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REPORT
ON
CONSTITUTIONAL REVISION REVIEW

The Committee: ROY F. BESSEY, KENT E. CLARK, HOWARD E. DEAN,
JAMES W. DURHAM, JR., FRANK H. EISEMAN, HUGH MCGILVRA, HARDY MYERS, JR.,
FRANCIS A. STATEN, GEORGE M. JOSEPH, *Chairman.*

*"To inform its members and the community in public matters and to
arouse in them a realization of the obligations of citizenship."*

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**REPORT
ON
CONSTITUTIONAL REVISION REVIEW**

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Your Committee received the following charge from the Board of Governors:

- (1) Report on the reasons why, after enactment of the 1960 amendment authorizing revision of the Constitution, and after a comprehensive study by the Constitutional Revision Commission, no revised Constitution has been submitted to the voters of Oregon;
- (2) Identify the areas of substantive policy on which there appears to be substantial agreement;
- (3) Identify the major areas of substantive policy on which there appears to be substantial disagreement delaying legislative submission of a revised Constitution to the voters;
- (4) Where these areas of disagreement can be identified as a choice among two or more well-defined positions, indicate which substantive policy should be incorporated in the revised Constitution.

The Committee should also analyze the available procedures for constitutional revision in Oregon and identify any factors in those procedures which have contributed to preventing a revised Constitution from being submitted to the people thus far. The Committee should also consider and recommend whether the procedures now provided in the Oregon Constitution for revising it should be amended, such as by permitting a revised Constitution to be proposed by initiative or by reducing the two-thirds legislative majority necessary to refer a revised Constitution to the people for vote, or otherwise.

No date was fixed for the submission of this report, but the hope was expressed that it would be submitted to the membership early in 1967. The Committee recognized that to be of the most value to the membership, the general public and the legislature, the report should precede final consideration of constitutional revision by the 1967 Legislative Assembly.

Committee members are: George M. Joseph, Attorney, Morrison & Bailey, Chairman; Roy F. Bessey, Planning Consultant; Kent E. Clark, Public Relations Representative, Crown Zellerbach Corporation; Howard E. Dean, Chairman, Political Science Department, Portland State College; James W. Durham, Jr., Attorney, Davies, Biggs, Strayer, Stoel and Boley; Frank H. Eisman, CPA, Erickson, Eisman & Co.; Hugh McGilvra, publisher, *Washington County News Times* and State Representative, Washington County; Hardy Myers, Jr., Attorney, Bonyhadi & Hall; and Frances A. Staten, President, Acme Metal Works.

II. SCOPE OF RESEARCH AND BIBLIOGRAPHY

Because the available time was short, the Committee focused its attention on these fundamental questions:

- (1) Is there a present, urgent need for constitutional revision?
- (2) What has been the history of constitutional revision in Oregon?
- (3) What are the most serious obstacles to legislative agreement on submission of a substantially new or materially revised Constitution for approval by the voters?

- (4) What are the prospects for legislative action in 1967?
- (5) What sort of revised Constitution would have a reasonable chance for approval by the people?

It should be recognized that these necessarily embrace a multitude of related questions. The Committee agreed that it should not and could not undertake to review completely all the work that has already been done (work outstanding both in quality and quantity), nor would it attempt to put before the membership what it would consider a perfect constitution. The Committee has squarely faced the overriding fact that, however interesting it may be to speculate about what would be theoretically the "best" Constitution for Oregon, what will actually be submitted to the people and accepted by them is a matter of practical politics. It is contemplated that the Committee will report at a later time on the progress of constitutional revision in the 1967 Legislature.

The Committee has relied on two general sources: (1) Texts, studies, reports and recommendations of individuals and organizations, private and public, concerned with state government and constitutional revision; (2) Interviews. The former include:

1. GOVERNMENT REPORTS: OREGON

- Consolidation Commission of the State of Oregon, *Report*, 1919.
- Joint Commission on Administrative Reorganization, *Report*, 1930.
- Legislative Interim Committee on Governmental and Administrative Reorganization, and Governmental Research Committee of the Oregon State Planning Board, *Joint Report on State Governmental and Administrative Reorganization in Oregon*, 1937.
- Oregon State Planning Board, Morris S. Isseks, *History of State Administrative Agencies in Oregon*, 1939.
- Legislative Interim Committee on State Government Administration, *Report*, 1951.
- Legislative Interim Committee on Government Reorganization, *State Government Organization in Oregon, 1958, Proposals for a Progressive and Continuing Program of Reorganization*, Dec. 1958.
- Legislative Interim Committee on Judicial Administration, *Report*, 1959.
- Governor Mark O. Hatfield, *Recommendations for Reorganization of the Executive Branch*, submitted to the 51st Legislative Assembly, Dec. 1960.
- Commission for Constitutional Revision, *A New Constitution for Oregon, Report to the Governor and the 52nd Legislative Assembly*, Dec. 1962.
- Oregon Legislative Assembly, issues of *Journal and Final Legislative Calendar*, 1951-1965.

2. GOVERNMENT REPORTS: UNITED STATES

- Commission on Intergovernmental Relations (Kestnbaum Commission), *A Report to the President for Transmittal to the Congress*, 1955.
- Joint Federal-State Action Committee Reports, 1957-59.
- Advisory Commission on Intergovernmental Relations, *To Improve the Effectiveness of the American Federal System Through Increased Cooperation Among National, State, and Local Levels of Government*, June 1, 1965, and other publications.

3. REPORTS OF NONGOVERNMENTAL ASSOCIATIONS

- City Club of Portland, *Bulletin*, Nov. 4, 1960, including report on measure *Authorizing Legislation to Propose Revised Constitution*.
- Citizens Committee for Revision of the Oregon Constitution, *Proposed Revision of the Oregon Constitution*, 1964.
- League of Women Voters of Oregon, *Sense, Sentiment, and the Oregon Constitution*, 1962.
- National Civic Review, January, 1967 (William W. Soranton, Joseph D. Tydings, Julia D. Stuart).
- National Municipal League, *State Constitutional Studies Project (1960-63)*, including:
 - Robert Dishman, *The Shape of the Document*;
 - Fennel Heady, *The Structure of Administration*;
 - John P. Wheeler, Jr., *Salient Issues of Constitutional Revision*.
- National Municipal League, *Model State Constitution*, 1921-63.
- Oregon Farm Bureau Federation, *Policy* 1966, Dec. 1965.
- Oregon State Bar, Committee on Constitutional Revision, *Report*, March 1963.
- Oregon State Bar, Committee Reports, *Supplement on Proposal of Constitutional Revision Commission for Revised Constitution for Oregon*, Sept. 1962.

4. BOOKS AND ARTICLES

- Charles R. Adrian, *State and Local Government*, 1967.
- American Academy of Political and Social Science, *Intergovernmental Relations in the United States*, Annals, May 1965.
- American Assembly, *The Forty-eight States*, 1955.
- American Assembly, *Goals for Americans: The Report of the President's Committee on National Goals*, 1960.
- William Anderson, Clara Penniman, Edward W. Weidner, *Government in the Fifty States*, 1963.
- James Bryce, *The American Commonwealth*, 1888, 1933.
- Arthur E. Buck, *Reorganization of State Governments*, 1938.
- Charles Henry Carey, *The Constitution of Oregon*, 1926.
- Daniel J. Elazar, *American Federalism*, 1966.
- Daniel R. Grant, H. C. Nixon, *State and Local Government in America*, 1963.
- W. Brooke Graves, ed., *State Constitutional Revision*, 1960.
- W. Brooke Graves, *American Intergovernmental Relations*, 1964.
- Claudius O. Johnson, H. Paul Castleberry, Daniel M. Ogden, Jr., *American State and Local Governments*, 1964.
- Arthur W. Macmahon, ed., *Federalism, Mature and Emergent*, 1956.
- Russell W. Maddox, Robert F. Fuquay, *State and Local Government*, 1966.
- Charles E. Merriam, ed., *A History of American Political Theories*, 1924.
- Charles E. Merriam, Robert E. Merriam, *The American Government: Democracy in Action*, 1954.
- Frederic A. Ogg, *Essentials of American Government*, 1954.
- Nelson A. Rockefeller, *The Future of Federalism*, 1962.
- Clinton Rossiter, "The Democratic Process," in *Goals for Americans*, Report of the President's Commission on National Goals, American Assembly, 1960.
- Donald C. Rowat, *The Ombudsman, Citizen's Defender*, 1965.
- John M. Swarthout, Ernest R. Bartley, *Principles and Policies of State and Local Government*, 1958.
- Harvey Walker, "The Office of Lieutenant Governor," *State Government*, Autumn, 1966.

