



Fourth Meeting
April 20 & 21, 2005

LCR 1 & 2
State Capitol Building
Pierre, South Dakota

The fourth meeting of the Constitutional Revision Commission was called to order by Chair Robert A. Miller at 10:05 a.m. (CT), April 20, 2005, in LCR 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Mr. Mark Barnett, Vice Chair Robert Burns, Vice Chair Donald Dahlin, Lieutenant Governor Dennis Daugaard, Mr. Gene Lebrun, Ms. Mary McClure Bibby, Chair Robert A. Miller, Mr. Ronald Olinger, Mr. Robert Roe, Mr. Brent Wilbur, and Supreme Court Justice Steven Zinter. Mr. James Abbott, Mr. Steve Cutler, Mr. Robert Drake, Dr. Sean Flynn, Mr. Jim Hutmacher, and Mr. Larry Lucas were excused.

Staff members present included David L. Ortbahn, Principal Research Analyst; Reed Holwegner, Chief Fiscal Analyst; and Teri Retrum, Senior Legislative Secretary.

(NOTE: For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

Wednesday, April 20, 2005

Approval of Minutes

Mr. David Ortbahn, LRC, noted that the minutes of the December 16, 2005, meeting are designated incorrectly as the minutes from the second meeting. He said that they are the minutes from the third meeting and that the original minutes for the December meeting will be corrected to reflect that change for the permanent record.

MR. OLINGER MOVED, SECONDED BY DR. DAHLIN, THAT THE MINUTES OF THE DECEMBER 16, 2005, MEETING BE APPROVED. The motion prevailed unanimously on a voice vote.

2005 Legislative Activities Regarding the Commission

Discussion with Legislative Leadership

Chair Robert A. Miller noted that he and several other commission members met with legislative leadership and other legislators the last week of January concerning the progression of the commission's study. Chair Miller reported that legislative leaders are supportive of the commission's efforts. At the request of Chair Miller, **Mr. Ortbahn** summarized the discussion of the January meeting. Mr. Ortbahn said that Chair Miller

explained the commission's deliberations thus far and expressed some of the concerns of the commission:

- Whether the commission has the authority to discuss form and style and line item vetoes;
- Appropriations process; and
- Extension of the commission's study for another year.

Mr. Ortbahn listed the following as some of the concerns expressed by the legislators:

- Term limits;
- Conflicts of interest;
- Legislative days; and
- Legislative pay.

Mr. Ortbahn indicated that legislative leadership was agreeable to introducing a bill to address the concerns of the commission.

House Bill 1264—An Act to revise certain provisions regarding the Constitutional Revision Commission

Chair Miller said that HB 1264 extends the commission's study for another year, and, correspondently, revises the commission's reporting dates to the Legislature. Although the legislation was originally drafted to also extend the commission's authority to style and form vetoes and line item vetoes and to the provisions of the constitution dealing with the general appropriations and special appropriations bills, those provisions did not get enough legislative support and were removed from the draft before the bill was introduced. The bill easily passed the House but just barely passed the Senate.

Consequently, the commission still is restricted to discussion of Article III of the South Dakota Constitution and the statutes related to Article III and no other articles of the Constitution.

Stating his opinion that all legislators should be kept apprised of the commission's deliberations, **MR. ROE MOVED, SECONDED BY DR. DAHLIN, THAT COPIES OF ALL THE COMMISSION'S MINUTES BE MAILED TO ALL LEGISLATORS. The motion prevailed unanimously on a voice vote.**

Ms. Mary McClure Bibby asked for the vote on HB 1264 because some commission members might want to contact those legislators who opposed the bill to discuss their concerns.

Mr. Reed Holwegner, LRC, distributed copies of the status of and the vote on HB 1264 in the 2005 Legislature (**Document #1**).

At this time, **Justice Steven Zinter** informed the commission that he would be excusing himself from the discussion of legislative reapportionment on April 21, 2005, because the Supreme Court currently is involved in that matter.

