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# Constitutional Law

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The doctrine of the Separation of Powers has been called the second great structural principle of American constitutional law,[1] and is probably second in importance only to the doctrine of Federalism which secures the autonomy of the several States while providing for a strong national government at the same time. The doctrine of the Separation of Powers presumes that there are three instrinsically distinct functions of government—the legislative, the executive, and the judicial. It assumes that these three distinct functions ought to be three separately operated parts of government, and that each of the three should be constitutionally equal and mutually independent.

During the period covered by this review, three interesting cases arose, dealing with the doctrine of the Separation of Powers. All of these seem properly decided. We have the Court refusing to assume law-making powers. We have the Court refusing to interfere in the constitutionally granted right of the State Senate to judge of the election returns and qualifications of its own members and finally, we have the Court preventing members of the legislative branch of the State Government from assuming powers which constitutionally belong to the executive branch of the Government.

In the case of *Rogers v. Florence Printing Company*[2] an attempt was made to have the Supreme Court reject, as a matter of public policy, the doctrine of punitive damages. Notwithstanding that the question had not been raised at the trial, the Court entertained the plea to the extent of discussing it, stating that it did so because it brought into focus the function of the Court with respect to the public policy of the State. Then it proceeded to note that despite criticism and denunciation of the doctrine, allowance of punitive dam-

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1. CORWIN, CONSTITUTION OF THE UNITED STATES OF AMERICA, § xiv (rev. & annot. 1952).
2. 233 S. C. 567, 106 S. E. 2d 258 (1958).

ages in cases of wilful, wanton or malicious tort had continued to be the rule in this country for over a century. The Court noted that the doctrine in South Carolina was recognized as far back as 1784. Refusing to disturb the doctrine, the Court stated:

> (1) But we need dwell no longer about the rationale, or upon the merits or demerits, of the doctrine. Acquiescence in it for almost two centuries justifies the conclusion that it is now agreeable to, and part of, the public policy of the state.
>
> (2) It is often the function of the courts by their judgments to establish public policy where none on the subject exists. But overthrow by the courts of existing public policy is quite another matter. That its establishment may have resulted from decisional, rather than statutory law, is, in our opinion, immaterial. Once firmly rooted, such policy becomes in effect a rule of conduct or of property within the state. In the exercise of proper judicial self-restraint, the courts should leave it to the people, through their elected representatives in the General Assembly, to say whether or not it should be revised or discarded.

Here is our Court's recognition of its limited sphere under the Doctrine of the Separation of Powers.

For the third time, the Supreme Court refused, in the case of *Scott v. Thornton*,[3] to take jurisdiction of a contest to determine which of two candidates had been elected to the State Senate of South Carolina. In this case, Scott sought to review the proceedings of the State Board of Canvassers which had declared his opponent, Lee, to have been elected as State Senator from Dillon County in the General Election of 1958. Scott challenged Lee's qualifications to hold office because of his alleged failure to comply with certain provisions, prescribed by Section 23-265 of the 1952 Code, as a condition precedent to the valid election of any candidate.[4]

3. 234 S. C. 19, 106 S. E. 2d 446 (1959).

4. This section requires each candidate to file with the Clerk of Court a pledge stating that he would not use money or intoxicating liquors to influence votes; that he would file with the Clerk of Court prior to the election an itemized statement of campaign expenditures, and that following the election he would file a further itemized statement showing moneys spent subsequent to the time of the filing of the first statement. The statute states that the failure to comply with this provision shall render the election null and void insofar as the candidate who fails to file the statement as therein required.

Invoking the provisions of Section 11 of Article III of the State Constitution, which states that each House of the General Assembly shall judge of the election returns and qualifications of its own members, the respondents successfully objected to the jurisdiction of the Court.

Included in the cases relied upon by the Court for it brief per curiam holding were two previous contests between persons seeking the office of State Senator. In *Ex Parte Scarborough*,[5] the Supreme Court refused to review the action of the State Canvassers upon the ground that they were Judicial Officers, at the same time pointing out that a review of their action lay with the Senate alone. A similar result followed a contest in 1932, involving the office of State Senator from Horry County.[6]

To sustain its results, the Court also pointed to the decision in the case of *Culbertson v. Blatt*.[7] In that case a taxpayer made a blanket challenge against dual office holding by a member of the House of Representatives, two members of the State Senate, and a mayor of an incorporated town. The majority opinion held that under the doctrine of Separation of Powers, it had no jurisdiction to entertain the questions raised by the case. The majority opinion also concluded that a mere taxpayer who showed that no personal or individual rights were involved, could not entertain the action. The first ground of the majority holding in the Culbertson case is highly questionable, for it is established law that when one, who holds one public office, accepts another public office, he automatically vacates the first public office. Thus, when the House member and State Senators became Trustees of the University they were no longer a House member and State Senators.[8] Possibly the lack of interest of the plaintiff warrants the result. But to return to the Scott case, even though it is not properly sustained by the Culbertson case, the other cases cited are sound and are supported by the overwhelming weight of authority throughout the country.

