

Dillard S. Gardner

Borden

C. 2

STUDY
COMMISSION
REPORTS

FILE #8

REPORT OF THE

NORTH CAROLINA

CONSTITUTIONAL COMMISSION



TO THE GOVERNOR AND MEMBERS OF THE GENERAL ASSEMBLY OF
THE STATE OF NORTH CAROLINA

RALEIGH, NORTH CAROLINA

1959

Base-
ment
c.2

N.C. Gen. Assembly. Con-
stitutional Commission

**INSTITUTE OF GOVERNMENT
LIBRARY**

This book must not be taken from the
Institute of Government Building

DATE

111 Corcoran Street
Durham, North Carolina
February 12, 1959

His Excellency,
Governor Luther H. Hodges
and
The Honorable Members of the General Assembly

Gentlemen:

The Commission appointed "to study the State Constitution and submit recommendations with respect to amendments or a revision thereof" (Joint Resolution 33, adopted May 31, 1957) has the honor to transmit the following report. It was made the duty of the Commission to report "on or after December 1, 1958."

The Commission, as constituted by the Joint Resolution and as appointed by the Governor, has served with the exception of Judge John J. Parker, who died while its work was in the initial stages of projection and organization. The members of this Commission have been conscious and regretful of the loss of the advice and guidance of this able jurist, who had served with distinction as a Judge of the United States Court of Appeals for the Fourth Circuit since 1925 and who was experienced in the work of constitutional revision, having been a member of the Commission of 1931-32. As his successor, we have welcomed Judge Johnson J. Hayes, Senior Judge of the United States District Court for the Middle District of North Carolina. The Commission chose as its Chairman Victor S. Bryant, of Durham, and as its Vice Chairman, W. Frank Taylor, of Goldsboro.

The services of Mr. George W. Hardy III, of the Faculty of Law of the University of North Carolina, were secured for the position of Executive Secretary. He has been painstaking in his research and most capable in his varied work. His clear perception of the background of the Commission's studies has been of inestimable benefit.

The Commission gratefully acknowledges the help of the Institute of Government. Its staff, its assembled research materials, its building and accommodations have been repeatedly used. Appreciation is also expressed to Mr. John L. Sanders of the Institute staff for his very competent assistance and to Dr. W. W. Pierson of the University of North Carolina Department of Political Science, whose knowledge and experience in the field of constitutional study have been of great value.

Conferences were held by the full Commission with the Governor, with members of the Council of State and with the Attorney General. The Commission conferred with a number of organizations, and with other legislative study commissions whose spheres of study embraced constitutional issues, notable among them being the Tax Study Commission.

The basic duty of this Commission, as indicated by the Joint Resolution, was that of recommending either amendments to or a revision of the present State Constitution. The studies of the Commission showed that in the history of this Constitution, now ninety years old, 135 amendments have been adopted (out of 158 submitted to the people of North Carolina).

Some provisions are now obsolete and outmoded; some lack clarity. There are duplications in the instrument as it stands, and there is, in the opinion of the Commission, the need for substantive changes in several areas. These considerations led to the conviction that only by revision could the numerous amendments necessary to remedy these defects and fulfill these ends be embodied in a Constitution having orderly sequence. A revised Constitution is, therefore, recommended.

To the end that any question as to the legal propriety of such a recommendation may be resolved in advance, we have been advised in writing by the Attorney General that such a revision, if submitted by the General Assembly to a vote of the people, would meet the legal requirements of the present Constitution.

In the work of revision, the steadfast effort of the Commission, in the style of expression used and in the employment of terms, has been to conserve traditional values and usages to which the people of North Carolina are accustomed. It has also been the effort to conserve the values of accumulated jurisprudence as embodied in the interpretation and construction of the language of the present Constitution. The changes made in many instances were adopted in order to express more clearly the understandings concerning certain provisions of the Constitution which have developed over the years through experience. The analysis of these changes, the reasons for their recommendation, and the merits of the revised version, as well as a brief history of the work of the Commission, are subjects of the commentary prepared by the Executive Secretary.

During the Commission's deliberations many questions of importance were presented. Divergences of opinion arose as to some of these. When, after careful study and debate, these differences still prevailed, they were resolved by majority vote. While we are in general accord, the signing of this report should not be interpreted as precluding any member of the Commission from expressing an individual viewpoint.

The work of the Commission is now completed, and this report is respectfully submitted for consideration by the Governor and members of the General Assembly.

W. Frank Taylor
Vice Chairman

Henry Brandis, Jr.
Harry B. Caldwell
Claude Currie
W. Ed Gavin
Johnson J. Hayes
Herschel V. Johnson
Woodrow Jones

Respectfully submitted,

Victor S. Bryant, Sr.
Chairman

John H. Kerr, Jr.
Charles Aycock Poe
Susie Sharp
William D. Snider
Lindsay C. Warren
Edward F. Yarborough

PERSONAL STATEMENTS

Though I am in general agreement with the recommendations contained in this report, I am constrained to express my opinion concerning the selection of judicial personnel. The draft of this Commission leaves to the General Assembly the choice of a method for selecting District Judges. It is my firm belief that the Constitution should provide for the election of all District Judges and solicitors by the people of the districts which they are to serve. While there is danger of political influence, it is too remote to risk depriving the people of the opportunity to elect the officers who must serve them, and I believe that the elective process of selection should be embodied in the Constitution.

Johnson J. Hayes

My signature to the foregoing Report of the Constitutional Revision Commission does not indicate that I supported each and every proposed revision as set forth in this Report. In the full Commission I questioned the wisdom of some sections adopted and opposed the adoption of certain other sections. I had hoped to find time to prepare and append to this Report a short statement indicating the reasons I questioned the adoption of certain sections and opposed the adoption of others. I hereby reserve the right to make my observations and objections in my capacity as a Member of the General Assembly.

John Kerr, Jr.

As indicated by the text of the letter of transmittal, I am in general accord with the recommendations set forth in this report. I strongly believe that the Senate should be redistricted after each census. However, it is my deep conviction that the membership of the Senate should not be increased, and that the provision contained in the proposed draft concerning redistricting of the Senate is a shocking delegation and unwarranted surrender of a power that should forever remain in the General Assembly without restriction. This provision for the redistricting of the Senate should be deleted, and if not, defeated.

Lindsay C. Warren



Digitized by the Internet Archive
in 2013

<http://archive.org/details/reportofnorthcar19nort>

TABLE OF CONTENTS

INTRODUCTION

	Page
Methods and procedures	ix
Style	x
Content and purpose of report	xi
Objectives	xi
Important aspects of Commission's work	xii

PART I

HISTORICAL DEVELOPMENT OF NORTH CAROLINA'S CONSTITUTION

PART II

TEXT OF PROPOSED CONSTITUTION FOR THE STATE OF NORTH CAROLINA

Article I, Declaration of Rights	5
Article II, Legislative Department	9
Article III, Executive Department	14
Article IV, Judicial Department	18
Article V, Revenue, Taxation, and Public Debt	24
Article VI, Suffrage and Eligibility to Office	27
Article VII, Education	28
Article VIII, Homesteads and Exemptions	31
Article IX, Punishments, Penal Institutions and Public Charities	32
Article X, Militia	33
Article XI, Conventions; Constitutional Amendment and Revision	34
Article XII, Miscellaneous	35

PART III

COMMENTARY ON PROPOSED CHANGES IN CONSTITUTION

Article I, Declaration of Rights	37
Article II, Legislative Department	41
Article III, Executive Department	51
Article IV, Judicial Department	56
Article V, Revenue, Taxation, and Public Debt	69
Article VI, Suffrage and Eligibility to Office	74
Article VII, Education	76
Article VIII, Homesteads and Exemptions	80
Article IX, Punishments, Penal Institutions and Public Charities	81
Article X, Militia	83
Article XI, Conventions; Constitutional Amendment and Revision	84
Article XII, Miscellaneous	87

PART IV

**COMPARATIVE TEXTS OF PROPOSED AND
PRESENT CONSTITUTIONS**

	Page
Article I, Declaration of Rights	93
Article II, Legislative Department	99
Article III, Executive Department	107
Article IV, Judicial Department	113
Article V, Revenue, Taxation, and Public Dept	123
Article VI, Suffrage and Eligibility to Office	127
Article VII, Education	129
Article VIII, Homesteads and Exemptions	133
Article IX, Punishments, Penal Institutions and Public Charities	135
Article X, Militia	137
Article XI, Conventions; Constitutional Amendment and Revision	138
Article XII, Miscellaneous	140

APPENDIX

RESOLUTION NO. 33, GENERAL ASSEMBLY OF 1957	142
LETTER TO ATTORNEY GENERAL OF NORTH CAROLINA	143
LETTER OF ATTORNEY GENERAL TO CONSTITUTIONAL COMMISSION	144

INTRODUCTION

Report of the North Carolina Constitutional Commission to the Governor and Members of the General Assembly of the State of North Carolina

Introduction

Methods and procedures

The North Carolina Constitutional Commission, authorized by resolution of the General Assembly in 1957, was directed to make a "complete and thorough study of the Constitution of North Carolina" and to make its report "on or after December 1, 1958."

Subsequent to the appointment by Governor Luther H. Hodges of the fifteen members of the Commission, Victor S. Bryant, Sr., of Durham was elected Chairman, and W. Frank Taylor, of Goldsboro, was elected to serve Vice Chairman.

In February and March of 1958, the Commission held meetings in Raleigh to receive suggestions from state officials. At a meeting on March 15, 1958, the Chairman announced the appointment of three subcommittees, to which were assigned various articles of the Constitution for study.

The Commission proceeded by having initial study and drafting done by subcommittees. On May 9, 1958, the first subcommittee reports were received. Reports were received on each article of the present Constitution, and recommendations of the subcommittees were accepted, altered, or rejected. When necessary, particular problems were referred to subcommittees for further study and were subsequently reviewed by the full Commission.

In July, an interim draft report was prepared, indicating both the changes made in the present Constitution and the provisions which remained open for study.

By October, 1958, it was possible to prepare a second draft which embodied suggested changes in thirteen of the fourteen articles of the present Constitution. At that time, only a few problems remained for final decision. In December, 1958, final decisions were reached on nearly all provisions of the Constitution except Article IV, Judicial Department. Work on that article was completed in January, and the full draft was prepared for submission as a part of this report.

Research was done by the Commission's Executive Secretary and members of the staff of the Institute of Government. During the latter stages of its work, the Commission received the help of Dr. W. W. Pierson, of the University of North Carolina.

Throughout the period of intensive study, the Commission consulted many individuals and governmental and civic groups. In addition, the efforts of the Commission were co-ordinated with those of other study commissions whose work involved, or might have involved, constitutional changes.

Style

In approaching the problem of style, two ideas were considered: first, the language used in the present Constitution is, in many instances, a part of the traditions of North Carolina, and for this reason changes were made with great caution; second, rules of punctuation and capitalization were not lightly discarded, even though modern usage might appear to make changes desirable or other rules preferable. With regard to both aspects of style, the Commission was acutely aware that the present Constitution is undergirded by ninety or more years of judicial interpretation. Thus, great care has been taken to avoid changes in style which might affect judicial construction of provisions which were not intended to be altered. However, the Constitution of 1868 and its subsequent amendments reflect the styling and influence of many different drafting hands, and in certain instances it was deemed wise to adopt uniform rules of style. Thus, there are certain rules which have been used throughout the proposed document in the interest of uniformity.

As to punctuation, several standard rules have been adopted. Wherever items appear in series, set off by commas, the last item has been set off by a comma placed before the preceding conjunction. A similar rule has been adopted as to clauses in series set off by semi-colons. In such cases, the last clause in series is set off by a semi-colon placed before the preceding conjunction. Another uniform usage has been utilized with regard to punctuation of provisos. In these instances, the word "provided" has been preceded by a colon, the letter "P" capitalized, and the word immediately followed by a comma.

The word "State" is spelled throughout with a capital "S" when the reference is to the State of North Carolina. Titles of officers and offices are capitalized where there is a clear reference to a particular office or officer, even though the full title is not used.

There are a few instances in which titles have been standardized, or in which usages have been standardized when a particular meaning is intended. Illustrative of this type of stylistic change is the fact that the present Constitution uses the word "Legislature" in some provisions and the words "General Assembly" in others. This discrepancy arose primarily from the use, in 1868, of other constitutions, in addition to North Carolina's prior Constitution. The importation of certain provisions from other constitutions apparently carried the term "Legislature" into our present Constitution, and preservation of pre-existing provisions brought forward the term "General Assembly." The title "General Assembly" is used throughout the proposed Constitution.

Two other changes of this character should be noted. First, the present Constitution contains many references to "general elections". In a number of instances it is clear that the reference intended is to an election for members of the General Assembly. Where this meaning is intended, the phrase "election for members of the General Assembly" has been used. The second change is in connection with the many references to the State's electorate, or to the electorate of a county or some other political subdivision. In some instances, the present Constitution uses the words "qualified electors;" in others, the words "qualified voters" are used; in several

places, the Constitution simply states that a particular question shall be submitted to a "vote of the people." The phrase "qualified voters" has been used in the draft.

Changes in style have been made in the interest of uniformity. No alterations of this character have been made with the intent of changing the meaning of the present Constitution.

Content and purpose of report

The report which follows this introductory statement is comprised of four sections.

Part 1 traces the development of North Carolina's Constitution. This is included for two purposes: first, to offer the reader some background in the historical foundations of the Constitution of North Carolina and the traditions which have become so essential in the life of her people; second, to give some elaboration of the reasons which prompted the Commission to submit a proposed Constitution rather than a series of amendments dealing with isolated problems.

Part 2 sets forth the revised Constitution as proposed by the Commission. Part 3 contains commentaries on the changes which have been proposed. In Part 4 the left column presents the text of the proposed draft and the right column contains the corresponding provisions of the present Constitution.

In Part 3 the changes reflected in each article are discussed under the following headings: substantive changes; drafting changes; sections transferred to or from the article discussed; sections of the present Constitution eliminated from the proposed draft; internal reorganization of the article. It is hoped that these comments will aid in understanding what changes have been recommended, and, to some degree at least, why such changes have been proposed.

Part 4, containing the texts of the proposed and present Constitutions, is intended to give the reader some basis for his own analysis of the changes discussed in Part 3.

Objectives.

The mandate to "make a complete and thorough study of the Constitution" was broad in scope. In the preliminary stages of the work it was felt by many members of the Commission that the study might be narrowed to a few major problem areas and that the remainder of the document might be left undisturbed.

Nevertheless, it soon became apparent that there were numerous instances in which changes appeared desirable. The desirability of such changes and the interrelationship of provisions directly affected with those in other parts of the Constitution led the Commission to conclude that work should proceed with the intention of drafting and proposing to the General Assembly a complete Constitution.

In addition to this fundamental decision, certain other objectives were set, some in the early planning of revision, others evolving from progress in the work itself. In brief form, these objectives were as follows:

1. To isolate and deal with major problems affecting the life and government of the people of North Carolina; to suggest solutions to these major problems; and to offer adequate explanations of both the problems and the suggested solutions.
2. To eliminate obsolete provisions of the present Constitution.
3. To clarify, by redrafting, those provisions which appeared to be unsatisfactory.
4. To avoid change solely for the sake of change, leaving intact those provisions which do not present major problems or which are not obsolete or obscure.
5. To reorganize the various articles of the Constitution so that the provisions of each article are logically and consistently presented.

Though deprived of the wisdom and active leadership of the late John J. Parker, for many years Chief Judge of the United States Court of Appeals for the Fourth Circuit, the Commission believes his statement of the purposes of a Constitution best epitomizes the goal toward which the Commission has worked:

The purpose of a State Constitution is two-fold: (1) to protect the rights of the individual from encroachment by the state; and (2) to provide a framework of government for the state and its subdivisions. It is not the function of a constitution to deal with temporary conditions, but to lay down general principles of government which must be observed amid changing conditions. It follows, then, that a constitution should not contain elaborate legislative provisions, but should lay down briefly and clearly the fundamental principles upon which the government shall proceed, leaving it to the people's representatives to apply these principles through legislation to conditions as they arise.*

Important aspects of the Commission's work

The following statement gives a brief indication of what the Commission deems to be the more important aspects of its work. It does not purport to be a comprehensive summary, but calls attention to only a few of the fifty-eight recommendations of substantive change made by the Commission.

Legislative department. The most significant recommendations of the Commission in this area are those concerning legislative representation. The Commission considered two aspects of the problem of reapportionment: first, membership of the two houses of the General Assembly; second, the methods of reapportioning House representation and of redistricting Senate districts.

The Commission has recommended no change in the number of Representatives. However, it is recommended that Senate membership be increased from fifty to sixty.

As to methods of reapportionment and redistricting, recommendations are made concerning both houses. In the House of Representatives, membership is distributed according to a constitutionally prescribed mathematical formula, the application of which should be a ministerial function appropriately assigned to the Speaker of the House as a duty of his office. The proposed draft directs the Speaker to apply the formula every ten

* As quoted in "The Proposed Constitution for North Carolina," *Popular Government*, Vol. 1, No. 4; June 1, 1934; p. XVI.

years. Entry of the new apportionment on the journal of the House will have the effect of an act of the General Assembly.

In the Senate, the procedure of drawing lines for senatorial districts involves considerations of a discretionary character. In an effort to insure redistricting without removing final control of the procedure from the General Assembly, the Commission suggests that every ten years a committee composed of the President of the Senate, the President pro tem. of the Senate, and the Speaker of the House be charged with the duty of placing before the General Assembly a proposal for redistricting the State for Senators. If the General Assembly fails to alter or revise it, the proposal will have the force and effect of an act of the General Assembly.

A second change in the legislative department which is considered of great importance is the recommendation that pay of members of the General Assembly be increased from fifteen to twenty dollars per day. Similarly, it is recommended that the pay of presiding officers be increased from twenty to twenty-five dollars per day.

Executive Department. The most important recommendations in Article III deal with succession to executive offices and determination of incapacity of executive officers. In an effort to clarify the present Constitution, the Commission proposes amendments which would specify the conditions under which the Lieutenant-Governor succeeds to the office of Governor, and those under which he merely becomes acting Governor. To allow some flexibility in the event of major disaster, the proposed draft gives the General Assembly power to determine the order of succession to the office of Governor below the office of Lieutenant-Governor.

Although there are now provisions governing the filling of vacancies in executive offices, other than that of Governor, there is no assurance in the present Constitution of continuity in the functioning of these offices pending appointment to fill a vacancy or during temporary incapacity of executive officers. To insure continuity in the performance of official acts, the Governor is given power to appoint an acting officer pending appointment to fill a vacancy or during temporary physical or mental incapacity of an executive officer.

While the present Constitution prescribes the order of succession to the governorship in the event of the Governor's "inability to discharge the duties of his office," no machinery has ever been provided for determining when such inability exists or when it has terminated. The Commission recommends that incapacity of the Governor be determined by the General Assembly upon a vote of two thirds of the members of each house. A simple majority only would be required to restore him to active duty. In either instance, the Governor would be entitled to a hearing. In the event the General Assembly is not in session when such an emergency arises, four members of the Council of State are authorized to convene the General Assembly to deal with the matter.

The General Assembly is given authority to provide methods for determining incapacity of executive officers other than the Governor, and, in the event of temporary incapacity, procedures for restoring them to active duty.

Another recommendation is to delete the present prohibition against increasing the compensation of executive officers during their terms. The

prohibition against reducing their salaries remains. The effect is, in this respect, to give executive officers the same status which judges have had since 1836.

Judicial department. The most far-reaching recommendation in Article IV is that which requires establishment of a system of inferior courts uniform throughout the State, superseding all presently existing inferior courts, including those of justices of the peace. The effective date of this change is January 1, 1965; thus, adequate time is allowed for the General Assembly to consider and enact necessary transitional legislation.

The basic structure and methods of selecting judges of the Supreme and Superior Courts are left virtually as they are today, except that the General Assembly is left free to continue, revise, or abolish the present system of rotation for Superior Court Judges. In view of the probability that the workload of the Supreme Court will increase, the General Assembly is empowered, in its discretion, to increase the number of Associate Justices of the Supreme Court from the present six to not more than eight. The Assembly is also empowered, upon recommendation of the Supreme Court, to establish an appellate court between the Supreme and Superior Courts. If such a court is established, the Assembly will determine its structure and organization, while the Supreme Court will prescribe its rules of procedure and, subject to constitutional limitations, determine its jurisdiction.

The new inferior courts, designated District Courts, will have judges, selected in some uniform manner to be prescribed by the General Assembly, and Trial Commissioners appointed by a regular Superior Court Judge from nominations made by the Chief District Judge. The General Assembly will determine by uniform laws the jurisdiction and powers of Superior Courts, Clerks of the Superior Courts, District Courts, and Trial Commissioners. The Superior Courts will have original jurisdiction of all matters not exclusively assigned elsewhere by the Assembly.

A new provision prohibits making the compensation of any judge or Trial Commissioner depend upon his decision or the collection of costs. All courts together comprise a General Court of Justice in which is vested all of the judicial power of the State except such as is vested by the Constitution in the Court for the Trial of Impeachments and except for such incidental judicial powers as the General Assembly may vest in administrative agencies.

The Assembly may exercise or delegate the power to prescribe rules of procedure, except that the Supreme Court is to prescribe its own rules and those of the intermediate appellate court, if established. The Assembly is also to provide for a proper system of appeals. Costs in trial courts are to be fixed, on a uniform basis, by the General Assembly, while costs in appellate courts will be fixed by the Supreme Court.

Some changes are made in the provisions dealing with removal of judges and clerks. Several proposals affect solicitorial districts and solicitors. The Attorney General is charged with the duty of recommending redistricting of solicitorial districts when he determines "that there is serious imbalance in the workloads of the solicitors or that there is other good cause." Solicitors are obligated to perform such duties as the Attorney General may require in relation to appeals in criminal cases from Superior Courts in their respective districts. The General Assembly is authorized

to prescribe duties for Solicitors, other than those enumerated in the Constitution, and to prescribe the manner in which criminal actions in courts inferior to the Superior Court shall be prosecuted.

The General Assembly is directed to provide a uniform, statewide system of listing and drawing both grand and petit jurors. Except in cases potentially involving capital punishment or life imprisonment, written waiver of jury trial is permitted in all criminal actions, provided the judge consents and, in felony cases, defendant's counsel also consents.

All reference to the offices of coroner and constable are deleted from the Constitution; however, such action does not abolish these offices.

Taxation. There are several proposals of importance in this field. One of the more significant changes relates to property taxation. The recommendations of the Constitutional Commission in this area are the same as those proposed by the Tax Study Commission. Essentially, the intent of the changes is to insure that the same class of property shall occupy the same status as a part of the property tax base in every county or other local taxing unit of the State. To this end, the proposed Constitution requires that every classification and every exemption of property for purposes of taxation be made by uniform rule, applicable in every local taxing unit of the State. With the exception of the power to classify trades and professions for local license tax purposes, the General Assembly is clearly forbidden to delegate its powers of classification and exemption.

The Commission also proposes certain modifications in the minimum income tax exemptions contained in the present Constitution. One principal effect of these changes is to avoid construction of these provisions in such a manner as to place the General Assembly under a constitutional obligation to provide a wife with separate income a deduction of \$1,000 when her husband is already being given the \$2,000 deduction granted married men living with their wives.

Another change which should be noted is the elimination of the provisions of the present Constitution dealing with levy of the capitation tax and prescribing the manner in which proceeds of such a tax must be distributed. However, the elimination of these provisions does not bar the Assembly from levying such a tax.

Education. One recommendation of the Commission deletes the present provision granting to the State Board of Education broad, general supervisory and administrative powers over the public schools, over and above the specific powers granted to the Board in the Constitution. The deleted provisions are replaced by a clause authorizing the General Assembly to prescribe the powers of the Board in so far as they are not constitutionally defined. This insures the General Assembly a voice in the decision of questions of great public importance, without restricting its authority to grant to the Board such powers of control as it may deem advisable. For similar reasons, the State Superintendent of Public Instruction is made "the chief administrative officer" of the Board, rather than the "administrative head of the school system" as in the present Constitution.

Several changes are proposed in existing provisions to eliminate the possibility of conflict with present Section 12 of Article IX, which permits the closing of public schools in local option units when the qualified voters of such units vote to do so. These changes include the insertion of ap-

appropriate cross references and substitution of "public schools" for such phrases as "a general and uniform system of public schools."

In consequence of decisions of the United States Supreme Court, the authority of which has been recognized by the North Carolina Supreme Court, the present provision requiring separation of the races in the public schools has lost its former legal effectiveness and is therefore deleted.

Conventions; constitutional amendment and revision. Since 1835 the Constitution of North Carolina has provided alternative modes of constitutional revision or amendment: first, a Convention of the People may adopt a new or revised Constitution or constitutional amendments, without necessarily submitting them to the people for ratification or rejection; and second, the General Assembly may submit proposed amendments to the people for their ratification or rejection.

The Convention of the People, an instrument for expressing the sovereign will of the people, has been used for various purposes in North Carolina. However, its principal use has been as a means of accomplishing constitutional changes. The Commission has sought to preserve the convention as a means for expression of the sovereign will.

A great body of custom has been built up around the Convention in North Carolina. To avoid the necessity of looking to history and custom for precedent in calling conventions, the Commission has proposed changes which will set forth clearly understandable procedures and requirements as to calling, membership, and limitations on the power of a convention.

The revised Constitution also makes clear the fact that either the Convention or the legislative initiation method may be used to propose a completely new or revised Constitution as well as amendments to the existing Constitution.

Saving Clause. To insure continuity of laws and to minimize abrupt changes in laws, the proposed Constitution contains a provision which preserves all provisions of the present Constitution not in conflict with those of the proposed Constitution. Under the terms of the section, those portions of the present Constitution not in conflict with the proposed draft would remain in force as statutory law until altered, revised, or repealed by the General Assembly.

PART I:

**Historical Development of North Carolina's
Constitution**

Historical Development of North Carolina's Constitution

After an unsuccessful attempt to frame a "temporary Civil Constitution" in May, 1776, the Provincial Congress of North Carolina established a Council of Safety to govern until the next Congress. That body, by resolution of August 9, 1776, declared that delegates elected to the Congress to be held in November, 1776, would be vested with the power to adopt a fixed and permanent Constitution of the Independent State of North Carolina.

Pursuant to its mandate, the Provincial Congress, on December 17, 1776, promulgated the Declaration of Rights. The following day, the Congress ratified a Constitution, incorporating the Declaration of Rights by reference. Excluding the Declaration, North Carolina's first Constitution contained only forty-six sections and was not divided into articles.

Contained in that first document were the seeds of certain fundamental ideas which have become a part of the political traditions of this State: a strong General Assembly; an executive department composed of a Governor and Council of State; a judicial branch—all of which were intended to be and remain separate from each other. A striking feature of the first Constitution, however, was that the Governor, Council of State, and judges were all elected by the General Assembly.

The Constitution of 1776 was not an elaborate instrument of government. It was adopted quickly and was not conditioned or shaped by experience in many respects. As a result, lessons learned in the school of practical, everyday government during the next thirty to forty years bared a number of flaws in the Constitution of 1776.

In 1835 a convention was called which was directed by the people to frame certain amendments and was granted authority to draw up certain others. Pursuant to the mandate of the people, the convention met in Raleigh on June 4th, 1835. On July 11th of that year it adjourned. The previous day it had adopted a slate of amendments which were later submitted to the people and ratified.

Among the changes made as a result of the Convention of 1835 several are worthy of special note. The growing desire of the people for a more direct voice in the selection of their executive officers was manifested by a change making the Governor an elective officer, responsible directly to the people. Changes in population distribution and the expansion of the settled area of the State were accommodated by changes in the system of apportioning legislative representation. The provisions of the present Constitution governing the size of the two Houses of the General Assembly and the method of apportioning representation in the House of Representatives are the same provisions which were drafted by the Convention of 1835.

Dissatisfaction with secret voting in election of officers by the General Assembly resulted in the requirement that all elections by that body be by voice vote.

A great flood of private and special legislation concerning divorces, changing of names, restoration of rights of citizenship to felons, and legitimation of persons born out of wedlock had jammed the legislative machinery. In one year, 94% of the total work of the General Assembly

consisted of local, private, and special legislation. This resulted in prohibitions against certain types of local, private, and special legislation.

A realization of the fact that judges must be as independent as possible from outside influence or any hint of coercion resulted in a prohibition against lowering the salary of any judge during the term for which he was elected.

Most of these changes were the result of practical experience. They were realistic steps intended to achieve greater efficiency in government.

The next crucial period in North Carolina's constitutional history came in the tragic years of the Civil War period. The Convention of 1861-2 removed North Carolina from the Union. The Convention of 1865-66 brought the State back into the Union, abolished slavery, and drafted a constitution which was later rejected by the people. A new Constitution was finally adopted subsequent to the convention of 1868, and that document is essentially the one under which we live at the present time.

Surprisingly enough, and despite the unsavory label of "Reconstruction Constitution," that instrument was, for its day, a remarkably sound, progressive document. For the first time such topics as taxation, local government, private corporations, public welfare, and debtors' homestead exemptions, were brought into the Constitution.

In this Constitution, the system of apportioning senatorial representation was altered. Since 1835, representation had been based upon tax contributions. Since 1868, membership has been drawn from geographical districts as nearly equal in population "as may be."

Further extension of the direct control of the people over their public officers was wrought by the establishment in the Constitution of the elective offices of Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Works (abolished in 1873), Superintendent of Public Instruction, and Attorney General. Also for the first time, judges became elective officers.

Amendments were made by legislative initiation in 1873 and by convention in 1875. Major revision of Article VI, governing suffrage and elections, was made at the turn of the century. A further effort at limiting the volume of local, private, and special legislation was made by amendments in 1917.

A notable attempt at constitutional revision was made in 1933 as a consequence of the work of a Commission created in 1931. However, the proposed Constitution was never voted upon by the people. Several amendments were submitted to the people in 1935. These amendments authorized enlargement of the Supreme Court, authorized a limited property tax exemption for homes occupied by owners, authorized an increase in the income tax rate, placed new restrictions on public debt, and granted the General Assembly power to classify property for purposes of taxation. The amendments were adopted, but they were not a substitute for complete revision.

The frequent patching of North Carolina's Constitution by item amendments has resulted in inconsistency and obscurity; some provisions have become obsolete. Since 1868, the people of North Carolina have had one hundred and fifty-eight opportunities to amend their Constitution. On one hundred and thirty-five occasions they have done so. Provisions have been inserted without regard to internal organization of the document; short-cuts have sometimes been taken to avoid amending more than one section

when two or three should have been amended; transitional provisions accompanying amendments are long out of date.

It is because the Constitutional Commission believes that there are several major areas in which present needs demand changes and that the process of amendment has brought defects in the present Constitution that a revised Constitution is respectfully proposed.

Despite its belief that a revised Constitution should be adopted by the people of North Carolina, the Commission also believes that certain ideas and characteristics comprise a part of the traditions and life of the people of this State, have stood the test of time, and should be left undisturbed. It is with the hope that recognition has been given to current problems without damaging fundamental principles that the Commission has submitted this report.

PART II:

**Text of Proposed Constitution for the State of
North Carolina**

Proposed Constitution of North Carolina

Preamble

We, the people of North Carolina, acknowledging our dependence upon Almighty God and our allegiance to the United States of America, do, for the more certain assurance of the blessings of liberty and freedom, and for the better government of the State, ordain and establish this Constitution:

Article 1, Declaration of Rights

To insure recognition and establishment of the essential principles of liberty and free government, and to define and affirm the relations of this State and its people to the government and people of the United States, we do declare that:

Section 1. The equality and rights of persons. We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Section 2. Political power and government. All political power is vested in, and derived from, the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 3. Other rights of the people. The enumeration of rights in this Constitution shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people.

Section 4. Internal government of the State. The people of this State have the inherent, sole, and exclusive right of regulating the internal government and policies thereof, and of altering or revising their Constitution and form of government whenever it may be necessary for their safety and happiness; but every such right should be exercised in pursuance of law and consistently with the Constitution of the United States.