The commission began discussing the following previously mailed documents comparing proposed changes to Article III or existing constitutional provisions to corresponding provisions in the Model State Constitution and the recommendations by the 1974 Constitutional Revision Commission:

- Possible Changes to Certain Obsolete Constitutional provisions (**Document #2**);
- Possible Changes to the Constitution Regarding the Legislative Process (**Document #3**);
- Filling of Legislative Vacancies (**Document #4**);
- Legislative Conflicts of Interest (**Document #5**); and
- Legislative Reapportionment (**Document #6**).

Discussion of Possible Changes to Certain Obsolete Constitutional Provisions

Mr. Ortbahn explained that in Document #2 he only included those sections of Article III that he thought wording could be considered obsolete or antiquated. He indicated that some of these sections include substantive issues that the commission may want to consider at a later date.

Dr. Donald Dahlin expressed his opinion that the commission perhaps first should consider clean-up recommendations to Article III to propose to the voters in one package and later work on any substantive recommendations.

The commission agreed with Dr. Dahlin and began to discuss each of the sections contained in Document #2.

§2 – Number of Legislators – Regular sessions proposed

MR. LEBRUN MOVED, SECONDED BY MR. OLINGER, THAT THE COMMISSION ADOPT THE PROPOSED CLEAN-UP RECOMMENDATION IN § 2 FOR INCLUSION IN A DRAFT RESOLUTION. The motion prevailed unanimously on a voice vote.

§ 3 – Qualifications for legislative office – Officers ineligible

Mr. Lebrun commented that the qualifications for legislative office for senators and representatives are outlined in two separate paragraphs and said that, since the qualifications for each are the same, the two paragraphs could be combined.

Mr. Olinger said that paragraph three of § 3 could be separated from the discussion because it would be more of a substantive matter.

Mr. Wilbur said that the commission could be getting into a conflict of interest issue in paragraph 3.

Mr. Lebrun agreed that the language in paragraph three could be discussed later as a substantive matter.

MR. LEBRUN MOVED, SECONDED BY MR. WILBUR, THAT PARAGRAPHS ONE AND TWO OF § 3 BE COMBINED FOR CLEAN-UP PURPOSES AND THAT DISCUSSION OF PARAGRAPH THREE BE INCLUDED IN THE SUBSTANTIVE MATTERS TO BE DISCUSSED LATER.

Ms. McClure Bibby said that she would prefer that paragraphs one and two be stated in the positive rather than the negative. Mr. Lebrun said that he has no problem with the grammar change and, along with Mr. Wilbur, agreed to include it in his motion.

Mr. Wilbur said that in his opinion some sort of provisions from paragraph three need to be retained.

Mr. Ortbahn said that pages 12 to 17, inclusive, of the "Observations on Article III South Dakota State Constitution Legislative Department" prepared by Mr. Hirsch discuss legislative qualifications. (Note: This document is included in the three-ring binder behind Tab 4.)

Dr. Dahlin said that "qualified elector" means voter and perhaps the word "voter" should be used.

Commission members agreed.

Dr. Robert Burns said that the commission should review the age requirement but that review could be delayed to when substantive changes are discussed. In his opinion, Dr. Burns said that the age requirement to run for legislative office should be lowered from twenty-one years of age to eighteen years of age.

Dr. Dahlin questioned the meaning of the phrase "citizen of the United States" but said that it also would fall under a discussion of substantive matters.

Mr. Olinger said that the phrase "next preceding election" is archaic and should simply state "prior to election."

Commission members agreed.

Now, Mr. Lebrun's original motion, incorporating the agreed to changes, reads as follows:

§ 3. Qualifications for legislative office – Officers ineligible

§ 3. ~~No~~ Any person is eligible for the office of senator or representative who is ~~not~~ a qualified elector voter in the district from which such person is chosen, a citizen of the United States, and who has ~~not~~ attained the age of twenty-one years, and who has ~~not~~ been a resident of the state for two years ~~next preceding~~ prior to election.