The third case which deals with the doctrine of Separation of Powers, is the case of *Dean v. Timmerman*.[9] The question

5. 34 S. C. 13, 12 S. E. 666 (1891).
6. Andersen v. Blackwell, 168 S. C. 137, 167 S. E. 30 (1932).
7. 194 S. C. 105, 9 S. E. 2d 218 (1940).
8. Ashmore v. Greater Greenville Sewer District, 211 S. C. 77, 44 S. E. 2d 88, 173 A. L. R. 397 (1947).
9. 234 S. C. 35, 106 S. E. 2d 665 (1959).

here was the validity of an Act of the General Assembly which permitted the Senators and Legislative delegation of the several counties of the State to assume executive functions and designate roads which would be hard surfaced under the State farm-to-market road improvement program. The situation here was exactly similar to that before the Court twenty years earlier in the case of *Bramlette v. Stringer*.[10] There, bonds were authorized for Greenville County to pave county highways, but the determination of the roads to be paved was left to the Senator and legislative delegation from Greenville County. On that basis, the Court invalidated the Greenville Act basing its holding upon the proposition persons who were members of the legislative branch of the Government could not perform executive or administrative functions. The correctness of the decision here is so free from doubt that little comment would be required were it not for the fact that the legislative enactment, which was successfully challenged here, finds its counterpart in countless other legislative enactments passed subsequent to the holding of the Bramlette case. In fact, it seems safe to say, that almost without exception, legislative delegations assume executive and administrative functions in the field of County Government. Apparently, it is only when bonds are to be issued, that questions arise with respect to the validity of these enactments. In South Carolina there is no system by which legislative enactments are reviewed to determine their constitutionality prior to their presentation to the Governor for his signature, nor is there any regular method of review provided before the approved bill is enforced. Thus, only in the unusual instances where bonds are to be issued pursuant to such a law, are challenges of this sort made.

The absence of regular review to determine the constitutionality of our Statutes is a definite weakness in the functioning of our State Government. There should be a review, looking to constitutionality, before any bill is presented to the Governor for signature. Furthermore, there should be a general review of all laws by the Attorney General's office before administrative agencies act in obedience to the directive of any legislative enactment.

10. 186 S. C. 134, 195 S. E. 257 (1938).

Finally, the members of the Legislature should recognize the unconstitutionality of statutes devolving administrative functions upon them, or they should, if they wish to perform functions in the field of County Government, propose appropriate constitutional amendments to allow them to do lawfully what is now frequently done in defiance of the written Constitution.

*Right of the Accused to Counsel*

While other interesting questions are involved in the case of *State v. Hollman*,[11] the review here will be limited to the constitutional right of one under indictment for a crime alleged to have been committed in violation of State law, to be represented by counsel. The defendant in this case was being tried under an indictment containing two counts, viz.: one, resisting an officer, and two, assault and battery with intent to kill and murder. He was not represented by counsel at the trial. The record was stated to show that when the case was called for trial, his rights were explained to him, whereupon he stated to the court that he had no lawyer, but would conduct his own defense. He stated that he was ready for trial. Only after the close of the testimony, when the trial judge asked if he desired to argue his case before the jury, did the appellant request the Court to appoint an attorney "to make the argument to the jury." The request was refused.

On appeal, the Supreme Court stated that the refusal by the trial court to grant this request was not error. Our Court noted that the appellant was given the right under the State Constitution to be fully heard in his defense by himself or by his counsel, or both, and went on to say that in South Carolina there was no constitutional or statutory requirement that the Court assign counsel for any person accused, except where the offense charged is a capital one. Then in answer to the contention that the defendant's rights under the Sixth and Fourteenth Amendments to the Constitution of the United States were violated, the Court had this to say:

> The Sixth Amendment of the Constitution of the United States applies only to trials in federal courts. Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595. If, as is suggested in the case last cited, refusal to appoint coun-

11. 232 S. C. 489, 102 S. E. 2d 873 (1958).