Section 5. Allegiance to the United States. This State shall ever remain a member of the American Union; every citizen of this State owes paramount allegiance to the Constitution and government of the United States; and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Section 6. Exclusive and hereditary emoluments. No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services; and no hereditary emoluments, privileges, or honors ought to be granted or conferred in this State.

Section 7. Perpetuities and monopolies. Perpetuities and monopolies are contrary to the genius of a free state, and ought not to be allowed.

Section 8. Of the power of suspending laws. All power of suspending laws or the execution of laws, by any authority, without the consent of

the representatives of the people, is injurious to their rights, and ought not to be exercised.

Section 9. Representation and taxation. The people of the State ought not to be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in General Assembly, freely given.

Section 10. Elections. For redress of grievances and for amending and strengthening the laws, elections should be often held. All elections ought to be free.

Section 11. Property qualification. Political rights and privileges are not dependent upon, or modified by, property; therefore, no property qualification ought to affect the right to vote or hold office.

Section 12. Right of the people to assemble together. The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances. But secret political societies are dangerous to the liberties of a free people and should not be tolerated.

Section 13. Religious liberty. All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

Section 14. Freedom of speech and of the press. Freedom of speech and of the press are two of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of the same.

Section 15. Involuntary servitude. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the parties shall have been duly convicted, shall exist within this State.

Section 16. Education. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Section 17. Ex post facto laws. Retrospective laws, punishing acts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore, no *ex post facto* law ought to be made. No law taxing retrospectively sales, purchases, or other acts previously done, ought to be passed.

Section 18. Courts shall be open. All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law and right and justice administered without favor, denial, or delay.

Section 19. Right to due process of law. No person ought to be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.

Section 20. Habeas corpus. Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed; and the privilege of the writ of habeas corpus shall not be suspended,

Section 21. Rights of accused. In all criminal prosecutions every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not to be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Section 22. Answers to criminal charges. No person shall be put to answer any criminal charge, except as hereinafter allowed, but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in all except capital cases.

Section 23. Right of jury. Subject to the provisions of Article IV of this Constitution, no person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open court. The General Assembly may, however, provide other means of trial for petty misdemeanors, with the right of appeal.

Section 24. Excessive bail. Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Section 25. General warrants. General warrants, whereby any officer or other person may be commanded to search suspected places, without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

Section 26. Imprisonment for debt. There shall be no imprisonment for debt in this State, except in cases of fraud.

Section 27. Treason against the State. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Section 28. Controversies at law respecting property. In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable. No person shall be excluded from jury service on account of sex.

Section 29. Militia and the right to bear arms. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power. Nothing herein contained shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against said practice.

Section 30. Quartering of soldiers. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner prescribed by law.

Section 31. Recurrence to fundamental principles. A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Section 32. The legislative, executive and judicial powers distinct. The legislative, executive, and supreme judicial powers of government ought to be forever separate and distinct from each other.

Article II, Legislative Department

Section 1. Two branches. The legislative authority shall be vested in two distinct branches, both dependent on the people, to-wit: a Senate and House of Representatives.

Section 2. Time of assembly. The Senate and House of Representatives shall meet biennially on the first Wednesday after the first Monday in February next after their election, unless a different day shall be provided by law; and when assembled, shall be denominated the General Assembly. Neither House shall proceed upon public business unless a majority of all the members are actually present.

Section 3. Number of Senators. Beginning with the regular session of 1965, the Senate shall be composed of sixty Senators, biennially chosen by ballot. Until such time, the Senate shall be composed of fifty Senators.

Section 4. Regulations in relation to districting the State for Senators. The Senate Districts shall be so altered at the regular session of the General Assembly in 1963 and thereafter at the first regular session convening after the return of every enumeration by order of Congress, that each Senate District shall contain, as near as may be, an equal number of inhabitants, excluding aliens, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory. No county shall be divided in the formation of a Senate District, unless such county shall be equitably entitled to two or more Senators.

At the regular session of the General Assembly in 1963 and thereafter at the first regular session convening after the return of every enumeration by order of Congress, a committee, composed of the President of the Senate as chairman, the President *pro tempore* of the Senate, and the Speaker of the House of Representatives, shall make a proposal for re-districting the State for Senate Districts. The proposal shall be presented to the General Assembly on or before the sixtieth calendar day of the session. If the General Assembly has not acted, either altering or revising the proposal, upon adjournment of the session the proposal shall have the force and effect of an act of the General Assembly and shall become effective at the next election for members of the General Assembly.

Section 5. Regulations in relation to apportionment of Representatives. The House of Representatives shall be composed of one hundred and twenty Representatives, biennially chosen by ballot, to be elected by the counties respectively, according to their population, and each county shall have at least one Representative in the House of Representatives, although it may not contain the requisite ratio of representation. This apportionment shall be made by the Speaker of the House of Representatives at the first regular session of the General Assembly convening after the return of every enumeration by order of Congress. The formula set out in Section 6 of this article shall be applied by the Speaker and the new apportionment entered on the journal of the House of Representatives on or before the sixtieth calendar day of the session. When so entered, the new apportionment shall have the same force and effect as an act of the General Assembly, and shall become effective at the next election for members of the General Assembly.

Section 6. Ratio of representation. In making the apportionment in the House of Representatives, the ratio of representation shall be ascertained by dividing the amount of the population of the State, exclusive of that comprehended within those counties which do not severally contain the one hundred and twentieth part of the population of the State, by the number of Representatives, less the number assigned to such counties; and in ascertaining the number of the population of the State, aliens shall not be included. To each county containing the said ratio and not twice the said ratio there shall be assigned one Representative; to each county containing twice but not three times the said ratio there shall be assigned two Representatives, and so on progressively; and then the remaining Representatives shall be assigned severally to the counties having the largest fractions.

Section 7. Qualifications for Senators. Each member of the Senate shall be a qualified voter of the State, shall be not less than twenty-five years of age, shall have resided in the State as a citizen two years, and shall have resided in the district for which he was chosen one year immediately preceding his election.

Section 8. Qualifications for Representatives. Each member of the House of Representatives shall be a qualified voter of the State, and shall have resided in the county for which he is chosen one year immediately preceding his election.

Section 9. Election for members of the General Assembly. The election for members of the General Assembly shall be held for the respective districts and counties, at the places where they are now held, or may be directed hereafter to be held, in such manner as may be prescribed by law, on the first Tuesday after the first Monday in November, in the year 19—, and every two years thereafter. But the General Assembly may change the time of holding the elections.

Section 10. Terms of office. The terms of office for Senators and members of the House of Representatives shall commence at the time of their election.

Section 11. Oath of members. Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States, and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Section 12. Vacancies. If a vacancy shall occur in the General Assembly by death, resignation, or otherwise, the said vacancy shall be filled immediately by the Governor appointing the person recommended by the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election.

Section 13. Pay of members and presiding officers of the General Assembly. The members of the General Assembly for the term for which they have been elected shall receive as a compensation for their services the sum of twenty dollars per day for each calendar day of their session for a period not exceeding one hundred and twenty days. The compensation of

the presiding officers of the two Houses shall be twenty-five dollars per day for a period not exceeding one hundred and twenty days. Should an extra session of the General Assembly be called, the members and presiding officers shall receive a like rate of compensation for a period not exceeding twenty-five days. The members and presiding officers shall also receive, while engaged in legislative duties, such subsistence and travel allowances as shall be established by law: Provided, such allowance shall not exceed those established for members of State boards and commissions generally. The Lieutenant-Governor shall receive, for his non-legislative duties, such compensation as shall be fixed by the General Assembly.

Section 14. Powers of the General Assembly. Each House shall be judge of the qualifications and election of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be passed into laws; and the two Houses may also jointly adjourn to any future day, or other place: Provided, either House may, of its own motion, adjourn for a period not in excess of three days.

Section 15. President of the Senate. The Lieutenant-Governor shall be President of the Senate, but shall have no vote unless the vote in the Senate be equally divided.

Section 16. Other senatorial officers. The Senate shall choose from its membership a President *pro tempore*, who shall become President of the Senate upon the failure of the Lieutenant-Governor-elect to qualify, or upon succession by the Lieutenant-Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President *pro tempore* shall preside over the Senate. The Senate shall elect its other officers.

Section 17. Officers of the House. The House of Representatives shall choose its Speaker and other officers.

Section 18. Election of Officers. In the election of all officers whose appointment shall be conferred upon the General Assembly by the Constitution, the vote shall be *viva voce*.

Section 19. Bills and resolutions to be read three times. All bills and resolutions of a legislative nature shall be read three times in each House before they pass into laws, and shall be signed by the presiding officers of both Houses.

No law shall be passed to raise money on the credit of the State, or pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each House of the General Assembly and passed three several readings, which readings shall have been on three different days, and agreed to by each House respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal; the first reading of such a bill in one House may be had on the same day on which the third reading was had in the other House.

Section 20. Style of the acts. The style of the acts shall be: "The General Assembly of North Carolina do enact:".

Section 21. Journals. Each House shall keep a journal of its proceedings which shall be printed and made public immediately after the adjournment of the General Assembly.

Section 22. Yeas and nays. Upon motion made and seconded in either House by one-fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Section 23. Protest. Any member of either House may dissent from, and protest against, any act or resolve which he may think injurious to the public, or any individual, and have the reasons of his dissent entered on the journal.

Section 24. Entails. The General Assembly shall regulate entails in such a manner as to prevent perpetuities.

Section 25. Local government. The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities, towns, and other governmental subdivisions; may provide for the consolidation and dissolution thereof; and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities, towns, and other governmental subdivisions as it may deem advisable.

Section 26. Limitations upon power of General Assembly to enact private or special legislation. The General Assembly shall not pass any local, private, or special act or resolution altering the name of any person; legitimating any person not born in lawful wedlock; restoring to the rights of citizenship any person convicted of an infamous crime; granting a divorce or securing alimony in any individual case; relating to health, sanitation, and the abatement of nuisances; changing the names of cities, towns, and townships; authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys; relating to ferries or bridges; relating to non-navigable streams; relating to cemeteries; relating to the pay of jurors; erecting new townships, or changing township lines, or establishing or changing the lines of school districts; remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury; regulating labor, trade, mining, or manufacturing; extending the time for the assessment or collection of taxes or otherwise relieving any collector from the due performance of his official duties or his sureties from liability; giving effect to informal wills and deeds; nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law, but the General Assembly may at any time repeal local, private, or special laws enacted by it. Any local, private, or special act or resolution passed in violation of the provisions of this section shall be void. The General Assembly shall have power to pass general laws regulating matters set out in this section.

Section 27. Corporations. No corporation shall be created, nor shall its charter be extended, altered, amended, or revoked by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for amending, extending,

and forfeiture of all charters, except those above permitted by special act. All such general and special acts may be altered from time to time or repealed.

The term "corporation" as used in this section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

Article III, Executive Department

Section 1. Officers of the Executive Department. The Executive Department shall consist of a Governor, in whom shall be vested the supreme executive power of the State; a Lieutenant-Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance, who shall be elected for a term of four years by the qualified voters of the State, at the same time and places and in the same manner as members of the General Assembly are elected. Their terms of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

Section 2. Qualifications of Governor and Lieutenant-Governor. No person shall be eligible for election to the office of Governor or Lieutenant-Governor, unless he shall have attained the age of thirty years, shall have been a citizen of the United States five years, and shall have been a resident of this State for two years next before election; nor shall a person elected to either of these two offices be eligible for election for the next succeeding term of the same office.

Section 3. Returns of elections. The return of every election for officers of the Executive Department shall be sealed up and transmitted to the seat of government by the returning officer, directed to the Secretary of State. The return shall be canvassed and the result declared in such manner as may be prescribed by law. Contested elections shall be determined by a joint ballot of both Houses of the General Assembly in such manner as shall be prescribed by law.

Section 4. Oath of office for Governor. The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States, and of the State of North Carolina, and that he will faithfully perform the duties appertaining to the office of Governor.

Section 5. Duties of the Governor. The Governor shall reside at the seat of government of this State, and he shall, from time to time, give the General Assembly information of the affairs of the State, and recommend to their consideration such measures as he shall deem expedient.

Section 6. Reprieves, commutations, and pardons. The Governor shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall biennially communicate to the General Assembly each case of reprieve, commutation, or pardon granted, stating the name of each convict, the crime for which he was convicted, the sentence and its date, the date of commutation, pardon, or reprieve, and the reasons therefor. The terms "reprieves," "commutations," and "pardons" shall not include paroles. The General Assembly is authorized and empowered to create a Board of Paroles, provide for the appointment of the members thereof, and enact suitable laws defining the duties and authority of such Board to grant, revoke, and terminate paroles.

Section 7. Commander-in-Chief. The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the service of the United States.

Section 8. Extra sessions of the General Assembly. The Governor shall have power, on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation, stating therein the purposes for which they are thus convened.

Section 9. Officers whose appointments are not otherwise provided for. The Governor shall nominate, and, by and with the advice and consent of a majority of the Senate, appoint all officers whose offices are established by this Constitution and whose appointments are not otherwise provided for.

Section 10. Biennial reports from officers of the Executive Department and of public institutions. The officers of the Executive Department and of the public institutions of the State shall, at least thirty days previous to each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly; and the Governor may, at any time, require information in writing from the officers in the Executive Department upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

Section 11. Succession to office of Governor. The Lieutenant-Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant-Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant-Governor shall be acting Governor. The further order of succession as acting Governor shall be prescribed by law.

Section 12. Incapacity of Governor. The physical or mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each House of the General Assembly. Thereafter, the physical or mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a majority of all the members of each House of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper, and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of the members concurring, may convene it in extra session for the purpose of proceeding under this section.

Section 13. Other executive officers; succession. The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance shall be prescribed by law. If

the office of any of these officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another until a successor be elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this article: Provided, that when a vacancy occurs in the office of any of the officers named in this section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

Upon the occurrence of a vacancy in the office of any of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an acting officer to perform the duties of that office until a person is appointed or elected pursuant to this section to fill the vacancy and is qualified.

During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to Section 14 of this article, the duties of his office shall be performed by an acting officer appointed by the Governor.

Section 14. Incapacity of other executive officers. The General Assembly shall by law prescribe, with respect to those officers, other than the Governor, whose offices are created by this article, (1) procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and (2) in the event of temporary physical or mental incapacity, procedures for determining whether an officer has sufficiently recovered his physical or mental capacity to perform the duties of his office.

Section 15. Council of State. The Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance shall constitute, *ex-officio*, the Council of State, who shall advise the Governor in the execution of his office, and four of whom shall constitute a quorum. Their advice and proceedings in this capacity shall be entered in a journal, to be kept for this purpose exclusively, and signed by the members present, from any part of which any member may enter his dissent; and such journal shall be placed before the General Assembly when called for by either House. The Attorney General shall be, *ex-officio*, the legal adviser of the Executive Department.

Section 16. Compensation for executive officers. Each officer mentioned in this article shall at stated periods receive for his services a compensation to be established by law, which shall not be diminished during the time for which he shall have been elected or appointed, and the said officers shall receive no other emolument or allowance whatever.

Section 17. Department of Justice. The General Assembly is authorized and empowered to create a Department of Justice under the supervision and direction of the Attorney General, and to enact suitable laws defining the authority of the Attorney General and other officers and agencies

concerning the prosecution of crime and the administration of the criminal laws of the State.

Section 18. Department of Agriculture. The General Assembly shall maintain a Department of Agriculture under such regulations as may best promote the agricultural interests of the State.

Section 19. Seal of State. There shall be a seal of the State, which shall be kept by the Governor, and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina." All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with The Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Article IV, Judicial Department

Section 1. Division of judicial powers. The judicial power of the State shall, except as provided in Section 2 of this article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the Judicial Department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this article.

Section 2. Judicial powers of administrative agencies. The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from rulings of administrative agencies shall be taken in a manner prescribed by law.

Section 3. Court for the Trial of Impeachments. The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant-Governor is impeached, the Chief Justice shall preside over the Court. A majority of members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Section 4. General Court of Justice. The General Court of Justice shall consist of an appellate division, a Superior Court division, and a division of local trial courts.

Section 5. Appellate division. The appellate division of the General Court of Justice shall consist of the Supreme Court. However, the General Assembly may, upon recommendation of the Supreme Court, establish within the appellate division an intermediate Court of Appeals.

Section 6. Supreme Court.

(1) *Membership.* The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. The General Assembly may provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

(2) *Divisions.* The Supreme Court shall have power to sit in divisions when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by a majority of all the justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court *en banc*.

(3) *Terms of the Supreme Court.* The terms of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Section 7. Court of Appeals. The structure and organization of the Court of Appeals, if established, shall be determined by the General Assembly. Jurisdiction of the Court of Appeals shall be determined by the Supreme Court, as provided in Section 11 of this article; and sessions of the Court of Appeals shall be held at such times and places as may be fixed by rules of the Supreme Court. The General Assembly may provide for the retirement of members of the Court of Appeals and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

Section 8. Superior Courts.

(1) *Superior Court districts and divisions.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may divide the State into a number of judicial divisions, and may provide for the judges to preside in the districts within a division successively. The General Assembly may provide by general laws for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) *Open at all times; sessions for trial of cases.* The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to law. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) *Clerks.* A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly. If the office of Clerk of Superior Court becomes vacant otherwise than by expiration of the term, or if the people fail to elect, the senior regular resident Judge of Superior Court for the county shall appoint to fill the vacancy until an election can be regularly held.

Section 9. Local trial courts.

(1) *District Courts; Trial Commissioners.* The General Assembly shall provide for the division, from time to time, of each Superior Court judicial district into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. A Chief District Judge and, if necessary, one or more Associate District Judges shall be selected for each district for a term of four years, in a manner provided by general law uniformly applicable in every local court district of the State. Every District Judge shall reside in the district for which he is selected. As officers of the District Courts, one or more Trial Commissioners shall be appointed in each county for a term of two years by the senior regular resident Superior Court Judge from nominations submitted by the Chief District Judge of the district in which the Trial Commissioner will serve. The number of Associate District Judges and Trial Commissioners shall, from time to time, be determined by the General Assembly.

(2) *Vacancies.* Vacancies in the office of District Judge shall be filled, for the unexpired term, in a manner provided by general law uniformly

applicable in every local court district of the State. Vacancies in the office of Trial Commissioner shall be filled for the unexpired term by appointment of the senior regular resident Superior Court Judge.

(3) *Courts to continue until 1965.* All existing courts, not created or authorized by this Constitution, including courts of justices of the peace, shall be continued only until the first day of January, 1965, or until such earlier date as the General Assembly shall fix. The General Assembly shall provide for the transfer of all cases then pending in such courts.

Section 10. Assignment of judges. The Chief Justice when, in his opinion, the public interest so requires, may assign any Superior Court Judge to hold one or more sessions of Superior Court in any district. In the absence or temporary incapacity of the Chief Justice, the powers granted in this section may be exercised by the senior Associate Justice.

Section 11. Jurisdiction of the General Court of Justice.

(1) *Supreme Court.* The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Constitution, and the Court shall have the power to issue any remedial writs necessary to give it general supervision and control over the proceedings of courts inferior to it.

The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; the decisions shall be reported to the next session of the General Assembly for its action.

(2) *Court of Appeals.* The Court of Appeals, if established, shall exercise such part of the appellate jurisdiction granted to the Supreme Court by this Constitution as the Supreme Court may by rule vest in it: Provided, that in all cases involving a construction of the Constitution of this State or of the United States, and in all criminal cases in which a sentence of death or life imprisonment has been imposed, there shall be an absolute right of final appeal to the Supreme Court.

(3) *Superior Courts.* Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of Superior Court shall have such jurisdiction and powers as the General Assembly shall provide by general law uniformly applicable in every county of the State.

(4) *District Courts; Trial Commissioners.* The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Trial Commissioners.

(5) *Appeals.* The General Assembly shall, by general law, provide a proper system of appeals: Provided, that appeals from Trial Commissioners shall be heard *de novo*, with the right of trial by jury as defined in this Constitution and the laws of this State.

Section 12. Forms of action; rules of procedure.

(1) *Forms of action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public

offense for the punishment of the same, shall be termed a criminal action.

(2) *Rules of procedure.* The Supreme Court shall have exclusive authority to make rules of procedure for the appellate division. The General Assembly shall provide by law for the regulation of the methods of proceeding of all courts below the appellate division in the exercise of their jurisdiction and powers.

Section 13. Waiver of jury trial. The right of trial by jury may be waived in all criminal cases except those in which the offense charged is a felony punishable by death or life imprisonment. In other felony cases waiver of the right of trial by jury shall be permitted only with the consent of the trial judge and counsel for the accused. In misdemeanor cases in which the right of trial by jury is granted, waiver of the right shall be permitted only with the consent of the trial judge. All waivers in criminal cases shall be in writing. The parties in any civil case may waive jury trial. In the event of waiver of jury trial, in either criminal or civil cases, the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Section 14. Listing and drawing of jurors. The General Assembly shall, by general law uniformly applicable throughout the State, provide for the listing and drawing of jurors for both petit and grand juries.

Section 15. Term of office and election of Judges of Supreme Court, Court of Appeals, and Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals, if established, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts as the General Assembly may provide.

Section 16. Removal of judges and clerks.

(1) *Judges of Supreme Court, Court of Appeals, and Superior Court.* Any Justice of the Supreme Court, Judge of the Court of Appeals, if established, or Judge of the Superior Court may be removed from office for mental or physical incapacity upon the joint resolution of two-thirds of both Houses of the General Assembly. Any justice or judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereon. Removal from office for any other cause shall be by impeachment.

(2) *Judges of courts inferior to the Superior Court.* The General Assembly shall provide by general law for the removal of judges of courts inferior to the Superior Court for misconduct or mental or physical incapacity.

(3) *Clerks.* Any clerk may be removed from office for misconduct or mental or physical incapacity: the Clerk of the Supreme Court by the Justices of that Court; the Clerks of the Court of Appeals by the Judges of that Court; and the Clerks of the Superior Court by the senior regular resident judge of the district. Any clerk against whom proceedings are

instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges. Clerks of courts inferior to the Superior Court shall be removed for such causes and in such manner as the General Assembly may provide by general law. Any clerk so removed from office shall be entitled to an appeal as provided by law.

Section 17. Solicitors and solicitorial districts.

(1) *District Solicitors.* The General Assembly shall, from time to time, divide the State into a convenient number of solicitorial districts, for each of which a Solicitor shall be chosen for a term of four years by the qualified voters thereof, as is prescribed for members of the General Assembly. When the Attorney General determines that there is serious imbalance in the work loads of the Solicitors, or that there is other good cause, he shall recommend redistricting to the General Assembly. The Solicitor shall advise the officers of justice in his district; and shall be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, for performing such duties related to appeals therefrom as the Attorney General may require, and for such other duties as the General Assembly may prescribe.

(2) *Prosecution in inferior courts.* Criminal actions in courts inferior to the Superior Court shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Section 18. Sheriffs. In each county a Sheriff shall be elected by the qualified voters thereof as is prescribed for members of the General Assembly, and shall hold his office for a period of four years. In case of a vacancy existing for any cause in any Sheriff's office, the governing authority of the county shall appoint to such office for the unexpired term.

Section 19. Vacancies. Unless otherwise provided in this article, all vacancies occurring in the offices provided for by this article shall be filled by the appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than thirty days after such vacancy occurs, when elections shall be held to fill such offices: Provided, that when the unexpired term of any of the offices named in this article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of such offices shall hold until their successors are qualified.

Section 20. Uniform schedule of fees and costs. The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice below the appellate division. The Supreme Court shall fix fees and costs for the appellate division.

Section 21. Fees, salaries, and emoluments. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers

provided for in this article; but the salaries of judges shall not be diminished during their continuance in office. In no case shall the compensation of any judge or Trial Commissioner be dependent upon his decision or upon the collection of costs.

Article V, Revenue, Taxation, and Public Debt

Section 1. State taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away. Only the General Assembly shall have the power to classify property and other subjects for taxation, which power shall be exercised only on a state-wide basis. No class or subject shall be taxed except by uniform rule, and every classification shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. The General Assembly's power to classify shall not be delegated, except that the General Assembly may permit the governing boards of counties, cities, and towns to classify trades and professions for total license tax purposes. The rate of tax on income shall not exceed ten per cent, and there shall be allowed the following minimum exemptions, to be deducted from the amount of annual incomes: to the income producing spouse of a married couple living together, where only one spouse has income, two thousand dollars; to a husband and wife living together, where both have income, a personal exemption of one thousand dollars each, and either spouse may allow the other to claim all or any part of said personal exemption; to a widow or widower with minor child or children, natural or adopted, two thousand dollars; and to all other natural persons, one thousand dollars. There may also be allowed deductions (not including living expenses), so that only net incomes are taxed.

Section 2. Property exempt from taxation. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable, or religious purposes, and, to a value not exceeding three hundred dollars, any personal property. The General Assembly may exempt from taxation not exceeding one thousand dollars in value of property held and used as the place of residence of the owner. Every exemption shall be on a state-wide basis and shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this section.

Section 3. Taxes levied for counties. The total of the State and county tax on property shall not exceed twenty cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied pursuant to general or special act of the General Assembly for the maintenance of the public schools of the State: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property.

Section 4. Acts levying tax shall state purpose. Every act of the General Assembly levying a tax shall state the public purpose to which it is to be applied, and it shall be applied to no other purpose.

Section 5. Limitations on State and local debt. The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State and to authorize counties and municipalities to con-

tract debts and pledge their faith and credit, for the following purposes: To fund or refund a valid existing debt; to borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per cent of such taxes; to supply a casual deficit; to suppress riots or insurrections, or to repel invasions. For any purpose other than these enumerated, the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to the qualified voters of the State; and for any purpose other than these enumerated the General Assembly shall have no power to authorize counties or municipalities to contract debts, and counties and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to the qualified voters of the particular county or municipality. In any election held in the State or in any county or municipality under the provisions of this section, the proposed indebtedness must be approved by a majority of those who shall vote thereon. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, unless the subject be submitted to the qualified voters of the State, and be approved by a majority of those who shall vote thereon.

Section 6. Debts and taxation for other than necessary expenses. No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose.

Section 7. Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which said sinking fund has been created.

Section 8. Retirement funds. The General Assembly shall not use, or authorize to be used, nor shall any agency of the State, public officer, or public employee use or authorize to be used the funds, or any part of the funds, of the Teachers' and State Employees' Retirement System except for Retirement System purposes. The funds of the Teachers' and State Employees' Retirement System shall not be applied, diverted, loaned to or used by the State, any State agency, State officer, or public officer or employee except for purposes of the Retirement System: Provided, that nothing in this section shall prohibit the use of said funds for the payment of benefits, administrative expenses, and refunds as authorized by the Teachers' and State Employees' Retirement Law, nor shall anything in this provision prohibit the proper investment of said funds as may be authorized by law.

Section 9. Certain debts declared invalid. Neither the State nor any county, city, town, or other governmental subdivision shall assume or pay, or authorize the collection of any debt or obligation, express or implied, in-

curred in aid of the War between the States; nor shall any tax be levied or collected for the payment of any such debt or obligation.

The General Assembly shall never assume or pay, or authorize the collection of any tax to pay, either directly or indirectly, express or implied, any debt or bond incurred, or issued by authority of the Convention of the year 1868, nor any debt or bond incurred or issued by the General Assembly of the year 1868, either at its special session of the year 1868, or at its regular sessions of the years 1868-69 and 1869-70, except the bonds issued to fund the interest on the old debt of the State, unless the proposal to pay the same shall have first been submitted to the people and by them ratified by the vote of a majority of all the qualified voters of the State at an election held for that purpose.

Section 10. Drawing money from Treasury; publication of accounts. No money shall be drawn from the Treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.

Article VI, Suffrage and Eligibility to Office

Section 1. Who may vote. Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Section 2. Qualifications of voters. Any person who shall have resided in the State of North Carolina for one year, and in the precinct, ward, or other election district in which such person offers to vote for thirty days next preceding an election, and possessing the other qualifications set out in this article, shall be entitled to vote at any election held in this State: Provided, that removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which such person has removed until thirty days after such removal. No person who has been convicted, or who has confessed his guilt upon trial in open court, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's prison, shall be permitted to vote, unless the said person shall first be restored to citizenship in the manner prescribed by law.

Section 3. Voters to be registered. Every person offering to vote shall be at the time a legally registered voter as herein prescribed, and in the manner hereafter provided by law, and the General Assembly shall enact general registration laws to carry into effect the provisions of this article.

Section 4. Qualifications for registration. Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Section 5. Elections by people and General Assembly. All elections by the people shall be by ballot, and all elections by the General Assembly shall be *viva voce*.

Section 6. Eligibility to office; official oath. Every voter in North Carolina, except as in this article disqualified, shall be eligible to office, but before entering upon the duties of the office he shall take and subscribe the following oath:

"I, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as, so help me, God."

Section 7. Disqualification for office. The following shall be disqualified for office: First, all persons who shall deny the being of Almighty God; second, any person who is not qualified to vote in an election for such office; third, any person who has been convicted or has confessed upon trial in open court guilt of treason, or corruption or malpractice in any office, or has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in a manner prescribed by law.

Article VII, Education

Section 1. Education shall be encouraged. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Section 2. General Assembly shall provide for schools. Subject to, and except as provided in, Section 6 of this article, the General Assembly shall provide by taxation and otherwise for public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years; each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year.

Section 3. Children must attend school. The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability shall attend the public schools during the period between the ages of six and eighteen years, unless educated by other means.

Section 4. State Board of Education. The State Board of Education shall supervise and administer the educational funds provided for the support of the free public schools, except those mentioned in Section 8 of this article. The State Board of Education shall consist of the Lieutenant-Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session under such procedures as the General Assembly may provide. The General Assembly shall divide the State into eight educational districts, which may be altered from time to time by the General Assembly. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. All appointments shall be for terms of eight years. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The Board shall elect a chairman and vice-chairman. A majority of the Board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members shall be provided by the General Assembly.

The State Superintendent of Public Instruction shall be the secretary and chief administrative officer of the Board.

Section 5. Powers and duties of the Board. The State Board of Education shall succeed to all the property rights and trusts of the President and Directors of the Literary Fund of North Carolina, and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary, and qualifications of public school teachers; to provide for the selection and adoption of the textbooks to be used in the public schools; to apportion and equalize the public school funds over the State; and to exercise such powers and perform such duties as the General Assembly may from time to time prescribe. All the powers enumerated in this section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly.

Section 6. Education expense grants and local option. Notwithstanding any other provision of this Constitution, the General Assembly may provide for payment of education expense grants from any State or local public funds for the private education of any child for whom no public school is available or for the private education of a child who is assigned against the wishes of such child's parent, or the person having control of such child, to a public school attended by a child of another race. A grant shall be available only for education in a nonsectarian school, and in the case of a child assigned to a public school attended by a child of another race, a grant shall, in addition, be available only when it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race.

Notwithstanding any other provision of this Constitution, the General Assembly may provide for a uniform system of local option whereby any local option unit, as defined by the General Assembly, may choose by a majority vote of the qualified voters in the unit who vote on the question to suspend or to authorize the suspension of the operation of one or more or all of the public schools in that unit.

No action taken pursuant to the authority of this section shall in any manner affect the obligation of the State or any political subdivision or agency thereof with respect to any indebtedness heretofore or hereafter created.

Section 7. Property and funds devoted to educational purposes. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also all moneys, stocks, bonds, and other property now belonging to any State fund for purposes of education; also the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, or devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury, and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools, and for no other uses or purposes whatsoever.

Section 8. County school fund. All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State. The amount collected in each county shall be annually reported to the Superintendent of Public Instruction.

Section 9. Election of trustees; provisions for maintenance of the University. The General Assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises, and endowments thereof in any wise granted to or conferred upon the trustees of the University; and the General Assembly may make such provisions, laws, and regulations

from time to time as may be necessary and expedient for the maintenance and management of the University.