Interviews have been held with the following people:

- Forest W. Amsden, formerly Executive Secretary, Commission for Constitutional Revision.
- Mrs. Frank Anderson, Chairman, Legislative Committee, League of Women Voters of Oregon.
- Victor Atiyeh, Senator, Washington County, Oregon Legislative Assembly.
- Clarence Barton, former Speaker, Oregon House of Representatives; member, Commission for Constitutional Revision.
- George Brown, Director, Committee for Political Education, Oregon AFL-CIO.
- John R. Dellenback, United States Representative; former Representative, Jackson County, Oregon Legislative Assembly.
- Mark O. Hatfield, United States Senator; former Governor, State of Oregon.
- Robert D. Holmes, former Governor, State of Oregon; member, Commission for Constitutional Revision.
- Randall B. Kester, attorney, Maguire, Shields, Kester, and Cosgrave; member, Oregon State Bar Committee on Constitutional Revision.
- Hans A. Linde, Professor of Law, University of Oregon School of Law; member, Commission for Constitutional Revision.
- Thomas R. Mahoney, Senator, Multnomah County, Oregon Legislative Assembly; member, Commission for Constitutional Revision.
- Tom McCall, Governor, State of Oregon; former Secretary of State, State of Oregon.
- Charles McKinley, Professor Emeritus of Political Science, Reed College; former Professor of Political Science, Portland State College.
- F. F. (Monte) Montgomery, Speaker, House of Representatives, Oregon Legislative Assembly.
- John D. Mosser, Director, Department of Finance and Administration, State of Oregon; former Representative, Washington County, Oregon Legislative Assembly.
- Herbert M. Schwab, attorney, Rives & Rodgers; member, Commission for Constitutional Revision.
- Charles A. Sprague, editor and publisher, *Oregon Statesman*, Salem; former Governor, State of Oregon.
- Thomas H. Tongue, attorney, Hicks, Tongue, Dale and Strader; Chairman, Oregon State Bar Committee on Judicial Administration.

Mrs. S. N. Stanley, President, League of Women Voters of Oregon.

Allen Wheeler, Master, Oregon State Grange.

Don S. Willner, Senator, Multnomah County, Oregon Legislative Assembly.

Most of the interviews were conducted by the full Committee. Individual members or subcommittees undertook research on particular questions. It is appropriate to note the unstinting cooperation given members of the Committee by every person interviewed and to express the Committee's appreciation for the frankness with which witnesses have responded to its inquiries. Material in the body of this report reflects reliance on the bibliographical material, and even if it is used without attribution, acknowledgment should be understood.

III. HISTORICAL BACKGROUND

Oregon's present Constitution has passed its 109th birthday. Today its authors would recognize it as basically unchanged since 1857, even though it has been frequently amended. It was drafted by a convention in August and September of that year, approved by the people in November and accepted by Congress in 1859. The draftsmen relied very heavily on the 1851 Constitution of Indiana, then considered a modern constitution.

The document contained an extensive Bill of Rights. The government was based on the usual separation of powers into three branches: legislative, executive, and judicial. Executive authority was divided among a Governor, a Secretary of State, and a Treasurer. The executive branch was not intended to have great power. The document emphasized economy and popular election of public officials. Charles H. Carey (*The Oregon Constitution*, pp. 55-56) epitomized the conventions product in this way:

The constitution as framed by the convention and accepted by the people proved to be well adapted to the requirements of the new state. While perhaps it was a little tight in places, on the whole it was a model instrument for just such a state and just such a people. The pioneers, none of whom was wealthy, and many of whom had known the pinch of hard times and had suffered from scarcity of the comforts of life, rather approved of the spirit of economy that pervaded the various articles and sections. They liked the restrictions upon public indebtedness and the prohibitions upon the use of public credit. It was a virtue of the constitution that it limited salaries of public officers to the lowest practicable degree, and that in the interest of economy the sessions of the legislative assembly were to be biennial, instead of the annual sessions of the territorial period. There was no useless lieutenant-governor, and no attorney-general to be paid for. The governor was required to serve as superintendent of schools, while the secretary of state was to discharge the duties of a state auditor. Roads were needed, but the legislature was forbidden to pass special road laws, thus avoiding the danger of log-rolling and trading for local roads in the legislative sessions, and eliminating the temptation to extravagant expenditure in a campaign of road building. The Supreme Court judges were required to do circuit duty; county judges had judicial duties, but also served with the county commissioners in the transaction of county business; and the county clerks were also recorders of conveyances. These, and many other economies, characterized the constitution and made it acceptable.

Throughout the instrument there was evident an intentional design to create limitations upon the exercise of power by the people themselves. Assuming that as voters they had all powers of state government not actually surrendered, they deliberately put bounds to what could be done constitutionally, and in this they carefully followed the models that had been tested by experience elsewhere. It was as though they knew that the expression of the popular will, or the popular desire, might lead to extravagance in action or in expenditures, and they chose to adopt restraints in the interest of good government.

Amendment was a difficult process, and the Constitution remained unchanged until 1902, when the people adopted the "Oregon system" of initiative, referendum and recall, and the amendment parade began. In the first decade it was amended 19 times by the initiative process alone. Ever since 1906, a feature of Oregon political life has been that constitutional amendments are all too frequently presented to the voters by the initiative or by referendum by the legislature. The result has been 115 amendments, of which 26 have been to Article XI, which deals with public debt. Most of the amendments, particularly those referred by the legislature, have dealt with the details of government and not with basic structure or philosophy. Many were designed for the benefit of special interests.

IV. CURRENT CONSTITUTIONAL PROBLEMS

To date changes in Oregon's Constitution have been achieved solely by amendment, a process which has been aptly described as "greasing the squeaking wheel." The amendments have met specific problems with specific solutions, and no major large-scale revision has ever been made. In addition to constitutional changes by amendment, Oregon's governmental structure has been significantly developed through legislation. Many important features of our state government are purely legislative in origin. For example, the Board of Control (consisting of the Governor, Secretary of State, and Treasurer) was created by statute in 1913 for the purpose of administering state institutions. The Board eventually developed into the main agency of fiscal and administrative control, but subsequently its functions were reduced to practically their original scope.

The major departments of the executive branch are legislative creations: Agriculture, Commerce, Finance and Administration, Forestry, Motor Vehicles, Police, Veterans' Affairs. The positions of Attorney General and Labor Commissioner were created by statute. Through legislation also has come the profusion of state boards and commissions, such as: Fish and Game Commissions, Board of Aeronautics, Chewings Fescue and Creeping Red Fescue Commission, Board of Education, Board of Health, Board of Higher Education, Civil Service Commission, Filbert Commission, Bureau of Labor, Board of Medical Examiners, Liquor Control Commission, Workmen's Compensation Board, Board of Pharmacy, Public Welfare Commission, Racing Commission, State Tax Commission, and many others.

Although Oregon's constitutional and governmental structures have often been altered by amendment and legislation, the main outlines have remained relatively unchanged. But the social environment within which our state governmental system operates has undergone sweeping changes. Oregon's population grew from about 50,000 in 1860 to over a million in 1940 and is nearly two million today. In 1860, Oregon's economy was predominantly agricultural; today, forestry, tourism, manufacturing, trade and distribution, and service occupations play major roles in the state's economy. Only about seven per cent of the employed civilian labor force is now in agriculture, whereas manufacturing employs nearly a quarter of the labor force. With the growth in population and the changing economy, there has been a dramatic growth of urbanism and suburbanism. Portland has become a large metropolitan area; Salem, Eugene and Medford have developed substantially. The population of Oregon was less than a third urban in 1900, more than half urban in 1950, and is now two-thirds urban.

With growing numbers of people, greater urban and metropolitan concentrations, expanding production, and more intensive use of resources, there have also come increasing threats to the environment, its safety and liveability, most notably through the accelerating pollution of our air, water and land. With these changes in the social and economic environment and with the growing problems of our complex society, there are increasing demands on government at all levels—national, state, and local—for more and better services and more effective regulation. This may be seen in the steadily growing expenditures in fields such as education, health, social welfare, highways, conservation, recreation, police and fire protection.

The United States in 1800 was a rural, agrarian society of some four million people, concentrated chiefly along the Eastern Seaboard. Today it is a predominately

urban, metropolitan, industrial nation of some two-hundred million people. A significant shift in the balance of power in the American federal system has accompanied this change. The national government has become dominant, and there is an increasingly complex pattern of intergovernmental relations between the states and the national government, between state and local governments, and between the cities and the national government. The federal government and the state governments are increasingly involved in an intricate network of inter-relationships in social security, public welfare, highway construction, resource conservation, urban renewal, housing, and other areas. Also, a rapidly developing pattern of direct federal aid to cities and other local units is being established. The continuing concern of the national government with urban problems has been underscored by the establishment of the federal Department of Housing and Urban Development. It is apparent that although the relationships among the national-state-local levels of our federal system could once have been described as a "layer-cake" arrangement, the "marble-cake" image more aptly describes today's situation.

The shifting of power to the national government has led to considerable alarm and has occasioned much thought about how to halt or even to reverse the trend. The Commission on Intergovernmental Relations (Kestnbaum Commission) and the Joint Federal-State Action Committee, both appointed during the Eisenhower administration, had this problem as their major focus, and it is under continuing study by the Advisory Commission on Intergovernmental Relations established by Congress in 1959. Whatever may be the results of efforts to alter the trend toward greater federal government involvement in state and local affairs, it is noteworthy that no effective means of stemming the tide has yet been found. Indeed, despite its great desire to make major recommendations, the Joint Federal-State Action Committee found only two federal programs which it concluded should be returned to the states: vocational education, and the construction of municipal waste treatment plants.