> sel for the defendant in a criminal case may in certain circumstances amount to denial of the due process required by the Fourteenth Amendment, it is manifest that the facts here warrant no such conclusion.

The statement made by our Supreme Court is literally correct, but it fails to point up the extent to which the United States Supreme Court has made itself "counsel for the defense" in a certain class of criminal cases. It might be well to point this up by quoting more extensively from the Betts decision. The majority opinion contains this language:

> The Sixth Amendment of the National Constitution applies only to trials in federal courts. The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the Sixth Amendment although a denial by a state of rights or privileges specifically embodied in that and others of the first eight amendments may, in certain circumstances, or in connection with other elements, operate, in a given case, to deprive a litigant of due process of law in violation of the Fourteenth. Due process of law is secured against invasion by the Federal Government by the Fifth Amendment and is safeguarded against state action in identical words by the Fourteenth. The phrase formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, may, in other circumstances, and in the light of other considerations, fall short of such denial. In the application of such a concept there is always the danger of falling into the habit of formulating the guarantee into a set of hard and fast rules the application of which in a given case may be to ignore the qualifying factors therein disclosed.

The language is only partially qualified by the majority holding which stated that the Fourteenth Amendment did not embody an inexorable command that no trial for any offense or in any court can be fairly conducted and justice accorded

a defendant who is not represented by counsel. However, there seems little doubt but that members of the present United States Supreme Court consider themselves counsel for the defense in many cases.

It is of interest to note that Hollman did not take the judgment of the South Carolina Supreme Court as final, for thereafter he brought habeas corpus proceedings in the United States District Court, raising in that forum, the same question discussed here. The District Court held that the action was not tenable by reason of the well settled rule that, except under extraordinary circumstances, an application for habeas corpus will be entertained by a Federal Court only after all State remedies available, including all appellate remedies in the State Courts and in the Supreme Court of the United States by appeal or writ of certiorari, have been exhausted. The Court of Appeals for the Fourth Circuit[12] affirmed the ruling of the United States District Court, saying that there were no special circumstances in this case which would form a basis for departing from the general rule requiring the exhaustion of State remedies before applying to a Federal Court for a writ of habeas corpus. But it went on to comment that the opinion by Justice Legge in the case under review was in harmony with the rule promulgated by the United States Supreme Court.

The extent to which that Court will intervene is illustrated in the case of *Moore v. State of Michigan.*[13] In that case by a five to four decision the United States Supreme Court in 1957 upset a 1938 sentence on the petition of the criminal, contending that the lack of counsel had deprived him of his Constitutional rights, notwithstanding that the Judge who imposed the sentence was dead and the prosecuting attorney had suffered a stroke rendering him incapable of testifying, and the contentions of the Petitioner were sharply challenged by the only living persons who recalled the circumstances of the case. Certiorari had been granted upon the ground that the accused did not have the benefit of counsel.

12. Hollman v. Manning, 262 F. 2d 656 (1959).
13. 355 U. S. 155 (1957).

*Power of the State Under the Twenty-First Amendment to Regulate Transportation of Liquor*

The facts in the case of *State v. Kilgore*[14] make it crystal clear that the whiskey which the defendant had purchased in North Carolina and had in his possession in South Carolina was not whiskey which was in the process of being transported in Interstate Commerce. Hence, clearly he violated the South Carolina law which makes the possession of alcoholic beverages, on which the South Carolina revenue stamp tax was not paid, a criminal offense. The Court in its decision notes that since the adoption of the Twenty-first Amendment to the United States Constitution, each State has power unfettered by the Commerce clause, to regulate or prohibit the importation of intoxicating liquor for delivery or use within its borders, but it goes on to say that independently of the Twenty-first Amendment a State might, without offending the Commerce clause, impose reasonable regulations with regard to the transportation of intoxicating liquor through its territory from one neighboring State to another. In other words, the statement indicates that the right to regulate Interstate transportation is dependent upon the Commerce clause and not the Twenty-first Amendment.