Section 10. Benefits of the University. The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition; also, that all the property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.

Article VIII, Homesteads and Exemptions

Section 1. Exemption of personal property. The personal property of any resident of this State, to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Section 2. Homestead Exemptions.

(1). *Exemption from sale; exceptions.* Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town, or village with the dwellings and buildings used thereon, owned and occupied by any resident of this State, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes or for payment of obligations contracted for the purchase of said premises.

(2). *Exemption for benefit of children.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3). *Exemption for benefit of widow.* If the owner of a homestead die, leaving a widow but no children, the homestead shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she be the owner of a homestead in her own right.

Section 3. Homestead may be conveyed; limitation. Nothing contained in this article shall operate to prevent the owner of a homestead from disposing of the same by deed; but no deed made by the owner of a homestead shall be valid without the signature and acknowledgment of his wife.

Section 4. Laborer's lien. The provisions of Section 1 and Section 2 of this article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

Section 5. Property of married women secured to them. The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her, or by herself and her husband, or by her husband.

Section 6. Insurance for sole benefit of wife and children. The husband may insure his own life for the sole use and benefit of his wife or children or both, and upon his death the proceeds from the insurance shall be paid over to them, or to a guardian, where required, free from all claims of the representatives or creditors of the decedent. Such insurance shall not be subject to claims of creditors of the insured during his lifetime.

Article IX, Punishments, Penal Institutions, and Public Charities

Section 1. Public, charitable, reformatory and penal institutions. Such charitable, benevolent, sanitary, reformatory and penal institutions as the claims of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

It shall be required by competent legislation that the structure and superintendence of penal institutions of the State, the county jails, and city police prisons secure the health and comfort of the prisoners and that male and female prisoners be never confined in the same room or cell.

Section 2. Board of Public Welfare. Beneficent provisions for the poor, the unfortunate, and the orphan being one of the first duties of a civilized and Christian state, the General Assembly shall provide for and define the duties of a Board of Public Welfare.

Section 3. Institutions self-supporting. It shall be steadily kept in view by the General Assembly, the State Board of Public Welfare, and the governing boards of all penal and charitable institutions that such institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.

Section 4. Punishments. The following punishments only shall be known to the laws of this State: death, imprisonment with or without hard labor, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State. The object of punishments is not only to satisfy justice, but also to reform the offender, and thus prevent crime. Therefore, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Article X, Militia

Section 1. Who are liable to militia duty. All able-bodied male citizens of the State of North Carolina between the ages of twenty-one and forty years shall be liable to duty in the militia: Provided, that all persons who may be averse to bearing arms, from religious scruples, shall be exempt therefrom.

Section 2. Organization. The General Assembly shall provide for the organizing, arming, equipping, and discipline of the militia, and for paying the same, when called into active service.

Section 3. Governor Commander-in-Chief. The Governor shall be Commander-in-Chief, and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasion.

Section 4. Exemptions; control. The General Assembly shall have power to make such exemptions as may be deemed necessary, and to enact laws that may be expedient for the government of the militia.

Article XI, Conventions; Constitutional Amendment and Revision

Section 1. Convention of the people. No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each House of the General Assembly, and except the proposition, "Convention or No Convention," be first submitted to the qualified voters of the State, at such time and in such manner as may be prescribed by law. If a majority of the votes cast upon the proposition be in favor of a Convention, it shall assemble on such day as may be prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and should a majority of the votes cast upon the proposition be in favor of a Convention, those limitations shall then become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters of the State at such time and in such manner as may be prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly which submits the convention proposition; and the delegates shall be apportioned as is the House of Representatives of the General Assembly which submits the convention proposition. A Convention may adopt no ordinance except such as shall be necessary to the purpose for which the Convention shall have been called.

Section 2. Power to revise or amend Constitution reserved to people. The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this article, but in no other way.

Section 3. Revision or amendment by Convention of the People. A Convention of the People of this State may be called pursuant to Section 1 of this article, to propose a new or revised Constitution, or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at such time and in such manner as may be prescribed by the Convention. If a majority of the votes cast thereon be in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, the new or revised Constitution or constitutional amendment or amendments shall become effective January first next after ratification by the voters, unless a different effective date be prescribed by the Convention.

Section 4. Revision or amendment by legislative initiation. Proposals of a new or revised Constitution, or amendment or amendments to this Constitution, may be initiated by the General Assembly, but only if three-fifths of all the members of each House shall adopt an act or acts submitting such proposals to the qualified voters of the State for their ratification or rejection. Such proposals shall be submitted at such time and in such manner as the General Assembly may prescribe. Should a majority of the votes cast upon a proposed new or revised Constitution or constitutional amendment be in favor of ratification, it shall become effective January first next after ratification by the voters, unless a different effective date be prescribed in the act submitting the proposal to the voters.

Article XII, Miscellaneous

Section 1. Seat of government; boundaries. The permanent seat of government in this State shall be at the City of Raleigh, and the limits and boundaries of the State shall be and remain as they now are.

Section 2. Holding office until successor qualified. In the absence of any contrary provision of this Constitution, incumbents of public office, both elective and appointive, shall hold office until their successors are lawfully selected and qualified.

Section 3. Dual office-holding. No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, commissioners and trustees of public charities and institutions, school committeemen, United States Commissioners, commissioners for special purposes, or delegates to a Convention of the People.

Section 4. Mechanic's lien. The General Assembly shall provide, by proper legislation, for giving to mechanics and laborers an adequate lien on the subject-matter of their labor.

Section 5. Intermarriage of whites and Negroes prohibited. All marriages between a white person and a Negro, or between a white person and a person of Negro descent to the third generation, inclusive, are hereby forever prohibited.

Section 6. Continuity of laws; protection of office holders. The laws of North Carolina, not repugnant to this Constitution, shall be and remain in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State made in pursuance thereof.

The provisions of the prior Constitution shall, except as inconsistent with the provisions of this Constitution, remain in force as statutory law subject to the power of the General Assembly to repeal or modify any or all of them.

PART III:

Commentary on Proposed Changes in Constitution

Article I, Declaration of Rights.

Recommended change in substance

There is little need for change in this portion of the present Constitution. However, one change of a substantive character has been recommended. The present Constitution guarantees freedom of the press but contains no guarantee of freedom of speech. Although this basic freedom is assured by the Constitution of the United States, it was felt that such a fundamental principle should be recognized in the Constitution of North Carolina.

Recommendation No. 1. That Article I, Section 20 be amended to include freedom of speech (see draft, Section 14).

Sections redrafted.

Seventeen sections of the present Article I were subjected to some form of redrafting. Some of these changes are alterations in a single word, others are combinations of sections in the present Constitution which clearly deal with the same or closely related subjects, and still others are changes in literary style. None of these affects the meaning of the provisions involved. The following are the drafting changes made in Article I:

1. **Preamble to Constitution:** Although not actually a part of Article I, the preamble is conveniently discussed here. This statement of the purposes for which the Constitution was written has been redrafted. No change in fundamental meaning has been made.
2. **Prefatory statement to Declaration of Rights.** The preface to the Declaration was rewritten to shorten and clarify the statement. It should also be noted that the preface presently ends “. . . we do declare:”. Such a construction necessitated the use of the word “that” at the beginning of each section of the Declaration. Through amendment and revision, the word “that” has disappeared from some sections and has simply not been used in others. As a matter of style it is simple to end the preface with the words “we do declare that:”. Such usage eliminates the grammatical necessity for using “that” at the beginning of each section.
3. **Section 3. Other rights of the people.** This section is presently Section 37, the last section of Article I. In reorganizing the article, it was moved and renumbered as Section 3. To accommodate this transfer, minor redrafting was necessary.
4. **Section 4. Internal government of the State.** In this section, the word “police,” an archaic synonym for “policy,” was changed to “policies.”
5. **Section 5. Allegiance to the United States.** This section of the draft combines Sections 4 and 5 of the present Constitution. The redraft eliminates the following language:
“that there is no right on the part of the State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union or to sever said Nation, ought to be resisted with the whole power of the State.”

6. **Section 6. Exclusive and hereditary emoluments.** This section of the draft combines present Section 7, prohibiting exclusive emoluments, with the present Section 30, which bans hereditary emoluments.
7. **Section 10. Elections.** This section of the draft combines Section 10 of the present Constitution with Section 28. Both sections concern elections, one commanding that they be frequent, the other that they be free.
8. **Section 11. Property qualification.** The word "as" was deleted from the first line of this section. The change, a purely editorial one, makes no alteration in the meaning of the section.
9. **Section 12. Right of the people to assemble together.** The word "Legislature" was replaced by the words "General Assembly."
10. **Section 15. Involuntary servitude.** This provision was redrafted. The language proposed is almost identical to that in the United States Constitution.
11. **Section 18. Courts shall be open.** This section, which is Section 35 of the present Article I, states that right and justice shall be administered without "favor, denial, or delay." The word favor replaces the word "sale" in the present section. The Commission feels that the word "favor" better expresses the idea that justice should be administered free from corrupting influence of any sort.
12. **Section 20. Habeas corpus.** This section combines Sections 18 and 21 of the present article. Both provisions clearly relate to habeas corpus, and the Commission felt that they should be combined.
13. **Section 23. Right of Jury.** Two changes were made in this section. A purely editorial change was made by replacing "Legislature" with "General Assembly." A change which may be of greater significance is found in the opening phrase of the draft provision: "Subject to the provisions of Article IV of this Constitution. . ." The cross-reference is made to eliminate any possible conflict between this section and a provision recommended in Article IV, Section 13, which grants limited rights to waive trial by jury.
14. **Section 25. General Warrants.** Section 15 of the present Constitution, which prohibits general warrants, begins with these words: "General warrants, whereby any officer or messenger may be commanded. . ." The Commission felt that the word "messenger" is rather obscure. Therefore, it is recommended that this word be replaced with the phrase "other person."

Transferred provisions.

Two provisions of the present Article I were transferred to other articles of the Constitution, and one provision from another article was inserted in Article I of the proposed draft. Article I, Section 6 of the present Constitution, prohibiting payment of Civil War debts and certain other obligations, was transferred to Article V, Revenue, Taxation, and Public Debt. Such a provision is out of place in a declaration of fundamental rights and more properly belongs in Article V, which concerns public debt and related topics.

Article I, Section 34 of the present Constitution was transferred to the "Miscellaneous" article of the proposed draft. This section, which relates to State boundaries, is combined with Article XIV, Section 6, of the present Constitution and appears in the draft as Article XII, Section 1. The section now states:

The permanent seat of government in this State shall be at the City of Raleigh, and the limits and boundaries of the State shall be and remain as they now are.

Article IV, Section 5, relating to treason against the State, was transferred to Article I of the proposed draft. This section deals with the evidence and testimony necessary to gain a conviction for treason, and provides that no conviction of treason shall work corruption of blood or forfeiture. It is more in the nature of a protection to the citizen who may be accused of treason than a part of the structure of the Judicial Department. Therefore, it has been transferred to the Declaration of Rights and appears as Article I, Section 27, of the proposed draft.

Reorganization of article.

The Declaration of Rights in the existing Constitution is not well organized. It is possible to collect most of the provisions of this article into groups which have common characteristics. Accordingly, the article was reorganized as indicated in Table I.

Table I

ORGANIZATION OUTLINE: ARTICLE I, DECLARATION OF RIGHTS

- I. Fundamental rights of man for which governments exist (Section 1).
- II. Source of political power and retention of sovereignty by the people.
 - A. Political power and government (Section 2).
 - B. Enumeration of rights in this Constitution does not limit or deny others retained by the people (Section 3).
 - C. Internal government of the State; right of the people to alter or revise and to dictate the policies thereof (Section 4).
- III. Relation of government and people of North Carolina to government of the United States (Section 5).
- IV. Prohibition of special and hereditary privileges and monopolies (Sections 6 and 7).
- V. Political rights.
 - A. Prohibition of suspending laws, except by consent of representatives of the people (Section 8).
 - B. Prohibition of taxation without representation (Section 9).
 - C. Free elections (Section 10).
 - D. Prohibition of property as qualification to vote (Section 11).
 - E. Right of assembly and prohibition of secret political societies (Section 12).
- VI. Personal rights of freedom.
 - A. Freedom of worship (Section 13).
 - B. Freedom of speech and of the press (Section 14).
 - C. Prohibition of slavery (Section 15).
 - D. Right of people to privilege of education (Section 16).
 - E. Prohibition of ex post facto laws (Section 17).
- VII. Rights of the people in civil and criminal actions.
 - A. All courts open (Section 18).

- B. Right to due process of law (Section 19).
 - C. Rights of restrained persons; habeas corpus (Section 20).
 - D. Rights of accused persons (Section 21).
 - E. No person to answer charges except by indictment, etc., (Section 22).
 - F. Right to jury trial (Section 23).
 - G. Prohibition of excessive bail (Section 24).
 - H. Prohibition of general warrants (Section 25).
 - I. Prohibition of imprisonment for debts (Section 26).
 - J. Treason against the State; requirements for conviction (Section 27.)
 - K. Right to trial by jury in cases affecting property (Section 28).
- VIII. Provisions relating to the military.
- A. Authorization for militia; subordination of military to civil power; right to bear arms (Section 29).
 - B. Quartering of troops (Section 30).
- IX. Recurrence to fundamental principles (Section 31).
- X. Separation of powers (Section 32).

Article II, Legislative Department

Recommended changes in substance

Legislative representation. One of the most important questions facing the Commission was that of reapportionment. To promote understanding of the proposals which the Constitutional Commission makes, some examination of the history of this portion of the present Constitution may be helpful.

The present provisions concerning membership of the Senate and House of Representatives were inserted in the organic law of North Carolina as a result of the work of the Convention of 1835. At that time, there were only sixty-five counties in the State. Thus, fifty-five House seats, approximately 46% of the membership of that body, were available for distribution among the more populous counties. In 1868, there were eighty-nine counties, leaving approximately 25% of the House seats for distribution to the more thickly settled areas. Today, with one hundred counties, there are only twenty seats, 16% of the membership, for apportionment among the larger counties. As originally conceived, this plan of apportionment emphasized population to a considerable degree. However, it may be readily observed that this emphasis has decreased to such an extent that today much greater weight is placed upon representation of geographical units than upon population.

The history of representation in the Senate has run a different course. In 1835, Senate membership was fixed, as now, at fifty. However, representation in the Senate was based upon percentage of tax contributions rather than area or population. In 1868, the present system of districts, containing "as near as may be" equal proportions of the State's population, was placed in the Constitution.

Examination of these historical developments reveals that the House of Representatives has become much more of a geographically representative body than was originally the case. As long as there is at least one Representative from each county, then, unless the number of Representatives is greatly increased, the Senate can more nearly reflect shifts in population.

The Commission's study led to the conclusion that any attempt to return the House of Representatives to its original status would require an increase in membership so great as to make the body unwieldy, cumbersome, and inefficient. As a result, no increase in the number of Representatives is proposed.

Because the Senate, partly by design and partly by historical accident, can now be more representative of population than the House of Representatives, it appeared that some increase in its membership would be warranted. As a result, it is recommended that membership of the Senate be increased from fifty to sixty.

The increase in membership will not become effective until 1965. This delay became necessary by reason of an amendment to Section 4, setting forth regulations concerning districting the State for Senate districts. That section presently provides that the "Senate Districts shall be so altered by the General Assembly, at the first session after the return of every enumeration. . . ." It is the opinion of the Commission that there is ambiguity in this portion of the section. Does the phrase "first session

after the return" mean the first session in any decade, or could it mean the first session *convening* after the return of the census? In order to eliminate this ambiguity, the section was amended to read "at the regular session of the General Assembly in 1963 and thereafter at the first regular session *convening* after the return . . ." Under this provision, redistricting of Senate districts would not be made until 1963. Thus, the increase in Senate membership could not become effective until 1965, and it is provided in Section 3 that until the regular session of 1965, the Senate shall be composed of fifty Senators.

A second aspect of this problem is apparent in the fact that neither Senate nor House representation has been reapportioned since 1941. Although there have been but two instances since 1868 in which the General Assembly has failed in its duty to reapportion representation, both of these have occurred in the last three decades. The Commission decided that some means should be sought which would insure regular reapportionment.

Concerning the House of Representatives, the solution was not so difficult. Representation in this body is distributed according to a constitutionally prescribed mathematical formula, the application of which should be a ministerial function appropriately assigned to the Speaker of the House as a duty of his office. At the first regular session convening after the return of each biennial census, the Speaker will perform this duty. The first General Assembly affected by it will be that of 1965.

In contrast to the distribution of Representatives among the various counties of the State, there is great discretion involved in drawing the lines of senatorial districts. Thus, a solution to this part of the problem was not as readily found. After much study and discussion, the Commission concluded that it is not feasible to remove redistricting for Senators from legislative control, or to insure that the General Assembly will carry out such redistricting. However, it is feasible to insure consideration of redistricting by the Assembly and to provide a plan which effects redistricting in case of failure of the Assembly to act. Therefore, it is recommended that a committee, composed of the President of the Senate, the President pro tem. of the Senate, and the Speaker of the House of Representatives be charged with the duty of presenting to the Assembly a proposal for redistricting the State. The proposal is to be presented on or before the sixtieth calendar day of the first regular session convening after the return of each census, and if not acted upon, either by alteration or revision, upon adjournment of the session the proposal will have the force and effect of an act of the Assembly. In this manner, control of the highly political problem of redistricting remains in the hands of the General Assembly, but there is an increased probability that positive action will be taken every decade.

In summary, the recommendations of the Commission concerning the problem of reapportionment are as follows:

- Recommendation No. 2.** That membership of the Senate be increased from fifty to sixty, effective at the regular session of the General Assembly in 1965 (see draft, Section 2).

Recommendation No. 3. That a committee composed of the President and President pro tem. of the Senate and the Speaker of the House be charged with the duty of presenting to the General Assembly a proposal for redistricting the State's senatorial districts, and that if the Assembly fails to act on this proposal, it shall have the force and effect of an act of the General Assembly (see draft, Section 4).

Recommendation No. 4. That the duty of applying the constitutional formula for determining distribution of Representatives be placed upon the Speaker of the House of Representatives as a duty of his office (see draft, Section 5).

Taking of census. Article II, Sections 4 and 6, of the present Constitution provide that "in ascertaining the number of the population of the State, aliens and Indians not taxed shall not be included." As there are few Indians in the state who are not in some way subject to taxation, it seems unnecessary to continue this provision. Therefore, the Commission makes the following recommendation:

Recommendation No. 5. That the phrase "Indians not taxed" be deleted from Sections 4 and 6 of Article II (see draft, Sections 4 and 6).

Qualifications for Senators. Article II, Section 8, of the present Constitution requires that each member of the House be a qualified elector of the State. No such requirement is found in Article II, Section 7, concerning qualifications for Senators. The Commission is unable to discover any valid reason for this discrepancy and believes that both Senators and Representatives should be required by the Constitution to be qualified electors. To eliminate this difference, the Commission makes the following recommendation:

Recommendation No. 6. That Article II, Section 7 be amended to require that Senators be qualified voters (see draft, Section 7).

Pay of legislators. The Commission feels that the present rate of compensation for members of the General Assembly is inadequate. Accordingly, it has recommended that an increase of five dollars per day be granted to the members and presiding officers of the General Assembly.

Members of the Assembly are now paid for a constitutional maximum of one hundred and twenty days for a regular session, and twenty-five days for a special session. However, the Constitution does not now specify whether pay is to be on a basis of legislative or calendar days. The Commission has recommended that Article II, Section 28, be so clarified as to specify that pay is to be based on calendar days. This conforms to present practice.

- Recommendation No. 7.** (a) That the pay of members of the General Assembly be increased from fifteen to twenty dollars for each calendar day a regular session, for a period not in excess of one hundred and twenty days.
- (b) That the pay of presiding officers of the two Houses of the General Assembly be increased from twenty to twenty-five dollars for each calendar day a regular session, for a period not exceeding one hundred and twenty days.
- (c) That the same increases apply to a special session for a period not exceeding twenty-five calendar days (see draft, Section 13).

Powers of General Assembly: Presently, Article II, Section 22 (draft Section 14) provides that each House shall sit upon its own adjournment from day to day, and that "the two Houses may also jointly adjourn to any future day, or other place." The Commission concluded that it might be wise to allow either House to adjourn for a period not in excess of three days, which is presently the system utilized in the Congress of the United States. At times when one House clears its calendar and is in the position of having to wait for the other to catch up, it might be advisable to allow such short adjournments. In addition, such a change would permit either house, in its discretion, to omit Saturday sessions.

Based upon these considerations, the Commission makes the following recommendation:

- Recommendation No. 8.** That each House of the General Assembly be granted the power to adjourn of its own motion, for a period not in excess of three days (see draft, Section 14).

President pro tempore of the Senate. The Commission has given extended consideration to the problems of succession to office and determination of disability. These problems are given full discussion in connection with Article III. However, it must be noted here that the Commission feels that some clarification should be made of the circumstances and manner in which the President *pro tempore* of the Senate succeeds to the office of President of the Senate.

Presently, Article II, Section 20, simply states that the Senate shall elect a "Speaker (*pro tempore*) in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor." There are at least three situations not covered by that provision in which the President *pro tempore* would succeed to or exercise the powers of the office of President of the Senate: (1) in the event the Lieutenant-Governor-elect fails to qualify; (2) upon death, resignation, or removal from office of the Lieutenant-Governor; and (3) during the physical or mental incapacity of the Lieutenant-Governor to perform the duties of his office. Presumably the word "absence" in the present provision covers these situations, but it is

certainly not clear. In addition, it is not specified how long the President *pro tempore* who steps up to the office of President of the Senate is intended to serve in that capacity.

In view of these deficiencies in the present provision, the Commission presents the following proposal:

- Recommendation No. 9.** (a) That Article II, Section 20 be amended to specify that the President *pro tempore* of the Senate shall succeed to the office of President of the Senate under the following circumstances:
- (1) In the event the Lieutenant-Governor-elect fails to qualify.
 - (2) Upon the death, resignation, or removal from office of the Lieutenant-Governor.
- (b) That the same provision specify that the President *pro tempore* of the Senate shall preside in the Senate under the following circumstances:
- (1) During the physical or mental incapacity of the Lieutenant-Governor to perform the duties of his office.
 - (2) During the absence of the Lieutenant-Governor.
- (c) That the same provision specify that upon succession to the office of President of the Senate, the President *pro tempore* shall serve until the expiration of his term of office as Senator (see draft, Section 16).

Local government. A great deal of time and effort was devoted to studying the problems of local government. North Carolina presently allows the General Assembly great freedom in this area. Certain facets of local government are regulated by general laws, but desirable flexibility is achieved through passage of local and special acts which are tailored to fit particular needs of individual counties, cities, and towns. However, under this system the General Assembly is called upon to consider great numbers of local and special acts at every session.

The question around which the Commission's inquiry turned was whether the desirable flexibility could be achieved under another system, which might also substantially reduce the volume of local legislation. The Commission concluded that the advantages of the present system warrant its continuation.

The changes proposed with reference to local government are formal in nature. Article VII of the present Constitution deals with municipal corporations. Article VIII, Section 4, directs the General Assembly to provide by general laws, for the organization and government of cities, towns, and

incorporated villages. The rigid plan of local government set out in Article VII was made almost completely meaningless in 1875 by the insertion of Section 13 of that article, which reads:

The General Assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions of this article, and substitute others in their place, except sections seven, nine and thirteen.

What was then Section 9 has been eliminated from the Constitution. This means that only two sections in the present Article VII have true constitutional status. The remainder are in the same position as ordinary statutes enacted by the legislature. In view of the fact that such a large proportion of this article is statutory material, the Commission decided that a single broad provision giving the General Assembly power to provide for the organization and government of local units should be inserted in the Constitution. In addition, it was felt that Section 7 of the present article, the necessary expense limitation, and Section 12, forbidding municipalities to pay certain classes of debts, should be transferred to Article V, which, as proposed, deals with revenue, taxation, and public debt. Because a single section giving the General Assembly power over local government represents a specific grant of power to that body, it was felt that the provision should be inserted in Article II, Legislative Department, thus making it possible to eliminate the present Article VII as a separate article.

Prior to 1917, the General Assembly had regulated municipal government by special acts. In 1915, the General Assembly submitted a slate of amendments intended to stem the tide of special legislation. Among these was an amendment to Article VIII, Section 4, requiring the Assembly to provide for the organization of cities, towns, and incorporated villages "by general laws." In *Kornegay v. Goldsboro*, 180 N. C. 441, (1920), the North Carolina Supreme Court, construing that section with the other amendments relating to local and special legislation, concluded that "the true intent of the last section [Article VIII, Section 4] is to impose the duty of passing general laws relating to cities and towns, leaving it to the discretion of the Legislature to enact special acts as the needs of the municipalities require." Since the existing provision places no restriction on the authority of the General Assembly to enact local legislation, it seems unnecessary to continue the reference to "general laws."

Although the drafting changes recommended by the Commission are extensive in nature, it should be emphasized that the insertion of a single provision—Article II, Section 25—in lieu of the present Article VII and Article VIII, Section 4, does not represent any change in the present system of exercising legislative authority. The powers of the General Assembly to regulate county and municipal government are neither broader nor more limited than under the present Constitution.

Based upon these conclusions, the Commission makes the following recommendation:

Recommendation No. 10. That a single provision granting broad powers to the General Assembly, such as it now possesses, to control local government by general or by local and special legislation be inserted in the Constitution in lieu of the present Article VII and the present Article VIII, Section 4 (see draft, Article II, Section 25); and that Sections 7 and 12 of the present Article VII be transferred to Article V, Revenue, Taxation, and Public Debt (see draft, Article V, Sections 6 and 9).

Local, private, and special legislation. Sections 10, 11, 12, and 29 of the present Article II relate to the subject of local, private, and special legislation. Sections 10, 11, and 29 prohibit the passage of specific types of local, private, and special acts.

Section 12 requires thirty days notice anterior to the passage of private laws. The Supreme Court of North Carolina has held that despite the absence of any record of such notice, upon passage of such an act a presumption arises that proper notice has been given.* The section is thus ineffective, and it is felt that it should be eliminated.

The Commission gave serious consideration to the problem faced by the General Assembly in curtailing local, private, and special legislation. Several proposals for either stemming or screening the flow of such acts were considered at length. The Commission concluded that, instead of revising the framework of present Article II, Section 29, it is better to deal expressly with specific situations requiring statewide uniformity in legislative treatment. Thus, for example, specific provisions have been included in Article V, governing classification and exemption of property for purposes of taxation—subjects not mentioned in present Article II, Section 29.

There are, however, several of these specific provisions included elsewhere in the draft which affect this section. First, the prohibition against local and special legislation “relating to the establishment of courts inferior to the Superior Court,” has been deleted; the same action was taken with regard to the prohibition against such legislation “relating to the appointment of justices of the peace.” Changes proposed in Article IV, Judicial Department, make these deletions necessary. In that article, the General Assembly has been specifically forbidden to establish or authorize courts except as therein permitted. In addition, the proposed revision would replace the system of justice of the peace courts with a system of “Trial Commissioners,” specifically providing for appointment of those officers. Because of these two changes in Article IV, the prohibitions contained in Article II, Section 29, are no longer necessary. In fact, their presence could conceivably damage the effectiveness of the proposals on Article IV because Article II, Section 29, gives specific authority to pass general laws regulating the enumerated subjects. Thus, failure to delete these two prohibitions deleted from the draft would create a conflict with the revised Article IV.

* *Gallimore v. Thomasville*, 191 N. C. 648, 132 S.E. 657 (1926); *Matthews v. Blowing Rock*, 207 N. C. 450, 177 S.E. 429 (1934).

It should be noted here that Sections 10, 11, and 29 of the present article have been combined into a single section and appear in the draft as Section 26 of Article II.

The following are the Commission's recommendations concerning local, private and special legislation:

Recommendation No. 11. That Section 12 of Article II be eliminated from the Constitution.

Recommendation No. 12. That the prohibitions against local, private, and special legislation "relating to the establishment of courts inferior to the Superior Court" and "relating to the appointment of justices of the peace," be eliminated from Article II, Section 29, of the present Constitution (see draft, Section 26).

Private Corporations. Sections 1, 2, and 3 of the present Article VIII relate to the subject of private corporations. Section 1 prohibits the creation of corporations by special act, except for corporations created for charitable, educational, penal, or reformatory purposes as agencies of the State. This provision, essentially a prohibition against a particular class of special legislation, was inserted in the Constitution in 1868. But until 1917 the provision gave the General Assembly power to make such exceptions to the prohibition as it deemed necessary. This made the section almost totally ineffective in stemming the flow of special legislation on that particular subject. In 1917, however, the exception was removed, and the original purpose of the section was achieved.

Section 3 of Article VIII requires that the term "corporation" be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. It also insures that all corporations shall have the right to sue and be sued. It is the opinion of the Commission that these two provisions should, in substance, be retained.

Section 2 of Article VIII relates to the manner in which corporate debts shall be secured. It is the Commission's conclusion that this provision is no longer necessary, nor is Section 4 of Article VIII, which properly relates to local government and was evidently inserted in Article VIII through error. Section 4 has been previously discussed in the section on local government.

The Commission makes the following recommendation concerning private corporations:

Recommendation No. 13. That Sections 1 and 3 of Article VIII be redrafted as a single provision and inserted as a part of Article II, Legislative Department, and that Article VIII of the present Constitution be eliminated as a separate article. (see draft, Section 27).

Sections redrafted

Other than the sections affected by proposed substantive changes, seven sections of the present Article II were subjected to redrafting. These changes are reflected in five sections of the draft. They are as follows:

1. **Section 8. Qualifications for Representatives.** The phrase "qualified elector" has been changed to "qualified voter."
2. **Section 9. Election for members of the General Assembly.** This section is clearly out of date. There is still a reference to general elections for members of the General Assembly being held in August. It has been revised to bring it into harmony with the present practice of holding such elections in November. (Present Section 27).
3. **Section 15. President of Senate.** This section, presently Section 19, was redrafted for two purposes. The elimination of Article III, Section 11, stating that the Lieutenant-Governor shall be President of the Senate without any amendment to Section 19 of Article II would have left the title "President of the Senate" out of the Constitution. In order to preserve the title, Section 19 was redrafted to make specific reference to the office of "President of the Senate." A second purpose in redrafting was to eliminate phraseology in the present provision which states that the Lieutenant-Governor shall preside in the senate, "but shall have no vote unless it may be equally divided." Although the intent to give the Lieutenant-Governor a vote only when the members of that House are equally divided in voting seems reasonably clear, it was felt advisable to free the matter from doubt.
4. **Section 17. Officers of the House.** In the language of the time in which the provision was written, this section states that "the House of Representatives shall choose their own speaker." In conformity with the more prevalent American usage, the word "their" was changed to "its." (Present Section 18).
5. **Section 19. Bills and resolutions to be read three times.** This section of the draft combines present Sections 14 and 23. Section 14 sets out the reading requirements for revenue bills. Section 23 simply states that "all bills and resolutions of a legislative nature shall be read three times in each House before they pass into laws, and shall be signed by the presiding officers of both Houses." Section 23 was utilized as a general rule, and Section 14 became an exception to the general rule. In addition, a clause was added making it clear that the first reading of a revenue bill may be had in one House on the same day on which the third reading occurred in the other. This conforms to present practice.

Transferred provisions

Two sections were transferred from Article II to Article V, Revenue, Taxation, and Public Debt. Article II, Section 30, of the present Constitution places limitations on the use of sinking funds. This provision appears as Section 7 of Article V in the draft. Article II, Section 31, concerns limitations on the use of retirement funds and appears as Section 8 of Article V in the proposed draft.

Reorganization of Article.

Article II of the present Constitution does not appear to be well organized. Sections relating to the legislative process are scattered throughout, and in other instances, sections which could easily be grouped together are sprinkled in various places in the article. Article II has been reorganized as indicated in Table II.