~~No person is eligible for the office of representatives who is not a qualified elector in the district from which such person is chosen, and a citizen of the United States, and who has not been a resident of the state for two years next preceding election, and who has not attained the age of twenty-one years.~~

No judge or clerk of any court, secretary of state, attorney general, state's attorney, recorder, sheriff or collector of public moneys, member of either house of Congress, or person holding any lucrative office under the United States, or this state, or any foreign government, shall be a member of the Legislature: provided, that appointments in the militia, the offices of notary public and justice of the peace shall not be considered lucrative; nor shall any person holding any office of honor or profit under any foreign government or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of three hundred dollars, hold any office in either branch of the Legislature or become a member thereof.

This original motion, incorporating the agreed to changes, prevailed on a voice vote. Mr. Barnett cast a NAY vote.

Dr. Burns said that reference to age should be deleted and that the phrase "qualified voter" is the only necessary eligibility required in that regard for seeking legislative office.

DR. BURNS MOVED, SECONDED BY JUSTICE ZINTER, THAT THE REFERENCE TO AGE IN § 3 BE DELETED.

Mr. Olinger said that the age requirement belongs in the substantive discussion because it goes beyond clean-up.

Dr. Burns said that he believes that there are some clean-up changes that could be made to paragraph three.

MR. OLINGER MADE A SUBSTITUTE MOTION, SECONDED BY MR. BARNETT, THAT THE COMMISSION ADDRESS CLEAN-UP CHANGES FIRST AND THEN WORK ON SUBSTANTIVE MATTERS LATER.

Mr. Mark Barnett said that it is worthwhile to work on clean-up first. The commission will have done a service even if only the clean-up portion aspect of its work is passed by the voters. Mr. Barnett said that he would be concerned that the revisions would be defeated if clean-up changes are combined with substantive changes.

The substitute motion prevailed unanimously on a voice vote.

§ 4. Disqualification for conviction of crime – Default on public money

Mr. Lebrun asked if a convicted felon who has been pardoned is eligible to vote.

Mr. Barnett answered that if a person pleads guilty to a felony and receives a suspended imposition of sentence that person is eligible to vote.

Mr. Ortbahn said that page 18 in Mr. Hirsch's document begins discussion on § 4.

Mr. Wilbur said that § 4 needs more clean-up.

Dr. Burns said that he thought a gubernatorial pardon restores all privileges to a person.

MR. LEBRUN MOVED, SECONDED BY MR. WILBUR, THAT CLEAN-UP CHANGES TO § 4 BE MADE AS FOLLOWS:

§ 4. Disqualification for conviction of crime – Default on public money

§ 4. No person who has been, ~~or hereafter shall be,~~ convicted of bribery, perjury, or other infamous crime, nor any person who has been, or may be collector or holder of public moneys, who shall not have accounted for an paid over, according to law, all such moneys due from him, a felony shall be eligible to serve in the Legislature ~~or to any office in either branch thereof.~~

The motion prevailed unanimously on a voice vote.

The commission recessed at 11:50 a.m. and reconvened at 1:05 p.m.

§ 6. Legislative terms of office – Compensation – Regular sessions

Mr. Lebrun suggested that paragraphs three and four be combined and that language concerning salary be updated to reflect actual practice.

MR. LEBRUN MOVED, SECONDED BY DR. DAHLIN, THAT PARAGRAPHS THREE AND FOUR OF § 6 BE COMBINED AND THAT LANGUAGE CONCERNING SALARY BE UPDATED TO REFLECT ACTUAL PRACTICE.

Dr. Dahlin commented that staff would be able to develop the correct language regarding salary.

The commission discussed reviewing the lengths of legislative sessions, length of legislative terms, and term limits at a later date when the commission discusses substantive matters.

The motion prevailed on a voice vote.

§ 8. Oath required of legislators and officers – Forfeiture of office for false swearing

Mr. Ortbahn referred the commission to page 31 of Mr. Hirsch's document for discussion on this section.

Dr. Dahlin said that perhaps § 8 could be deleted altogether since oaths of office are covered elsewhere.

Mr. Olinger said that in his opinion § 8 should remain as is because removing it could be misinterpreted by the voters.

