamental principles essential to liberty and free men which have historically received constitutional status have been retained.

- (b) The Committee retained the articles which provided for the three branches of government, ensuring basic safeguards and grants of authority for the executive and judicial branches and restricting the legislative branch in certain areas of fundamental importance such as local and special laws.
- (c) The Committee intentionally retained sections in the Constitution which grant no authority to the General Assembly, but have long been considered as constitutional principles in South Carolina, in the belief that a constitution should reflect historic principles which are significant to the people of the State.
- (d) Accepting the principles that the General Assembly may act unless forbidden by the Constitution, the Committee based its recommendations on indebtedness, taxation, local government, education, health, and welfare on broad principles and has removed many of the specific details which have become out-dated and which only hamper governmental processes rather than controlling them.

- (e) In preparing its recommendations, the Committee endeavored to advise flexibility in South Carolina government, to the end that Constitutional provisions would not prevent the needs of the future from being realized.
- (f) The Committee has removed certain sections involving detail and procedures from the Constitution on the grounds that these matters are not constitutional--hence leaving such matters to the General Assembly for regulation. When such recommendations are made, it should not be interpreted that the Committee per se is seeking a new or different procedure. Such recommendations simply imply that the matter is statutory and should be regulated or provided for in whatever manner deemed appropriate by the General Assembly. For example, the recommendation suggesting that a provision requiring the printing of the statutes be removed from the constitution simply means that the Committee feels that this subject is not a constitutional issue but one which should be controlled by the General Assembly. Thus, the Proposed Revised Constitution is approximately one-third the length of the present Constitution.
- (g) For continuity in constitutional development, the recommendations, whenever possible, have retained some sections of the Constitution which, perhaps, are unnecessary, but the removal of which may lead to the erroneous belief that a change of policy was intended.
- (h) Some sections have been deleted even though the Committee knows that such action will lead to controversy. The decisions of the committee, on such matters were made on the basis of constitutional value, rather than political expediency.

- (i) In determining its recommendations, the Committee acted on the theory that any resulting deficiencies in governmental regulations would be immediately corrected by the passage of necessary legislation.
- (j) Finally, the committee acted on the basis that a state constitution provides for basic protections and regulations and charts the way for governmental processes, but, that in the final analysis, the adequacy and soundness of government depends upon the interest of the citizens, acting through their own personal efforts and through their influence upon the established branches of government, especially the General Assembly.

D. Committee Minority Positions

It should be noted that, despite the absence of a minority report or reports, there were substantial differences of opinion within the committee on several issues. Those who were in the minority, however, agreed to accept the majority's decision in the interests of presenting a draft which reflects the consensus of the group. Nevertheless, the minority (not always consisting of the same individuals) wishes to record its position in several major areas:

1. Selection of constitutional officers

Since a majority of the constitutional offices are administrative, rather than policy making positions, the Executive should be assigned a greater degree of appointive power in this area.

2. Selection of members of the judiciary

In keeping with the democratic principle of separation of powers, the system of judicial selection should not be vested wholly in the Legislative Branch.

3. Sale of alcoholic beverages

Provisions restricting the power of the General Assembly as to the sale of alcoholic beverages should be removed from the Constitution. Inclusion of such provisions is not in accord with the character of a constitution as a document of fundamental law.

4. Method of constitutional revision

The minority feels strongly that constitutional revision which is equivalent to re-writing the document should be accomplished through a Constitutional Convention made up of delegates selected by the citizenry for that specific purpose.