Table II

ORGANIZATIONAL OUTLINE: ARTICLE II, LEGISLATIVE DEPARTMENT

- I. Two Houses—composition and apportionment.**
 - A. Two branches—House and Senate (Section 1).
 - B. Time of assembling (Section 2).
 - C. Number of Senators (Section 3).
 - D. Regulations in relation to districting State for Senators (Section 4).
 - E. Regulations in relation to apportionment of representatives (Section 5).
 - F. Ratio of representation in House (Section 6).
- II. Members of the General Assembly—qualifications, election, compensation.**
 - A. Qualifications for Senators (Section 7).
 - B. Qualifications for Representatives (Section 8).
 - C. Election for members of the General Assembly (Section 9).
 - D. Terms of office (Section 10).
 - E. Oath of members (Section 11).
 - F. Vacancies (Section 12).
 - G. Pay of members and presiding officers of the General Assembly (Section 13).
- III. Powers and organization of two Houses.**
 - A. Powers of General Assembly (Section 14).
 - B. President of the Senate (Section 15).
 - C. Other Senatorial officers (Section 16).
 - D. Officers of the House (Section 17).
 - E. Election of officers (Section 18).
- IV. The Legislative process.**
 - A. Bills and resolutions to be read three times (Section 19).
 - B. Style of the acts (Section 20).
 - C. Journals (Section 21).
 - D. Yeas and nays (Section 22).
 - E. Protest (Section 23).
- V. Mandates and limitations.**
 - A. General Assembly to regulate entails to prevent perpetuities (Section 24).
 - B. Local government (Section 25).
 - C. Limitations on power to enact local, private and special laws (Section 26).
 - D. Corporations (Section 27).

Article III, Executive Department

Recommended changes in substance.

Inauguration of Governor. Section 1 of Article III states that the Governor's term shall begin on the first day of January next after his election. Section 4 states that he shall take an oath before a joint session of the General Assembly or before any justice of the Supreme Court. In 1956, Article II, Section 2, was amended, and the General Assembly now convenes in February. This change, made during the administration of the present Governor, has not been in effect for the inauguration of a Governor assuming the office for the first time. No problem arises when, after serving the unexpired term of a predecessor, a person is elected for a full term. However, when a Governor assumes the office for the first time, his term begins on January 1. While the General Assembly could meet at that time, under present practice it does not meet until more than thirty days later. The Commission feels that it is advantageous for the Governor to be in office for a month before the legislative session begins in order that he may have an opportunity fully to prepare his legislative program.

The Commission considered returning to the old system of having the General Assembly convene in January, but concluded that it would be unwise for both Governor and General Assembly. Therefore, it is recommended that the option of taking the oath before the members of the General Assembly be eliminated from Section 4. This would not mean that a Governor could not take an oath before a joint session, nor would it abolish the traditional inaugural ceremony.

Recommendation No. 14. That Article III, Section 4, be amended so as to require only that the Governor take an oath or affirmation before any Justice of the Supreme Court (see draft, Section 4).

Succession to office of Governor. The Commission finds several defects in Article III, Section 12. First, the section is obscure as to the circumstances under which the Lieutenant-Governor becomes Governor and those under which he is temporarily acting as Governor.

Second, difficulties arise in connection with the requirement that the Secretary of State convene the Senate, that they may elect "a President of the Senate to administer the government" if vacancies occur in the offices of both the Governor and Lieutenant-Governor. A question arises as to whether this procedure must be followed, even though at its previous session the Senate has elected a "President of the Senate" under authority of present Article II, Section 20, as it did in 1955. For example, if there were simultaneous vacancies in the office of Governor, Lieutenant-Governor, and Secretary of State, there would then be no one to convene the Senate that it might elect a President "to administer the government." Because of the threat of atomic war and also because of the possibility of multiple death in modern travel accidents, this defect should be eliminated. Rather than attempting to specify a remedy for this situation in the Constitution, the Commission proposes to authorize the General Assembly to determine the order of succession below the office of Lieutenant-Governor. This

change is desirable not only because of the ambiguity concerning election of a "President of the Senate," but also because as a practical matter the General Assembly should be left free to provide for continuity of government in the event of major disaster.

A change in Section 2 of Article III (see draft, Section 2) should be pointed out at this time. The last clause of that section now reads: "nor shall the person elected to either of these two offices be eligible to the same office more than four years in any term of eight years, unless the office shall have been cast upon him as Lieutenant-Governor or President of the Senate." As a necessary result of the proposed change placing the order of succession below the office of Lieutenant-Governor in the hands of the General Assembly, this clause was redrafted, the only substantive change being the elimination of reference to the President of the Senate.

In addition to correction of these two defects, the Commission suggests a third change in Section 12. Presently this section provides that upon impeachment of the Governor by the House of Representatives, and pending disposition of his case by the Senate, he shall be suspended from office. The Commission feels that, having been placed in office by the people, a Governor should not be displaced unless and until convicted upon impeachment.

The following recommendation sets forth the changes suggested in Article III, Section 12:

- Recommendation No. 15.** (a) That Article III, Section 12 be revised to specify:
- (1) The conditions under which the Lieutenant-Governor becomes Governor.
 - (2) The conditions under which the Lieutenant-Governor merely serves as acting Governor.
- (b) That this section be revised to give the General Assembly power to provide for the order of succession to the office of Governor below the office of Lieutenant-Governor.
- (c) That this section be altered to eliminate the requirement that a Governor be suspended from office upon impeachment by the House of Representatives and pending disposition of his case by the Senate (see draft, Section 11).

Succession to other executive offices. Article III, Section 13, presently regulates succession to executive offices other than that of Governor. The Commission noted one problem with regard to succession to these offices. Although there are provisions governing the filling of vacancies in executive offices, there is no assurance in the Constitution of continuity in the functioning of these offices pending appointment to fill a vacancy or during temporary incapacity of executive officers. The Commission feels that it would be wise to authorize the Governor to appoint an acting official to perform the duties of a particular office pending appointment

of a successor or restoration to capacity of the official occupant. In this manner, the Governor will be free to seek a successor whom he believes most highly qualified with the assurance that official acts of the office in question will continue to be performed. Also, the same continuity will be insured during the temporary physical or mental incapacity of an executive officer.

To these ends, the Commission makes the following recommendation :

Recommendation No. 16. That Article III, Section 13 be so amended as to allow the Governor to appoint an acting officer pending appointment to fill a vacancy or during the temporary mental or physical incapacity of officers of the Executive Department (see draft, Section 13).

Incapacity of Governor. While the Constitution prescribes the order of succession to the governorship in the event of the Governor's "inability to discharge the duties of his office," no machinery or procedure has ever been provided for determining when such inability exists or when it has terminated. The difficulties which could arise from the lack of any means of determining these questions are too obvious to require discussion. Because of the grave responsibility involved in finding that a Governor should be suspended from office for disability, the Commission favors entrusting that power to the General Assembly, with the further safeguard that two-thirds of the members of each House must concur in any finding of incapacity. This is the same procedure as that prescribed since 1876 for the removal of judges for inability. If a question of the Governor's disability or the removal thereof should arise while the General Assembly is not in session, four members of the Council of State should be authorized to convene the General Assembly in extra session to deal with the matter.

Although the Commission strongly believes that a two-thirds majority should be required for a finding of incapacity, it feels that only a simple majority should be required to restore a Governor to active duty.

To effectuate its conclusions concerning determination of incapacity of the Governor, the Commission makes the following recommendation :

Recommendation No. 17. That a new section be inserted in Article III providing for a determination of the physical or mental incapacity of the Governor to perform the duties of his office; that such determination be by joint resolution adopted by two thirds of all the members of each house of the General Assembly; and that restoration of capacity be determined by adoption of a joint resolution by a majority of all the members of each house of the General Assembly (see draft, Section 12).

Incapacity of other executive officers. The Commission is equally interested in assuring some method of determining the physical or mental incapacity of other executive officers. However, it is felt that it is unnecessary to burden the Constitution with a lengthy procedure for effecting such determination. Thus, the Commission recommends that the General Assembly be authorized to provide by law procedures for determining physical or mental incapacity of executive officers and for determining whether they have sufficiently recovered their powers to resume active duty.

Recommendation No. 18. That the General Assembly be authorized to provide for the determination of physical or mental incapacity of executive officers other than the Governor and for their restoration to active duty (see draft, Section 14).

Council of State. One minor change is suggested in Article III, Section 14 of the present Constitution. When the Council of State was last enlarged, no change was made in the number required for a quorum of that body. Section 14 still provides that three members shall constitute a quorum. In view of this obvious omission, the Commission makes the following recommendation:

Recommendation No. 19. That Article III, Section 14, be amended to provide that four members shall be necessary to constitute a quorum of the Council of State (see draft, Section 15).

Salaries of executive officers. Article III, Section 15, of the present Constitution provides that salaries of executive officers shall neither be increased nor decreased during the time for which they shall have been elected. The Commission decided that the prohibition against increasing executive salaries should be eliminated.

The recommended change places executive officers in the same position as judges.

Recommendation No. 20. That Article III, Section 15 be amended to allow the General Assembly to raise but not to diminish the salaries of executive officers during the terms for which they have been elected or appointed (see draft, Section 16).

Sections redrafted or eliminated

In addition to the substantive changes recommended in Article III, the Commission suggests the following drafting changes:

1. **Section 1. Officers of the Executive Department.** A proviso at the end of this section was deleted. It provided that officers first elected under the Constitution of 1868 would assume duties of their offices ten days after congressional approval of the Constitution.

2. **Section 6. Reprieves, commutations, pardons, and paroles.** Transitional matter concerning termination of the Governor's power of paroles was eliminated. The language had been necessary to accomplish the transfer of parole power from the Governor to the Board of Paroles.
3. **Section 18. Department of Agriculture.** This section (present Section 17) was redrafted to conform it to present practice and to eliminate language now obsolete. The present provision refers to a "Department of Agriculture, Immigration, and Statistics." The title "Department of Agriculture" was substituted. Also, the reference to encouragement of sheep husbandry as a specific mandate to the General Assembly was eliminated. These changes are self-explanatory.

Reorganization of article

Much less reorganization was necessary in this article than in Articles I and II. The organization of Article III of the proposed draft is shown in Table III.

Table III

ORGANIZATIONAL OUTLINE: ARTICLE III, EXECUTIVE DEPARTMENT

- I. Executive Department: qualification, elections, etc.**
 - A. Officers of the Executive Department (Section 1).
 - B. Qualifications for Governor and Lieutenant-Governor (Section 2).
 - C. Returns of elections (Section 3).
 - D. Oath of office for Governor (Section 4).
- II. Duties and powers of Governor.**
 - A. Duties of Governor (Section 5).
 - B. Reprieves, commutations, and pardons (Section 6).
 - C. Commander-in-Chief (Section 7).
 - D. Extra sessions of General Assembly (Section 8).
 - E. Appointment of officers whose appointments are not otherwise provided for (Section 9).
 - F. Biennial reports from executive officers; transmittal to General Assembly (Section 10).
- III. Succession to office of Governor; incapacity of Governor.**
 - A. Succession to office of Governor; performance of duties by Lieutenant-Governor during physical or mental incapacity of Governor or his absence from the State (Section 11).
 - B. Determination of incapacity of Governor (Section 12).
- IV. Other executive officers: duties, succession, incapacity.**
 - A. Duties to be provided by law; succession (Section 13).
 - B. Determination of incapacity (Section 14).
- V. Council of State (Section 15).**
- VI. Compensation of executive officers (Section 16).**
- VII. Executive departments.**
 - A. Department of Justice (Section 17).
 - B. Department of Agriculture (Section 18).
- VIII. Seal of State (Section 19).**

Article IV, Judicial Department

Recommended substantive changes

The Commission believes that there is need for revision of the structure of the court system below the level of the Superior Courts. Under the present Constitution, which grants to the General Assembly the authority to establish courts between the Superior Court and the justice of the peace courts, there has been created a large number of local courts differing widely in jurisdiction, procedure, costs, and methods of selecting personnel. Further, continued existence of the present justice of the peace courts, which is required by the present Constitution, leaves much to be desired.

The most far-reaching recommendation in Article IV is that which requires establishment of a system of inferior courts uniform throughout the State, superseding all presently existing inferior courts, including those of justices of the peace.

A few significant details will, if the proposed draft is adopted, be prescribed by the Constitution. For example, the draft includes a provision that the compensation of a judge or Trial Commissioner (the nearest equivalent in the draft to a justice of the peace) may not be made to depend upon his decision or upon collection of costs.

In general, the draft requires the General Assembly to prescribe, or provide a method for prescribing, on a uniform basis, rules of procedure for trial courts, the jurisdiction of such courts, and fees and costs. Under the proposed draft, the Assembly could delegate the authority to determine such matters to some agency deemed by it to be appropriate—for example, the Supreme Court.

Those desiring to compare the Commission's recommendations with the recommendations made by the North Carolina Bar Association's Committee for Improving and Expediting the Administration of Justice will find that both drafts of Article IV follow the same general plan of organization, and comparison may readily be made by cross-checking section captions.

Court Structure. As previously noted, the Commission favors the establishment of a uniform system of inferior courts. To accomplish this, it is desirable to specify the general structure of the court system in the Constitution and to prohibit the creation or authorization of courts not embraced by that system. To these ends, the Commission recommends that the judicial power of the State be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The Court for the Trial of Impeachments is the same as that provided in the present Constitution.

The General Court of Justice, as proposed in the draft, is to consist of an appellate division, a Superior Court division, and a division of local trial courts. These three divisions will be discussed hereafter.

Administrative agencies are excepted from this vesting of judicial power. These bodies have heretofore been vested with limited judicial powers under authority of the present constitutional provision empowering the General Assembly to create courts inferior to the Superior Court. However, if the General Assembly's discretionary power to create such courts is removed, special provision must be made to permit the vesting of limited judicial powers in administrative agencies.

The Commission makes the following recommendation concerning the vesting of judicial power :

- Recommendation No. 21.** (a) That the judicial power, except for that vested in administrative agencies by the General Assembly, be vested in a Court for the Trial of Impeachments and in a General Court of Justice, to consist of an appellate division, a division of Superior Courts, and a division of local trial courts (see draft, Sections 1 and 3).
- (b) That the General Assembly be prohibited from establishing or authorizing any courts other than those permitted by Article IV of the Constitution (see draft, Section 1).
- (c) That the General Assembly be authorized to vest in administrative agencies such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created (see draft, Section 2).

Supreme Court. Initially, the appellate division of the General Court of Justice is to consist of the Supreme Court. The Supreme Court of North Carolina is, at present, one of the most efficient appellate courts in the country. However, case loads of the Justices of the Supreme Court are slowly increasing. To help care for the burdens of increased appellate litigation, the Commission suggests that the General Assembly be authorized to increase the number of Associate Justices to not more than eight.

One other change regarding the Supreme Court should be noted. Article IV, Section 6 of the present Constitution states that all terms of the Supreme Court shall be held in Raleigh. This statement was inserted in the Constitution in 1935. Section 7, adopted prior to 1935, states that all sessions shall be held in Raleigh unless the General Assembly shall otherwise provide. As between the two provisions, the 1935 amendment must take precedence. However, the Constitutional Commission, mindful of the dangers of modern warfare, has reinstated the present Section 7, thus allowing the General Assembly to provide another site for terms of the Supreme Court if it should so desire.

- Recommendation No. 22.** That the General Assembly be empowered to increase the number of Associate Justices of the Supreme Court from six to not more than eight (see draft, Section 6 (1)).
- (b) That the General Assembly be permitted to authorize the Supreme Court to hold sessions in places other than Raleigh (see draft, Section 6 (3)).

Intermediate Court of Appeals. If appellate litigation increases to such a degree that the Supreme Court cannot adequately handle the load, some means of disposing of this volume of cases must be found. To provide such an outlet, the Commission recommends that the General Assembly be empowered to create within the appellate division an intermediate Court of Appeals. This court may be created only upon recommendation of the Supreme Court, but the General Assembly would determine its structure and organization.

Recommendation No. 23. That upon recommendation of the Supreme Court, the General Assembly be empowered to create within the appellate division an intermediate Court of Appeals, and that the General Assembly be given power to determine structure and organization of the Court of Appeals (see draft, Section 7).

Superior Courts. Essentially, Article IV, Section 8, of the draft leaves the Superior Court system as it is today. However, two changes should be pointed out. First, the proposed draft leaves to the General Assembly the question of whether the present system of rotating Superior Court Judges shall be continued. The limitation that no judge may hold all of the courts in a single district more than once in four years has been eliminated as a constitutional requirement. This change does not abolish the present system of rotation; it merely leaves the General Assembly free to consider the problem and deal with it in the future in whatever may appear to be the best manner.

A second change is found in the deletion of references to "terms" of Superior Court. This deletion is made in an effort to avoid the myriad technicalities surrounding the idea of fixed court terms. Instead, the phrase "trial sessions" has been used. Under the terms of Article IV, Section 8, regular trial sessions are to be fixed pursuant to law. This wording permits the General Assembly to delegate its power to schedule trial sessions, and if it saw fit, this power could be delegated to the Supreme Court.

Recommendation No. 24. That the General Assembly be left free to retain, revise, or abolish the present system of rotating Superior Court Judges; and that the word "terms" be replaced by the words "trial sessions" (see draft, Section 8).

Local Trial Courts. As noted, the Commission is convinced that the primary need for court reform is in the area of courts inferior to the Superior Court. To achieve this end, the draft specifies that the General Assembly shall provide for division, from time to time, of each Superior Court judicial district into local court districts. For each of the districts, a Chief District Judge is to be selected for a term of four years. The draft does not specify election or appointment of these judges, leaving this matter to the determination of the General Assembly. In addition

to the Chief Judge, the General Assembly may, if necessary, provide for selection of one or more Associate District Judges. The draft also requires appointment for terms of two years of one or more Trial Commissioners for each county, who are to be officers of the District Courts. Appointments to the office of Trial Commissioner are to be made by the senior regular resident Superior Court judge, from recommendations submitted by the Chief District Judge of the district in which the Trial Commissioner is to serve.

Under the terms of Article IV, Section 9, of the draft, vacancies in the office of District Judge are to be filled, for the unexpired term, in a manner provided by general law. Appointments to fill vacancies in the office of Trial Commissioner are to be made in the same manner as for a full two-year term.

The Commission feels that some deadline should be set to insure that these changes will be effected. Accordingly, Article IV, Section 9 (3), grants continued life to all existing courts not authorized by the revised Constitution, including justice of the peace courts, only until the first day of January, 1965. This should allow the General Assembly sufficient time to enact whatever transitional legislation may be necessary to care for establishment of the new system and transfer of pending cases to new courts.

Recommendation No. 25.

(a) That all existing trial courts, other than the Superior Courts, be replaced by a division of local trial courts, to be known as District Courts (see draft, Section 9).

(b) That the General Assembly be required to provide for the division, from time to time, of the Superior Court judicial districts into local court districts (see draft, Section 9 (1)).

(c) That there be in each district a Chief District Judge, and, if necessary, one or more Associate District Judges, who shall serve for terms of four years (see draft, Section 9 (1)).

(d) That there be appointed, as officers of the District Courts, one or more Trial Commissioners in each county, who shall serve for terms of two years (see draft, Section 9 (1)).

(e) That all courts other than those authorized by the Constitution be continued only until January 1, 1965 (see draft, Section 9 (3)).

Selection and tenure of Judges. Article IV, Section 21 of the present Constitution provides that Justices of the Supreme Court and Judges of the Superior Court shall be elected for terms of eight years. Except for the insertion of judges of the Court of Appeals, no change has been made in this provision.

As previously noted, the proposed draft authorizes the General Assembly to prescribe the method by which District Judges shall be selected. This power is, however, limited in that the manner of selection must be prescribed by general law uniformly applicable in every local court district of the State. Presently, county and municipal judges are selected by a number of different methods: election by the people, appointment by county commissioners, appointment by the regular resident Superior Court Judge, and other methods. The draft provision requires a single mode of selection, but leaves the mode to the General Assembly.

Trial Commissioners are to be appointed by the regular resident Superior Court Judge from nominations submitted by the Chief District judge of the district in which the Commissioner is to serve. The Constitutional Commission feels that complete responsibility for appointment of Trial Commissioners should not be vested in the Chief District Judge. Such a situation could present opportunities for abuse. However, the Chief District Judge should have some responsibility for these appointments, both from the standpoint of efficient control over the appointees and public responsibility for the quality of his administration.

The draft provides that District Judges shall serve for terms of four years, and that Trial Commissioners shall serve for two years. These relatively short terms permit the replacement of persons unfitted for service as judicial officers with a minimum of difficulty.

- Recommendation No. 26.** (a) That Article IV, Section 21, providing for election of Justices of the Supreme Court and Judges of the Superior Court be amended to include Judges of the Court of Appeals (see draft, Section 15).
- (b) That District Judges be selected in a manner prescribed by general law uniformly applicable in every local court district of the State, and that they serve for terms of four years (see draft, Section 9 (1)).
- (c) That Trial Commissioners be appointed for terms of two years by the senior regular resident Superior Court Judge from nominations by the Chief District Judge of the district in which the Commissioner will serve (see draft, Section 9 (1)).

Jurisdiction of General Court of Justice. Sections 8 and 9 of the present Article IV govern jurisdiction of the Supreme Court. The proposed draft leaves the substance of these provisions unchanged (see draft, Section 11 (1)).

Section 11 of the draft grants to the Supreme Court power to allot such part of its appellate jurisdiction to the Court of Appeals, if established, as it may deem wise. However, in any criminal case in which there is a sentence of death or life imprisonment, and in cases involving interpretation of the Constitution of North Carolina or that of the United States, an absolute right of final appeal to the Supreme Court is guaranteed.

Jurisdiction of the Superior Courts and the District Courts is subject

to the power of the General Assembly. Except as otherwise provided by the General Assembly, the Superior Courts will have original general jurisdiction throughout the State. Because the Assembly's discretionary power to create courts inferior to the Superior Court is being withdrawn, some special provision must be made concerning Clerks of the Superior Court, who now exercise judicial powers of various kinds. To preserve the present situation without making it inflexible, the draft provides that Clerks shall have such jurisdiction and powers as the General Assembly shall provide by general law.

Jurisdiction of the District Courts and Trial Commissioners will also be determined by the General Assembly. However, to achieve uniformity, it is required that the jurisdiction and powers of these courts be prescribed by general law uniformly applicable in every local court district of the State.

The General Assembly is also charged with providing a proper system of appeals. This duty is carried over from Article IV, Section 12, of the present Constitution. One limitation is provided in this regard: appeals from Trial Commissioners must be heard *de novo*, with the right of trial by jury.

- Recommendation No. 27.**
- (a) That the jurisdiction and powers of the Supreme Court remain the same (see draft, Section 11 (1)).
 - (b) That the Supreme Court be empowered to vest in the Court of Appeals, if established, such portion of the jurisdiction presently granted to it as it may deem wise: provided, that there must be an absolute right of final appeal to the Supreme Court in all cases in which a sentence of death or life imprisonment has been imposed and in all cases involving a construction of the Constitution of this State or of the United States (see draft, Section 11 (2)).
 - (c) That except as otherwise provided by the General Assembly, the Superior Courts be granted original general jurisdiction throughout the State (see draft, section 11 (3)).
 - (d) That the General Assembly be authorized to prescribe the jurisdiction and powers of courts inferior to the Superior Court by general law uniformly applicable in every local court district of the State (see draft, Section 11 (4)).
 - (e) That the General Assembly be charged with providing a proper system of appeals, subject to the requirement that appeals from Trial Commissioners must be heard *de novo*, with the right of trial by jury (see draft, Section 11 (5)).

Removal of judges and clerks. Article IV, Section 31, of the present Constitution provides for removal of Supreme Court and Superior Court judges for mental or physical inability upon a concurrent resolution by two-thirds of both houses of the General Assembly. Section 16 of the draft preserves this system, adding Judges of the Court of Appeals. In addition, a sentence has been added specifying that removal for any other cause shall be by impeachment.

The General Assembly is given power to provide by general law for removal of judges of inferior courts for misconduct or mental or physical incapacity.

Article IV, Section 32, of the present Constitution provides for removal of clerks. The procedures recommended for removal of clerks of the Supreme Court, Court of Appeals, and Superior Court are substantially the same as those in the present section. The draft provides that clerks of the above courts may be removed for misconduct or physical or mental incapacity by the judges of the courts concerned. In the case of a Superior Court Clerk, removal is to be by the senior regular resident judge. Any clerk against whom proceedings are instituted is entitled to written notice at least 10 days beforehand, and is granted a right of appeal as provided by law.

The draft provides that clerks of courts inferior to the Superior Court shall be removed for such causes and in such manner as the General Assembly may provide by general law.

- Recommendation No. 28.**
- (a) That Article IV, Section 31, be amended to include Judges of the Court of Appeals, if established, and to provide that removal for any cause other than mental or physical incapacity shall be by impeachment (see draft, Section 16 (1)).
 - (b) That the General Assembly be authorized to provide by general law for removal of judges of courts inferior to the Superior Court for mental or physical incapacity (see draft, Section 16 (2)).
 - (c) That clerks of the Supreme Court, Court of Appeals, and Superior Court be subject to removal for misconduct or mental or physical incapacity by the judges of the courts concerned, with the right of any clerk against whom proceedings are instituted to notice, hearing, and appeal (see draft, Section 16 (3)).

Rule-making power. The Supreme Court presently makes its own rules of practice and procedure. The Commission recommends that this power be continued and that in addition, the Supreme Court be granted power to make rules of procedure for the Court of Appeals, if that court is established. This latter recommendation is made in view of the fact that the Supreme Court is also given power to determine the jurisdiction

of the Court of Appeals. Because the two courts will constitute a division of the General Court and will be so closely related in their operation and administration, the power to make rules for the appellate division should be vested in the Supreme Court.

As to the other divisions of the General Court of Justice, the Commission feels that primary responsibility should remain fixed in the General Assembly. However, the proposed section is so drafted that the General Assembly could, if it chose, delegate the rule-making power to the Supreme Court or any other agency.

- Recommendation No. 29.** (a) That the Supreme Court be empowered to make rules of procedure for the appellate division of the General Court of Justice (see draft, Section 12 (2)).
- (b) That the General Assembly be directed to provide for the making of rules of procedure for courts below the appellate division (see draft, Section 12 (2)).

Forms of action. Article IV, Section 1, of the present Constitution abolished the common law forms of action and provided for one form of action for the enforcement or protection of private rights or the redress of private wrongs. This and other present provisions have been construed to mean that in all civil actions, whether involving legal or equitable remedies, the parties have a right to have issues of fact raised by the pleadings tried by a jury.*

The Commission's proposal eliminates the anachronistic reference to abolition of the old forms of action and feigned issues and makes other changes in wording, but no change in substance.

- Recommendation No. 30.** That Article IV, Section 1, of the present Constitution be redrafted, eliminating reference to abolition of the common law forms of action and feigned issues (see draft, Section 12 (1)).

Waiver of jury trial. The provisions of the present Constitution as interpreted by the courts of North Carolina do not allow waiver of jury trial in criminal cases upon a plea of "not guilty." The right to trial by jury is essentially a safeguard of the individual's rights. If, thoroughly understanding the meaning of his act, a defendant freely chooses to waive this right, there seems no reason why he should be prevented from doing so. Waiver should not, however, be allowed in cases involving capital punishment or life imprisonment.

The proposed draft allows waiver in felony cases only with consent of counsel for the accused and of the trial judge. In other cases, the waiver may be made by the defendant with the consent of the trial judge. As a further safeguard against hasty action, it is required that all waivers in criminal cases be in writing.

* *Worthy v. Shields*, 90 N. C. 192, 196 (1884); *Chastern v. Martin*, 81 N. C. 51, 55 (1879); *Lee v. Pearce*, 68 N. C. 76, 82, 89 (1873).

The provision of the present Constitution allowing waiver of jury trial in civil cases has been brought forward as a part of the proposed draft.

Recommendation No. 31. That provision be made for waiver of the right of trial by jury in all cases other than those involving life imprisonment or capital punishment; that all waivers must be in writing; that waiver in a felony case may be made only with consent of counsel for the accused and of the trial judge; that waivers in other cases may be made only with consent of the trial judge (see draft, Section 13).

Listing and drawing of jurors. The Commission is cognizant of the many problems involved in the listing and drawing of jurors. As a result of this awareness, it recommends that the Constitution require the General Assembly to establish a uniform system of listing and drawing jurors for both petit and grand juries. The method by which this is done is left to the discretion of the General Assembly.

Recommendation No. 32. That the General Assembly be directed to provide by general law uniformly applicable throughout the State for the listing and drawing of jurors for both petit and grand juries (see draft, Section 14).

Assignment of Judges. The Commission has brought forward as a part of the proposed draft the provisions of Article IV, Section 11, which grant to the Chief Justice power to assign Superior Court judges to hold one or more terms of Superior Court in any district. In conformity with the attempt to do away with the technical concept of fixed terms, the word "terms" has been changed to "sessions". To insure continuity in the performance of this function, the Commission recommends that the senior Associate Justice be authorized to exercise the power of assignment in the absence or temporary incapacity of the Chief Justice.

Recommendation No. 33. That the Chief Justice be empowered to assign Judges of the Superior Court to hold one or more sessions (rather than "terms") of court in any district, and that in the absence or temporary incapacity of the Chief Justice, the senior Associate Justice be authorized to exercise the power of assignment (see draft, Section 10).

Uniform schedule of court fees and costs. The Commission feels that one of the defects in the present court system is the wide variation in costs from one court to another throughout the State. Litigants and offenders in some areas are forced to pay large bills of costs which have no true relation to the cost of court proceedings. This should not be allowed to continue. Section 20 of the draft requires that the General Assembly provide

for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice below the appellate division. The Supreme Court presently fixes its own schedule of costs, and the Commission recommends that this power be continued and enlarged to include the power to fix fees and costs in the Court of Appeals, if that court is established.

Recommendation No. 34. That the General Assembly be directed to provide for the establishment of a schedule of fees and costs which shall be uniform in each division of the General Court of Justice below the appellate division, and that the Supreme Court be authorized to fix fees and costs for the appellate division (see draft, Section 20).

Compensation of judges. Article IV, Section 18, now authorizes the General Assembly to fix and regulate fees, salaries, and emoluments of all officers provided for in the judicial article and prohibits diminution of judges' salaries during their continuance in office. The draft brings this provision forward with one addition.

Compensation of some judges, particularly justices of the peace, is at present dependent upon conviction of the accused. This system of compensation presents opportunities for abuse. To prevent such a practice, the Commission recommends that the Constitution provide that in no case shall the compensation of any judge or Trial Commissioner be dependent upon his decision or upon the collection of costs. Such a provision does not prohibit compensating judges on a per case basis, but it does avoid the evils inherent in the present system of compensation based on convictions.

Recommendation No. 35. That Article IV, Section 18, be amended to provide that in no case shall the compensation of any judge or Trial Commissioner be dependent upon his decision or upon the collection of costs (see draft, Section 21).

Solicitors. Amendments proposed to Article IV are intended to accomplish several purposes: first, to place upon the Attorney General the duty of recommending to the General Assembly that the solicitorial districts be redistricted whenever he determines that there is a serious imbalance in the workloads of the District Solicitors or that there is other good cause; second, to allow the Attorney General to require a District Solicitor duties in relation to appeals; third, to permit the General Assembly to require performance by District Solicitors of duties other than those named in the Constitution; and fourth, to authorize the General Assembly to provide for the prosecution of criminal actions in courts inferior to the Superior Court.

Placing the duty to recommend redistricting of solicitorial districts on the Attorney General focuses responsibility for presenting the problem to the General Assembly and is intended to insure that the General Assembly will periodically consider taking action.

The Commission feels that the Attorney General should, when he feels it necessary, be allowed to require district solicitors to aid him in the preparation and argument of cases on appeal.