MR. OLINGER MOVED, SECONDED BY MR. WILBUR, THAT THE COMMISSION ADOPT § 8 AS DRAFTED. The motion prevailed on a voice vote. Mr. Barnett cast a NAY vote.

§ 11. Legislator privilege from arrest – Freedom of debate

Dr. Dahlin asked how this section is currently interpreted.

Dr. Burns said that this is older language and he believes that the language states that legislators cannot be held criminally liable for what they say.

Mr. Lebrun asked whether it could be interpreted to mean that a legislator cannot be asked any questions and said that the language needs to be modernized.

Mr. Ortbahn said that discussion on § 11 can be found on page 40 in Mr. Hirsch's document.

Mr. Wilbur commented that if this section is read literally, it might mean a legislator cannot be picked up for DUI.

Mr. Olinger said that perhaps § 11 should be stricken in its entirety.

Dr. Burns stated his opinion that legislators probably should be immune from some civil penalties due to the nature of their obligation to the public.

MR. WILBUR MOVED, SECONDED BY MR. LEBRUN, THAT CLEAN-UP CHANGES TO § 11 BE MADE AS FOLLOWS:

§ 11. Legislator privilege from arrest – Freedom of debate

§ 11. Senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same; ~~and for words used in any speech or debate in either house, they shall not be questioned in any other place~~ . No member of the Legislature may be questioned in any other place for any speech or debate in the Legislature.

MR. OLINGER MADE A SUBSTITUTE MOTION, SECONDED BY MR. LEBRUN, THAT THE COMMISSION DIRECT STAFF TO DRAFT APPROPRIATE LANGUAGE FOR § 11.

In his opinion, Justice Zinter said that the commission should proceed with caution if it wants to make changes to this section. Justice Zinter said that he prefers to leave it as is.

Mr. Olinger requested more case law on the matter.

Ms. McClure Bibby said that she agreed with Justice Zinter that perhaps this section should remain as is.

No action was taken on the motion or substitute motion.

Chair Miller suggested that further discussion on § 11 be postponed to the next meeting's agenda and that staff develop some options for commission consideration. The commission concurred.

§ 23. Private and special laws prohibited

Mr. Ortbahn said that the proposed change is what the 1974 Constitutional Revision Commission recommended and referred the commission to page seventy of Mr. Hirsch's document for discussion.

Mr. Olinger stated that changes to this section would throw out much of the case law.

Mr. Wilbur commented that changes to this section would be controversial.

Mr. Lebrun suggested that the laundry list of private or special laws that the Legislature is prohibited from enacting would not be substantive change.

DR. DAHLIN MOVED, SECONDED BY MR. BARNETT, THAT THE COMMISSION ADOPT § 23 AS DRAFTED. The motion prevailed unanimously on a voice vote.

§ 24. Release of debt to state or municipality

MR. WILBUR MOVED, SECONDED BY MR. LEBRUN, THAT THE COMMISSION ADOPT § 24 AS DRAFTED. The motion prevailed unanimously on a voice vote.

§ 26. Municipal powers denied to private organizations

Mr. Ortbahn said that this section is commonly referred to as the "ripper clause" and is meant to shield local governments from the Legislature.

Commission members agreed that they would like to read case law regarding this section.

Mr. Wilbur suggested that the Chair appoint a subcommittee to study the issue and report to the commission at its next meeting.

MS. MC CLURE BIBBY MOVED, SECONDED BY DR. DAHLIN, THAT CHAIR MILLER APPOINT A SUBCOMMITTEE OF THREE TO DISCUSS § 26 AND REPORT TO THE COMMISSION AT ITS NEXT MEETING. The motion prevailed unanimously on a voice vote.

Chair Miller appointed Messrs. Wilbur and Barnett and Dr. Burns as a subcommittee to discuss § 26 and report to the commission at its next meeting. Mr. Barnett was named Chair of the subcommittee.

§32. Term limitations for United States congressmen

MR. LEBRUN MOVED, SECONDED BY DR. BURNS, THAT THE COMMISSION ADOPT § 32 AS DRAFTED. The motion prevailed unanimously on a voice vote.