In their concern with the growing power of the national government, many people seem to have overlooked that just as the functions and responsibilities of the national government have increased tremendously, so have those of state and local governments. State government revenues and expenditures from their own sources have approximately tripled since 1948. A comparison of the percentage increase in revenues, expenditures, and civilian employment since 1949 shows that the state and local governments have had a larger percentage increase in expenditures and civilian employment than has the national government while there has been an equal percentage increase in revenues. In 1965 approximately 136 billion dollars was spent for goods and services by all levels of government in the United States. More than fifty per cent of this total was expended by state and local governments. If national defense spending is not included in the total, state and local governments' outlays (including grants from the federal government) are more than four times those by the national government directly. Certainly it is still true, as one scholar has recently said, that "our states, located between the federal government and the burgeoning local governments in a metropolitanizing nation, are the keystones of the American governmental arch." Emphasizing the states' continuing role as important managers and innovators, it has been said:

They have become even more active promoters and administrators of public services than ever before. In part, this is simply because governments are doing more than they had in the past, but it is also because they provide ways to increase governmental activity while maintaining non-centralized government. By handling important programs at a level that can be reached by many people, they contribute to the maintenance of a traditional interest of democratic politics, namely, the maximization of local control over the political and administrative decision makers whose actions affect the lives of every citizen. (Elazar, *American Federalism*.)

Because of their ever-growing responsibilities and increasingly complex relationships with the national and local governments, it is necessary that state governments be able to discharge their responsibilities more effectively and more responsibly. Speaking of the compelling need for more active and efficient state and local government, the distinguished political scientist Clinton Rossiter has said:

A strengthening of these governments would take us far toward solving the

social problems that now beset us, and would do more to quiet fears of centralization than would any other program of action. The way to reverse the flow of power to Washington, to the extent that it can or should be reversed, is not to weaken the national government but to bolster state and local governments. The states in particular have too important a part to play in the American system to be permitted the outworn luxuries of absurdly detailed constitutions, hog-tied governors, shamefully gerrymandered electoral districts, pressure-ridden legislatures, and chaotic administrations. (*Goals for Americans*)

The necessity for strengthening the state governments has become increasingly apparent as the solution of the critical problems facing them has become more urgent. Discontent with ineffective state governments led to numerous attempts in many states during the past sixty years to bring about reorganization. One of the country's earliest significant efforts came in Oregon in 1909 when the Peoples Power League proposed its plan for reorganization of the state government. That plan would have limited the number of elective officials to two (the Governor and the Auditor) and transferred the functions of 46 boards and commissions to seven departments headed by officials appointed by the Governor. Shortly thereafter, Governor Charles Evans Hughes recommended similar reorganization for New York. Between 1917—when Governor Lowden's comprehensive reorganization plan was adopted in Illinois—and the end of the 1930's, many states had joined in the reorganization movement.

In Oregon, proposals emphasizing the need for administrative integration through consolidation and departmentalization were made at various times: in 1917-19, in the 1920's, and down to the 1960's (see Appendix A). Through these efforts some piecemeal reorganization was achieved by creation of new departments. In 1934, consolidation in state government was an issue in the gubernatorial campaign, and Governor Martin recommended to the 1935 Legislature a program of comprehensive departmentalization of administrative functions.

Although a wide variety of ideas has been involved in the numerous reorganization efforts since 1909, certain basic principles have been consistently emphasized by political scientists, specialists in public administration, and others:

- (1) Departmentalization, or integration of administrative agencies according to function;
- (2) Concentration of administrative authority and responsibility in the Governor;
- (3) Limitation of boards and commissions to advice, consultation and review as contrasted with purely administrative work;
- (4) Provision of more adequate staff services responsible to the Governor for purchasing, budgeting, accounting, personnel, planning, management analysis, and strengthening the Governor's own staff;
- (5) Establishment of an independent post-audit (distinct from the financial control and accounting functions of the executive) under the direction of an official responsible to the legislature.

Following World War II, reorganization efforts were resumed in more than twenty states when the "little Hoover Commissions" were established. Oregon's was created in 1949 as the Legislative Interim Committee on State Government Reorganization. Its report placed major emphasis upon the need for better financial controls and central state services and recommended a Department of Finance and Administration, which the legislature established in 1951.

In 1959, another Legislative Interim Committee recommended a number of proposals, which included establishment of a Department of Natural Resources and a Department of Revenue; strengthening the Governor's staff; improving fiscal management, and provision of central services for boards and commissions. The report proposed that these goals be achieved through legislation and executive orders, avoiding the recommendation of measures which might have required constitutional amendment. The legislature provided for a Legislative Fiscal Officer, but did not otherwise implement that Committee's report.

The most recent effort at reorganization began with the appointment by Governor Hatfield of an Advisory Committee (of which former Governors Sprague and Holmes were respectively Chairman and Vice-Chairman) to study the organizational needs of the executive branch. The committee recommended action to reduce the number of separate agencies by consolidating functions. Subsequently, Governor Hatfield submitted to the 1961 Legislature a series of reorganization proposals designed to make government more responsive to the people, achieve greater efficiency, improve coordination, and provide more effective service. The proposals, to be achieved through legislation, would have grouped executive functions in eight departments: Labor, Commerce, Social Services, Public Safety, Transportation and Utilities, General Government Services, Natural Resources, and a Department of Education to be established later. The only result of these efforts was the creation of a temporary Department of Commerce.

Since 1920 the City Club has made 28 studies (see Appendix B) dealing with proposed constitutional amendments. Nearly all of these studies dealt with ballot measures for specific subjects rather than with proposals for comprehensive revision of the Constitution. In 1960 the City Club membership approved a report on the amendment which permits the legislature to revise the Constitution and refer it to the people. The report pointed out that over-all revision of the century-old, much-amended Constitution was desirable in order to make it "more concise, logical, understandable, and up to date."

Some of the main goals of state government reorganization could very likely be achieved through legislative action. But many analysts of state government believe legislative action alone cannot achieve the strengthening and revitalization which state governments must have. As the federal Commission on Intergovernmental Relations reported in 1955, in many states it is an antiquated constitution which has seriously hindered the adaptability and effectiveness of state and local government:

The Commission finds a very real and pressing need for the states to improve their constitutions. A number of states recently have taken energetic action to rewrite outmoded charters. In these states this action has been regarded as a first step in the program to achieve the flexibility required to meet the modern needs of their citizens.

Authorities on American government, from James Bryce's time to today, have agreed on the need for revision. Of the many criticisms of state constitutions, the most common are that they are often far too long, cluttered with excessive detail, duplications, inconsistencies, and obsolete provisions, and marred by the presence of much material which is properly statutory in nature, rather than constitutional. In some cases, hundreds of amendments have frozen into the fundamental law specific provisions dear to special interests.

Many state constitutions, designed more than a century ago for rural agrarian societies where the demands upon, and responsibilities of, government were few, have perpetuated a system in which executive power is highly fragmented among a maze of executive agencies, so that the authority of the Governor is glaringly unequal to his responsibilities. Similarly, the capacity of the legislature to cope with the needs of a modern society is often severely restricted by a limitation to biennial sessions, and by detailed constitutional limitations on taxation, borrowing and expenditure. In some state constitutions, outmoded legislative apportionment provisions have carried into an increasingly urbanized, industrialized, metropolitan society a pattern of rural dominance which reflects the realities of the last century but not of today. Commenting upon these weaknesses, the Commission on Intergovernmental Relations reported that "many State constitutions restrict the scope, effectiveness and adaptability of State and local action. These self-imposed constitutional limitations . . . have frequently been the underlying cause of State and Municipal pleas for Federal assistance."

Many of the criticisms which students of state government have made of state constitutions and state governments in general have also been made of Oregon's constitutional and governmental structure. Among them are these:

(1) The Constitution is excessively long and complex.

The Constitution is too long, too complex, and too difficult to understand. It has been amended a hundred and fifteen times. Some of its provisions are obsolete, such as those prohibiting titles of nobility (Art. I, Sec. 29), penalizing dueling (Art. II, Sec. 9), providing that the Governor shall be superintendent of public instruction unless otherwise provided by law (Art. VIII, Sec. 1), prohibiting the legislative chartering of banks and the issuance or circulation by banks of checks or promissory notes (Art. II, Sec. 1), and providing fixed salaries for the Governor (\$1,500), the Secretary of State (\$1,500), Treasurer (\$800) and Supreme Court judges (\$2,000). In addition, there is the confusing presence of two Seventh Articles; one designated "Amended" and the other "Original." A minor criticism is the presence of numerous and disconcerting misspellings: "Cheif executive," "Govenor," "Religeon," "Suprume Court," "greviances," etc.

(2) The Constitution contains many provisions which should be statutory, not constitutional.

The Constitution contains many provisions which properly should be matters for legislative decision and ought not to be frozen into the constitutional document or given constitutional stature. Among these are the provision for the sale of liquor by the glass (Art. I, Sec. 39), the naming of county officers and specification of their method of selection and terms of office (Art. VI, Sec. 6), the detailed provision of judicial procedures on appeals (Art. VII, Amended, Sec. 3), the provision that all "stationary" required for State use shall be supplied by the lowest bidder (Art. IX, Sec. 9), and the provision providing for qualifications of the state printer (Art. XII, Sec. 1).