The grant to the General Assembly of power to require solicitors to perform duties other than those enumerated is a step intended to provide flexibility in the system of criminal prosecution in the State. Under this provision, the General Assembly could require the District Solicitor to supervise prosecution of all criminal actions arising in his district, whether originating in Superior Court or in District Courts. Should the General Assembly deem it advisable to require that all solicitors be full-time officers, it would be in a position to fix the duties of the office accordingly. Should the Assembly deem it desirable to provide administrative supervision of District Solicitors by the Attorney General, this, too, could be accomplished under the grant of power to require performance of duties other than those enumerated in the Constitution.

- Recommendation No. 36.**
- (a) That the Attorney General be charged with the duty of recommending that the General Assembly redistrict solicitorial districts whenever he shall determine that there is serious imbalance in the workloads of the District Solicitors or that there is other good cause (see draft, Section 17 (1)).
 - (b) That the District Solicitors be required to perform such duties as the Attorney General may require in relation to criminal appeals from the Superior Courts of their respective districts (see draft, Section 17 (1)).
 - (c) That the General Assembly be empowered to require performance by the District Solicitors of duties other than those enumerated in the Constitution (see draft, Section 17 (1)).
 - (d) That the General Assembly be authorized to prescribe the manner in which criminal actions in courts inferior to the Superior Court shall be prosecuted (see draft, Section 17 (2)).

Sheriffs, coroners, and constables. Article IV, Section 24, now provides for the election of a sheriff and coroner in each county and a constable in each township. Section 18 of the proposed draft provides only for the election of a sheriff. Mention of the coroner and constable in the Constitution was eliminated. Problems of urban growth and the resultant necessity of changes in local governmental structure make it undesirable to have numbers of minor officers required by the Constitution. Also, it may be desirable to make alterations in the present coroner system. The presence of this office in the Constitution makes changes of this character difficult, if not impossible. However, elimination of mention of these offices does not abolish them. Under the provisions of Article XII, Section 6, these

offices would continue in existence, subject to the power of the General Assembly to make such changes as it may deem wise.

Recommendation No. 37. That the offices of coroner and constable be eliminated from Article IV, Section 24 (see draft, Section 18).

Section redrafted.

Article IV, Section 25, now provides for the method of filling vacancies in offices created by Article IV. Minor word changes were made in this section, among them two changes inserting the phrase "election for members of the General Assembly" in conformity with the style change previously mentioned. No change in the substance of this section was made, and except as otherwise provided in Article IV, the Governor has the power to fill vacancies in offices therein created.

Sections eliminated from draft.

Nine sections of Article IV not heretofore mentioned were eliminated from the Constitution. Four of these are transitional provisions made necessary by adoption of the Constitution of 1868 or subsequent amendments (Sections 15, 19, 20 and 26). Two of them relate to justices of the peace: Section 27, relating to jurisdiction, and Section 28, relating to the filling of vacancies. Section 14, directing the General Assembly to provide special courts for trial of misdemeanors in cities and towns, was also eliminated as a result of the creation of a uniform system of lower courts. Section 15, establishing the office of Clerk of the Supreme Court, was deemed unnecessary as a provision of the Constitution. Section 30, authorizing the General Assembly to provide personnel for courts inferior to the Supreme Court, was deemed unnecessary since the General Assembly may do so through its general legislative power.

Section transferred.

As noted in discussing Article I, Declaration of Rights, Article IV, Section 5, relating to treason against the State, was transferred to the Declaration of Rights and appears there as Section 27.

Reorganization of Article.

The extensive substantive changes made in Article IV have necessitated complete reorganization. The organization of the proposed article appears in Table IV.

Table IV

ORGANIZATIONAL OUTLINE: ARTICLE IV, JUDICIAL DEPARTMENT

I. The Judicial Power

- A. Vested in Court for the Trial of Impeachments and General Court of Justice (Section 1).
- B. Authorization of General Assembly to vest incidental judicial powers in administrative agencies (Section 2).

- II. Court for the Trial of Impeachments (Section 3).
- III. The General Court of Justice (Section 4).
 - A. Appellate Division (Section 5).
 - B. Supreme Court (Section 6).
 - C. Court of Appeals (Section 7).
 - D. Superior Court (Section 8)
 - E. Local trial courts (Section 9).
- IV. Assignment of judges (Section 10).
- V. Jurisdiction of General Court of Justice (Section 11).
- VI. Forms of action; rules of procedure (Section 12).
- VII. Juries and jury trial.
 - A. Waiver of jury trial (Section 13.)
 - B. Listing and drawing of jurors (Section 14).
- VIII. Court personnel.
 - A. Election of Justices of Supreme Court, Judges of Court of Appeals, and Judges of Superior Court. (Section 15).
 - B. Removal of judges and clerks (Section 16).
- IX. District Solicitors (Section 17).
- X. Sheriffs (Section 18).
- XI. Filling of vacancies. (Section 19).
- XII. Fees, costs, salaries.
 - A. Fixing of fees and costs for General Court of Justice (Section 20).
 - B. Compensation of judges (Section 21).

Article V, Revenue, Taxation and Public Debt

Recommended substantive changes

Capitation tax. Article V, Section 1, of the present Constitution authorizes the General Assembly to levy a capitation tax of not more than two dollars and cities and towns to levy such a tax of not more than one dollar. Section 2 provides for distribution of the proceeds of the state and county poll tax for purposes of education and support of the poor. No more than 25% of such revenues may be appropriated for the latter in any one year.

Several aspects of these provisions led the Commission to suggest their elimination from the Constitution. First, the tax is restricted to male inhabitants between the ages of twenty-one and fifty years. Both the age and sex restrictions seem unnecessary. Second, the distribution of revenues from the tax is a matter which could best be determined by the General Assembly. The Commission felt that the imposition, rate and distribution of the tax should be left to the discretion of the General Assembly. Because elimination of these provisions would not deprive the General Assembly of power to levy such a tax, it was felt that the advantages of flexibility made elimination of these provisions desirable.

Recommendation No. 38. That Sections 1 and 2 of Article V be eliminated from the Constitution and that the matter of levying a capitation tax and distributing its proceeds be left to the General Assembly.

Property taxation. Because the Tax Study Commission has published an exhaustive report concerning problems of property taxation, lengthy discussion of the changes proposed here seems unnecessary. The Constitutional Commission worked closely with the Tax Study Commission in re-drafting Sections 3 and 5 of Article V. The recommendations concerning classification and exemption of property for purposes of taxation are the same as those proposed by the Tax Study Commission.

Briefly, however, the intent of the changes is to insure that the same class of property shall occupy the same status as a part of the property tax base in every county of the State. The General Assembly is required to make every classification by uniform rule, uniformly applicable in every county, municipality, and other local taxing unit of the State. In addition, the General Assembly is forbidden to delegate its power of classification, except that it may delegate to counties,* cities, and towns the power to classify trades and professions for local license tax purposes.

Similar restrictions have been placed upon exemption of property from taxation. Every exemption must be on a state-wide basis by uniform rule, uniformly applicable in every local taxing unit of the State. It is also provided that no taxing authority other than the General Assembly may exempt property; nor can the General Assembly delegate its power of exemption.

* Inclusion of counties in this exception differs from the printed report of the Tax Study Commission, but in all probability this addition will appear in any legislation presented to the General Assembly by the Tax Study Commission.

It should be emphasized that the requirement of uniformity in classification does not prohibit fixing of basic tax *rates* by local units in accordance with their individual needs, but it does seek to insure that the tax base will be uniform throughout the State. Also, it should be pointed out that the changes recommended in these sections do not represent a change in the traditional concept of property taxation in North Carolina. The idea of uniformity is expressed in the present Constitution, and the recommendations are merely directed toward tightening the provisions of the Constitution relating to property taxation in an effort to assure uniformity of classification and exemption.

Recommendation No. 39. (a) That Article V, Section 3, be amended to clarify the requirement that classification of property for purposes of taxation be on a state-wide basis, applying uniformly in every local taxing unit (see draft, Section 1).

(b) That the General Assembly be prohibited from delegating its power of classification, except to allow counties, cities, and towns to classify trades and professions for local license tax purposes (see draft, Section 1)

Recommendation No. 40. (a) That Article V, Section 5, be amended to require that all exemptions from taxation be on a state-wide basis, applying uniformly in every local taxing unit (see draft, Section 2).

(b) That the General Assembly be prohibited from delegating its power of exemption and that no other authority be allowed to exempt property from taxation (see draft, Section 2).

Income taxation. Recommended changes in the provisions of Article V, Section 3, deal with several problems inherent in the present provisions concerning taxation of income. Section 3 now allows the following exemptions: "for a married man with a wife living with him, or to a widow or widower having minor child or children, natural or adopted, not less than \$2,000; to all other persons not less than \$1,000."

One difficulty is that if both husband and wife have income, Section 3, as written, can be construed to require that the husband be given a \$2,000 exemption and the wife an additional \$1,000. For many years the General Assembly has apparently so interpreted Section 3. On the other hand, a husband whose wife has no separate income receives only the \$2,000 exemption. In addition, the present system allows distribution, between spouses, of assets such as security holdings, in order to gain an extra exemption. This system of giving extra benefits to some married couples and not to others seems unfair. The Commission proposes to allow the present \$2,000 to the income producing spouse of a married couple living together, only one of whom has income. When both husband and wife have

income, the proposed section allows each an exemption of \$1,000, with the right in either to allow the other to claim all or any part of his or her exemption. The effect of this proposal is three-fold: first, the married woman who provides the sole support for her family is assured by the Constitution of a \$2,000 exemption; second, the advantage of flexibility in apportioning their personal exemptions is given married couples when both husband and wife have income; third where both spouses have income, the allowance of the extra \$1,000 to the wife is not required by the Constitution. An additional effect of this change is purely administrative in character: the redrafting of this provision will measurably reduce administrative problems if the General Assembly should adopt a system of joint tax returns similar to that existing in the federal income tax system.

The exemption of \$1,000 to "all other persons" has been altered to read "all other natural persons" in the draft. This change would avoid the possible construction that the General Assembly is under an *obligation* to allow a \$1,000 exemption to all artificial persons, such as trusts or corporations. The General Assembly has not allowed corporations such an exemption, but has allowed one for trusts.

One other feature of the proposed provision should be noted. It is specifically stated that the exemptions set out are minimum exemptions. This leaves the General Assembly free to grant such other exemptions as it may deem wise. The following are the Commission's recommendations concerning income taxation:

- Recommendation No. 41.**
- (a) That the provisions of Article V, Section 3 be altered to allow the income producing spouse of a married couple living together an exemption of \$2,000 (see draft, Section 1).
 - (b) That married couples living together, both of whom have income, be allowed a minimum exemption of \$1,000 each, with the right in either spouse to allow the other to claim all or any part of such exemption (see draft, Section 1).
 - (c) That the exemption of \$1,000 granted to "all other persons" be altered to read "all other natural persons."

County taxation. One minor substantive change was made in Article V, Section 6. The present provision states that the twenty cent limitation shall not apply to taxes levied for the maintenance of the public schools of the State "for the term required by Article IX, Section 3, of the Constitution." This latter section requires that a school be maintained in every county school district for at least six months in each year. Under the local option provisions of Article IX, Section 12, of the present Constitution, however, schools may be closed in a local option unit. Thus, there is an apparent conflict between the requirement of a six month school term and the local option plan. Because the status of the six month requirement is unclear, the Commission has suggested that Article V, Section 6 (draft, Section 3) be altered to except from the twenty cent limitation on county

property taxes “taxes levied pursuant to general or special act of the General Assembly for the maintenance of the public schools of the State.” This alteration avoids any possible difficulty arising from construction of the six month requirement and the local option plan in Article IX.

Elimination of any cross-reference to the six month term will also make it clear that the General Assembly is not under a constitutional obligation to submit any tax for school maintenance to a vote of the people. However, such elections may, in the discretion of the General Assembly, be required as a matter of policy.

Recommendation No. 42. That Article V, Section 6, be altered so as to eliminate reference to the six month requirement in Article IX, and to except from the twenty cent limitation taxes levied pursuant to general or special act of the General Assembly for the maintenance of the public schools of the State (see draft, Section 3).

Debt limitations. Only one change in substance was made in Article V, Section 4, relating to state and local debt limitations. The present provision prohibits the General Assembly from lending the credit of the State in aid of any person, association, or corporation without a vote of the people, unless the purpose is to aid in completion of railroads unfinished at the time of the adoption of the Constitution of 1868. This provision was inserted during the great railroad boom of the nineteenth century. The Commission feels that the exception in favor of railroads unfinished in 1868 is no longer necessary, and therefore suggests its elimination. This would not prevent the lending of credit to a railroad, but it would require a vote of the people.

Recommendation No. 43. That Article V, Section 4, be altered to eliminate the exception of railroads unfinished at the time of adoption of the present Constitution from the requirement of a vote of the people on proposals to lend the credit of the State to any person, association, or corporation (see draft, Section 5).

Debts declared invalid. Article V, Section 9, of the proposed draft combines Article I, Section 6, and Article VII, Section 12, of the present Constitution. Other than minor redrafting to facilitate combination of the two sections, only one change was made. The State is forbidden by Article I, Section 6, to pay or authorize collection of any claim for the loss or emancipation of any slave. The Commission felt that this portion of the section should be eliminated.

Recommendation No. 44. That the prohibition against payment or authorization of collection of any claim for the loss or emancipation of any slave be eliminated from Article I, Section 6 (see draft, Section 9).

Section redrafted.

Other than those affected by substantive changes, only one section was redrafted:

Section 4. Acts levying tax shall state purpose. Section 7 of the present article requires that every act levying a tax state the "special object" to which it is to be applied. This phrase has been replaced by "public purpose." Section 1 of the draft states that the power of taxation shall be exercised "for public purposes only," and in an effort to standardize terminology, the phrase "public purpose" was inserted in Section 4.

Sections transferred to article.

Six sections were transferred to Article V from other articles of the present Constitution: Article VII, Section 7, the necessary expense limitation, was transferred and appears as Article V, Section 6; Article II, Section 30, concerning the inviolability of sinking funds, appears as Article V, Section 7; Article II, Section 31, concerning use of teachers' and state employees' retirement funds appears as Section 8; Article I, Section 6, and Article VII, Section 12, declaring certain debts and obligations invalid, were combined and appear as Section 9; and Article XIV, Section 3, concerning the drawing of money from the Treasury, appears as Section 10.

Table V**ORGANIZATIONAL OUTLINE: ARTICLE V,
REVENUE, TAXATION, AND PUBLIC DEBT**

- I. Taxation.**
 - A. State taxation—power of taxation and classification (Section 1).
 - B. Property exempt from taxation—power to exempt certain classes of property (Section 2).
 - C. Taxes levied for counties—limit (Section 3).
 - D. Acts levying taxes shall state purpose (Section 4).
- II. State and local indebtedness—Use of certain funds.**
 - A. Limitations on public debt (Section 5).
 - B. Necessary expense limitation on local governmental units (Section 6).
 - C. Use of sinking funds (Section 7).
 - D. Retirement funds (Section 8).
 - E. Debts incurred in War Between the States not to be paid (Section 9).
- III. No money to be drawn except under authority of appropriation, etc., (Section 10).**

Article VI, Suffrage and Eligibility to Office

Recommended substantive changes.

Qualifications of voter. Article VI, Section 2, of the present Constitution provides that "no person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's prison, shall be permitted to vote." The Commission has suggested elimination of the phrase "upon indictment." The 1949 amendment to Article I, Section 12, provided for waiver of indictment in all except capital cases. Thus, it is possible that a person may be convicted or may confess guilt of a felony, but not "upon indictment."

Recommendation No. 45. That the phrase "upon indictment" be eliminated from Article VI, Section 2 (see draft, Section 2).

Qualifications for registration. Article VI, Section 4, of the present Constitution contains what is popularly known as the "grandfather clause," enacted as a part of the revision of this article at the turn of the century. The effect of this clause was to except certain classes of persons from the literacy test required in the first sentence of this section. Such a clause is of little utility today, and the Commission feels that it should be eliminated.

Recommendation No. 46. That Article VI, Section 4, be revised to include only the required literacy test as a qualification for registration (see draft, Section 4).

Disqualification for office. Section 8 of Article VI presently provides that "all persons who shall have been convicted or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States" shall be disqualified for office. This portion of Section 8 was evidently designed to apply to the newly emancipated slaves after the Civil War. The Commission has altered this provision to disqualify "any person who is not qualified to vote in an election for such office." This change would mean that a person not eligible to vote could not run for office. Thus, because felons cannot vote, they would also be disqualified for office under the altered provision.

Recommendation No. 47. That Article VI, Section 8, be redrafted to disqualify for office any person not eligible to vote in an election for the office he seeks (see draft, Section 7).

Sections eliminated from article.

Two sections were eliminated from this article: Section 5, providing that the amendments to Article VI adopted in 1900 would be an indivisible plan;

and Section 9, providing an effective date for the revision of 1900. Neither of these sections is necessary today. Their elimination makes no alteration in the meaning of this article.

Reorganization of Article.

An organizational outline of Article VI appears in Table VI. Other than renumbering of sections resulting from elimination of Sections 5 and 9, no major reorganization was necessary.

Table VI

ORGANIZATIONAL OUTLINE: ARTICLE VI, SUFFRAGE AND
ELIGIBILITY TO OFFICE

- I. Voting and registration.
 - A. Who may vote (Section 1).
 - B. Qualifications of voter (Section 2).
 - C. Voters to be registered (Section 3).
 - D. Qualifications for registration (Section 4).
- II. Manner of holding elections (Section 5).
- III. Eligibility and disqualification for office.
 - A. Eligibility to office (Section 6).
 - B. Disqualification for office (Section 7).

Article VII, Education

Recommended substantive changes.

Duty to provide public schools. Article IX, Section 2, of the present Constitution states that "The General Assembly . . . shall provide by taxation and otherwise for a general and uniform system of public schools." Section 12 provides for local option units and for the closing of schools in any local option unit by vote of the qualified voters thereof. The Commission recognized the possibility of conflict between these two sections of the Constitution, and to avoid any such difficulty, Section 2 was altered to read: "Subject to, and except as provided by, Section 6 [present Section 12] of this article, the General Assembly shall provide by taxation and otherwise for public schools."

The phrase "general and uniform system" has been removed from this section. Because action under the local option plan closing schools in any unit would make the school system that much less general and uniform, the phrase was removed as a possible source of conflict with the local option provisions. Similarly, references to the public school "system" have been deleted wherever they appear in Article IX.

A second change in this section was made by elimination of the requirement of separation of the races. As a result of decisions of the United States Supreme Court, the Supreme Court of North Carolina, in *Constantian v. Anson County*, 244 N. C. 221 (1956), stated that "the mandatory requirement as to enforced separation, incorporated in Article IX, Section 2, by the 1875 amendment is no longer the law in North Carolina." Consequently, it seems inadvisable to perpetuate this provision in the Constitution of North Carolina.

Combined with Section 2 in the proposed draft is the first clause of Section 3, which states that "each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months of the year." Proposed Section 2 makes it clear that this requirement is subject to the provisions of the local option plan, avoiding any possible conflict between the two. It was felt that the requirement of a six month school term should not be eliminated from the Constitution. The remainder of Section 3 has been deleted. This clause subjects county commissioners to indictment for failure to maintain a school in each county school district for six months each year. At present the State pays the major portion of the cost of operating the public schools, and the counties pay the major portion of the cost of school buildings. This division of fiscal responsibility came about through legislation. In view of the existing situation, the Commission, feeling that the implications of the provision regarding indictment of county commissioners are somewhat uncertain, believes that the General Assembly should be free to divide fiscal responsibility for the public schools in such manner as it deems advisable.

Recommendation No. 48. (a) That Article IX, Section 2 (see draft, Article VII, Section 2) be amended to state clearly that the provisions of that section are

subject to the provisions of Article IX, Section 12 (see draft, Article VII, Section 6).

(b) That the requirement of separation of the races be deleted from Article IX, Section 2.

(c) That the requirement of maintenance of a school in each county school district be incorporated as a part of Section 2.

(d) That the portion of Article IX, Section 3, subjecting county commissioners to indictment for failure to maintain a school in each district for six months each year be deleted from the Constitution.

Compulsory school attendance. Article IX, Section 11, now empowers the General Assembly to require school attendance by children from six to eighteen years of age, "for a term of not less than sixteen months." This term was inserted when the required annual school term was four months, and the intended minimum period was four years. The four month term has now been replaced by a requirement of six months. The sixteen month provision is now obsolete, and in the opinion of the Commission the concept of minimum schooling of only four years is likewise obsolete. Hence, the Commission has removed all mention of a specific minimum attendance.

Recommendation No. 49. That Article IX, Section 11, be amended by deleting reference to a minimum term of attendance (see draft, Article VII, Section 3).

State Board of Education; State Superintendent of Public Instruction. Article IX, Section 8, of the present Constitution provides that "the general supervision and administration of the free public school system . . . shall . . . be vested in the State Board of Education." Section 9 of the same article grants the Board power "generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto." These sections also grant to the Board certain specific powers.

The Commission recommends, in substance, that the quoted provisions be replaced by a provision to the effect that the powers of the State Board, other than those specifically enumerated in the Constitution, shall be as prescribed by the General Assembly.

Present Section 9 provides: "All the powers enumerated in this section shall be exercised . . . subject to such laws as may be enacted from time to time by the General Assembly." However, Section 8, which came later into the Constitution, contains no comparable provision; and the meaning of the provision in Section 9 is by no means clear.

In proposing these changes, the Commission feels that, while the enumerated specific powers should be continued, it is inadvisable to have in the Constitution provisions which can be construed as guaranteeing to the Board broad, general powers to supervise and regulate all public school

matters, thus depriving the General Assembly of a voice in deciding questions of great public importance. Hence, these changes are intended to insure for the General Assembly a greater degree of control, though the General Assembly may still delegate operational control as it may deem advisable.

In addition to the above-quoted provisions giving broad administrative powers to the Board, the present Constitution, in Section 9, provides that the State Superintendent of Public Instruction "shall be the administrative head of the public school system." While the seeming conflict between this and the Board provisions would be partially eliminated if the Board provisions are changed as recommended by the Commission, to leave this provision in the Constitution would pose another problem. It might be construed as restricting the authority of the General Assembly. The effect might be to transfer power from the Board to the Superintendent, rather than from both to the Assembly. To avoid this possible consequence, the Commission proposes to substitute for the provision making the Superintendent the administrative head of the school system a provision making him the chief administrative officer of the Board.

One change should be noted in the specifically enumerated powers of the Board as they now appear in Section 9. One of these powers is "to regulate the grade, salary, and qualifications of teachers." This was altered to read "public school teachers," rather than simply "teachers."

- Recommendation No. 50.** (a) That the provisions giving broad, general administrative powers to the State Board of Education be deleted from Article IX, Section 8 (necessitating minor rewording) and Section 9; that they be replaced by a provision to the effect that the powers of the Board, other than as specifically enumerated by the Constitution, shall be as prescribed by the General Assembly (see draft, Article VII, Sections 4 and 5).
- (b) That the present provision making the State Superintendent of Public Instruction the administrative head of the school system be deleted; and that there be substituted a provision making him the chief administrative officer of the Board of Education (see draft, Article VII, Section 4).

Board Property. Present Section 9 of Article IX provides that "the State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted." The Commission understands that the purpose of this provision is to insure that title to lands formerly vested in the two bodies named should pass to the present Board. Incorporation by reference of the "powers and trusts" of these agencies seems much too sweeping a provision for the relatively narrow objective sought, and interpretation of the provision might well become

troublesome. Accordingly, the Commission recommends that "property rights" be substituted for "powers".

Recommendation No. 51. That the phrase "property rights" be substituted for "powers" in the first sentence of present Article IX, Section 9 (see draft, Article VII, Section 5).

Section redrafted

Only one section, other than those discussed, was redrafted in minor respects:

Section 6. Education expense grants and local option. The first sentence of this provision refers to "his parent" in speaking of the parent of a child assigned to a public school attended by a child of another race. The phrase "his parent" was changed to "such child's parent."

Section eliminated.

Present Article IX, Section 10, requiring establishment of departments of agriculture, mechanics, mining, and normal instruction in connection with the University, was evidently included in the Constitution to insure passage of legislation which would make the University eligible for benefits under the Morrill Act, setting up a system of land grants for state colleges teaching agricultural and mechanical subjects. The Commission suggests that this provision be eliminated from the Constitution.

Reorganization of article.

Regrouping of the sections in this article has achieved great improvement in its internal organization. Table VII sets forth the organizational outline for Article VII of the draft.

Table VII

ORGANIZATIONAL OUTLINE: ARTICLE VII, EDUCATION

- I. Duties and powers of General Assembly with regard to public school system.
 - A. Education to be encouraged (Section 1).
 - B. General Assembly shall provide for public schools (Section 2).
 - C. Power to require attendance (Section 3).
- II. Organization and powers of State Board of Education, education expense grants.
 - A. State Board of Education (Section 4).
 - B. Powers and duties of Board (Section 5).
- III. Education expense grants (Section 6).
- IV. Financing of school system.
 - A. What property devoted to education (Section 7).
 - B. County school fund (Section 8).
- V. The University.
 - A. Trustees and regulation (Section 9).
 - B. Benefits extended to youth free of tuition, if practicable (Section 10).

Article VIII, Homesteads and Exemptions

Sections redrafted.

Only two drafting changes need be noted in this article. Sections 2, 3, and 5 of present Article X all relate to exemptions of the homestead from debt. These three sections were organized as a single provision and appear as Article VIII, Section 2, in the draft. No changes in substance were made.

Article X, Section 7 (draft, Article VIII, Section 6), grants a husband the right to insure his life for the sole benefit of his wife and children, free from claims of creditors during his lifetime, the proceeds to be free from claims of his creditors and representatives after death. This section was redrafted to achieve greater clarity. No change in meaning results from the redraft.

Reorganization of article.

The drafting changes noted above necessitated reorganization of the article as indicated in Table VIII.

Table VIII

ORGANIZATIONAL OUTLINE: ARTICLE VIII, HOMESTEADS AND EXEMPTIONS

- I. Exemptions of property from debt.**
 - A. Personal property exemption (Section 1).**
 - B. Homestead exemptions. (Section 2).**
 1. Exemption from sale for debt; exceptions (Section 2(1))
 2. Exemption during minority of children predeceased by owner of homestead (Section 2(2)).
 3. Homestead preserved to widow (Section 2(3)).
- II. Homestead may be conveyed (Section 3).**
- III. Laborer's lien protected (Section 4).**
- IV. Property of married women secured to them (Section 5).**
- V. Husband may insure life for benefit of wife and children (Section 6).**

Article IX, Punishments, Penal Institutions, and Public Charities

Recommended substantive changes.

Public institutions. Article XI of the present Constitution has six provisions either requiring or permitting establishment of several types of public institutions. The General Assembly is under an obligation to provide a penitentiary, orphans' homes, and means for the education of idiots and inebriates. The Assembly is authorized to establish houses of correction for vagrants and persons guilty of misdemeanors, houses of refuge for correction and instruction of other offenders, and means of caring for the deaf-mute, blind, and insane. These mandates and authorizations require six sections of the present Constitution. The Commission feels that these sections can be replaced by a single provision authorizing the General Assembly to establish such charitable, benevolent, sanitary, reformatory, and penal institutions as public need and sound policy may require. It is not contemplated that the institutions already established will be abolished, and the General Assembly should decide what institutions the State requires.

Combined with this general statement authorizing creation of public institutions of various kinds, is Section 6 of the present article, which requires separation of the sexes in prisons and adequate provision for the health and comfort of prisoners.

Recommendation No. 52. That Sections 3, 4, 5, 8, 9, and 10 of Article XI be replaced by a single provision authorizing the General Assembly to establish and maintain such public institutions as may be required, and that Section 6 of that article be combined with the substituted section (see draft, Article IX, Section 1).

Board of Public Welfare. Article XI, Section 7, of the present Constitution requires the General Assembly to establish a "board of public charities," to which is entrusted supervision of all charitable and penal institutions. The Commission has changed the name of this board to conform to present usage. It is entitled a "Board of Public Welfare." At the present time, supervision of jails, prisons, and other institutions is largely controlled by statute. The Commission has deleted from Section 6 (draft, Article IX, Section 2) that portion which entrusts supervision of penal and charitable institutions to the Board of Public Welfare. The effect of this amendment is to leave in the discretion of the General Assembly the definition of the Board's duties and the allocation of these supervisory powers.

Recommendation No. 53. That Article XI, Section 7, be amended by deleting that portion of the section which specifically entrusts supervision of penal and charitable institutions to the Board of Public

Welfare, thus leaving to the General Assembly the definition of the Board's duties and the allocation of these supervisory powers (see draft, Article IX, Section 2).

Punishments. Article XI, Sections 1 and 2, of the present Constitution deal with the topic of punishments. Section 1 states that only certain punishments shall be known in this State, and further provides that the authorization of imprisonment with hard labor shall be construed to permit farming out of convict labor. Section 2 limits the crimes for which the General Assembly may allow imposition of the death penalty. The Commission decided to delete the detailed reference to farming out of convict labor. The provisions of Section 1, and of Article I, Section 33 (draft, Article 1, Section 15), clearly contemplate imprisonment with hard labor, and deletion of the part of Section 1 authorizing farming out of convict labor does not mean that the General Assembly will have no power to authorize such a practice. In addition to this deletion, the Commission combined the remaining parts of Sections 1 and 2 into a single section, which appears as Article IX, Section 4, of the draft.

Recommendation No. 54. That Article XI, Section 1 be amended by deletion of that part which specifically authorizes farming out of convict labor, and that Section 1 be combined with Section 2 (see draft, Article IX, Section 4).

Section redrafted.

Article XI, Section 11, provides that institutions shall be as nearly self-supporting as is consistent with the purpose of their creation. The title "Board of Public Charities" was changed to "Board of Public Welfare," and "Legislature" was changed to "General Assembly."

Reorganization of article.

This article was reduced from eleven sections to four by the redrafting discussed above. Organization of the article is shown in Table IX.

Table IX

ORGANIZATIONAL OUTLINE: ARTICLE IX, PUNISHMENTS, PENAL INSTITUTIONS, AND PUBLIC CHARITIES

- I. Public institutions (Section 1).
- II. Board of Public Welfare (Section 2).
- III. Institutions to be self-supporting (Section 3).
- IV. Punishments (Section 4).

Article X, Militia

Article XII is the only article of the present Constitution which has not been amended since 1868. The Commission breaks the letter of this precedent, if not its spirit. Section 1 now states that "all able-bodied male citizens of the State of North Carolina, between the ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in the militia." The clause "who are citizens of the United States" has been excised. The remainder of the article has been brought forward without change in form or substance.

Article XI, Conventions; Constitutional Amendment and Revision

Recommended substantive changes

Since 1835 the Constitution of North Carolina has provided two alternative modes of constitutional revision or amendment: first, a Convention of the People may adopt a new or revised constitution or constitutional amendments, without necessarily submitting them to the people for ratification or rejection; and second, the General Assembly may submit proposed amendments to the people for their ratification or rejection.

Article XIII, Section 1, sets forth the procedure for calling a Convention. Several defects are inherent in this provision as written. First, it is not clear whether the vote of the people which is required to call a Convention must be a majority of the votes cast on the convention proposition or a majority of the votes cast in the election.

Another defect is that there is no definition of the purposes or powers of a Convention. In addition to its usual function as a device for the making and amending of constitutions, the Convention was used in 1789 to take North Carolina into the Union, in 1861 to take her out of the Union and into the Confederacy, and in 1865 to nullify secession. Conventions called for other purposes have sometimes engaged in ordinary legislative business. The Commission feels that the right of the people to limit the power of a Convention should be recognized and that no Convention should be able to pass ordinances or resolutions not necessary to the purpose for which it is called. Also, it is felt that some definite provision should be made concerning the membership and apportionment of representation in a Convention.

Although the Commission feels that the people should be able to limit the purpose of a Convention by their vote, it also believes that the function of the convention as an all-purpose instrument for expression of the sovereign will of the people should be preserved. Therefore, it has not recommended that the purpose of a Convention of the People be limited to constitutional revision.