Possible Changes to Constitution Regarding Legislative Process

§ 13. Legislative journals – Recording of yeas and nays

Mr. Ortbahn said that commentary on § 13 could be found on page 46 of Mr. Hirsch's document.

Mr. Lebrun said that the term, journal, implies a written document. He suggested that the term, journal, be changed to the term, record, to be consistent with the Uniform Laws Commission (ULC) definition to reflect the actuality that it is a record that can be retrieved electronically rather than a written document.

MR. LEBRUN MOVED, SECONDED BY DR. BURNS, THAT THE TERM, JOURNAL, BE REPLACED BY THE TERM, RECORD.

Ms. McClure Bibby asked for the definition of record. Mr. Lebrun said that the ULC defines it as a document that can be kept electronically and can also be retrieved. He said that he will provide the exact definition.

Mr. Olinger said he could see no reason to tamper with this section.

Mr. Barnett asked if the change would imply an exact transcript.

Mr. Lebrun withdrew his motion with the consent of the second.

Dr. Dahlin questioned what "time to time" means regarding journal publication.

Lieutenant Governor Dennis Daugaard said that the journal is published on a daily basis.

DR. DAHLIN MOVED, SECONDED BY DR. BURNS, THAT THE COMMISSION ADOPT THE LANGUAGE FROM THE MODEL STATE CONSTITUTION CONCERNING PUBLISHING OF THE JOURNAL BY DELETING "TIME TO TIME" AND INSERTING "DAY TO DAY."

Mr. Wilbur expressed his opinion that the Constitution should not be changed unnecessarily and that he opposes the motion.

Stating his opinion that legislative proceedings should not be held in secret, **MR. LEBRUN MADE A SUBSTITUTE MOTION, SECONDED BY MS. MC CLURE BIBBY, THAT § 13 READ AS FOLLOWS:**

§ 13. Legislative journals--Recording of yeas and nays.

§ 13. Each house shall keep a journal of its proceedings and publish the same ~~from time to time, except such parts as require secrecy~~ pursuant to law, and the yeas and nays of members on any question shall be taken at the desire of one-sixth of those present and entered upon the journal.

The motion prevailed on a voice vote. Mr. Olinger cast a NAY vote.

§ 14. Elections viva voce

Mr. Ortbahn said that discussion on § 14 can be found on page 39 of Mr. Hirsch's document.

Stating that the language should be modernized to reflect actual practice because voting in the House is taken by a voting machine, **MR. OLINGER MOVED, SECONDED BY JUSTICE ZINTER, THAT § 14 READ AS FOLLOWS:**

§ 14. Elections viva voce.

§ 14. In all elections to be made by the Legislature the members thereof shall vote ~~viva voce~~ and their votes shall be entered in the journal.

Mr. Barnett questioned whether this would apply to election of party leaders in the Legislature.

Mr. Lebrun responded that each political party elects its political leaders, and each legislative body elects its officers.

The motion prevailed on a voice vote. Ms. McClure Bibby cast a NAY vote.

§ 15. Open legislative sessions – Exception

Stating his opinion that there should be no legislative meetings closed to the public, Mr. Lebrun offered the following change to § 15:

§ 15. The sessions of each house and ~~of the committee of the whole~~ the committees thereof shall be open, ~~unless when the business is such as ought to be kept secret~~ to the public.

Mr. Ortbahn drew the commission's attention to the second sentence of the recommendation by the 1974 Constitutional Revision Commission and asked whether commission members would be interested in that language.

MR. LEBRUN MOVED, SECONDED BY JUSTICE ZINTER, THAT THE COMMISSION REPHRASE § 15 TO INCORPORATE THE LANGUAGE IN THE SECOND SENTENCE OF THE RECOMMENDATION BY THE 1974 CONSTITUTIONAL REVISION COMMISSION, WHICH READS AS FOLLOWS:

"SESSIONS, JOINT SESSIONS, COMMITTEE MEETINGS AND LEGISLATIVE COMMISSION MEETINGS SHALL BE OPEN TO THE PUBLIC."