(3) Executive Power is too diffused.

The Governor is in an undesirably weak position. He is charged with responsibility for effective operation of the executive branch, but his authority is not commensurate with that responsibility.

As Governor Hatfield noted in his 1960 recommendations for improvements in the executive branch, the Governor shares control of executive functions with five other elected officials, and at least 89 boards, commissions, authorities and committees having rule-making, advisory or managerial roles, with over 50 agencies reporting directly to the Governor. Emphasizing that this complicated organization of the executive branch constitutes "a massive obstacle to efficient, responsible, and responsive government," Governor Hatfield summarized the problems in these words:

1. A multitude of administrative units, each so independent of the other as to make certain that coordination and efficiency will be at a minimum.
2. Responsibility and authority so subdivided that action is inevitably slower and less adequate than it ought to be.
3. The assignment of executive responsibility to other elected officials, leaving the Governor with responsibility for actions he cannot control.
4. The indiscriminate assignment to boards and commissions of final administrative authority, making the government less responsive to the decisions of the people and more responsive to special interests than it ought to be, and further accentuating the division of responsibility and the difficulty of coordination.
5. An organizational structure so complex that it is nearly impossible for any Governor to provide executive leadership or control.

(4) There is no independent post-audit.

There is no provision for an independent post-audit and review of state financial transactions by an official responsible to the legislature. This function is distinct from, and should not be confused with, the financial and accounting controls exercised by the executive branch.

(5) Annual legislative sessions are needed.

The complex and continuing nature of legislative problems, particularly those relating to budgeting, has led many legislators, executive officials and students of government to believe that annual legislative sessions are desirable. The Oregon Constitution provides for regular sessions only every other year.

(6) Taxing power is inflexibly restricted.

Detailed constitutional restrictions on the state's power to tax, borrow, and spend are regarded by many authorities as unnecessary limitations on the legislature's capacity to make the flexible decisions needed to meet changing needs. Yet the Oregon Constitution specifically earmarks the very large revenues from motor fuel taxes and vehicle licenses for highway and recreational purposes. Another frequently criticized provision is the six per cent limitation on annual increases in budgets of taxing districts. Some critics oppose this restriction as one which hampers needed flexibility, others have regarded it as an ineffective restriction which serves as a kind of license to increase spending by six per cent every year.

In addition, the Constitution (Art. XI, Sec. 7) contains a specific limitation of \$50,000 upon state debt. Bonding programs to exceed this limitation can be effectuated only through constitutional amendments. Although approving the general principle of constitutional debt limitations, many observers question the wisdom of requiring a constitutional amendment for programs in excess of the debt limit. The same end could be achieved by a constitutional provision requiring a favorable vote of the people in a statewide referendum in order to exceed the debt limitation, thus obviating the necessity for an amendment.

(7) The Constitution may be amended too easily.

The fact that the Constitution has been amended well over a hundred times since 1902 has convinced many people that it can be amended too easily. The present provision allows amendments to be proposed by a simple majority of the membership of both houses of the legislature and requires approval by a majority of the voters. An alternative mode of amendment is through initiative petition signed by a number of people equal to ten per cent of those who voted in the last Supreme Court election and approval by a majority of the voters.

(8) The judicial system is not unified.

Some analysts believe that our judicial system suffers from lack of unity and that the constitutional establishment of specific courts prevents needed flexibility. They suggest that the Constitution should be amended to allow the legislature to create an integrated state judicial system under the supervisory authority of the Supreme Court.

V. CONSTITUTIONAL REVISION IN THE LEGISLATURE

By the early 1950's, some individuals and organizations had become convinced that Oregon needed substantial constitutional reform. At that time only three routes were open: a constitutional convention (which could probably not be called by the initiative process); individual amendments referred by the legislature; and amendment by initiative. (In 1964 the Supreme Court held that a completely revised document could not be proposed by the initiative: *Holmes v. Appling*, 237 Or 546.) In 1953 a Governor's and Legislative Constitutional Commission was appointed and reported unanimously in 1955 that the Constitution needed at least extensive revision. A majority favored a constitutional convention.

Legislation for a referendum on the calling of a convention was unsuccessfully proposed several times during the decade, but the 1959 Legislature did refer to the voters an amendment (the so-called "gateway amendment") which would allow the legislature by a two-thirds vote of each house to propose as one ballot measure a revision of any part or all of the Constitution. In 1960 this amendment (which

was an addition to other methods) was adopted by a vote of 358,367 to 299,895. Its adoption must be credited largely to the League of Women Voters which has long spearheaded the fight for constitutional revision.

The 1961 Legislature could have constituted itself as a constitutional convention but it chose instead to pass Senate Joint Resolution 20 creating a Constitutional Revision Commission. The preamble of the resolution pointed out that "parts of the Constitution of Oregon have become obsolete during the century since its adoption"; "many conflicts and ambiguities have been created by scores of amendments in that time"; and "Oregon cannot adequately reflect its Twentieth Century attitudes in the framework of a Nineteenth Century Constitution."

A seventeen-member Commission was appointed: seven by the Speaker of the House, six by the President of the Senate, two by the Governor, and two by the Chief Justice of the Supreme Court. The Commission made its report on December 15, 1962, under the title: "A New Constitution for Oregon." According to the report (p. 31):

The revised Constitution recommended with this report does not favor one branch over any other, it is unpartisan as between political parties or factions, and it holds no advantage for any economic or geographic bloc. The only place it is not neutral is in the field of individual rights and civil liberties; it is on the side of the individual.

Further, in its changes from present practice the Revised Constitution does not deprive any political, economic or social group of any right, privilege or possible advantage which that group may have under the existing Constitution.

This is as it should be. A Constitution should provide a balance between contending elements. It should lay down visible, simple rules for government—rules which permit people to govern themselves in such a way as to meet their needs, present and future.

The Revised Constitution offers an improved framework for effective, democratic self-government. And it clears away old constitutional debris which raises areas of doubt in government, in law and individual rights.

The Commission felt that its document had these characteristics:

- (1) It would improve the ability of the state government to solve modern problems by provision of an adequate governmental structure.
- (2) It would secure and protect individual liberties.
- (3) It would define the power of government while achieving flexibility.
- (4) It would provide for three relatively strong branches of government with checks and balances between them, but without internal impediments to effectiveness.
- (5) It would be simple and straightforward.
- (6) It would preserve the basic traditions of Oregon government.

The most important general characteristic was that it was not merely a cleaned-up revision but a new Constitution.

The essentials of the document can be summarized as follows:

- (1) The Governor would be the only statewide elective executive official.
- (2) Other than that imposed by legislative authority, the most important check on the executive would be in the office of the Controller. This officer would be selected as provided by law for at least an eight-year term during which he would be ineligible to be a candidate for any other office. He would perform the post-audit function and any other non-executive functions given him.
- (3) Administration of state government would be gathered into not more than 20 major departments. The Governor would have the power of appointment (with Senate approval) and removal of the department heads; effectuation of the reorganization would be a legislative responsibility.
- (4) The bicameral legislature would be preserved, and apportionment would be based on a standard under which no member of a house could represent more than two times as many people as any other member.

(5) Each house of the legislature would have an odd number of members and the Senate could not have more than half the membership of the House.

(6) The legislature would meet annually without limitation as to subject matter or length of sessions.

(7) A unified court system headed by a seven-member Supreme Court would embrace all but municipal courts.

(8) The Governor would appoint all judges in the first instance. Judicial elections would consist only of answering the question whether an appointed judge should continue to serve. If a judge were rejected, the Governor would make a new appointment.

(9) A State Law Commission would be established to advise the Governor on judicial appointments, advise the Supreme Court on rules, and advise the legislature on revision of statutes.

(10) The Supreme Court would have the power to make rules for judicial procedure, subject to legislative rejection or change.

(11) Functions of the grand jury would be left to legislative definition.

(12) The judiciary could review legislation for substantive as well as procedural process.

(13) Various changes would be made in the Bill of Rights, including elimination of some archaisms, clarification of the double jeopardy clause, broadening of rights of those accused of crime, and provision of increased flexibility in condemnation procedures.

(14) Prohibition of state debt would be retained, but authorization for specific debt exceptions would depend upon a popular vote in each instance instead of upon constitutional amendment.

(15) The six per cent limitation would be retained.

(16) Revenues from motor fuel taxes and vehicle licenses would continue to be earmarked.

(17) The base for determining the necessary signatures for a referral or initiative would be the total votes cast for Governor at the preceding general election. The percentages required would be raised slightly.

(18) The emergency clause on revenue measures would still be prohibited.

(19) Local government provisions would be largely unchanged, except that the prohibition against lending money or credit to corporations was made subject to legislative exception. Methods of altering subdivision boundaries or merging and dissolving subdivisions would be left to law; and provision would be made for creating metropolitan districts.

(20) A constitutional convention could be initiated by the people.