Since 1835, it has been normal practice for a Convention to submit its work to a vote of the people for their ratification or rejection. The present Constitution, however, does not require such procedure. The Commission feels that any proposals of a new or revised constitution or constitutional amendments should be submitted to a vote of the people and that the Constitution should require such submission.

Section 2 of Article XIII sets forth the machinery for revising or amending the Constitution by legislative initiation of proposed changes. While the history of and usage under this article make it clear to the Commission that each mode is complete in itself and that either may be used as a procedure for amending or completely revising the Constitution, the article does not so provide in express terms. This leaves open to argument the interrelation and permissible uses of the two methods. The Commission feels that the Constitution should set forth processes for constitutional revision which can be understood without extensive reliance upon history, precedent, and inference to determine their meaning.

Another defect present in both Sections 1 and 2 is that no provision is made for an effective date for amendments. This omission should be supplied, granting, of course, the right of either Convention or General Assembly to prescribe an effective date for amendments which it submits.

The proposed article contains four sections. The first deals with Conventions in general, indicating that the Convention may be used for purposes other than constitutional revision. The second section reserves to the people the power to amend or revise the Constitution and clearly specifies that either the convention or legislative method may be used for both amending and completely revising the Constitution. Section 3 provides for constitutional revision or amendment by Convention, and Section 4 prescribes procedures for legislative initiation of constitutional changes.

Article XIII has been so thoroughly revised that every provision therein must be considered the object of substantive change. However, the present provisions have been carried forward as a part of the proposed article, the only effort being to give constitutional utterance to the large body of custom and tradition which has grown up around the procedures for constitutional revision and amendment.

The following are the Commission's recommendations:

Recommendation No. 55. That Article XIII (draft, Article XI) be revised, and that it clearly provide:

(1) That the General Assembly be authorized to submit the proposition, Convention or no Convention, to the people at any time (see draft, Section 1).

(2) For recognition of the right of the people to limit the powers of a Convention by their approval of limitations proposed in the act calling for a vote on the convention proposition (see draft, Section 1).

(3) That convention delegates are to be elected by the people (see draft, Section 1).

(4) That the number and apportionment of delegates to a Convention shall be the same as that of the House of Representatives of the General Assembly submitting the convention proposition to the people (see draft, Section 1).

(5) That the calling of a Convention or the ratification of a new or revised constitution or constitutional amendment requires a majority of the popular vote cast on the proposition in question, rather than a majority of the vote cast in the whole election (see draft, Sections 1 and 3).

(6) That every constitutional amendment or new or revised constitution adopted by a

Convention must be submitted to the voters for their ratification or rejection (see draft, Section 3).

(7) That a Convention shall adopt no ordinance not necessary to the purpose for which it was called (see draft, Section 1).

(8) For express recognition of the existing authority of the General Assembly to submit to the people an entirely new or revised constitution, as well as individual amendments (see draft, Section 4).

(9) That the General Assembly shall have authority to submit proposed amendments to the people at any time (see draft, Section 4).

(10) That the ratification of a constitutional amendment or revision initiated by the General Assembly requires a majority of the popular vote cast on the proposition in question, rather than a majority of the vote cast in the whole election (see draft, Section 3).

(11) That proposals ratified by the people shall become effective on January 1 next after ratification unless the Convention or General Assembly submitting the proposals prescribes a different date (see draft, Sections 3 and 4).

Reorganization of article

The substantial redrafting of this article resulted in organizational changes. Table X, reflects the structure of this article.

Table X

OUTLINE: ARTICLE XI, CONVENTIONS;
CONSTITUTIONAL AMENDMENT AND REVISION

- I. Convention of the People (Section 1).
- II. Power of amendment and revision.
 - A. Power reserved to people (Section 2).
 - B. Revision or amendment by Convention of the People (Section 3).
 - C. Revision or amendment by legislative initiation (Section 4).

Article XII, Miscellaneous

Recommended substantive changes

Seat of government; State boundaries. As noted in the commentary on Article I, Section 34 of that article has been transferred to Article XII of the draft. It appears there as Section 1, in combination with Article XIV, Section 6, of the present Constitution. The proposed section provides that the "permanent seat of government in this State shall be at the City of Raleigh, and the limits and boundaries of the State shall be and remain as they now are." Addition of the word "permanent" represents a substantive change. It is intended to allow the General Assembly to establish a temporary seat of government elsewhere than in Raleigh in the event of major disaster.

Recommendation No. 56. That Article XIV, Section 6, be combined with Article I, Section 34, and so amended as to provide that the "permanent" seat of government of this State shall be in Raleigh (see draft, Article XII, Section 1).

Dual office-holding. Only one section of present Article XIV has been altered in substance. Section 7, Article XIV, of the present Constitution prohibits dual office-holding and lists exceptions to that prohibition. Now excepted from that provision are "officers in the militia, notaries public, justices of the peace, commissioners of public charities, or commissioners for special purposes." The Commission has proposed addition of five offices to the list of exceptions and has deleted one.

One of the additions was made by alteration of the phrase "commissioners of public charities." This was changed to "commissioners or trustees of public charities or institutions." The Commission was seeking to clarify present understanding concerning such officials as trustees of the University rather than to create a new exception.

A second addition to the list is "school committeemen." This is a completely new exception. However, the Commission felt that this position should not be one of those caught by the prohibition because there are many holders of public office who would make outstanding school committeemen; nor would there be any conflict of interest between the office of school committeeman and other public offices.

Delegates to a Convention of the People were also excepted from this provision. Obviously, prominent among the leaders who should be most active in the work of a constitutional convention are many of those already holding public office. Although the Commission believes that this office might be exempted under the phrase "commissioner for a special purpose," it is desirable to remove any doubt.

The fourth addition and the only deletion are related. Justices of the peace were removed from the list because the office of justice of the peace would be abolished under the provisions of Article IV. Added to the list was the office of United States Commissioner. The Constitutional Commission felt that the way should be left open for a United States Commissioner to become a "Trial Commissioner," the office which most nearly replaces that

of justice of the peace under the proposed revision. One effect of this change will be to make it impossible for law enforcement officers, mayors, and other local officials to occupy the office of Trial Commissioner.

The Commission's recommendation concerning this provision is as follows:

- Recommendation No. 57.** (a) That the following offices be added to the list of those excepted from the prohibition against dual office-holding in Article XIV, Section 7 (see draft, Article XII, Section 3).
- (1) Trustees of public charities and institutions.
 - (2) School committeemen.
 - (3) United States Commissioners.
 - (4) Delegates to a Convention of the People.
- (b) That the office of justice of the peace be deleted from the list of exceptions from the prohibition against dual office-holding.

Continuity of laws. Article XII, Section 6, of the draft is a new section. It provides that laws of North Carolina now in force shall remain effective until lawfully altered; that adoption of the proposed Constitution shall not have the effect of vacating any office or term filled by election or appointment under the present Constitution or laws made in pursuance thereof; and that, except as inconsistent with provisions of the proposed Constitution, the provisions of the present Constitution not brought forward in the proposed Constitution shall remain in force as statutory law, subject to the power of the General Assembly to repeal or modify any or all of them.

The first two parts of the section need no explanation. However, it may be helpful to point out an example of the type of provision which will be continued in effect as statutory law if the proposed Constitution is adopted. One of the most outstanding examples is the rigid plan of county government contained in Article VII of the present Constitution. The plan sets out details of offices, functions, and other matters related to county government. Some of these provisions are still effective, even though subject to the power of the General Assembly to make alterations. The saving clause contained in Article XII, Section 6, will preserve those sections of Article VII as statutory law until the General Assembly alters them.

- Recommendation No. 58.** That a saving clause be inserted in the Constitution as Article XII, Section 6, providing for continuity of laws now in effect, preservation of offices now held (except as otherwise provided), and continuation of provisions of the present Constitution not inconsistent with the proposed draft as statutory law, until altered by the General Assembly.

Sections redrafted.

One section of the present Article XII was redrafted:

Section 2. Holding office until successor qualified. This section (present Article XIV, Section 5) was evidently a transitional provision protecting office-holders at the time the present Constitution was adopted. It has been redrafted and is now of permanent significance, providing that in the absence of contrary provisions of the Constitution, all incumbents of public office shall hold until their successors are lawfully selected and qualified.

Sections eliminated from article.

Two sections of Article XIV have been eliminated from the Constitution. Section 1 was a transitional provision concerning prosecution of criminal actions instituted prior to the Constitution of 1868. Section 2 prohibits the fighting of duels.

Reorganization of article.

Table XI shows the organization of Article XII.

Table XI

ORGANIZATIONAL OUTLINE: ARTICLE XII, MISCELLANEOUS

- I. Seat of Government; Boundaries (Section 1).
- II. Holding of offices.
 - A. Incumbents to hold until successor selected and qualified (Section 2).
 - B. Dual office-holding (Section 3).
- III. Mechanic's lien (Section 4).
- IV. Intermarriage of whites and Negroes prohibited (Section 5).
- V. General saving clause (Section 6).

PART IV:

**Comparative Texts of Proposed and Present
Constitutions**

Note:

The following part sets forth the texts of the proposed Constitution and the present Constitution. Symbols have been used in the proposed provisions to indicate the character of action taken by the Commission with regard to each section of the proposed Constitution. Sections which appear in italics have been subjected to major changes or are new provisions proposed by the Commission. An asterisk at the end of a section or subsection denotes drafting changes which have no effect on the meaning of the corresponding provision or provisions of the present Constitution. Those sections in the left hand column which are unmarked are provisions carried forward from the present Constitution without change.

Constitution of North Carolina

PROPOSED TEXT

PREAMBLE

1 We, the people of North Carolina, acknowl-
2 edging our dependence upon Almighty God and
3 our allegiance to the United States of America,
4 do, for the more certain assurance of the bless-
5 ings of liberty and freedom, and for the better
6 government of the State, ordain and establish
7 this Constitution: *

PRESENT TEXT

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof, and for the better government of this State, ordain and establish this Constitution:

Article I, Declaration of Rights

1 To insure recognition and establishment of
2 the essential principles of liberty and free gov-
3 ernment, and to define and affirm the relations
4 of this State and its people to the government
5 and people of the United States, we do declare
6 that: *

That the great, general and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and Government of the United States, and those of the people of this State to the rest of the American people, may be defined and affirmed, we do declare:

Section 1. The equality and rights of persons.

1 We hold it to be self-evident that all per-
2 sons are created equal; that they are endowed
3 by their Creator with certain inalienable
4 rights; that among these are life, liberty, the
5 enjoyment of the fruits of their own labor, and
6 the pursuit of happiness.

Section 1. The equality and rights of persons.

That we hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Section 2. Political power and government.

1 All political power is vested in, and derived
2 from, the people; all government of right origi-
3 nates from the people, is founded upon their
4 will only, and is instituted solely for the good
5 of the whole.

Section 2. Political power and government.

That all political power is vested in, and derived from, the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 3. Other rights of the people.

1 The enumeration of rights in this Constitu-
2 tion shall not be construed to impair or deny
3 others retained by the people; and all powers
4 not herein delegated remain with the people.*

Section 37. Other rights of the people.

This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people.

Section 4. Internal government of the State.

1 The people of this State have the inherent,
2 sole, and exclusive right of regulating the in-
3 ternal government and policies thereof, and of
4 altering or revising their Constitution and form
5 of government whenever it may be necessary
6 for their safety and happiness; but every such
7 right should be exercised in pursuance of law
8 and consistently with the Constitution of the
9 United States.*

Section 3. Internal government of the State.

That the people of this State have the inherent, sole and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right should be exercised in pursuance of law, and consistently with the Constitution of the United States.

Section 5. Allegiance to the United States.

1 This State shall ever remain a member of
2 the American Union; every citizen of this State
3 owes paramount allegiance to the Constitution
4 and government of the United States; and no
5 law or ordinance of the State in contravention
6 or subversion thereof can have any binding
7 force.*

Section 6. Exclusive and hereditary emoluments.

1 No person or set of persons is entitled to
2 exclusive or separate emoluments or privileges
3 from the community but in consideration of
4 public services; and no hereditary emoluments,
5 privileges, or honors ought to be granted or
6 conferred in this State.*

Section 7. Perpetuities and monopolies.

1 Perpetuities and monopolies are contrary to
2 the genius of a free state, and ought not to be
3 allowed.

Section 8. Of the power of suspending laws.

1 All power of suspending laws or the execu-
2 tion of laws, by any authority, without the
3 consent of the representatives of the people, is
4 injurious to their rights, and ought not to be
5 exercised.

Section 9. Representation and taxation.

1 The people of the State ought not to be
2 taxed or made subject to the payment of any
3 impost or duty without the consent of them-
4 selves or their representatives in General As-
5 sembly, freely given.

Section 10. Elections.

1 For redress of grievances and for amending
2 and strengthening the laws, elections should
3 be often held. All elections ought to be free.*

Section 11. Property qualification.

1 Political rights and privileges are not de-
2 pendent upon, or modified by, property; there-
3 fore, no property qualification ought to affect
4 the right to vote or hold office.*

Section 4. That there is no right to secede.

That this State shall ever remain a member of the American Union; that the people thereof are a part of the American Nation; that there is no right on the part of the State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union or to sever said Nation, ought to be resisted with the whole power of the State.

Section 5. Of allegiance to the United States Government.

That every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and that no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Section 7. Exclusive emoluments, etc.

No person or set of persons are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Section 30. Hereditary emoluments, etc.

No hereditary emoluments, privileges, or honors ought to be granted or conferred in this State.

Section 31. Perpetuities, etc.

Perpetuities and monopolies are contrary to the genius of a free state, and ought not to be allowed.

Section 9. Of the power of suspending laws.

All power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Section 23. Representation and taxation.

The people of the State ought not to be taxed, or made subject to the payment of any impost or duty without the consent of themselves, or their representatives in General Assembly, freely given.

Section 10. Elections free.

All elections ought to be free.

Section 28. Elections should be frequent.

For redress of grievances, and for amending and strengthening the laws, elections should be often held.

Section 22. Property qualification.

As political rights and privileges are not dependent upon, or modified by, property, therefore no property qualification ought to affect the right to vote or hold office.

Section 12. Right of the people to assemble together.

1 The people have a right to assemble to-
 2 gether to consult for their common good, to
 3 instruct their representatives, and to apply to
 4 the General Assembly for redress of griev-
 5 ances. But secret political societies are dan-
 6 gerous to the liberties of a free people and
 7 should not be tolerated.*

Section 13. Religious liberty.

1 All persons have a natural and inalienable
 2 right to worship Almighty God according
 3 to the dictates of their own consciences, and
 4 no human authority should, in any case what-
 5 ever, control or interfere with the rights of
 6 conscience.

Section 14. Freedom of speech and of the press.

1 *Freedom of speech and of the press are two*
 2 *of the great bulwarks of liberty, and therefore*
 3 *ought never to be restrained, but every in-*
 4 *dividual shall be held responsible for the abuse*
 5 *of the same.*

Section 15. Involuntary servitude.

1 Neither slavery nor involuntary servitude,
 2 except as a punishment for crime whereof the
 3 parties shall have been duly convicted, shall
 4 exist within this State.*

Section 16. Education.

1 The people have a right to the privilege of
 2 education, and it is the duty of the State to
 3 guard and maintain that right.

Section 17. Ex post facto laws.

1 Retrospective laws, punishing acts commit-
 2 ted before the existence of such laws, and by
 3 them only declared criminal, are oppressive,
 4 unjust, and incompatible with liberty; where-
 5 fore, no *ex post facto* law ought to be made. No
 6 law taxing retrospectively sales, purchases, or
 7 other acts previously done, ought to be passed.

Section 18. Courts shall be open.

1 All courts shall be open; and every person
 2 for an injury done him in his lands, goods, per-
 3 son, or reputation, shall have remedy by due
 4 course of law and right and justice administer-
 5 ed without favor, denial, or delay.*

Section 25. Right of the people to assemble together.

The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the Legislature for redress of grievances. But secret political societies are dangerous to the liberties of a free people, and should not be tolerated.

Section 26. Religious liberty.

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

Section 20. Freedom of the press.

The freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of the same.

Section 33. Slavery prohibited.

Slavery and involuntary servitude, otherwise than for crime, whereof the parties shall have been duly convicted, shall be, and are hereby, forever prohibited within the State.

Section 27. Education.

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Section 32. Ex post facto laws.

Retrospective laws, punishing acts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no *ex post facto* law ought to be made. No law taxing retrospectively sales, purchases, or other acts previously done, ought to be passed.

Section 35. Courts shall be open.

All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Section 19. Right to due process of law.

1 No person ought to be taken, imprisoned, or
2 disseized of his freehold, liberties, or privileges,
3 or outlawed or exiled, or in any manner de-
4 prived of his life, liberty, or property, but by
5 the law of the land.

Section 20. Habeas corpus.

1 Every person restrained of his liberty is
2 entitled to a remedy to inquire into the lawful-
3 ness thereof, and to remove the same, if unlaw-
4 ful; and such remedy ought not to be denied or
5 delayed; and the privilege of the writ of habeas
6 corpus shall not be suspended.*

Section 21. Rights of accused.

1 In all criminal prosecutions every person
2 charged with crime has the right to be in-
3 formed of the accusation and to confront the
4 accusers and witnesses with other testimony,
5 and to have counsel for defense, and not to be
6 compelled to give self-incriminating evidence,
7 or to pay costs, jail fees, or necessary witness
8 fees of the defense, unless found guilty.

Section 22. Answers to criminal charges.

1 No person shall be put to answer any crimi-
2 nal charge, except as hereinafter allowed, but
3 by indictment, presentment, or impeachment.
4 But any person, when represented by counsel,
5 may, under such regulations as the General
6 Assembly shall prescribe, waive indictment in
7 all except capital cases.

Section 23. Right of jury.

1 Subject to the provisions of Article IV of
2 this Constitution, no person shall be convicted
3 of any crime but by the unanimous verdict of
4 a jury of good and lawful persons in open
5 court. The General Assembly may, however,
6 provide other means of trial for petty misde-
7 meanors, with the right of appeal.*

Section 24. Excessive bail.

1 Excessive bail should not be required, nor
2 excessive fines imposed, nor cruel or unusual
3 punishments inflicted.

Section 17. No persons taken, etc. but by law of land.

No person ought to be taken, imprisoned or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the law of the land.

Section 18. Persons restrained of liberty.

Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed.

Section 21. Habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended.

Section 11. In criminal prosecutions.

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Section 12. Answers to criminal charges.

No person shall be put to answer any criminal charge except as hereinafter allowed, but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the Legislature shall prescribe, waive indictment in all except capital cases.

Section 13. Right of jury.

No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open court. The Legislature may, however, provide other means of trial for petty misdemeanors, with the right of appeal.

Section 14. Excessive bail.

Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Section 25. General warrants.

1 General warrants, whereby any officer or
 2 other person may be commanded to search
 3 suspected places, without evidence of the act
 4 committed, or to seize any person or persons
 5 not named, whose offense is not particularly
 6 described and supported by evidence, are dan-
 7 gerous to liberty, and ought not be granted.*

Section 26. Imprisonment for debt.

1 There shall be no imprisonment for debt in
 2 this State, except in cases of fraud.

Section 27. Treason against the State.

1 Treason against the State shall consist only
 2 in levying war against it, or adhering to its
 3 enemies, giving them aid and comfort. No per-
 4 son shall be convicted of treason unless on the
 5 testimony of two witnesses to the same overt
 6 act, or on confession in open court. No convic-
 7 tion of treason or attainder shall work corrup-
 8 tion of blood or forfeiture.

Section 28. Controversies at law respecting property.

1 In all controversies at law respecting prop-
 2 erty, the ancient mode of trial by jury is one
 3 of the best securities of the rights of the peo-
 4 ple, and ought to remain sacred and inviolable.
 5 No person shall be excluded from jury service
 6 on account of sex.

Section 29. Militia and the right to bear arms.

1 A well regulated militia being necessary to
 2 the security of a free state, the right of the
 3 people to keep and bear arms shall not be in-
 4 fringed; and, as standing armies in time of
 5 peace are dangerous to liberty, they ought not
 6 to be kept up, and the military should be kept
 7 under strict subordination to, and governed by,
 8 the civil power. Nothing herein contained shall
 9 justify the practice of carrying concealed
 10 weapons, or prevent the General Assembly
 11 from enacting penal statutes against said
 12 practice.

Section 30. Quartering of soldiers.

1 No soldier shall, in time of peace, be quar-
 2 tered in any house without the consent of the
 3 owner; nor in time of war but in a manner
 4 prescribed by law.

Section 15. General warrants.

General warrants, whereby any officer or messenger
 may be commanded to search suspected places, without
 evidence of the act committed, or to seize any person or
 persons not named, whose offense is not particularly de-
 scribed and supported by evidence, are dangerous to lib-
 erty, and ought not to be granted.

Section 16. Imprisonment for debt.

There shall be no imprisonment for debt in this State,
 except in cases of fraud.

Article IV, Section 5. Treason against the State.

Treason against the State shall consist only in levying
 war against it, or adhering to its enemies, giving them
 aid and comfort. No person shall be convicted of treason
 unless on the testimony of two witnesses to the same
 overt act, or on confession in open court. No conviction of
 treason or attainder shall work corruption of blood or
 forfeiture.

Section 19. Controversies at law respecting property.

In all controversies at law respecting property, the
 ancient mode of trial by jury is one of the best securities
 of the rights of the people, and ought to remain sacred and
 inviolable. No person shall be excluded from jury service
 on account of sex.

Section 24. Militia and the right to bear arms.

A well regulated militia being necessary to the security
 of a free state, the right of the people to keep and bear
 arms shall not be infringed; and, as standing armies in
 time of peace are dangerous to liberty, they ought not to
 be kept up, and the military should be kept under strict
 subordination to, and governed by, the civil power. Noth-
 ing herein contained shall justify the practice of carrying
 concealed weapons, or prevent the Legislature from enact-
 ing penal statutes against said practice.

Section 36. Soldiers in time of peace.

No soldier shall, in time of peace, be quartered in any
 house without the consent of the owner; nor in time of
 war but in a manner prescribed by law.

Section 31. Recurrence to fundamental principles.

1 A frequent recurrence to fundamental prin-
 2 ciples is absolutely necessary to preserve the
 3 blessings of liberty.

Section 32. The legislative, executive, and judicial powers distinct.

1 The legislative, executive, and supreme
 2 judicial powers of government ought to be
 3 forever separate and distinct from each other.

Section 29. Recurrence to fundamental principles.

A frequent recurrence to fundamental principles is
 absolutely necessary to preserve the blessings of liberty.

Section 8. The legislative, executive and judicial powers distinct.

The legislative, executive, and supreme judicial powers
 of the government ought to be forever separate and distinct
 from each other.

Article II, Legislative Department

PROPOSED TEXT

PRESENT TEXT

Section 1. Two branches.

1 The legislative authority shall be vested in
2 distinct branches, both dependent on the peo-
3 ple, to-wit: a Senate and House of Represen-
4 tatives.

Section 1. Two branches.

The legislative authority shall be vested in two distinct branches, both dependent on the people, to-wit: a Senate and House of Representatives.

Section 2. Time of assembly.

1 The Senate and House of Representatives
2 shall meet biennially on the first Wednesday
3 after the first Monday in February next after
4 their election, unless a different day shall be
5 provided by law; and when assembled, shall be
6 denominated the General Assembly. Neither
7 House shall proceed upon public business un-
8 less a majority of all the members are actually
9 present.

Section 2. Time of assembly.

The Senate and House of Representatives shall meet biennially on the first Wednesday after the first Monday in February next after their election, unless a different day shall be provided by law; and when assembled, shall be denominated the General Assembly. Neither house shall proceed upon public business unless a majority of all the members are actually present.

Section 3. Number of Senators.

1 *Beginning with the regular session of 1965,*
2 *the Senate shall be composed of sixty Senators,*
3 *biennially chosen by ballot. Until such time,*
4 *the Senate shall be composed of fifty Senators.*

Section 3. Number of senators.

The Senate shall be composed of fifty Senators, biennially chosen by ballot.

Section 4. Regulations in relation to districting the State for Senators.

1 *The Senate Districts shall be so altered at*
2 *the regular session of the General Assembly*
3 *in 1963 and thereafter at the first regular*
4 *session convening after the return of every*
5 *enumeration by order of Congress, that each*
6 *Senate District shall contain, as near as may*
7 *be, an equal number of inhabitants, excluding*
8 *aliens, and shall remain unaltered until the*
9 *return of another enumeration, and shall at*
10 *all times consist of contiguous territory. No*
11 *county shall be divided in the formation of a*
12 *Senate District, unless such county shall be*
13 *equitably entitled to two or more Senators.*

Section 4. Regulations in relation to districting the State for senators.

The Senate Districts shall be so altered by the General Assembly, at the first session after the return of every enumeration by order of Congress, that each Senate District shall contain, as near as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate District, unless such county shall be equitably entitled to two or more Senators.

14 *At the regular session of the General As-*
15 *sembly in 1963 and thereafter at the first regu-*
16 *lar session convening after the return of every*
17 *enumeration by order of Congress, a commit-*
18 *tee, composed of the President of the Senate*
19 *as chairman, the President pro tempore of the*
20 *Senate, and the Speaker of the House of Rep-*
21 *resentatives, shall make a proposal for redis-*
22 *tricting the State for Senate Districts. The*
23 *proposal shall be presented to the General As-*
24 *sembly on or before the sixtieth calendar day*
25 *of the session. If the General Assembly has*

26 *not acted, either altering or revising the pro-*
 27 *posal, upon adjournment of the session the*
 28 *proposal shall have the force and effect of an*
 29 *act of the General Assembly and shall become*
 30 *effective at the next election for members of*
 31 *the General Assembly.*

Section 5. Regulations in relation to apportionment of Representatives.

1 *The House of Representatives shall be com-*
 2 *posed of one hundred and twenty Representa-*
 3 *tives, biennially chosen by ballot, to be elected*
 4 *by the counties respectively, according to their*
 5 *population, and each county shall have at least*
 6 *one Representative in the House of Representa-*
 7 *tives, although it may not contain the requisite*
 8 *ratio of representation. This apportionment*
 9 *shall be made by the Speaker of the House of*
 10 *Representatives at the first regular session of*
 11 *the General Assembly convening after the re-*
 12 *turn of every enumeration by order of Con-*
 13 *gress. The formula set out in Section 6 of this*
 14 *article shall be applied by the Speaker and the*
 15 *new apportionment entered on the journal of*
 16 *the House of Representatives on or before the*
 17 *sixtieth calendar day of the session. When so*
 18 *entered, the new apportionment shall have the*
 19 *same force and effect as an act of the General*
 20 *Assembly, and shall become effective at the*
 21 *next election for members of the General As-*
 22 *sembly.*

Section 6. Ratio of representation.

1 *In making the apportionment in the House*
 2 *of Representatives, the ratio of representation*
 3 *shall be ascertained by dividing the amount of*
 4 *the population of the State, exclusive of that*
 5 *comprehended within those counties which do*
 6 *not severally contain the one hundred and*
 7 *twentieth part of the population of the State,*
 8 *by the number of Representatives, less the*
 9 *number assigned to such counties; and in as-*
 10 *certaining the number of the population of the*
 11 *State, aliens shall not be included. To each*
 12 *county containing the said ratio and not twice*
 13 *the said ratio there shall be assigned one*
 14 *Representative; to each county containing*
 15 *twice but not three times the said ratio there*
 16 *shall be assigned two Representatives, and so*
 17 *on progressively; and then the remaining Rep-*
 18 *resentatives shall be assigned severally to the*
 19 *counties having the largest fractions.*

Section 5. Regulations in relation to apportionment of representatives.

The House of Representatives shall be composed of one hundred and twenty Representatives, biennially chosen by ballot, to be elected by the counties respectively, according to their population, and each county shall have at least one Representative in the House of Representatives, although it may not contain the requisite ratio of representation; this apportionment shall be made by the General Assembly at the respective times and periods when the districts for the Senate are hereinbefore directed to be laid off.

Section 6. Ratio of representation.

In making the apportionment in the House of Representatives, the ratio of representation shall be ascertained by dividing the amount of the population of the State, exclusive of that comprehended within those counties which do not severally contain the one hundred and twentieth part of the population of the State, by the number of Representatives, less the number assigned to such counties; and in ascertaining the number of the population of the State, aliens and Indians not taxed shall not be included. To each county containing the said ratio and not twice the said ratio there shall be assigned one Representative; to each county containing twice but not three times the said ratio there shall be assigned two Representatives, and so on progressively, and then the remaining Representatives shall be assigned severally to the counties having the largest fractions.

Section 7. Qualifications for Senators.

1 Each member of the Senate shall be a quali-
 2 fied voter of the State, shall be not less than
 3 twenty-five years of age, shall have resided in
 4 the State as a citizen two years, and shall have
 5 resided in the district for which he was chosen
 6 one year immediately preceding his election.

Section 8. Qualifications for Representatives.

1 Each member of the House of Representa-
 2 tives shall be a qualified voter of the State,
 3 and shall have resided in the county for which
 4 he is chosen one year immediately preceding
 5 his election.

Section 9. Election for members of the General Assembly.

1 The election for members of the General
 2 Assembly shall be held for the respective dis-
 3 tricts and counties, at the places where they
 4 are now held, or may be directed hereafter to
 5 be held, in such manner as may be prescribed
 6 by law, on the first Tuesday after the first
 7 Monday in November, in the year 19____, and
 8 every two years thereafter. But the General
 9 Assembly may change the time of holding the
 10 elections.*

Section 10. Terms of office.

1 The terms of office for Senators and mem-
 2 bers of the House of Representatives shall
 3 commence at the time of their election.

Section 11. Oath of members.

1 Each member of the General Assembly, be-
 2 fore taking his seat, shall take an oath or
 3 affirmation that he will support the Constitu-
 4 tion and laws of the United States, and the
 5 Constitution of the State of North Carolina,
 6 and will faithfully discharge his duty as a
 7 member of the Senate or House of Representa-
 8 tives.

Section 12. Vacancies.

1 If a vacancy shall occur in the General
 2 Assembly by death, resignation, or otherwise,
 3 the said vacancy shall be filled immediately by
 4 the Governor appointing the person recom-
 5 mended by the executive committee of the
 6 county in which the deceased or resigned mem-
 7 ber was resident, being the executive commit-
 8 tee of the political party with which the de-
 9 ceased or resigned member was affiliated at
 10 the time of his election.

Section 7. Qualifications for senators.

Each member of the Senate shall not be less than twenty-five years of age, shall have resided in the State as a citizen two years, and shall have usually resided in the district for which he was chosen one year immediately preceding his election.

Section 8. Qualifications of representatives.

Each member of the House of Representatives shall be a qualified elector of the State, and shall have resided in the county for which he is chosen for one year immediately preceding his election.

Section 27. Election for members of the General Assembly.

The election for members of the General Assembly shall be held for the respective districts and counties, at the places where they are now held, or may be directed hereafter to be held, in such manner as may be prescribed by law, on the first Thursday in August, in the year one thousand eight hundred and seventy, and every two years thereafter. But the General Assembly may change the time of holding the elections.

Section 25. Terms of office.

The terms of office for Senators and members of the House of Representatives shall commence at the time of their election.

Section 24. Oath of Members.

Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States, and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Section 13. Vacancies.

If a vacancy shall occur in the General Assembly by death, resignation or otherwise, the said vacancy shall be filled immediately by the Governor appointing the person recommended by the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election.

Section 13. Pay of members and presiding officers of the General Assembly.