The interesting question of the extent to which a State may regulate "through" shipments of liquor—that is, liquor purchased in one State, transported through the second State, for delivery in the third State—is to some degree in a state of flux. Shortly after the ratification of the Twenty-first Amendment, there were holdings such as *Ziffrin, Inc. v. Reeves*[15] in which an unanimous Court held that the Twenty-first Amendment sanctioned the right of a State to legislate concerning intoxicating liquors brought from without, unfettered by the Commerce clause. In that opinion, Justice MacReynolds said that without a doubt a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale or possession, irrespective of when or where produced or obtained . . . further, she may adopt measures reasonably appropriate to effectuate these prohibitions and exercise full police authority in respect of them. However, in more

14. 233 S. C. 6, 103 S. E. 2d 321 (1958). 358 U. S. 826 (1958).
15. 308 U. S. 132 (1939).

recent decisions, notably *Duckworth v. Arkansas*[16] and *Carter v. Virginia*,[17] the majority of the Supreme Court seemed to doubt if it was the intent of the Twenty-first Amendment to enable States to prohibit Interstate shipments of alcoholic beverages across the States. But in the latter case, Justice Frankfurter, in concurring in the result, rested his decision on the Twenty-first Amendment and noted the absolute power given to the States which had been enjoined in the earlier decisions.

Finally, there must be observed the disposition made by the Supreme Court in *Gordon v. State of Texas*.[18] The opinion is as follows:

> Per curiam the judgment is affirmed. Twenty First Amendment to the United States. Carter v. Virginia . . .

Thus, is the question preserved for future answer, for notwithstanding that a petition for certiorari in the case here reviewed was denied, the facts of this case are so clear that under no circumstances would any question relating to interstate transportation of intoxicating liquor properly arise.

*Limitation Upon Legislative Log-Rolling*

Among the innovations contained in the modern State Constitution, are prohibitions against legislative log-rolling. In the South Carolina Constitution this provision is expressed in Section 17 of Article III, which requires that every Act shall relate to but one subject and that shall be expressed in the title. The opinion in the case of *Colonial Life Insurance Copany v. South Carolina Tax Commission*[19] clearly shows the "great liberality" with which Courts have construed this provision in their studied effort not to embarrass or obstruct needed legislation.

Yet our Court has not hesitated to give full recognition to the purpose of this constitutional provision. In almost each case it notes that it was intended to prevent hodge-podge or log-rolling legislation, and to prevent surprise or fraud upon the Legislature by means of bills as to which the title give no indication as to their contents and which therefore might be overlooked both by the Legislature and the observant citi-

16. 314 U. S. 390, 138 A. L. R. 1144 (1941).
17. 321 U. S. 131 (1944).
18. 355 U. S. 369; *reh. den.* 355 U. S. 967 (1958).
19. 233 S. C. 129, 103 S. E. 2d 908 (1958).

zen. Notwithstanding such pious expressions, the Court has hesitated to implement the clear intent of this type of provision. As a consequence, there has grown up in South Carolina in the last decade or so, the practice of using the State Appropriation Bill as a vehicle to enact permanent legislation in almost every field. These bills have in fact assumed the omnibus characteristics which the constitutional provision was intended to prevent. Legislation thus enacted has generally been upheld because of its effect upon, or relation to State revenues. On this basis, permanent legislation making provision for the issuance of "special fund" State Bonds for whose payment certain revenues, together with the faith and credit of the State have been pledged, has been upheld.

In the case under review, there was enacted as permanent legislation, but incorporated into the 1951 Annual State Appropriation Bill, a license tax relating to insurance companies, but the title, though lengthy, failed to make specific reference to the license tax under challenge in this litigation. On that basis, the Court held that the enactment was invalid as violative of the portion of Section 17, Article III, which required that the subject of the law be expressed in the title. In so holding, the Court in effect approved the practice of the omnibus bill, but merely required the legislative draftsmen to amplify the title of State Appropriation Bills. Thus, the title of the State Appropriation Bills must indeed become a complete index to the contents of the legislation.

Notwithstanding the convenience of the omnibus bill, the fact remains that Section 17 of Article III intended to put an end to that method of statutory enactment. The result in this case is a step in the right direction, and it might lessen the tendency to use the omnibus bill. Nevertheless, the basic evil remains to be effectively dealt with.

An interesting sidelight to this case is the ultimate disposition of the legislative enactment. Long prior to this suit the Code Commissioners inserted the provisions in the 1952 Code. Such action on their part effectively validated the legislation notwithstanding its original invalidity by reason of the inadequacy of its title. The Court's holding on this point is amply sustained by previous authorities.