(21) Individual constitutional amendments would have to pass each house by a two-thirds majority vote before being submitted to the people.

(22) Numerous provisions of the present Constitution which the Commission thought should be statutory would be compiled in Oregon Revised Statutes and would no longer be part of the Constitution. Included were capital punishment and details of the recall, existing bond programs and powers exercisable by Peoples' Utility Districts.

The Commission adopted its report with only two dissents. One dissenter took principal exception to the apportionment provisions; permissive legislation districting; annual sessions; establishment of a cabinet form of government; elimination of elective executive officers; Controller; Supreme Court rule-making power; the method of judicial selection; establishment of a law commission; downgrading of the grand jury; and enhancement of the power of the Supreme Court. The other dissenter limited his written objections to the judiciary article, although expressing broader disagreement with the document. He objected to freezing the Supreme Court's membership at seven, to the mechanism of judicial selection, establishment of the law commission, the rule-making power and the grand jury limitations. There were other exceptions to particular provisions. Seven members dissented from the substantive due process provision. Two members suggested a possible alternative to the single executive scheme, under which a Secretary of State would be elected

on the same ticket with the Governor and perform duties delegated to him by the Governor, including, if the Governor wished, heading a department. He would also be first in the line of succession to the governorship.

The Commission's revised Constitution was introduced in the 1963 Legislature as House Joint Resolution 1. It was referred in the House to a Committee on Constitutional Revision, headed by Representative (now Congressman) John R. Dellenback. Extensive hearings were held and the Committee reported it out with amendments and it passed the House by a 41-19 vote. In the Senate a controversy developed over the legislative apportionment provision written into HJR 1 by a majority of the Senate Constitutional Revision committee. Despite several attempts, the Senate was unable to muster the necessary two-thirds majority for any apportionment formula, and the measure died.

It should not be thought that opposition to the Commission's proposal was muted. To a large extent the document embodied the objectives and resembled in detail the proposals of the League of Women Voters, but the League was the only group that strongly supported the revision. The Oregon State Grange, for example, opposed the report for several reasons, including a lack of conviction that so substantial a revision was needed or desirable, and opposition to reduction of the number of elected officials. In addition, that organization saw a danger to public power in the elimination from the Constitution of detailed provisions for Peoples' Utility Districts. The Oregon Farm Bureau Federation (as well as the Grange) opposed submission of a one-package revision, favoring instead submission of a series of separate amendments. Organized labor opposed it for reasons which included the elimination of several elected officials, particularly the Labor Commissioner. Committees of the Oregon State and Multnomah Bar Associations studied the Commission's proposals, particularly those relating to the judiciary, which they in large measure disapproved. The Oregon State Bar at its 1962 annual meeting disapproved of several provisions including the judicial selection provisions, rule-making power, Supreme Court jurisdiction, and the Law Commission, and proposed that the whole question of constitutional revision be put over until 1965 for further study. Reaction of some elective officials whose positions would be made appointive was also unfavorable.

There was little organized support for the Commission's report and considerable opposition outside the Legislature. Moreover, Governor Hatfield did not take a direct, active role. He strongly favored substantial constitutional reform, a position which dated back to his service in the legislature, when he, Richard L. Neuberger, Robert D. Holmes and other legislators were active in trying to bring about a constitutional convention. Nevertheless, consistent with his philosophy that the Governor should not interject himself into the legislative process, he did not attempt to apply the strength of his position to the achievement of a new Constitution.

After the 1963 Legislature, a group called the "Citizens' Committee for Revision of the Oregon Constitution" attempted to bring about the submission of a Constitution by the initiative process. Its proposed document reflected the Commission's report and the work of the 1963 Legislature. Additionally, the executive article was changed to provide for a Secretary of State elected jointly with the Governor to perform functions delegated to him by the Governor (an alternative suggested by two members of the Commission). The attempt to place the proposal on the ballot resulted in litigation terminating in a decision by the Oregon Supreme Court that an entire Constitution could not be initiated (see p. 214 above).

In the 1965 Legislature, the performance of the House reflected its continuing belief not only that constitutional reform was desirable and necessary but that the 1960 amendment constituted a mandate to produce and submit to the people a new Constitution. Under the leadership of Speaker Montgomery and Representative Dellenback, the House approved a document and sent it to the Senate. HJR 1 in the 1965 session, as approved by the House, differed from the Commission's report in the following important particulars:

- (1) It set the number of senators at 30 and the number of representatives at 60. The Commission report had merely called for an odd number of members in each house with Senate membership to be not less than one-third or more than one-half the number in the House.

(2) A formula for determining legislative apportionment was contained in the House measure. The Commission report had only set guidelines for use in determining apportionment.

(3) It contained a provision, not found in the Commission report but approved by the voters as an amendment to the present Constitution, allowing persons employed by the State Board of Higher Education, and members or employees of school boards, to be members of the Legislature.

(4) Several sections of the Commission version pertaining to the judiciary were not a part of HJR 1. It did not provide for judicial review of legislation for substantive due process, rule-making power in the Supreme Court, or a State Law Commission. In addition, the House revision provided for the initial election of judges and for their running against live opponents in subsequent elections. It also required use of the grand jury system and delineated grand jury functions in the Constitution itself.

(5) The Controller would be elected rather than "selected."

More significant than these differences were the major areas in which HJR 1 was the same, or basically the same, as the Commission report. These included:

(1) Making the Governor the only statewide elective executive official.

(2) Reorganization of the administration of state government into not more than twenty departments.

(3) Creation of the Office of Controller.

(4) Retention of the six per cent tax limitation.

(5) Provision for annual sessions of the legislature. (While required in the Commission version, HJR 1 stated regular sessions "may be held" in even-numbered years as well as in the required odd-numbered years.)

(6) Making the total number of votes cast for Governor in the preceding general election the base for determining how many signatures would be required for a referral or initiative. (The two versions vary in one instance in that the Commission report sets the figure at eight per cent for initiative petitions, and HJR 1 set it at ten per cent.)

Another version of a revised Constitution, Senate Joint Resolution 11, was introduced in the Senate early in the 1965 session by Senators Mahoney and Yturri. This document differed in several major respects from both the Commission report and HJR 1; it was only a cleaned-up version of the present Constitution with few substantive changes. The Senate defeated SJR 11 by a vote of 21 to 8. However, several of its important features, as well as other different provisions, were incorporated into HJR 1 by the Senate Committee. The version of HJR 1 finally voted on by the Senate contained these features:

(1) Allowed statutory restrictions requiring that a person be an owner of real property in order to vote in certain types of elections.

(2) Increased the percentage figure—and consequently the number of signatures needed—on petitions for an initiative or referendum.

(3) Set maximum membership figures for the legislature at 35 in the Senate and 65 in the House.

(4) Contained a different apportionment system.

(5) Stated legislative sessions would be held biennially, with no provision for regular annual sessions.

(6) Did not make it mandatory for justices of the peace or judges of county courts having judicial functions to be attorneys.

(7) Contained no provision for a Controller.

(8) Retained the Secretary of State and the State Treasurer as constitutional executive officers to be elected on a statewide basis.

(9) Dropped the six per cent tax limitation.

(10) Required a 60 per cent favorable vote to pass a measure incurring bonded indebtedness for the state or a city, county or public corporation.

The Senate's revised version of HJR 1 passed that house by a vote of 22 to 7. The House refused to concur in the amendments put in by the Senate. Three

successive joint committees, each consisting of two members of each legislative body met, but were unable to come to agreement. A fourth such committee had been formed when the legislature adjourned.

This Committee recognizes that there were numerous areas for substantial disagreement with the 1965 House version, and that there were serious-minded Senators who doubted the desirability of a substantial constitutional revision. However, the overriding reason why no action was forthcoming in 1965 was that the leadership of the Senate was determined that a revised Constitution not be submitted to the people. The House-passed measure was directed to a Senate committee specially constituted with a membership that was opposed to it. It was significantly changed in committee to eliminate many of the important provisions the House had approved. Conference committee members from the Senate were apparently instructed not to accept compromises which could have produced a revision. The process was one the Committee repeatedly heard described as "game playing," which is to say that those in control of the Senate were merely going through the motions with no intention that a revised Constitution be approved. They prevailed.

VI. THE PRESENT SITUATION: ISSUES AND PRELIMINARY JUDGMENTS

Six years and two sessions of the legislature have passed since the people empowered the legislature to submit to them a revised Constitution. The legislature is again considering the problem in 1967.

It would be a relatively easy task to draft a Constitution for Oregon that would satisfy political scientists and meet most theoretical standards for the best form of state government. However, it would not have any chance to pass the legislature or to be approved by the people. Furthermore, it probably would not even be desirable, for it would necessarily be unrealistic in view of Oregon's history and tradition. Be that as it may, no one has proposed that Oregon scrap history and tradition and start afresh. Every serious form of revision put forth has built on past experience and the pressing needs of today and tomorrow, recognizing that what the people would be asked to adopt as their fundamental law must be adequate for the long run. **If the present efforts produce an acceptable document, substantial constitutional revision is not likely to be undertaken again for a long time.**

HJR 1 from the 1965 session, possibly in a somewhat modified form, probably will be reintroduced in the House. Unless there have been substantial changes either in the makeup of the House or in the thinking of the members, it is probable that the House in due course will approve something very like that document. Governor McCall intends to put before the legislature a form of constitutional revision as part of his program.⁽¹⁾ In the Senate its 1965 version of HJR 1 has been introduced as SJR 7 (with some changes to reflect a 1966 amendment to the present Constitution and to restore the six per cent limitation), apparently, to judge by previous actions of the Senate leadership, in hope and confidence that it will not be passed. It is evident that "game playing" will continue and that meaningful constitutional revision will again face very serious obstacles in the Senate.