1 *The members of the General Assembly for*
 2 *the term for which they have been elected*
 3 *shall receive as a compensation for their serv-*
 4 *ices the sum of twenty dollars per day for each*
 5 *calendar day of their session for a period not*
 6 *exceeding one hundred and twenty days. The*
 7 *compensation of the presiding officers of the*
 8 *two Houses shall be twenty-five dollars per day*
 9 *for a period not exceeding one hundred and*
 10 *twenty days. Should an extra session of the*
 11 *General Assembly be called, the members and*
 12 *presiding officers shall receive a like rate of*
 13 *compensation for a period not exceeding twen-*
 14 *ty-five days. The members and presiding of-*
 15 *ficers shall also receive, while engaged in legis-*
 16 *lative duties, such subsistence and travel*
 17 *allowances as shall be established by law: Pro-*
 18 *vided, such allowances shall not exceed those*
 19 *established for members of State boards and*
 20 *commissions generally. The Lieutenant-Gover-*
 21 *nor shall receive, for his non-legislative duties,*
 22 *such compensation as shall be fixed by the*
 23 *General Assembly.*

Section 14. Powers of the General Assembly.

1 *Each House shall be judge of the qualifica-*
 2 *tions and election of its own members, shall sit*
 3 *upon its own adjournment from day to day,*
 4 *and shall prepare bills to be passed into laws;*
 5 *and the two Houses may also jointly adjourn*
 6 *to any future day, or other place: Provided,*
 7 *either House may, of its own motion, adjourn*
 8 *for a period not in excess of three days.*

Section 15. President of the Senate.

1 The Lieutenant-Governor shall be President
 2 of the Senate, but shall have no vote unless the
 3 vote in the Senate be equally divided.*

Section 16. Other senatorial officers.

1 *The Senate shall choose from its member-*
 2 *ship a President pro tempore, who shall become*
 3 *President of the Senate upon the failure of the*
 4 *Lieutenant-Governor-elect to qualify, or upon*
 5 *succession by the Lieutenant-Governor to the*
 6 *office of Governor, or upon the death, resigna-*
 7 *tion, or removal from office of the President of*
 8 *the Senate, and who shall serve until the ex-*
 9 *piration of his term of office as Senator.*

10 *During the physical or mental incapacity of*

Section 28. Pay of members and presiding officers of the General Assembly.

The members of the General Assembly for the term for which they have been elected shall receive as a compensation for their services the sum of fifteen dollars (\$15.00) per day for each day of their session for a period not exceeding one hundred and twenty days. The compensation of the presiding officers of the two houses shall be twenty dollars (\$20.00) per day for a period not exceeding one hundred and twenty days. Should an extra session of the General Assembly be called, the members and presiding officers shall receive a like rate of compensation for a period not exceeding twenty-five days. The members and presiding officers shall also receive, while engaged in legislative duties, such subsistence and travel allowance as shall be established by law; provided, such allowance shall not exceed those established for members of State boards and commissions generally.

Section 22. Powers of the General Assembly.

Each House shall be judge of the qualifications and election of its own members, shall sit upon its own adjournment from day to day, prepare bills to be passed into laws; and the two Houses may also jointly adjourn to any future day, or other place.

Section 19. President of the Senate.

The Lieutenant-Governor shall preside in the Senate, but shall have no vote unless it may be equally divided.

Section 20. Other senatorial officers.

The Senate shall choose its other officers, and also a Speaker (*pro tempore*) in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor.

11 *the President of the Senate to perform the du-*
 12 *ties of his office, or during the absence of the*
 13 *President of the Senate, the President pro tem-*
 14 *pore shall preside over the Senate. The Senate*
 15 *shall elect its other officers.*

Section 17. Officers of the House.

1 The House of Representatives shall choose
 2 its Speaker and other officers.*

Section 18. Election of officers.

1 In the election of all officers whose appoint-
 2 ment shall be conferred upon the General
 3 Assembly by the Constitution, the vote shall be
 4 *viva voce*.

Section 19. Bills and resolutions to be read three times.

1 *All bills and resolutions of a legislative*
 2 *nature shall be read three times in each House*
 3 *before they pass into laws, and shall be signed*
 4 *by the presiding officers of both Houses.*

5 *No law shall be passed to raise money on*
 6 *the credit of the State, or to pledge the faith of*
 7 *the State, directly or indirectly, for the pay-*
 8 *ment of any debt, or to impose any tax upon*
 9 *the people of the State, or to allow the counties,*
 10 *cities, or towns to do so, unless the bill for the*
 11 *purpose shall have been read three several*
 12 *times in each House of the General Assembly*
 13 *and passed three several readings, which read-*
 14 *ings shall have been on three different days,*
 15 *and agreed to by each House respectively, and*
 16 *unless the yeas and nays on the second and*
 17 *third readings of the bill shall have been en-*
 18 *tered on the journal; the first reading of such*
 19 *a bill in one House may be had on the same*
 20 *day on which the third reading was had in the*
 21 *other House.*

Section 20. Style of the acts.

1 The style of the acts shall be: "The General
 2 Assembly of North Carolina do enact:".

Section 21. Journals.

1 Each House shall keep a journal of its pro-
 2 ceedings which shall be printed and made
 3 public immediately after the adjournment of
 4 the General Assembly.

Section 22. Yeas and nays.

1 Upon motion made and seconded in either
 2 House by one-fifth of the members present, the
 3 yeas and nays upon any question shall be
 4 taken and entered upon the journal.

Section 18. Officers of the House.

The House of Representatives shall choose their own
 Speaker and other officers.

Section 9. Election of officers.

In the election of all officers, whose appointment shall
 be conferred upon the General Assembly by the Consti-
 tution, the vote shall be *viva voce*.

Section 14. Revenue.

No law shall be passed to raise money on the credit of
 the State, or to pledge the faith of the State, directly or
 indirectly, for the payment of any debt, or to impose any
 tax upon the people of the State, or allow the counties,
 cities or towns to do so, unless the bill for the purpose
 shall have been read three several times in each House
 of the General Assembly and passed three several read-
 ings, which readings shall have been on three different
 days, and agreed to by each House respectively, and
 unless the yeas and nays on the second and third readings
 of the bill shall have been entered on the journal.

Section 23. Bills and resolutions to be read three times, etc.

All bills and resolutions of a legislative nature shall be
 read three times in each House before they pass into
 laws, and shall be signed by the presiding officers of both
 Houses.

Section 21. Style of the acts.

The style of the acts shall be: "The General Assembly
 of North Carolina do enact:".

Section 16. Journals.

Each House shall keep a journal of its proceedings,
 which shall be printed and made public immediately after
 the adjournment of the General Assembly.

Section 26. Yeas and nays.

Upon motion made and seconded in either House by
 one-fifth of the members present, the yeas and nays upon
 any question shall be taken and entered upon the journals.

Section 23. Protest.

1 Any member of either House may dissent
2 from, and protest against, any act or resolve
3 which he may think injurious to the public, or
4 any individual, and have the reasons of his
5 dissent entered on the journal.

Section 24. Entails.

1 The General Assembly shall regulate entails
2 in such a manner as to prevent perpetuities.

Section 25. Local government.

1 *The General Assembly shall provide for the*
2 *organization and government and the fixing of*
3 *boundaries of counties, cities, towns, and other*
4 *governmental subdivisions; may provide for*
5 *the consolidation and dissolution thereof;*
6 *and, except as otherwise prohibited by this*
7 *Constitution, may give such powers and duties*
8 *to counties, cities, towns, and other govern-*
9 *mental subdivisions as it may deem advisable.*

Section 17. Protest.

Any member of either House may dissent from, and protest against, any act or resolve which he may think injurious to the public, or any individual, and have the reasons of his dissent entered on the journal.

Section 15. Entails.

The General Assembly shall regulate entails in such a manner as to prevent perpetuities.

ARTICLE VII, MUNICIPAL CORPORATIONS.

[Note: This article was eliminated from the Constitution as a separate article. Only Sections 7 and 12 of the present article are found in this draft. These two sections were transferred to Article V. The remaining sections were replaced by the provision opposite.]

Section 1. County officers.

In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, the following officers: A treasurer, register of deeds, surveyor, and five commissioners.

Sec. 2. Duty of county commissioners.

It shall be the duty of the commissioners to exercise a general supervision and control of the penal and charitable institutions, schools, roads, bridges, levying of taxes, and finances of the county, as may be prescribed by law. The register of deeds shall be ex officio clerk of the board of commissioners.

Sec. 3. Counties to be divided into districts.

It shall be the duty of the commissioners first elected in each county to divide the same into convenient districts, to determine the boundaries and prescribe the name of the said districts, and to report the same to the General Assembly before the first day of January, 1869.

Sec. 4. Townships have corporate powers.

Upon the approval of the reports provided for in the foregoing section by the General Assembly, the said districts shall have corporate powers for the necessary purposes of local government, and shall be known as townships.

Sec. 5. Officers of townships.

In each township there shall be biennially elected, by the qualified voters thereof, a clerk and two justices of the peace, who shall constitute a board of trustees, and shall, under the supervision of the county commissioners, have control of the taxes and finances, roads and bridges of the townships, as may be prescribed by law. The General Assembly may provide for the election of a larger number of justices of the peace in cities and towns, and in those townships in which cities and towns are situated. In every township there shall also be biennially elected a school committee, consisting of three persons, whose duty shall be prescribed by law.

Sec. 6. Trustees shall assess property.

The township board of trustees shall assess the taxable property of their townships and make return to the county commissioners for revision, as may be prescribed by law. The clerk shall be, *ex officio*, treasurer of the township.

Sec. 7. No debt or loan except by a majority of voters.— See Art. V of draft.

Article VII (cont'd)**Sec. 8. No money drawn except by law.**

No money shall be drawn from any county or township treasury, except by authority of law.

Sec. 9. When officers enter on duty.

The county officers first elected under the provisions of this article shall enter upon their duties ten days after the approval of this Constitution by the Congress of the United States.

Sec. 10. Governor to appoint justices.

The Governor shall appoint a sufficient number of justices of the peace in each county, who shall hold their places until sections four, five, and six of this article shall have been carried into effect.

Sec. 11. Charters to remain in force until legally changed.

All charters, ordinances, and provisions relating to municipal corporations shall remain in force until legally changed, unless inconsistent with the provisions of this Constitution.

Sec. 12. Debts in aid of the rebellion not to be paid.—
See Art. V of draft.**Sec. 13. Powers of General Assembly over municipal corporations.**

The General Assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions of this article, and substitute others in their place, except sections seven, nine and thirteen.

[The reference to Section 13 is to Section 12 of the present Constitution.]

Article VIII, Section 4. Legislature to provide for organizing cities, towns, etc.

It shall be the duty of the Legislature to provide by general laws for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessment and in contracting debts by such municipal corporations.

Section 26. Limitations upon power of General Assembly to enact private or special legislation.

1 *The General Assembly shall not pass any*
2 *local, private, or special act or resolution alter-*
3 *ing the name of any person; legitimating any*
4 *person not born in lawful wedlock; restoring to*
5 *the rights of citizenship any person convicted*
6 *of an infamous crime; granting a divorce or*
7 *securing alimony in any individual case; relat-*
8 *ing to health, sanitation, and the abatement of*
9 *nuisances; changing the names of cities,*
10 *towns, and townships; authorizing the laying*
11 *out, opening, altering, maintaining, or discon-*
12 *tinuing of highways, streets, or alleys; relat-*
13 *ing to ferries or bridges; relating to non-*
14 *navigable streams; relating to cemeteries; re-*
15 *lating to the pay of jurors; erecting new town-*
16 *ships, or changing township lines, or estab-*
17 *lishing or changing the lines of school dis-*

Section 10. Powers in relation to divorce and alimony.

The General Assembly shall have power to pass general laws regulating divorce and alimony, but shall not have power to grant a divorce or secure alimony in any individual case.

Section 11. Private laws in relation to names of persons, etc.

The General Assembly shall not have power to pass any private law to alter the name of any person, or to legitimate any person not born in lawful wedlock, or to restore to the rights of citizenship any person convicted of an infamous crime, but shall have power to pass general laws regulating the same.

Section 12. Thirty days notice shall be given anterior to passage of private laws.

[Note: This section was eliminated.]

The General Assembly shall not pass any private law, unless it shall be made to appear that thirty days notice of application to pass such a law shall have been given, under such direction and in such manner as shall be provided by law.

13 tricts; remitting fines, penalties, and for-
 14 feitures, or refunding moneys legally paid in-
 15 to the public treasury; regulating labor, trade,
 16 mining, or manufacturing; extending the time
 17 for the assessment or collection of taxes or
 18 otherwise relieving any collector from the due
 19 performance of his official duties or his sure-
 20 ties from liability; giving effect to informal
 21 wills and deeds; nor shall the General Assem-
 22 bly enact any such local, private, or special
 23 act by the partial repeal of a general law, but
 24 the General Assembly may at any time repeal
 25 local, private, or special laws enacted by it.
 26 Any local, private, or special act or resolution
 27 passed in violation of the provisions of this
 28 section shall be void. The General Assembly
 29 shall have power to pass general laws regulat-
 30 ing matters set out in this section.*

Section 27. Corporations.

1 No corporation shall be created, nor shall its
 2 charter be extended, altered, amended, or re-
 3 voked by special act, except corporations for
 4 charitable, educational, penal, or reformatory
 5 purposes that are to be and remain under the
 6 patronage and control of the State; but the
 7 General Assembly shall provide by general
 8 laws for the chartering, organization, and
 9 powers of all corporations, and for amending,
 10 extending, and forfeiture of all charters, ex-
 11 cept those above permitted by special act. All
 12 such general and special acts may be altered
 13 from time to time or repealed.

14 The term "corporation" as used in this
 15 section shall be construed to include all as-
 16 sociations and joint-stock companies having
 17 any of the powers and privileges of corpora-
 18 tions not possessed by individuals or partern-
 19 ships. All corporations shall have the right
 20 to sue, and shall be subject to be sued, in all
 21 courts, in like cases as natural persons.

Section 29. Limitations upon power of General Assembly to enact private or special legislation.

The General Assembly shall not pass any local, private or special act or resolution relating to the establishment of courts inferior to the Superior Court; relating to the appointment of justices of the peace; relating to health, sanitation, and the abatement of nuisances; changing the names of cities, towns, and townships; authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys; relating to ferries or bridges; relating to non-navigable streams; relating to cemeteries; relating to the pay of jurors; erecting new townships, or changing township lines, or establishing or changing the lines of school districts; remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury; regulating labor, trade, mining, or manufacturing; extending the time for the assessment or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability; giving effect to informal wills and deeds; nor shall the General Assembly enact any such local, private or special act by the partial repeal of a general law, but the General Assembly may at any time repeal local, private or special laws enacted by it. Any local, private or special act or resolution passed in violation of the provisions of this section shall be void. The General Assembly shall have power to pass general laws regulating matters set out in this section.

ARTICLE VIII, CORPORATIONS OTHER THAN MUNICIPAL.

[Note: Article VIII was eliminated as a separate article.]

Section 1. Corporations under general laws.

No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering and organization of all corporations, and for amending extending, and forfeiture of all charters, except those above permitted by special act. All such general and special acts may be altered from time to time or repealed; and the General Assembly may at any time by special act repeal the charter of any corporation.

Section 2. Debts of corporations, how secured.

Dues from corporations shall be secured by such individual liabilities of the corporations, and other means, as may be prescribed by law.

Section 3. What corporations shall include.

The term "corporation" as used in this article shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

Article III, Executive Department

PROPOSED TEXT

PRESENT TEXT

Section 1. Officers of the Executive Department.

Section 1. Officers of the Executive Department; terms of office.

1 The Executive Department shall consist of
2 a Governor, in whom shall be vested the
3 supreme executive power of the State; a Lieu-
4 tenant-Governor, a Secretary of State, an
5 Auditor, a Treasurer, a Superintendent of Pub-
6 lic Instruction, an Attorney General, a Com-
7 missioner of Agriculture, a Commissioner of
8 Labor, and a Commissioner of Insurance, who
9 shall be elected for a term of four years by the
10 qualified voters of the State, at the same time
11 and places and in the same manner as members
12 of the General Assembly are elected. Their
13 terms of office shall commence on the first day
14 of January next after their election and con-
15 tinue until their successors are elected and
16 qualified.*

The Executive Department shall consist of a Governor, in whom shall be vested the supreme executive power of the State; a Lieutenant-Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance, who shall be elected for a term of four years by the qualified electors of the State, at the same time and places and in the same manner as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election, and continue until their successors are elected and qualified: Provided, that the officers first elected shall assume the duties of their office ten days after the approval of this Constitution by the Congress of the United States, and shall hold their offices four years from and after the first day of January.

Section 2. Qualifications of Governor and Lieutenant-Governor.

Section 2. Qualifications of Governor and Lieutenant-Governor.

1 *No person shall be eligible for election to*
2 *the office of Governor or Lieutenant-Governor,*
3 *unless he shall have attained the age of thirty*
4 *years, shall have been a citizen of the United*
5 *States five years, and shall have been a resi-*
6 *dent of this State for two years next before*
7 *election; nor shall a person elected to*
8 *either of these two offices be eligible for elec-*
9 *tion for the next succeeding term of the same*
10 *office.*

No person shall be eligible as Governor or Lieutenant-Governor unless he shall have attained the age of thirty years, shall have been a citizen of the United States five years, and shall have been a resident of this State for two years next before election; nor shall the person elected to either of these two offices be eligible to the same office more than four years in any term of eight years, unless the office shall have been cast upon him as Lieutenant-Governor or President of the Senate.

Section 3. Returns of elections.

Section 3. Returns of elections.

1 The return of every election for officers of
2 the Executive Department shall be sealed up
3 and transmitted to the seat of government by
4 the returning officer, directed to the Secretary
5 of State. The return shall be canvassed and the
6 result declared in such manner as may be pre-
7 scribed by law. Contested elections shall be
8 determined by a joint ballot of both Houses of
9 the General Assembly in such manner as shall
10 be prescribed by law.

The return of every election for officers of the Executive Department shall be sealed up and transmitted to the seat of government by the returning officer, directed to the Secretary of State. The return shall be canvassed and the result declared in such manner as may be prescribed by law. Contested elections shall be determined by a joint ballot of both Houses of the General Assembly in such manner as shall be prescribed by law.

Section 4. Oath of office for Governor.

1 *The Governor, before entering upon the*
 2 *duties of his office, shall, before any Justice of*
 3 *the Supreme Court, take an oath or affirmation*
 4 *that he will support the Constitution and laws*
 5 *of the United States, and of the State of North*
 6 *Carolina, and that he will faithfully perform*
 7 *the duties appertaining to the office of Gov-*
 8 *ernor.*

Section 5. Duties of the Governor.

1 The Governor shall reside at the seat of
 2 government of this State, and he shall, from
 3 time to time, give the General Assembly infor-
 4 mation of the affairs of the State, and recom-
 5 mend to their consideration such measures as
 6 he shall deem expedient.

Section 6. Reprieves, commutations, and pardons.

1 The Governor shall have the power to grant
 2 reprieves, commutations, and pardons, after
 3 conviction, for all offenses (except in cases of
 4 impeachment), upon such conditions as he may
 5 think proper, subject to such regulations as
 6 may be provided by law relative to the manner
 7 of applying for pardons. He shall biennially
 8 communicate to the General Assembly each
 9 case of reprieve, commutation, or pardon grant-
 10 ed, stating the name of each convict, the crime
 11 for which he was convicted, the sentence and
 12 its date, the date of commutation, pardon, or
 13 reprieve, and the reasons therefor. The terms
 14 "reprieves," "commutations," and "pardons"
 15 shall not include paroles. The General Assem-
 16 bly is authorized and empowered to create a
 17 Board of Paroles, provide for the appointment
 18 of the members thereof, and enact suitable
 19 laws defining the duties and authority of such
 20 Board to grant, revoke, and terminate
 21 paroles.*

Section 7. Commander-in-Chief.

1 The Governor shall be Commander-in-Chief
 2 of the militia of the State, except when they
 3 shall be called into the service of the United
 4 States.

Section 4. Oath of office for Governor.

The Governor, before entering upon the duties of his office, shall, in the presence of the members of both branches of the General Assembly, or before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States, and of the State of North Carolina, and that he will faithfully perform the duties appertaining to the office of Governor, to which he has been elected.

Section 5. Duties of Governor.

The Governor shall reside at the seat of government of this State, and he shall, from time to time, give the General Assembly information of the affairs of the State, and recommend to their consideration such measures as he shall deem expedient.

Section 6. Reprieves, commutations, and pardons.

The Governor shall have the power to grant reprieves, commutations and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall biennially communicate to the General Assembly each case of reprieve, commutation, or pardon granted, stating the name of each convict, the crime for which he was convicted, the sentence and its date, the date of commutation, pardon, or reprieve, and the reasons therefor. The terms reprieves, commutations and pardons shall not include paroles. The General Assembly is authorized and empowered to create a Board of Paroles, provide for the appointment of the members thereof, and enact suitable laws defining the duties and authority of such board to grant, revoke and terminate paroles. The Governor's power of paroles shall continue until July 1, 1955, at which time said power shall cease and shall be vested in such Board of Paroles as may be created by the General Assembly.

Section 8. Commander-in-Chief.

The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the service of the United States.

Section 8. Extra sessions of the General Assembly.

1 The Governor shall have power, on extra-
2 ordinary occasions, by and with the advice of
3 the Council of State, to convene the General
4 Assembly in extra session by his proclama-
5 tion, stating therein the purposes for which
6 they are thus convened.

Section 9. Officers whose appointments are not otherwise provided for.

1 The Governor shall nominate, and, by and
2 with the advice and consent of a majority of
3 the Senate, appoint all officers whose offices
4 are established by this Constitution and
5 whose appointments are not otherwise provid-
6 ed for.

Section 10. Biennial reports from officers of the Executive Department and of public institutions.

1 *The officers of the Executive Department*
2 *and of the public institutions of the State shall,*
3 *at least thirty days previous to each regular*
4 *session of the General Assembly, severally re-*
5 *port to the Governor, who shall transmit such*
6 *reports, with his message, to the General As-*
7 *sembly; and the Governor may, at any time,*
8 *require information in writing from the of-*
9 *ficers in the Executive Department upon any*
10 *subject relating to the duties of their respec-*
11 *tive offices, and shall take care that the laws*
12 *be faithfully executed.*

Section 11. Succession to office of Governor.

1 *The Lieutenant-Governor-elect shall become*
2 *Governor upon the failure of the Governor-*
3 *elect to qualify. The Lieutenant-Governor shall*
4 *become Governor upon the death, resignation,*
5 *or removal from office of the Governor. The*
6 *further order of succession to the office of*
7 *Governor shall be prescribed by law. A succes-*
8 *sor shall serve for the remainder of the term*
9 *of the Governor whom he succeeds and until*
10 *a new Governor is elected and qualified.*

11 *During the absence of the Governor from*
12 *the State, or during the physical or mental in-*
13 *capacity of the Governor to perform the duties*
14 *of his office, the Lieutenant-Governor shall be*
15 *acting Governor. The further order of succes-*
16 *sion as acting Governor shall be prescribed by*
17 *law.*

Section 9. Extra sessions of the General Assembly.

The Governor shall have power on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

Section 10. Officers whose appointments are not otherwise provided for.

The Governor shall nominate, and by and with the advice and consent of a majority of the Senators-elect, appoint all officers whose offices are established by this Constitution and whose appointments are not otherwise provided for.

Section 7. Annual reports from officers of Executive Department and of public institutions.

The officers of the Executive Department and of the public institutions of the State shall, at least five days previous to each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly; and the Governor may, at any time, require information in writing from the officers in the Executive Department upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

Section 12. In case of impeachment of Governor, or vacancy caused by death or resignation.

In case of the impeachment of the Governor, his failure to qualify, his absence from the State, his inability to discharge the duties of his office, or, in case the office of Governor shall in any wise become vacant, the powers, duties and emoluments of the office shall devolve upon the Lieutenant-Governor until the disability shall cease or a new Governor shall be elected and qualified. In every case in which the Lieutenant-Governor shall be unable to preside over the Senate, the Senators shall elect one of their own number president of their body; and the powers, duties and emoluments of the office of Governor shall devolve upon him whenever the Lieutenant-Governor shall, for any reason, be prevented from discharging the duties of such office as above provided, and he shall continue as acting Governor until the disabilities be removed, or a new Governor or Lieutenant-Governor shall be elected and qualified. Whenever, during the recess of the General Assembly, it shall become necessary for the President of the Senate to administer the government, the Secretary of State shall convene the Senate, that they may elect such President.

Section 12. Incapacity of Governor.

1 *The physical or mental incapacity of the*
 2 *Governor to perform the duties of his office*
 3 *shall be determined only by joint resolution*
 4 *adopted by a vote of two-thirds of all the mem-*
 5 *bers of each House of the General Assembly.*
 6 *Thereafter, the physical or mental capacity of*
 7 *the Governor to perform the duties of his office*
 8 *shall be determined only by joint resolution*
 9 *adopted by a majority of all the members of*
 10 *each House of the General Assembly. In all*
 11 *cases, the General Assembly shall give the*
 12 *Governor such notice as it may deem proper,*
 13 *and shall allow him an opportunity to be heard*
 14 *before a joint session of the General Assembly*
 15 *before it takes final action. When the General*
 16 *Assembly is not in session, the Council of*
 17 *State, a majority of the members concurring,*
 18 *may convene it in extra session for the pur-*
 19 *pose of proceeding under this section.*

Section 13. Other executive officers; succession.

1 *The respective duties of the Secretary of*
 2 *State, Auditor, Treasurer, Superintendent of*
 3 *Public Instruction, Attorney General, Commis-*
 4 *sioner of Agriculture, Commissioner of Labor,*
 5 *and Commissioner of Insurance shall be pre-*
 6 *scribed by law. If the office of any of these*
 7 *officers shall be vacated by death, resignation,*
 8 *or otherwise, it shall be the duty of the Gov-*
 9 *ernor to appoint another until a successor be*
 10 *elected and qualified. Every such vacancy shall*
 11 *be filled by election at the first election for*
 12 *members of the General Assembly that occurs*
 13 *more than thirty days after the vacancy has*
 14 *taken place, and the person chosen shall hold*
 15 *the office for the remainder of the unexpired*
 16 *term fixed in the first section of this article:*
 17 *Provided, that when a vacancy occurs in the*
 18 *office of any of the officers named in this sec-*
 19 *tion and the term expires on the first day of*
 20 *January succeeding the next election for mem-*
 21 *bers of the General Assembly, the Governor*
 22 *shall appoint to fill the vacancy for the unex-*
 23 *pired term of the office.*

24 *Upon the occurrence of a vacancy in the*
 25 *office of any of these officers for any of the*
 26 *causes stated in the preceding paragraph, the*
 27 *Governor may appoint an acting officer to per-*
 28 *form the duties of that office until a person is*

Section 13. Duties of other executive officers.

The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance shall be prescribed by law. If the office of any of said officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another until the disability be removed or his successor be elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this article: Provided, that when the unexpired term of any of the offices named in this section in which such vacancy has occurred expires on the first day of January succeeding the next general election, the Governor shall appoint to fill said vacancy for the unexpired term of said office.

29 appointed or elected pursuant to this section to
30 fill the vacancy and is qualified.

31 During the physical or mental incapacity of
32 any one of these officers to perform the duties
33 of his office, as determined pursuant to Section
34 14 of this article, the duties of his office
35 shall be performed by an acting officer ap-
36 pointed by the Governor.

Section 14. Incapacity of other executive officers.

1 The General Assembly shall by law pre-
2 scribe, with respect to those officers, other than
3 the Governor, whose offices are created by this
4 article, (1) procedures for determining the
5 physical or mental incapacity of any officer to
6 perform the duties of his office, and (2) in the
7 event of temporary physical or mental in-
8 capacity, procedures for determining whether
9 an officer has sufficiently recovered his phy-
10 sical or mental capacity to perform the duties
11 of his office.

Section 15. Council of State.

1 The Secretary of State, Auditor, Treasurer,
2 Superintendent of Public Instruction, Commis-
3 sioner of Agriculture, Commissioner of Labor,
4 and Commissioner of Insurance shall consti-
5 tute, ex officio, the Council of State, who shall
6 advise the Governor in the execution of his
7 office, and four of whom shall constitute a
8 quorum. Their advice and proceedings in this
9 capacity shall be entered in a journal, to be
10 kept for this purpose exclusively, and signed
11 by the members present, from any part of
12 which any member may enter his dissent; and
13 such journal shall be placed before the General
14 Assembly when called for by either House. The
15 Attorney General shall be, ex officio, the legal
16 adviser of the Executive Department.

Section 16. Compensation for executive officers.

1 Each officer mentioned in this article shall
2 at stated periods receive for his services a com-
3 pensation to be established by law, which shall
4 not be diminished during the time for which he
5 shall have been elected or appointed, and the
6 said officers shall receive no other emolument
7 or allowance whatever.

Section 14. Council of State.

The Secretary of State, Auditor, Treasurer, Superin-
tendent of Public Instruction, Commissioner of Agricul-
ture, Commissioner of Labor, and Commissioner of In-
surance shall constitute, *ex officio*, the Council of State,
who shall advise the Governor in the execution of his office,
and three of whom shall constitute a quorum; their advice
and proceedings in this capacity shall be entered in a
journal, to be kept for this purpose, exclusively, and
signed by the members present, from any part of which
any member may enter his dissent; and such journal shall
be placed before the General Assembly when called for
by either house. The Attorney-General shall be, *ex officio*,
the legal adviser of the executive department.

Section 15. Compensation for executive officers.

The officers mentioned in this article shall at stated
periods receive for their services a compensation to be
established by law, which shall neither be increased nor
diminished during the time for which they shall have
been elected, and the said officers shall receive no other
emolument or allowance whatever.

Section 17. Department of Justice.

1 The General Assembly is authorized and
 2 empowered to create a Department of Justice
 3 under the supervision and direction of the
 4 Attorney General, and to enact suitable laws
 5 defining the authority of the Attorney General
 6 and other officers and agencies concerning the
 7 prosecution of crime and the administration of
 8 the criminal laws of the State.

Section 18. Department of Agriculture.

1 The General Assembly shall maintain a De-
 2 partment of Agriculture under such regulations
 3 as may best promote the agricultural interests
 4 of the State.*

Section 19. Seal of State.

1 There shall be a seal of the State, which
 2 shall be kept by the Governor, and used by him
 3 as occasion may require, and shall be called
 4 "The Great Seal of the State of North Caro-
 5 lina." All grants and commissions shall be is-
 6 sued in the name and by the authority of the
 7 State of North Carolina, sealed with The Great
 8 Seal of the State, signed by the Governor, and
 9 countersigned by the Secretary of State.

Section 18. Department of Justice.

The General Assembly is authorized and empowered to create a Department of Justice under the supervision and direction of the Attorney-General, and to enact suitable laws defining the authority of the Attorney-General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the State.

Section 17. Department of Agriculture, Immigration, and Statistics.

The General Assembly shall establish a Department of Agriculture, Immigration, and Statistics, under such regulations as may best promote the agricultural interests of the State, and shall enact laws for the adequate protection and encouragement of sheep husbandry.

Section 16. Seal of State.

There shall be a seal of the State, which shall be kept by the Governor, and used by him, as occasion may require, and shall be called "The Great Seal of the State of North Carolina." All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State," signed by the Governor, and countersigned by the Secretary of State.

Eliminated from draft:**Section 11. Duties of the Lieutenant-Governor.**

The Lieutenant-Governor shall be President of the Senate, but shall have no vote unless the Senate be equally divided. He shall receive such compensation as shall be fixed by the General Assembly.

Article IV, Judicial Department

PROPOSED TEXT

PRESENT TEXT

Section 1. Division of judicial powers.

1 *The judicial power of the State shall, ex-*
2 *cept as provided in Section 2 of this article,*
3 *be vested in a Court for the Trial of Impeach-*
4 *ments and in a General Court of Justice. The*
5 *General Assembly shall have no power to de-*
6 *prive the Judicial Department of any power or*
7 *jurisdiction which rightfully pertains to it as a*
8 *co-ordinate department of the government, nor*
9 *shall it establish or authorize any courts other*
10 *than as permitted by this article.*

Section 2. Judicial powers of administrative agencies.