*Validity of Special Acts*

Inasmuch as there are not less than 100 cases in which the South Carolina Supreme Court has been called upon since 1895 to determine if an enactment of the General Assembly is a special law of a sort prohibited by Section 34, Subdivision IX of Article 3 of the State Constitution, it would be unusual if any review of the Courts' holdings in the field of constitutional law during any given year did not include comment upon an opinion involving such legislation. In the case of *Elliott v. Sligh*[20] the Court was required to pass upon a statute making it a criminal offense to use, sell or possess fireworks in any county containing a municipality having a population of over 65,000 inhabitants according to the last official United States census. In other words, the law would have been applicable to Charleston County and Richland County, but to no others. The Court, while recognizing that classification of counties is permitted, noted that such classification must be based on a rational difference of situation or condition found in the counties, and that the basis of classification must have some reasonable relation to the purposes and objects sought to be obtained by the legislation. It found that in this case there were no differences between the conditions in the rural areas of Charleston and Richland Counties from those existing in adjoining counties, which would justify the legislation, and on that basis it held that the classification was not rational, and the Statute unconstitutional. The result here seems entirely correct. One comment might be made. Because of the great number of decisions involving the validity of special acts, no absolute and clear-cut pattern which would result in the harmonizing of all the decisions, is possible. The constant litigation on the subject is indicative that the Bar does not recognize a clear pattern. Nevertheless, the decision in the case of *Mills Mill v. Hawkins*[21] points up the fact that at least in the field of local finance, a definite pattern has emerged under which local acts relating to public finance will be upheld. The case here seems to emphasize that a similar pattern has emerged insofar as criminal statutes are concerned. Almost without exception statutes of this sort will be stricken unless there is a clear and logical classification to

20. 233 S. C. 161, 103 S. E. 2d 923 (1958).
21. 232 S. C. 515, 103 S. E. 2d 14 (1957); 11 S. C. L. Q. 9 (1958).

sustain the restricted field in which the statute is intended to operate. The result here is salutary. Special legislation in the field of public finance is logical. However, the converse is certainly true in the field of criminal law.

It is interesting to recall that the very first challenge to the validity of a special enactment which was made following the adoption of the Constitution of 1895 was a case making it a criminal offense to fish (for profit) in the counties of Colleton and Berkeley without obtaining a license.[22] The Court quickly declared the enactment invalid.

*Scope of Review of Orders Issued by South Carolina Public Service Commission*

The holding in the case of *Long Motor Lines, Inc. v. South Carolina Public Service Commission*[23] does not disturb the settled rule that the order of a Commission made pursuant to legislative authority in the exercises of the police powers of the State is subject to correction only insofar as it might be held as a matter of law to embody arbitrary or capricious action. Orders of such a Commission are presumptively just, and findings of fact of such bodies are deemed to be correct, at least prima facie. However, the principal basis of the Appellant's contention in this case was that the failure of the administrative agency, to make specific findings, circumvented Court review even in the light of those accepted principles. The Supreme Court avoided the question on the ground that the respondents failed to raise this question before the trial judge. Disposition of the case on this ground is debatable. Fortunately, however, the Court noted that better practice requires the Commission to make specific findings of fact before taking action. It seems to the writer here that unless the Commission made specific findings in the light of the record made before it, the Appellate Court would not be in a position to make a review of the Commission's action in order to determine if the aggrieved party had been treated in arbitrary or capricious fashion. It would thus seem that Appellate Court review and relief would be required unless there were findings of fact based upon the record upon which the action of the Commission was predicated. Presumably, in the light of

22. State v. Higgins, 51 S. C. 51, 28 S. E. 15 (1897).
23. 233 S. C. 67, 103 S. E. 2d 762 (1958).

this warning, State Commissions will undertake findings of fact in order to enable the reviewing Court to determine if their final action has a proper standing. The reviewing Court should not hesitate to grant relief if the record discloses no credible evidence upon which the administrative agency's action is predicated.

### *Unsuccessful Candidate In Primary Election Not Disqualified In Following General Election*

While the case of *Scott v. Thornton,* supra, illustrates the rule that the Supreme Court does not have jurisdiction to pass upon contests relating to seats in the General Assembly, *Redfearn v. Board of State Canvassers*[24] illustrates that the contrary is true in contests relating to other offices. The right of review on a writ of certiorari is clear.