Ms. Mc Clure Bibby expressed her opinion that there should be some type of opportunity to hold some discussions in a closed session.

MS. MC CLURE BIBBY MOVED, SECONDED BY MR. WILBUR, TO AMEND THE MOTION AS FOLLOWS:

AFTER "PUBLIC" INSERT "UNLESS TWO-THIRDS MAJORITY OF THE MEMBERSHIP DECLARES IT OUGHT TO BE KEPT SECRET".

Mr. Lebrun stated that when operating in the political arena everything should be open to the public.

Chair Miller announced that the vote would combine both Mr. Lebrun's original motion and Ms. McClure Bibby's motion to amend the amendment.

Unable to determine a voice vote on the combined original motion and the motion to amend the motion, Chair Miller called for a show of hands, which resulted in a 5 to 5 tie. Chair Miller broke the tie by voting AYE, and Mr. Lebrun's motion prevailed as amended.

§ 16. Adjournment of legislative houses

Responding to Mr. Lebrun, Mr. Olinger said that in his opinion § 16 is an important provision because it is a protection to force the legislative process to work. Mr. Olinger said that he cannot see any reason to make changes.

MR. OLINGER MOVED, SECONDED BY MR. ROE, THAT THE COMMISSION LEAVE § 16 AS CURRENTLY WORDED. The motion prevailed unanimously on a voice vote.

§ 17. Reading of bills

Mr. Ortbahn said that discussion on this section can be found on page 53 of Mr. Hirsch's document.

MR. LEBRUN MOVED, SECONDED BY DR. DAHLIN, THAT § 17 BE AMENDED AS FOLLOWS:

§ 17. Reading of bills.

§ 17. Every bill shall be read twice, by number and title once when introduced, and once upon final passage, ~~but one reading at length may be demanded at any time before final passage.~~

Lieutenant Governor Daugaard agreed that the stricken language does not serve any purpose.

The motion prevailed unanimously on a voice vote.

§ 18. Enacting clause – Assent by majority – Recording of votes

DR. BURNS MOVED, SECONDED BY MS. MC CLURE BIBBY, THAT THE COMMISSION LEAVE § 18 AS CURRENTLY WORDED. The motion prevailed unanimously on a voice vote.

§ 19. Signing of bills and resolutions

MR. LEBRUN MOVED, SECONDED BY LIEUTENANT GOVERNOR DAUGAARD, THAT § 19 BE AMENDED AS FOLLOWS:

§ 19. Signing of bills and resolutions.

§ 19. The presiding officer of each house shall, ~~in the presence of the house over which he presides,~~ sign all bills and joint resolutions passed by the Legislature, ~~after their titles have been publicly read immediately before signing,~~ and the fact of signing shall be entered upon the journal.

The motion prevailed unanimously on a voice vote.

§ 20. Origin of bills – Amendment in other house

MR. LEBRUN MOVED, SECONDED BY DR. DAHLIN, THAT THE COMMISSION LEAVE § 20 AS CURRENTLY WORDED. The motion prevailed unanimously on a voice vote.

§ 21. One subject expressed in title

MR. OLINGER MOVED, SECONDED BY MS. MC CLURE BIBBY, THAT THE COMMISSION LEAVE § 21 AS CURRENTLY WORDED. The motion prevailed unanimously on a voice vote.

§ 22. Effective date of acts – Emergency clause

MR. BARNETT MOVED, SECONDED BY MR. OLINGER, THAT THE COMMISSION LEAVE § 22 AS CURRENTLY WORDED. The motion prevailed unanimously on a voice vote.

At this time, continuing to express concern about closed door meetings, Mr. Lebrun asked the commission what its feelings would be to allow closed meetings to discuss gubernatorial appointments but require final action to be taken in public.

Ms. McClure said that would be an improvement.

Dr. Burns suggested that there be a provision requiring all votes to be taken in public.