The Commission's proposal contained much that has since dropped by the wayside and is not likely to be revived. Most important of these provisions were those which related to substantive due process, the so-called Missouri plan for judicial selection and tenure, rule-making power in the Supreme Court, and downgrading of the grand jury. With the exception of substantive due process, the Committee believes that there was substantial merit in each of these proposals. None of them, however, was fundamental, and their absence from the final product should not be considered serious.

Other elements of the Commission's document are apparently not subject to serious controversy. Some represent nothing more than cleaned-up forms of present provisions; others are language changes without substantive effect. With the exception of the grand jury provisions and the removal of the details of Peoples'

⁽¹⁾ Since this report was written, SJR 7 has been introduced at the request of the Governor.

Utility District establishment and administration, the Committee heard no objection to placing many former constitutional details in the category of statutes subject to legislative power. A *caveat* should be entered here, however. The implications for public power of what was proposed with respect to PUD's were not seen by the Committee until a witness pointed out that the proposal would subject that form of public power to the mercy of the legislature. It is conceivable that the detailed provisions making statutes of former constitutional provisions contain similarly far-reaching implications not apparent to the Committee. Furthermore, since capital punishment has only recently been abolished by vote of the people, it would appear desirable that the legislature not have the power to reinstate it.

Office of Controller

The proposal for the establishment of the office of Controller is of very great significance, not only because it would separate post-audit and administration, but because the office is intended to function as a general watchdog over the functioning of the state government. This would certainly be an innovation and one the Committee finds highly desirable, particularly in its post-audit aspects. It might reasonably be expected that so important a change would draw serious opposition, but the Committee heard none. Instead, there was nearly unanimous approval for the idea.

Executive Branch Reorganization

Despite the fact that executive reorganization has had an uneven and largely disappointing course, one of the major proposals of the Commission which has survived to date calls for consolidation of administrative agencies into not more than 20 major departments according to function. Most objections to this idea centered on the premise that it would mean the establishment of a cabinet system, which historically has been a subject of controversy in Oregon. The Committee believes that this objection is misconceived and mistaken. There is absolutely nothing in the language to suggest that a cabinet system was intended, if by a cabinet is meant a body charged collectively and formally with advising the chief executive on policy. The overriding purpose is to bring about a rationalization of the chaotic conditions created by the existence of multitudinous administrative and advisory bodies which are appointed by the Governor but not responsible to him. It is based on the belief that efficient execution of the laws demand that there be clear lines of authority. Few witnesses opposed this consolidation provision.

The Committee is unanimously agreed that the objective of the provision is fundamental to significant revision, but there are serious questions about the mechanics for implementation. A general directive is stated but actual reorganization is left to the legislature without providing any insurance that the legislature must actually perform. **In view of the history of reorganization efforts in the Oregon legislature, it is the Committee's belief that the purpose of the provision should be retained in language that would make sure it would be achieved. Furthermore, as written, it is vaguely worded and ambiguous and could breed much litigation. It should be strengthened by more precise language.**

Legislative Apportionment

Legislative apportionment was one of the most serious issues in the 1963 and 1965 sessions, as it had been in the Commission's deliberations and in the proposals of the Citizens' Committee. It killed HJR 1 in the 1963 Legislature. What looked like disagreement in the previous sessions about the details of how to provide for periodic reapportionment was in fact a fight over the "one man, one vote" principle. **There are individuals and groups for whom reapportionment is still an issue, at least in the sense that they do not like the "one man, one vote" rule imposed by United States Supreme Court rulings. That fight should now be forgotten, for there can be no doubt that the principle is now a part of the United States Constitution.** It should not prove an insuperable, or for that matter even very difficult, task for the legislature to approve a formula that will satisfy the principle, especially in view of the fact that any variation from it in a new Constitution will only invite the federal Courts to rewrite that part of the document.

Reduction in the Number of Elected Officials

The proper nature and scope of executive power is the major area of controversy standing in the way of submission of a new constitution to the people. Any strengthening of the authority and responsibility of the executive branch would represent a major and significant change in Oregon's governmental system, which has been characterized since the beginning by a large number of elected officers sharing a diffuse and essentially weak executive power. Judged against this background the change proposed by the Commission was radical, for it would have established the Governor as the only statewide elective executive officer, and would have vested in him the entire executive power.

The Committee is convinced that the Commission's proposal for a single elected executive is politically unacceptable either at the legislative or the popular level, however sound it might be theoretically. The recent effort to remove the Superintendent of Public Instruction as an elective office is persuasive evidence that the people of Oregon are resistant to reduction in the number of elected officials.

Several witnesses before the Committee expressed strong opposition to the idea of a single elected statewide executive official, while at the same time they recognized the desirability of a stronger Governor with more administrative authority. Much criticism of the present situation is based on the frequent use of a statewide elective office as a base from which to launch a campaign for the governorship. Whenever this circumstance leads to open conflict of views or a lack of cooperation within the executive branch, it can be expected to have a deleterious effect on state government. However, the real problem is not competition for office. **The real problem is diffusion of executive authority. That can only be ended by elimination of the present system under which other officials, elective or appointive, exercise, independently of the Governor, power and authority which should rest in the Governor. The Committee has been led to acceptance of this important distinction: It is not vitally important that only one executive branch official be elected. It is vitally important that Oregon end diffusion of executive power and the resulting weakness of that power.**

The indications are that the right of the people to elect statewide executive branch officials must be respected in any new Constitution which the voters still can reasonably be expected to approve. The Committee has heard several alternative proposals which their backers believe would be acceptable to the voters.⁽²⁾

- (1) A Governor and a Secretary of State who would function as Controllor;
- (2) A Governor and a Secretary of State who would function as Lieutenant Governor;
- (3) A Governor, Secretary of State, and Treasurer, just as at present (as well as all other elected officials).
- (4) A Governor and a Lieutenant Governor who would perform functions assigned to him by the Governor.

Proposals 1, 2 and 4 assume that the officers would run and be elected on the same ticket, as a team.

One member of the Commission who has been in the forefront of the revision effort told the Committee that he would actively oppose any constitution which abandons the single elected executive concept. Several other witnesses strongly supported the idea as proposed by the Commission, but they recognized that elimination of all but one elected statewide official would probably cause the defeat of the entire revision. **The Committee believes that a reduction in the present number of elected officials is desirable, but election of two or more statewide officials is not necessarily inconsistent with needed improvement in the constitutional status of the Governor and the executive branch, so long as the powers and duties of the other offices are such as not to conflict with having the executive power rest in the Governor. Unless there is presented to the people a chance to bring about reorganization of the administration of state**

⁽²⁾The proposed independent office of Controllor, which is not to be an executive office, is not included in the question of the nature and power of the executive branch.

government under an effective executive, little is likely to be gained by constitutional revision.

There are parts of the present Constitution which no proposal so far has sought to change or which have received inadequate attention. The Committee is not prepared to recommend that these necessarily be changed, but it should be recognized that they represent problems worthy of consideration. The major ones are as follows:

(1) Lieutenant Governor

The Committee is impressed with the desirability of having a Lieutenant Governor elected on the same ticket with the Governor. Not only would he be first in the line of gubernatorial succession, but he could be assigned to perform a number of functions, including:

- a. Hearing petitions and complaints
- b. Serving for the Governor *ex officio* on boards and commissions
- c. Handling extradition matters
- d. Performing ceremonial functions
- e. Inspecting state institutions

In general his duties would serve to relieve the Governor of much time-consuming detail. He should not preside over the Senate.

(2) Gubernatorial Succession

At present, if a Governor dies in office, or even if he leaves the state temporarily, the President of the Senate succeeds to the office. Although the matter is not without argument on each side, the Committee believes that it would be more desirable that the line of succession run first, at least, to an officer elected on a statewide basis, rather than to a legislator who may represent a small constituency. In any event, in modern times, there is no reason why the Governor should not be Governor at all times, even if he might temporarily be outside the state's borders and even if there were a Lieutenant Governor.

(3) Annual Legislative Sessions

It is unlikely that this state can much longer get by with biennial sessions of its legislature. The problems of budgeting for periods of 30 or more months in this rapidly changing world, with ever-increasing demands on government, have become so severe as to be almost insuperable. The 1965 revision passed by the House permitted annual sessions. The Committee is convinced that a very strong case exists right now for required annual sessions, even if every other session is limited to budgetary concerns. It has also been suggested that continual sessions may in fact be the most efficient way to meet the problem.