The constitutional question in this case arose on the contention of Redfearn that his opponent was not eligible to oppose him in the General Election because she had made the pledge prescribed by the Code,[25] "to abide by the results of the primary and to support in the next General Election all candidates nominated in said primary." Redfearn had been successful in the primary and his principal opponent in the General Election had been his unsuccessful opponent in the primary. In passing upon this question the Court made this statement:

> We are not here concerned with whether Mrs. Pusser's position, as a 'write-in' candidate in the general election, should or should not be considered as morally or ethically improper. Our function is to determine her eligibility as a matter of law.
>
> Article 1, Section 10 of the Constitution of 1895 declares that 'every inhabitant of this State possessing the qualifications provided in this Constitution shall have an equal right to elect officers and to be elected to fill public office.' That Mrs. Pusser possessed the qualifications prescribed by the Constitution is not questioned.

It then proceeded to hold that it was unnecessary to decide whether the Legislature may impose qualifications or disqualifications, other than those prescribed by the Constitu-

24. 234 S. C. 113, 107 S. E. 2d 10 (1959).
25. CODE OF LAWS OF SOUTH CAROLINA, 1952, § 32-373.

tion, for election to the particular office in controversy. It held that the code section prescribing the pledge did not impose such a qualification. The disposition of this question seems correct. The same reasoning was applied to Redfearn's further contention that those who voted for him in the primary and who had taken the oath contemplated by the code to support the nominees of the primary, were also disqualified.

*Freedom to Contract*

The Plaintiff in the case of *Batchelor v. American Health Insurance Company*[26] was obviously easy prey to insurance salesmen. Notwithstanding that he had "take home" pay of only $53 per week, the record shows that he had some ten policies besides the one involved in this litigation entitling him to weekly benefits, plus medical and hospital charges. Having suffered an accident, presumably covered by the policy here, Batchelor brought suit. His claim was resisted on the theory that the large number of policies which he had procured had the effect of constituting the policy in litigation a "wagering" policy and void as against public policy. One can hold little sympathy for the Insurance Company here in view of the testimony which shows that when approached by the agent of the defendant he tried to resist his blandishments because he did not need any insurance. To this the agent replied that one could never have too much insurance.

Noting that the freedom to contract was not unlimited where public safety and morals were involved, and that in such instances the law-making branch of the government might impose limitations upon the right to contract, the Court properly held that the case here did not fall in that category, noting that the General Assembly had not established a public policy preventing one from purchasing as many hospital expense policies as one might desire. Other questions in this case are not germane to the scope of the review.

*Sufficiency of Ballot Proposing Constitutional Amendment*

Section I of Article XVI prescribes the method of adding amendments to the Constitution of South Carolina. The first step required is the adoption, by each of the two Houses of

26. 234 S. C. 103, 107 S. E. 2d 36 (1959).

the General Assembly, of a resolution proposing the amendment. Following the adoption of the resolution in the manner prescribed in this section of the Constitution, the question of adoption of the amendment is submitted to the qualified electors of the State at the next General Election thereafter held. If the vote in such election is favorable, the amendment becomes a part of the Constitution if each branch of the General Assembly following the election, ratifies the same. Thus it is to be seen that the expression of the electorate is a vital part in the amending process of the State Constitution.

In the case of *Lowery v. Shirley*,[27] the question for decision was whether the question employed to obtain the required expression of the electorate was misleading. The necessity for questions to be fairly submitted is readily apparent, and our Court has on occasion condemned the result where the question was so phrased as to be capable of misleading the voters.[28] The question employed in the case under review read:

> Shall Section 5, Article X of the Constitution of this State be amended so as to provide a limitation upon the bonded indebtedness of Oconee County and to authorize Oconee County to incur bonded indebtedness to an amount not exceeding fifteen per cent of the assessed value of the taxable property in the county?

The contention was that the phraseology employed could have misled the voters into believing that the amendment would impose *and not relax* a limitation upon the County's power to incur bonded indebtedness. The Court concluded that taken as a whole the amendment fairly informed the electorate, but it noted that the phraseology "to provide a limitation upon the bonded indebtedness of Oconee County" was not necessary and that had it stood alone it would have been misleading. Notwithstanding, the Court concluded that the question as a whole did not have the effect of misleading the electorate, and as a consequence, concluded that the amendment had received the required approval of the electorate.

27. 234 S. C. 279, 107 S. E. 2d 769 (1959).
28. *Ex Parte* Tipton, 229 S. C. 471, 93 S. E. 2d 640 (1956).