MR. LEBRUN MOVED, SECONDED BY MR. OLINGER, THAT THE COMMISSION DIRECT STAFF TO DRAFT THE APPROPRIATE LANGUAGE FOR § 15. The motion prevailed unanimously on a voice vote.

Legislative Conflicts of Interest

§ 12. Legislators ineligible for other office – Contracts with state or county

Chair Miller reminded the commission that this is one of the constitutional provisions that the legislative leadership would like to have addressed.

Mr. Roe suggested that the commission add this topic to its list of substantive matters to be discussed later.

Mr. Barnett said that there are some areas which the Attorney General's Office would view as nonobjectionable housekeeping matters:

- Shorten the time that an exiting legislator cannot be involved in a state or county contract from the current one year to six months;
- Remove the county contract from ineligibility; and
- Remove the exclusion of appointments to state boards or commissions from ineligibility.

Mr. Lebrun suggested that a subcommittee be appointed to study this situation and report to the commission at its next meeting.

MR. LEBRUN MOVED, SECONDED BY MR. WILBUR, THAT THE CHAIR APPOINT A SUBCOMMITTEE TO REVIEW § 12 AND REPORT TO THE COMMISSION. The motion prevailed unanimously on a voice vote.

Chair Miller appointed Mr. Lebrun, Dr. Dahlin, Mr. Roe, and Mr. Barnett as the subcommittee. Dr. Dahlin will serve as Chair.

Legislative Vacancies

§ 10. Filling legislative vacancies

Mr. Olinger expressed his opinion that this section should remain as is.

Dr. Burns said that this section clearly deals with separation of powers.

Mr. Wilbur said that his research shows that special elections are held to fill legislative vacancies in the more populous states, whereas gubernatorial appointment to fill legislative vacancies is provided for in more rural states.

Dr. Dahlin stated that, although he believes that the issue would be considered as a substantive measure, the commission should consider discussing whether a gubernatorial appointment at least should be from the same political party in which the vacancy occurs.

Mr. Lebrun agreed.

MR. WILBUR MOVED, SECONDED BY MR. BARNETT, THAT THE COMMISSION LEAVE § 10 AS CURRENTLY WORDED. The motion prevailed unanimously on a voice vote.

Legislative Reapportionment

The commission agreed to proceed with the discussion on legislative reapportionment on Thursday, April 21, 2005.

Committee Discussion

Mr. Ortbahn asked whether the commission wants to discuss legislative compensation at its next meeting.

The commission generally thought that was a good idea and also wanted to review the statutes regarding legislative compensation.

Chair Miller said that the commission has agreed that legislative leadership should be included in all mailings and suggested that they also be invited to attend meetings of the Executive Board to hear any presentation from the commission.

The commission recessed at 4:00 p.m. and reconvened at 8:30 a.m. on Thursday, April 21, 2005.

Thursday, April 21, 2005

Legislative Reapportionment

Justice Zinter excused himself from the following discussion on legislative reapportionment.

Mr. Barnett said that the case presently in court is to decide whether the Legislature can conduct an apportionment other than every ten years. He also said that **Mr. John Guhin** from the Attorney General's Office could be present to provide information.

Dr. Dahlin asked for information from **Mr. Reuben Bezpaletz**, Chief Research Analyst, LRC, regarding legislative reapportionment.

Lieutenant Governor Daugaard said that the commission might want to consider any change to single and dual-member districts to have a delayed effective date so the change would not coincide with an election when legislative members could be swayed to vote a certain way due to their reelection circumstances.

Dr. Dahlin expressed his opinion that any decision regarding this section of the constitution by the commission should be delayed until the Supreme Court decision.

Mr. Guhin spoke on the status of the current litigation. He said that the plaintiffs maintain that Districts 26 and 27 were malapportioned by putting too many Native Americans in District 27 and not enough Native Americans in District 26. Mr. Guhin said that the district court found in favor of the plaintiffs. He said that the Supreme Court decision is expected shortly.

Responding to questions, Mr. Guhin stated the state's opinion is that if the initial reapportionment is not valid then the Legislature not only has the authority but the obligation

to reapportion, and the plaintiffs maintain that only the federal district court should have the authority to reapportion.