(4) Unicameral Legislature

The traditional bicameral legislature has lost some of its reason for existence since the establishment of the "one man, one vote" rule. It is possible to achieve sufficient guarantees against hasty legislation in a unicameral system, and perhaps the time has come to give serious consideration to adopting it.

(5) Emergency Clause

At present the emergency clause (which permits legislation to become effective immediately upon its enactment) cannot be attached to a revenue measure. This has an undesirable hamstringing effect on revenue planning and should be eliminated. Nonetheless, the Committee recognizes that elimination is of questionable political practicability, regardless of its merit.

(6) Six Per Cent Limitation

The so-called six per cent tax limitation is in fact probably as much a license as a limitation. Every witness who discussed it favored its elimination. If a Constitution can be drafted that is otherwise politically acceptable, it seems likely that elimination of this provision will not prevent its approval, even though it may be

necessary to substitute a meaningful limitation on the power of taxing bodies to increase their tax revenues.

(7) Real Property Tax Limitation

Since the 1965 session of the legislature, the question of limiting real property taxes has reached the level of a political crisis. A major problem facing the 1967 Legislature is to design a tax program which will assure the continuation of state and local government services and at the same time allow enough property tax relief to quiet the very strong popular demand for a stringent restriction on the rate of real property taxation. No proposed constitutional revision so far has contained any such restriction, and the Committee does not favor one. **It must be recognized, however, that unless there is a legislative solution to the tax problem, a Constitution which does not provide for some real property tax limitation will meet very stiff opposition, regardless of how meritorious might be its other aspects.**

VII. CONCLUSIONS

The movement for constitutional revision in Oregon (as elsewhere) is concerned with meeting effectively the urgent governmental needs of new times and conditions while continuing to secure and protect the basic rights and privileges of the people. The motivation and thrust of the revision effort are progressive with respect to the administration of affairs of government and are conservative where the rights of the individual are concerned. The principles, rooted in the evolution of human rights, constitutionalism and the American system of government that are the expressed concern of many Oregonians (and others throughout the land) have not been ignored in the movement. **Not to be controverted by revision are the concepts of liberty, personal rights, public will and popular sovereignty adopted by our Founding Fathers. These principles would be strengthened through reiteration and reemphasis in a shorter and more fundamental constitutional document freed from the clutter and encumbrance of more detailed, more contemporary and shifting law.**

The movement holds no threat to the essentials of the concept of checks and balances or to the federal system. The traditional balances between the major branches would remain intact—protecting the executive and the legislative from domination by the other, and the executive and the judiciary from special interests on transitory mass opinion. The purpose is to restore and reinforce the role of the state in the federal system. A modern, dynamic, cooperative and effective American federalism is widely sought by leaders in political thought. Obtaining it necessarily means strengthening state government and its role in the system, with restraints upon centralized power, with broadened opportunity for participation by the citizens and with better adaptation of governmental policies and programs to the needs of geographical areas.

Enhancement of the qualities of responsiveness and responsibility in state government is a major goal with respect to the rights and needs of all of the people—of the “invisible community” including “those who are living, those who are dead, and those who are to be born” (Edmund Burke). Oregon’s constitutional revision movement seeks this reenforcement of democratic government through an executive elected by and accountable to the people and dedicated to the general public interest and the administration of the law; a representative legislature responsible and responsive to separate constituencies as well as to statewide interest; a judiciary strengthened in its role of protecting rights and administering justice; and, over all, a general government better equipped to meet, cooperatively and effectively, the needs of the people, the economy, and the environment under conditions of rapidly increasing complexity and urgency.

The Committee believes that this is the opportune time to bring about the needed revisions, for the following reasons:

1. The voters of the state have given a clear mandate for the drafting of a revised Constitution for submission to them for approval or rejection. A blue-ribbon Commission on Constitutional Revision, after exhaustive study, has proposed such a draft. The legislature has considered that proposal in depth, through hearings, debate and conference, over two biennia. Governors of the past have favored

meaningful revision. Governor McCall has said to this Committee, to the public and to the legislature that his administration is strongly committed to obtaining a new Constitution. Nonpartisan citizen interest is evident in a number of quarters. General public interest may be assumed on the basis of the revision enabling measure. A proposal not in conflict with Oregon's history, traditions and attitudes should have fair consideration at the polls.

2. There is a serious and mounting crisis in state and intergovernmental affairs. It is not an emergency of sudden and dramatic impact obvious to everybody, but one in which threats to the economy, environment and human well-being have been building up on a wide front over a period of years. Needed to cope with the situation are much greater governmental flexibility, sureness, quickness and effectiveness in appraisal, decision-making and program formation. This crisis has many facets, but two concrete and vital problems may be cited to illustrate its urgent nature: first, the control of accelerating pollution of our air, water and land; and, second, protection and rehabilitation of our urban, metropolitan, and rural environments under the pressures of expansion and change.

3. The State of Oregon should not continue to shrink from enlarging its role in the solution of the critical problems of an increasingly complex state community and federal system. If federal government control of local affairs is not to be expanded vastly beyond its already extensive scope, Oregon (as well as other states) must now accept the problem challenges which can be met at the state level with well-organized and vigorously led state government. Governor Rockefeller of New York spoke directly of the need for preserving

. . . the vitally important balance between state and national sovereignty within a federal system. To hold this vital balance, all of the states themselves must fully awaken to—and act on—their responsibilities and opportunities . . . For if the states ignore or evade their responsibility to act in these areas, there will be no alternative to direct federal-local action. If state inaction creates a vacuum, the federal government, under the pressure of public opinion, will fill it. (*The Future of Federalism*)

The Committee agrees.

It is to be hoped that the obstacles in the way of constitutional revision which exist in the legislative process, and which this report delineates, can be overcome in this session and that a document will be referred to the voters. If that does happen, however, popular approval of a revised Constitution will require earnest effort under vigorous leadership. In this campaign, the role of the Governor will be vital and is most likely to be the key to success. Governor McCall has given the strongest indications that he fully intends to fill this role. It is certain, though, that he cannot do the job alone. **It will require cooperation by individuals, organizations, business and government, and a well-financed drive to persuade the voters that what Oregon has is not adequate and that what is proposed is both necessary and desirable. Whether the effort should be made depends entirely upon whether the proposed document is worth it.**

The Committee has not found it appropriate to attempt to reach hard and fast conclusions on the specific contents of a new Constitution. What it has sought to do is to suggest the problems that face state governments in general, and Oregon's in particular, to outline a position in favor of substantial revision of the Commission, to analyze the various proposals that have been made, and to make some tentative judgments on those proposals.

VIII. RECOMMENDATIONS

As this report is prepared, the Committee is not aware of all the specific proposals that will be introduced in the legislature. What action the legislature will eventually approve is even less certain. Therefore at this time the Committee limits its recommendations to meaningful general suggestions and a proposal for further study and report.

The Committee recommends:

(1) That the 1967 Legislative Assembly develop and refer to the people a substantially revised Constitution that will provide a more responsive and responsible structure of state government, encourage leadership and enable the state more effectively to meet the needs of the citizens, foster the economy, and protect the physical environment. That revision should include provisions that will:

- (a) Safeguard individual liberties;
- (b) Increase legislative branch efficiency and fiscal control;
- (c) End the diffusion of administrative responsibility by providing a more departmentalized executive branch with effective responsibility and control in the Governor;
- (d) Provide a more unified judicial branch;
- (e) Encourage cooperation and coordination between branches; and
- (f) Express only the basic structure and limits of state government, leaving sufficient flexibility to permit appropriately rapid response to changing problems.

(2) That the Board of Governors authorize an appropriate committee to observe, analyze and report on the progress of constitutional revision in the 1967 session of the legislature.

Respectfully submitted,

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Kent E. Clark
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James W. Durham, Jr.
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Approved by the Research Board January 30, 1967, and submitted to the Board of Governors.

Received by the Board of Governors February 2, 1967 and ordered printed and submitted to the membership for discussion and action on February 17, 1967.

APPENDIX A

Summary of Executive Reorganization Proposals

- 1909-1912 Peoples Power League proposed transfer of functions of 46 boards and commissions to seven departments headed by individuals appointed by the Governor. Only the Governor and the Auditor would have remained on elective. Plan was to be effected by constitutional amendment.
An initiative measure failed of sufficient signatures to place it before the electorate.
An amendment for a unicameral legislature and proportional representation did receive sufficient signatures but was rejected by the voters in general election of 1912.
- 1913 State Board of Control, consisting of Governor, Treasurer, and Secretary of State, was established through action of the legislature.
- 1917-1919 State reorganization proposals in 1917 Legislature were referred to committee of seven businessmen for study. Report was made to the 1919 Legislature recommending consolidation of agencies into ten executive departments, headed by gubernatorial appointees. Provision was also made for a Lieutenant Governor.
None of recommendations was adopted by the legislature.
- 1923-1925 A number of proposals for reorganization, including consolidation and departmentalization in cabinet form of executive branch, failed in legislative assemblies.
- 1927-1930 Major effort at reorganization resulted in several measures which failed in the 1927 Legislature. An interim study committee was appointed in that year and reported to the 1929 session. A proposed implementing amendment was defeated at the polls in November, 1930.
- 1929-1931 Some piecemeal departmentalization was effected: Departments of Higher Education, Agriculture, State Police were created in 1931.
- 1933 Efforts to establish departmental organization with respect to Business Regulation, Public Health and Welfare failed in 1933 Legislature. An interim committee was appointed to study organization problems.
- 1934-1937 Consolidation in state government was an issue in 1934 gubernatorial campaign. Governor Martin proposed to 1935 session comprehensive departmentalization of administrative functions under appointive power of the Governor. Legislature provided for interim committee to study subject with cooperation of the State Planning Board. Report proposed limited departmentalization, involving Finance, Business Regulation, Conservation and Public Welfare. However, 1937 Legislature did not enact enabling legislation.
- 1949-1951 Legislative Interim Committee on State Government Reorganization—so-called Oregon “little Hoover Commission”—created in 1949. Report placed major emphasis on financial controls and central state services, with a Department of Finance and Administration. The 1951 Legislature provided for establishment of the proposed department.
- 1953-1955 Legislative interim committee study proposed creation of a Department of Revenue. The 1955 Legislature did not approve, but did create a Department of Motor Vehicles.
- 1957-1959 Legislative Interim Committee on Government Reorganization created by 1957 Legislature reported to 1959 session on a number

of reorganization proposals. A "step" or evolutionary approach rather than comprehensive "one-shot" executive branch reorganization was proposed. Recommendations included: continuing development of organization plans for the executive branch; immediate establishment of Departments of Natural Resources and of Revenue; strengthening of Governor's staff; strengthening of fiscal management; coordination of capital improvement programming; central services for boards and commissions.

The report also recommended strengthening the legislature in some respects. The report proposed implementation by executive order and legislative action, avoided recommendations of actions that might involve constitutional amendment.

The 1959 Legislature failed to enact implementing legislation except as to the provision for a Legislative Fiscal Officer.

- 1959-1961 Reorganization study by "blue ribbon" Reorganization Advisory Committee consisting of former Governors Charles A. Sprague (chairman) and Robert D. Holmes (vice-chairman), Senate President Walter J. Pearson; Senator Anthony Yturri, Representatives Robert Elfstrom and W. O. Kelsay; former Labor Commissioner William Kimsey; educators E. B. Lemon, William C. Jones and John M. Swarthout; news commentator Tom McCall; businessmen John Gray, Hillman Lueddemann, and Thomas Sandoz; rancher John Day; and attorneys Robert T. Mautz and C. Girard Davidson.

The report, transmitted by Governor Hatfield to the 1961 Legislature, sought executive policies and agencies responsive to the popular will and proposed departmental grouping, together with strengthening of the chief executive's staff for improved coordination and greater efficiency. The executive branch reorganization proposals called for a cabinet type organization with Departments of Labor, Commerce, Social Services, Education, Public Safety, Transportation and Utilities, General Government Services, and Natural Resources. The plan proposed implementation under legislative enactment; constitutional amendment was not contemplated.

Only the Department of Commerce was established.

APPENDIX B

City Club Studies relating to Constitutional Amendment and Revision

A number of City Club studies has had to do with proposed amendments to the state Constitution. Nearly all of these resulted from the introduction of ballot measures. With one exception, in 1960, all related to *amendments* dealing with separate subjects, and not to multiple-subject or comprehensive *revision*.

All of the investigations are listed below for background information and reference purposes. The exceptional study of 1960, relating to authority for the legislature to propose *revision*, is commented upon at greater length.

Year	Amendment Subject	Committee Recdn.	Club Action	Voters' Action
1920	Ballot. Amendment to provide for longer terms of office for county elective officers.	Yes	Yes	Yes
1921	Ballot. Amendment to lengthen legislative session and increase pay.	Yes	Yes	No
1927	Ballot. Amendment to increase salaries of legislators.	Yes	Yes	No
1927	Ballot. Amendment to permit Portland to establish a metropolitan area.	Yes	Yes	No
1928	Ballot. Amendment limiting authority of legislature on bills voted on by people.	No	No	No
1929	Committee on Government Simplification recommendation of amendments and to provide for city-county consolidation and for county home rule.	—	—	—
1930	Ballot. Amendment for a cabinet form in State government.	Yes	Yes	No
1930	Ballot. Amendment to increase salaries of legislators.	Yes	Yes	No
1930	Ballot. Amendment to provide for filling vacancies in state legislature.	No	No	Yes
1930	Ballot. Amendment to provide for a Lieutenant Governor.	No	No	No
1931	Review of Oregon Public Service Commission.	—	—	—
1933	Ballot. Amendment to permit county manager form of government.	Yes	Yes	No
1936	Ballot. Amendment to increase salaries of legislators, permit fixing by legislature.	Yes	No	No
1938	Ballot. Amendment extending Governor's time for veto.	Yes	Yes	Yes
1938	Ballot. Amendment to increase salaries of legislators.	Yes	Yes	Yes
1940	Ballot. Amendment to increase salaries of legislators.	Yes	Yes	No
1940	Ballot. Amendment to eliminate restrictions on terms of Secretary of State and State Treasurer.	Yes	No	No
1942	Ballot. Amendment to increase salaries of legislators.	Yes	Yes	Yes
1944	Ballot. Amendment to permit county manager form of government.	Yes	Yes	Yes
1946	Ballot. Amendment to modify procedure in bill reading.	Yes	Yes	Yes
1946	Ballot. Amendment to increase number of members in Senate.	No	No	No

Year	Amendment Subject	Committee Recdn.	Club Action	Voters' Action
1946	Ballot. Amendment to provide for succession to office of Governor.	Yes	Yes	Yes
1950	Amendment to fix salaries of legislators.	Yes	Yes	Yes
1950	Amendment to provide for reapportionment of representation in legislature.	No	—	No
1952	Ballot. Amendment to create Legislative Emergency Committee for budgetary control.	No	Yes	Yes
1954	Ballot. Amendment to increase number of voter signatures for constitutional amendment from 8 to 10 per cent.	Yes	Yes	Yes
1954	Ballot. Amendment to permit legislature to fix salaries of members.	Yes	Yes	No
1954	Ballot. Amendment for division of counties into sub-districts for election of Senators and Representatives.	Yes	Yes	Yes
1956	Ballot. Amendment to provide increase in legislators' pay from \$600 to \$1200.	Yes	Yes	No
1958	Ballot. Amendment to provide increase in legislators' pay to \$1200.	Yes	Yes	No
1958	Ballot. Amendment to permit school board members or employees to serve as members of legislature.	No	Yes	Yes
1958	Ballot. Amendment to permit county home rule.	Yes	Yes	Yes
1960	Ballot. Amendment on when elective offices to become vacant.	No	No	Yes
1960	Ballot. Amendment to provide for increased pay for legislators.	Yes	Yes	No
1960	Ballot. Amendment to fix commencement of legislature terms.	Yes	Yes	Yes
1960	Ballot. Amendment to authorize legislature to propose revised Constitution.	Yes	Yes	Yes
1962	Ballot. Amendment for legislative apportionment.	No	No	No
1962	Ballot. Amendment to permit legislature to fix compensation.	Yes	Yes	Yes

Voters' attitudes toward change, as well as subjects of amendments, may be of some interest.

The City Club report most significant and relevant in the present context is that of November 4, 1960, authorizing the legislature to propose a revised Constitution.

The purpose was to amend the Constitution to permit the legislature to revise the Constitution in whole or in part and to refer it to the voters for approval. The legislature would be empowered to propose revision by a two-thirds vote of each House, to submit amendments to the people at the same election as amendments to the revision proposed by the legislature and, alternatively, as an amendment to the existing Constitution. Such alternative amendments may be proposed by initiative or as legislative action by a majority vote.

The Committee report reviewed the legislative proposal and procedure, the background and purpose, the procedure for constitutional amendment, and the need for constitutional revision; it submitted analysis of the proposal and outlined arguments for and against it. The analysis prepared by the Office of Legislative Counsel outlines procedures for proposing to the people revisions of all or part of the Constitution, an entire new Constitution, or revision of a particular article.

The Committee interviewed only four people and apparently did not have time for research in depth.

Majority conclusions and recommendations favored the constitutional amendment authorizing the legislature to propose revisions to the people for adoption. The majority report was signed by Committee members Gunther Krause, Clarence Larkin, John M. Swarthout, and Robert L. Weiss (chairman).

The minority report by Eugene J. Watson concluded that the proposed form of revision was not desirable and that it would substantially remove a substantive right of the people to pass upon constitutional amendments covering only a single subject.

The need of constitutional revision was stated in brief and general (and not very broad or urgent) terms. The report pointed out that many detailed arrangements are included in the Constitution (in contrast to the broad terms of the federal Constitution), that these require frequent amendment as needs and political ideas change, that the Constitution becomes confused and outworn, and that at this stage full revision becomes desirable, if not necessary. The Committee found that the Oregon Constitution, over a century old and amended over a hundred times, still serves adequately. Nevertheless, over-all revision becomes increasingly needed as time goes on, and it would be helpful now, the Committee said, to make the document "more concise, logical, understandable, and up to date."