Mr. Bezpaletz briefly discussed the background of redistricting.

Responding to questions, Mr. Bezpaletz said that in his opinion South Dakota's Constitution allows for a mixed system of both single-member and multi-member districts. He felt that urban areas would not favor single-member districts, and rural areas would favor single-member districts. He expressed his concern about the following language: "Legislative districts shall consist of compact, contiguous territory and shall have population as nearly equal as is practicable, based on the last preceding federal census." Mr. Bezpaletz said that his main concern is the phrase "as nearly as is practicable" because it leaves an opening for a lawsuit. Regarding an effort to depoliticize the redistricting process, Mr. Bezpaletz said that he would recommend the process in Montana, rather than the process in Iowa. He said that not only is Montana's system a better concept than Iowa's, South Dakota mirrors Montana in many ways, such as the mountain/plains and east river/west river geographical differences.

Chair Miller thanked Messrs. Guhin and Bezpaletz for their participation.

Chair Miller asked whether the commission should have a broad-based committee to review this topic and then discuss it more in depth at another meeting; however, Chair Miller commented that it would be inappropriate for the commission to make a decision on this section until the court action is settled.

Mr. Lebrun said that perhaps the commission could address the single-member district issue. He suggested that the commission invite members of rural and urban areas to the commission's meetings to address their concerns.

Dr. Burns said a subcommittee could review the issue and report to the commission.

MR. OLINGER MOVED, SECONDED BY DR. DAHLIN, THAT THE CHAIR APPOINT A SUBCOMMITTEE TO DISCUSS THE REAPPORTIONMENT ISSUE AND REPORT TO THE COMMISSION AT ITS NEXT MEETING. The motion prevailed unanimously on a voice vote.

Chair Miller appointed Ms. McClure Bibby, Mr. Olinger, and Doctors Dahlin and Burns as such subcommittee. Ms. McClure Bibby will serve as chair.

Commission Discussion and Staff Directives

Justice Zinter was present for this portion of the discussion.

In response to a request from Ms. McClure Bibby, Mr. Ortbahn distributed copies of "Possible Issues in Article III" (**Document # 7**) and listed the following issues that are not contained in Article III but are typically found in the Legislative Article of state constitutions:

- Impeachment powers;

- Confirmation powers;
- Budget and appropriations process;
- Authority of the Legislature to ask for advisory opinions of the Supreme Court; and
- Power to expel and discipline legislative members.

Mr. Ortbahn also commented that the commission at this meeting had not reviewed §§ 1, 7, 9, 25, 27, 28, 29, 30, and 31.

Ms. McClure Bibby asked for information on advisory opinions.

Dr. Dahlin requested information on whether the Legislature has subpoena powers.

Mr. Olinger said that he is interested in the budget and appropriation process. He expressed his opinion that the appropriations committees do not function the way that they should. Mr. Olinger asked for information from other states and how their appropriation process works.

Justice Zinter said that he is not convinced that the commission has the authority to change it, if the appropriations process appears in Article XII.

Mr. Olinger said that if it is a legislative function then he thinks that it is permissible to study the appropriations process.

Mr. Olinger asked when the commission should review statutes related to Legislative Article III.

Mr. Ortbahn indicated that the commission would begin looking at the related statutes at the next meeting.

The commission agreed to consider the following substantive issues at a later date:

- Age requirement to run for legislative office;
- Citizenship of legislators;
- Different lengths of legislative sessions;
- Legislative term limits;
- The phrase, "Legislature shall be a continuous body"; and
- Legislative authority to call itself into session.

The commission also agreed to look at the sections of Article III that were not reviewed at this meeting.

Next Meeting Dates and Adjournment

The commission set September 14 and 15, 2005, and November 16 and 17, 2005, as future meeting dates.

MR. BARNETT MOVED, SECONDED BY LIEUTENANT GOVERNOR DAUGAARD, THAT THE COMMISSION BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The commission adjourned at 9:30 a.m.



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