1 *The General Assembly may vest in admini-*
2 *strative agencies established pursuant to law*
3 *such judicial powers as may be reasonably*
4 *necessary as an incident to the accomplish-*
5 *ment of the purposes for which the agencies*
6 *were created. Appeals from rulings of admini-*
7 *strative agencies shall be taken in a manner*
8 *prescribed by law.*

Section 3. Court for the Trial of Impeachments.

1 The House of Representatives solely shall
2 have the power of impeaching. The Court for
3 the Trial of Impeachments shall be the Senate.
4 When the Governor or Lieutenant-Governor is
5 impeached, the Chief Justice shall preside
6 over the Court. A majority of members shall
7 be necessary to a quorum, and no person shall
8 be convicted without the concurrence of two-
9 thirds of the Senators present. Judgment upon
10 conviction shall not extend beyond removal
11 from and disqualification to hold office in this
12 State, but the party shall be liable to indict-
13 ment and punishment according to law.*

Section 4. General Court of Justice.

1 *The General Court of Justice shall consist*
2 *of an appellate division, a Superior Court di-*
3 *vision, and a division of local trial courts.*

Section 2. Division of Judicial powers.

The judicial power of the State shall be vested in a court for the trial of impeachments, a Supreme Court, Superior Courts, courts of justices of the peace, and such other courts inferior to the Supreme Court as may be established by law.

Section 12. Jurisdiction of courts inferior to Supreme Court.

The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a coordinate department of the government;.....

Section 3. Trial court of impeachment.

The court for the trial of impeachments shall be the Senate. A majority of the members shall be necessary to a quorum, and the judgment shall not extend beyond removal from and disqualification to hold office in this State; but the party shall be liable to indictment and punishment according to law.

Section 4. Impeachment.

The House of Representatives solely shall have the power of impeaching. No person shall be convicted without the concurrence of two-thirds of the Senators present. When the Governor is impeached, the Chief Justice shall preside.

Section 5. Appellate division.

1 *The appellate division of the General Court*
 2 *of Justice shall consist of the Supreme Court.*
 3 *However, the General Assembly may, upon*
 4 *recommendation of the Supreme Court, estab-*
 5 *lish within the appellate division an inter-*
 6 *mediate Court of Appeals.*

Section 6. Supreme Court.

1 (1) *Membership. The Supreme Court shall*
 2 *consist of a Chief Justice and six Associate*
 3 *Justices, but the General Assembly may in-*
 4 *crease the number of Associate Justices to not*
 5 *more than eight. The General Assembly may*
 6 *provide for the retirement of members of the*
 7 *Supreme Court and for the recall of such re-*
 8 *tired members to serve on that Court in lieu*
 9 *of any active member thereof who is, for any*
 10 *cause, temporarily incapacitated.*

11 (2) *Divisions. The Supreme Court shall*
 12 *have power to sit in divisions when in its*
 13 *judgment this is necessary for the proper dis-*
 14 *patch of business, and to make rules for the*
 15 *distribution of business between the divisions*
 16 *and for the hearing of cases by the full Court.*
 17 *No decision of any division shall become the*
 18 *judgment of the Court unless concurred in by*
 19 *a majority of all the justices; and no case*
 20 *involving a construction of the Constitution*
 21 *of the State or of the United States shall be*
 22 *decided except by the Court en banc.*

23 (3) *Terms of the Supreme Court. The*
 24 *terms of the Supreme Court shall be held in*
 25 *the City of Raleigh unless otherwise provid-*
 26 *ed by the General Assembly.*

Section 7. Court of Appeals.

1 *The structure and organization of the*
 2 *Court of Appeals, if established, shall be de-*
 3 *termined by the General Assembly. Jurisdic-*
 4 *tion of the Court of Appeals shall be determin-*
 5 *ed by the Supreme Court, as provided in Sec-*
 6 *tion 11 of this article; and sessions of the Court*
 7 *of Appeals shall be held at such times and*
 8 *places as may be fixed by rules of the Supreme*
 9 *Court. The General Assembly may provide for*
 10 *the retirement of members of the Court of*
 11 *Appeals and for the recall of such retired*
 12 *members to serve on that Court in lieu of any*
 13 *active member thereof who is, for any cause,*
 14 *temporarily incapacitated.*

Section 6. Supreme Court.

The Supreme Court shall consist of a Chief Justice and four Associate Justices. The General Assembly may increase the number of Associate Justices to not more than six when the work of the Court so requires. The Court shall have power to sit in divisions, when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by a majority of all the Justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court *en banc*. All sessions of the Court shall be held in the City of Raleigh. This amendment made to the Constitution of North Carolina shall not have the effect to vacate any office or term of office now existing under the Constitution of the State, and filled or held by virtue of any election or appointment under the said Constitution, and the laws of the State made in pursuance thereof. The General Assembly is vested with authority to provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on said court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

Section 7. Terms of the Supreme Court.

The terms of the Supreme Court shall be held in Raleigh, as now, unless otherwise provided by the General Assembly.

Section 8. Superior Courts.

1 (1) *Superior Court districts and divisions.*
 2 *The General Assembly shall, from time to*
 3 *time, divide the State into a convenient num-*
 4 *ber of Superior Court judicial districts and*
 5 *shall provide for the election of one or more*
 6 *Superior Court Judges for each district. Each*
 7 *regular Superior Court Judge shall reside in*
 8 *the district for which he is elected. The Gen-*
 9 *eral Assembly may divide the State into a*
 10 *number of judicial divisions, and may provide*
 11 *for the judges to preside in the districts with-*
 12 *in a division successively. The General Assem-*
 13 *bly may provide by general laws for the selec-*
 14 *tion or appointment of special or emergency*
 15 *Superior Court Judges not selected for a par-*
 16 *ticular judicial district.*

17 (2) *Open at all times; sessions for trial*
 18 *of cases. The Superior Courts shall be open at*
 19 *all times for the transaction of all business*
 20 *except the trial of issues of fact requiring a*
 21 *jury. Regular trial sessions of the Superior*
 22 *Court shall be held at times fixed pursuant to*
 23 *law. At least two sessions for the trial of jury*
 24 *cases shall be held annually in each county.*

25 (3) *Clerks.* A Clerk of the Superior Court
 26 for each county shall be elected for a term of
 27 four years by the qualified voters thereof, at
 28 the time and in the manner prescribed by law
 29 for the election of members of the General
 30 Assembly. If the office of Clerk of Superior
 31 Court becomes vacant otherwise than by ex-
 32 piration of the term, or if the people fail to
 33 elect the senior regular resident Judge of Su-
 34 perior Court for the county shall appoint to
 35 fill the vacancy until an election can be regu-
 36 larly held.*

Section 9. Local trial courts.

1 (1) *District Courts; Trial Commissioners.*
 2 *The General Assembly shall provide for the*
 3 *division, from time to time, of each Superior*
 4 *Court judicial district into a convenient num-*
 5 *ber of local court districts and shall prescribe*
 6 *where the District Courts shall sit, but a Dis-*
 7 *trict Court must sit in at least one place in*
 8 *each county. A Chief District Judge and, if*
 9 *necessary, one or more Associate District*

Section 10. Judicial districts for Superior Courts.

The General Assembly shall divide the State into a number of judicial districts which number may be increased or reduced and shall provide for the election of one or more Superior Court judges for each district. There shall be a Superior Court in each county at least twice each year to continue for such time in each county as may be prescribed by law.

Section 11. Judicial districts; rotation; special Superior Court judges; assignment of Superior Court judges by Chief Justice.

Each Judge of the Superior Court shall reside in the district for which he is elected. The General Assembly may divide the State into a number of judicial divisions. The judges shall preside in the courts of the different districts within a division successively; but no judge shall hold all the courts in the same district oftener than once in four years. The General Assembly may provide by general laws for the selection or appointment of special or emergency Superior Court judges not assigned to any judicial district, who may be designated from time to time by the Chief Justice, to hold court in any district or districts within the State; and the General Assembly shall define their jurisdiction and shall provide for their reasonable compensation. The Chief Justice, when in his opinion the public interest so requires, may assign any Superior Court judge to hold one or more terms of Superior Court in any district.

Section 22. Transaction of business in the Superior Courts.

The Superior Courts shall be, at all times, open for the transaction of all business within their jurisdiction, except the trial of issues of fact requiring a jury.

Section 16. Election of Superior Court clerk.

A clerk of the Superior Court for each county shall be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly.

Section 29. Vacancies in office of Superior Court clerk.

In case the office of clerk of a Superior Court for a county shall become vacant otherwise than by the expiration of the term, and in case of failure by the people to elect, the judge of the Superior Court for the county shall appoint to fill the vacancy until an election can be regularly held.

10 Judges shall be selected for each district for
 11 a term of four years, in a manner provided by
 12 general law uniformly applicable in every
 13 local court district in the State. Every Dis-
 14 trict Judge shall reside in the district for
 15 which he is selected. As officers of the District
 16 Courts, one or more Trial Commissioners shall
 17 be appointed in each county for a term of
 18 two years by the senior regular resident Su-
 19 perior Court Judge from nominations submit-
 20 ted by the Chief District Judge of the district
 21 in which the Trial Commissioner will serve.
 22 The number of Associate District Judges and
 23 Trial Commissioners shall, from time to time,
 24 be determined by the General Assembly.

25 (2) Vacancies. Vacancies in the office of
 26 District Judge shall be filled, for the unexpired
 27 term, in a manner provided by general law
 28 uniformly applicable in every local court dis-
 29 trict of the State. Vacancies in the office of
 30 Trial Commissioner shall be filled for the un-
 31 expired term by appointment of the senior
 32 regular resident Superior Court Judge.

33 (3) Courts to continue until 1965. All exist-
 34 ing courts, not created or authorized by this
 35 Constitution, including courts of justices of
 36 the peace, shall be continued only until the
 37 first day of January, 1965, or until such earlier
 38 date as the General Assembly shall fix. The
 39 General Assembly shall provide for the trans-
 40 fer of all cases then pending in such courts.

Section 10. Assignment of judges.

1 The Chief Justice when, in his opinion, the
 2 public interest so requires, may assign any
 3 Superior Court Judge to hold one or more ses-
 4 sions of Superior Court in any district. In the
 5 absence or temporary incapacity of the Chief
 6 Justice, the powers granted in this section
 7 may be exercised by the senior Associate Jus-
 8 tice.

Section 11. Jurisdiction of the General Court of Justice.

1 (1) Supreme Court. The Supreme Court
 2 shall have jurisdiction to review, upon appeal,
 3 any decision of the courts below, upon any
 4 matter of law or legal inference. The jurisdic-

See Section 11 on preceding page.

Sec. 8. Jurisdiction of Supreme Court.

The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference. And the jurisdiction of said court over "issues of fact" and "questions of fact" shall be the same exercised by it before the adoption of

5 tion of the Supreme Court over "issues of fact"
6 and "questions of fact" shall be the same exer-
7 cised by it prior to the adoption of this Consti-
8 tution, and the Court shall have the power to
9 issue any remedial writs necessary to give it
10 general supervision and control over the pro-
11 ceedings of courts inferior to it.

12 The Supreme Court shall have original
13 jurisdiction to hear claims against the State,
14 but its decisions shall be merely recommenda-
15 tory; no process in the nature of execution
16 shall issue thereon; the decisions shall be re-
17 ported to the next session of the General As-
18 sembly for its action.*

19 (2) *Court of Appeals. The Court of Ap-*
20 *peals, if established, shall exercise such part*
21 *of the appellate jurisdiction granted to the*
22 *Supreme Court by this Constitution as the*
23 *Supreme Court may by rule vest in it: Pro-*
24 *vided, that in all cases involving a construction*
25 *of the Constitution of this State or of the*
26 *United States, and in all criminal cases in*
27 *which a sentence of death or life imprisonment*
28 *has been imposed, there shall be an absolute*
29 *right of final appeal to the Supreme Court.*

30 (3) *Superior Courts. Except as otherwise*
31 *provided by the General Assembly, the Su-*
32 *perior Court shall have original general juris-*
33 *isdiction throughout the State. The Clerks of*
34 *Superior Court shall have such jurisdiction*
35 *and powers as the General Assembly shall*
36 *provide by general law uniformly applicable*
37 *in every county of the State.*

38 (4) *District Courts; Trial Commissioners.*
39 *The General Assembly shall, by general law*
40 *uniformly applicable in every local court dis-*
41 *trict of the State, prescribe the jurisdiction*
42 *and powers of the District Courts and Trial*
43 *Commissioners.*

44 (5) *Appeals. The General Assembly shall,*
45 *by general law, provide a proper system of*
46 *appeals: Provided, that appeals from Trial*
47 *Commissioners shall be heard de novo, with*
48 *the right of trial by jury as defined in this*
49 *Constitution and the laws of this State.*

the Constitution of one thousand eight hundred and sixty-eight, and the court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts.

Sec. 9. Claims against the State.

The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the General Assembly for its action.

Sec. 12. Jurisdiction of courts inferior to Supreme Court.

The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a coordinate department of the government; but the General Assembly shall allot and distribute that portion of this power and jurisdiction which does not pertain to the Supreme Court among the other courts prescribed in this Constitution or which may be established by law, in such manner as it may deem best; provide also a proper system of appeals; and regulate by law, when necessary, the methods of proceeding in the exercise of their powers, of all the courts below the Supreme Court, so far as the same may be done without conflict with other provisions of this Constitution.

Section 12. Forms of action; rules of procedure.

1 (1) *Forms of action.* There shall be in this
 2 State but one form of action for the enforce-
 3 ment or protection of private rights or the
 4 redress of private wrongs, which shall be de-
 5 nominated a civil action, and in which there
 6 shall be a right to have issues of fact tried
 7 before a jury. Every action prosecuted by the
 8 people of the State as a party against a person
 9 charged with a public offense for the punish-
 10 ment of the same, shall be termed a criminal
 11 action.*

12 (2) *Rules of procedure.* *The Supreme Court*
 13 *shall have exclusive authority to make rules*
 14 *of procedure for the appellate division. The*
 15 *General Assembly shall provide by law for the*
 16 *regulation of the methods of proceeding of*
 17 *all courts below the appellate division in the*
 18 *exercise of their jurisdiction and powers.*

Section 13. Waiver of jury trial.

1 *The right of trial by jury may be waived*
 2 *in all criminal cases except those in which the*
 3 *offense charged is a felony punishable by death*
 4 *or life imprisonment. In other felony cases*
 5 *waiver of the right of trial by jury shall be*
 6 *permitted only with the consent of the trial*
 7 *judge and counsel for the accused. In misde-*
 8 *meanor cases in which the right of trial by*
 9 *jury is granted, waiver of the right shall be*
 10 *permitted only with the consent of the trial*
 11 *judge. All waivers in criminal cases shall be*
 12 *in writing. The parties in any civil case may*
 13 *waive jury trial. In the event of waiver of*
 14 *jury trial, in either criminal or civil cases, the*
 15 *findings of the judge upon the facts shall have*
 16 *the force and effect of a verdict by a jury.*

Section 14. Listing and drawing of jurors.

1 *The General Assembly shall, by general*
 2 *law uniformly applicable throughout the State,*
 3 *provide for the listing and drawing of jurors*
 4 *for both petit and grand juries.*

Section 1. Abolishes the distinctions between actions at law and suits in equity, and feigned issues.

The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, shall be abolished; and there shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the State as a party, against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action. Feigned issues shall also be abolished, and the facts at issue tried by order of court before a jury.

See Section 12 on preceding page.

Sec. 13. In case of waiver of trial by jury.

In all issues of fact, joined in any court, the parties may waive the right to have the same determined by a jury; in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Section 15. Term of office and election of judges of Supreme Court, Court of Appeals, and Superior Court.

1 Justices of the Supreme Court, Judges of
2 the Court of Appeals, if established, and regu-
3 lar Judges of the Superior Court shall be
4 elected by the qualified voters and shall hold
5 office for terms of eight years and until their
6 successors are elected and qualified. Justices
7 of the Supreme Court and Judges of the Court
8 of Appeals shall be elected by the qualified
9 voters of the State. Regular Judges of the
10 Superior Court may be elected by the qualified
11 voters of the State or by the voters of their
12 respective districts as the General Assembly
13 may provide.*

Section 16. Removal of Judges and clerks.

1 (1) *Judges of Supreme Court, Court of*
2 *Appeals, and Superior Court.* Any Justice of
3 the Supreme Court, Judge of the Court of Ap-
4 peals, if established, or Judge of the Superior
5 Court may be removed from office for mental
6 or physical incapacity upon the joint resolu-
7 tion of two-thirds of both Houses of the Gen-
8 eral Assembly. Any justice or judge against
9 whom the General Assembly may be about to
10 proceed shall receive notice thereof, accom-
11 panied by a copy of the causes alleged for his
12 removal, at least twenty days before the day on
13 which either House of the General Assembly
14 shall act thereon. Removal from office for any
15 other cause shall be by impeachment.*

16 (2) *Judges of courts inferior to the Su-*
17 *perior Court. The General Assembly shall pro-*
18 *vide by general law for the removal of judges*
19 *of courts inferior to the Superior Court for*
20 *misconduct or mental or physical incapacity.*

21 (3) *Clerks. Any clerk may be removed*
22 *from office for misconduct or mental or physi-*
23 *cal incapacity: the Clerk of the Supreme Court*
24 *by the Justices of that Court; the Clerks of*
25 *the Court of Appeals by the Judges of that*
26 *Court; and the Clerks of the Superior Court*
27 *by the senior regular resident judge of the*
28 *district. Any clerk against whom proceedings*

Sec. 21. Elections, term of office, etc., of Justices of the Supreme and Judges of the Superior Courts.

The Justices of the Supreme Court shall be elected by the qualified voters of the State, as is provided for the election of members of the General Assembly. They shall hold their offices for eight years. The judges of the Superior Courts, elected at the first election under this amendment, shall be elected in like manner as is provided for justices of the Supreme Court, and shall hold their offices for eight years. The General Assembly may, from time to time, provide that the Judges of the Superior Courts, chosen at succeeding elections, instead of being elected by the voters of the whole State, as is herein provided for, shall be elected by the voters of their respective districts.

Sec. 31. Removal of judges of the various courts for inability.

Any judge of the Supreme Court, or of the Superior Courts, and the presiding officers of such courts inferior to the Supreme Court as may be established by law, may be removed from office for mental or physical inability, upon a concurrent resolution of two-thirds of both houses of the General Assembly. The judge or presiding officer against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon.

Sec. 32. Removal of clerks of the various courts for inability.

Any clerk of the Supreme Court, or of the Superior Courts, or of such courts inferior to the Supreme Court as may be established by law, may be removed from office for mental or physical inability; the clerk of the Supreme Court by the judges of said court, the clerks of the Superior Courts by the judge riding the district, and the clerks of such courts inferior to the Supreme Court as may be established by law by the presiding officers of said courts. The clerk against whom proceedings are instituted shall receive notice thereof, accompanied by a copy of the cause alleged for his removal, at least ten days before the day appointed to act thereon, and the clerk shall be entitled to an appeal to the next term of the Superior Court and thence to the Supreme Court as provided in other cases of appeals.

29 are instituted shall receive written notice of
 30 the charges against him at least ten days before
 31 the hearing upon the charges. Clerks of courts
 32 inferior to the Superior Court shall be remov-
 33 ed for such causes and in such manner as the
 34 General Assembly may provide by general law.
 35 Any clerk so removed from office shall be en-
 36 titled to an appeal as provided by law.

Section 17. Solicitors and solicitorial districts.

1 (1) District solicitors. The General Assem-
 2 bly shall, from time to time, divide the State
 3 into a convenient number of solicitorial dis-
 4 tricts, for each of which a Solicitor shall be
 5 chosen for a term of four years by the quali-
 6 fied voters thereof, as is prescribed for mem-
 7 bers of the General Assembly. When the At-
 8 torney General determines that there is serious
 9 imbalance in the work loads of the Solicitors,
 10 or that there is other good cause, he shall
 11 recommend redistricting to the General As-
 12 sembly. The Solicitor shall advise the officers
 13 of justice in his district; and shall be respon-
 14 sible for the prosecution on behalf of the State
 15 of all criminal actions in the Superior Courts of
 16 his district, for performing such duties related
 17 to appeals therefrom as the Attorney General
 18 may require, and for such other duties as the
 19 General Assembly may prescribe.

20 (2) Prosecution in inferior courts. Crimi-
 21 nal actions in courts inferior to the Superior
 22 Court shall be prosecuted in such manner as
 23 the General Assembly may prescribe by gen-
 24 eral law uniformly applicable in every local
 25 court district of the State.

Section 18. Sheriffs.

1 In each county a Sheriff shall be elected by
 2 the qualified voters thereof as is prescribed for
 3 members of the General Assembly, and shall
 4 hold his office for a period of four years. In
 5 case of a vacancy existing for any cause in any
 6 Sheriff's office, the governing authority of the
 7 county shall appoint to such office for the
 8 unexpired term.

Sec. 23. Solicitors and solicitorial districts.

The State shall be divided into twenty-one solicitorial districts, for each of which a solicitor shall be chosen by the qualified voters thereof, as is prescribed for members of the General Assembly, who shall hold office for the term of four years, and prosecute on behalf of the State in all criminal actions in the Superior Courts, and advise the officers of justice in his district. But the General Assembly may reduce or increase the number of solicitorial districts, which need not correspond to, or be the same as, the judicial districts of the State.

Sec. 24. Sheriffs and coroners.

In each county a sheriff and coroner shall be elected by the qualified voters thereof as is prescribed for members of the General Assembly, and shall hold their offices for a period of four years. In each township there shall be a constable elected in like manner by the voters thereof, who shall hold his office for a period of two years. When there is no coroner in a county, the clerk of the Superior Court for the county may appoint one for special cases. In case of a vacancy existing for any cause in any of the offices created by this section, the commissioners of the county may appoint to such office for the unexpired term.

Section 19. Vacancies.

1 Unless otherwise provided in this article,
2 all vacancies occurring in the offices provided
3 for by this article shall be filled by the appoint-
4 ment of the Governor, and the appointees shall
5 hold their places until the next election for
6 members of the General Assembly that is held
7 more than thirty days after such vacancy
8 occurs, when elections shall be held to fill such
9 offices: Provided, that when the unexpired
10 term of any of the offices named in this article
11 of the Constitution in which such vacancy has
12 occurred, and in which it is herein provided
13 that the Governor shall fill the vacancy, expires
14 on the first day of January succeeding the
15 next election for members of the General As-
16 sembly, the Governor shall appoint to fill that
17 vacancy for the unexpired term of the office.
18 If any person, elected or appointed to any of
19 said offices, shall neglect and fail to qualify,
20 such office shall be appointed to, held, and filled
21 as provided in case of vacancies occurring
22 therein. All incumbents of such offices shall
23 hold until their successors are qualified.

Section 20. Uniform schedule of fees and costs.

1 *The General Assembly shall provide for the*
2 *establishment of a schedule of court fees and*
3 *costs which shall be uniform throughout the*
4 *State within each division of the General Court*
5 *of Justice below the appellate division. The*
6 *Supreme Court shall fix fees and costs for the*
7 *appellate division.*

Section 21. Fees, salaries, and emoluments.

1 *The General Assembly shall prescribe and*
2 *regulate the fees, salaries, and emoluments*
3 *of all officers provided for in this article; but*
4 *the salaries of judges shall not be diminished*
5 *during their continuance in office. In no case*
6 *shall the compensation of any judge or Trial*
7 *Commissioner be dependent upon his decision*
8 *or upon the collection of costs.*

Sec. 25. Vacancies.

All vacancies occurring in the offices provided for by this article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly that is held more than thirty days after such vacancy occurs, when elections shall be held to fill such offices: Provided, that when the unexpired term of any of the offices named in this article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next general election, the Governor shall appoint to fill said vacancy for the unexpired term of said office. If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such offices shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

Section 18. Fees, salaries and emoluments.

The General Assembly shall prescribe and regulate the fees, salaries and emoluments of all officers provided for in this article; but the salaries of judges shall not be diminished during their continuance in office.

Eliminated from draft:

Section 14. Special courts in cities.

The General Assembly shall provide for the establishment of special courts, for the trial of misdemeanors, in cities and towns, where the same may be necessary.

Section 15. Clerk of the Supreme Court.

The Clerk of the Supreme Court shall be appointed by the Court, and shall hold his office for eight years.

Section 19. What laws are, and shall be, in force.

The laws of North Carolina, not repugnant to this Constitution or the Constitution and laws of the United States, shall be in force until lawfully altered.

Section 20. Disposition of actions at law and suits in equity, pending when this Constitution shall go into effect, etc.

Actions at law and suits in equity pending when this Constitution shall go into effect shall be transferred to the courts having jurisdiction thereof, without prejudice by reason of the change; and all such actions and suits commenced before, and pending at the adoption by the General Assembly of the rules of practice and procedure herein provided for, shall be heard and determined according to the practices now in use, unless otherwise provided for by said rules.

Section 26. Terms of office of first officers.

The officers elected at the first election held under this Constitution shall hold their offices for the terms prescribed for them, respectively, next ensuing after the next regular election for members of the General Assembly. But their terms shall begin upon the approval of this Constitution by the Congress of the United States.

Section 27. Jurisdiction of justices of the peace.

The several justices of the peace shall have jurisdiction, under such regulations as the General Assembly shall prescribe, of civil actions, founded on contract, wherein the sum demanded shall not exceed two hundred dollars, and wherein the title to real estate shall not be in controversy, and of all criminal matters arising within their counties where the punishment cannot exceed a fine of fifty dollars or imprisonment for thirty days. And the General Assembly may give to the justices of the peace jurisdiction of other civil actions wherein the value of the property in controversy does not exceed fifty dollars. When an issue of fact shall be joined before a justice, on demand of either party thereto, he shall cause a jury of six men to be summoned, who shall try the same. The party against whom the judgment shall be rendered in any civil action may appeal to the Superior Court from the same. In all cases of a criminal nature the party against whom the judgment is given may appeal to the Superior Court, where the matter shall be heard anew. In all cases brought before a justice, he shall make a record of the proceedings, and file the same with the clerk of the Superior Court for his county.

Section 28. Vacancies in offices of justices.

When the office of justice of the peace shall become vacant otherwise than by expiration of the term, and in case of a failure by the voters of any district to elect, the clerk of the Superior Court for the county shall appoint to fill the vacancy for the unexpired term.

Section 30. Officers of other courts inferior to Supreme Court.

In case the General Assembly shall establish other courts inferior to the Supreme Court, the presiding officers and clerks thereof shall be elected in such manner as the General Assembly may from time to time prescribe, and they shall hold their offices for a term not exceeding eight years.

Section 33. Amendments not to vacate existing offices.

The amendments made to the Constitution of North Carolina by this Convention shall not have the effect to vacate any office or term of office now existing under the Constitution of the State, and filled, or held by virtue of any election or appointment under the said Constitution and the laws of the State made pursuance thereof.

Article V, Revenue, Taxation, and Public Debt

PROPOSED TEXT

PRESENT TEXT

Section 1. State taxation.

1 *The power of taxation shall be exercised in*
2 *a just and equitable manner, for public pur-*
3 *poses only, and shall never be surrendered, sus-*
4 *pending, or contracted away. Only the General*
5 *Assembly shall have the power to classify*
6 *property and other subjects for taxation, which*
7 *power shall be exercised only on a state-wide*
8 *basis. No class or subject shall be taxed except*
9 *by uniform rule, and every classification shall*
10 *be uniformly applicable in every county, munic-*
11 *ipality, and other local taxing unit of the State.*
12 *The General Assembly's power to classify shall*
13 *not be delegated, except that the General As-*
14 *sembly may permit the governing boards of*
15 *counties, cities, and towns to classify trades*
16 *and professions for local license tax pur-*
17 *poses. The rate of tax on income shall not ex-*
18 *ceed ten per cent, and there shall be allowed*
19 *the following minimum exemptions, to be de-*
20 *ducted from the amount of annual incomes:*
21 *to the income producing spouse of a married*
22 *couple living together, where only one spouse*
23 *has income, two thousand dollars; to a hus-*
24 *band and wife living together, where both*
25 *have income, a personal exemption of one*
26 *thousand dollars each, and either spouse may*
27 *allow the other to claim all or any part of*
28 *said personal exemption; to a widow or widow-*
29 *er with minor child or children, natural or*
30 *adopted, two thousand dollars; and to all other*
31 *natural persons, one thousand dollars. There*
32 *may also be allowed deductions (not including*
33 *living expenses), so that only net incomes are*
34 *taxed.*

Section 2. Property exempt from taxation.

1 *Property belonging to the State, counties,*
2 *and municipal corporations shall be exempt*
3 *from taxation. The General Assembly may*
4 *exempt cemeteries and property held for edu-*
5 *cational, scientific, literary, charitable, or re-*
6 *ligious purposes, and, to a value not exceeding*
7 *three hundred dollars, any personal property.*
8 *The General Assembly may exempt from taxa-*
9 *tion not exceeding one thousand dollars in*
10 *value of property held and used as the place of*
11 *residence of the owner. Every exemption shall*
12 *be on a state-wide basis and shall be uniformly*

Section 3. State Taxation

The power of taxation shall be exercised in a just and equitable manner, and shall never be surrendered, suspended or contracted away. Taxes on property shall be uniform as to each class of property taxed. Taxes shall be levied only for public purposes, and every act levying a tax shall state the object to which it is to be applied. The General Assembly may also tax trades, professions, franchises, and incomes: Provided, the rate of tax on income shall not in any case exceed ten per cent (10%), and there shall be allowed the following exemptions, to be deducted from the amount of annual incomes, to-wit: for a married man with a wife living with him, or to a widow or widower having minor child or children, natural or adopted, not less than \$2,000; to all other persons not less than \$1,000, and there may be allowed other deductions (not including living expenses) so that only net incomes are taxed.

Section 5. Property exempt from taxation.

Property belonging to the State or to municipal corporations, shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable, or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars. The General Assembly may exempt from taxation not exceeding one thousand dollars (\$1,000.00) in value of property held and used as the place of residence of the owner.

13 *applicable in every county, municipality, and*
 14 *other local taxing unit of the State. No taxing*
 15 *authority other than the General Assembly*
 16 *may grant exemptions, and the General Assem-*
 17 *bly shall not delegate the powers accorded to*
 18 *it by this section.*

Section 3. Taxes levied for counties.

1 *The total of the State and county tax on*
 2 *property shall not exceed twenty cents on the*
 3 *one hundred dollars value of property, except*
 4 *when the county property tax is levied for a*
 5 *special purpose and with the special approval*
 6 *of the General Assembly, which may be done*
 7 *by special or general act: Provided, this limita-*
 8 *tion shall not apply to taxes levied pursuant to*
 9 *general or special act of the General Assembly*
 10 *for the maintenance of the public schools of the*
 11 *State: Provided, further, the State tax shall*
 12 *not exceed five cents on the one hundred dol-*
 13 *lars value of property.*

Section 4. Acts levying tax shall state purpose.

1 *Every act of the General Assembly levying*
 2 *a tax shall state the public purpose to which it*
 3 *is to be applied, and it shall be applied to no*
 4 *other purpose.**

Section 5. Limitations on State and local debt.

1 *The General Assembly shall have the power*
 2 *to contract debts and to pledge the faith and*
 3 *credit of the State and to authorize counties*
 4 *and municipalities to contract debts and pledge*
 5 *their faith and credit, for the following pur-*
 6 *poses: To fund or refund a valid existing debt;*
 7 *to borrow in anticipation of the collection of*
 8 *taxes due and payable within the fiscal year to*
 9 *an amount not exceeding fifty per cent of*
 10 *such taxes; to supply a casual deficit; to sup-*
 11 *press riots or insurrections, or to repel inva-*
 12 *sions. For any purpose other than these enu-*
 13 *merated, the General Assembly shall have no*
 14 *power, during any biennium, to contract new*
 15 *debts on behalf of the State to an amount in*
 16 *excess of two-thirds of the amount by which*
 17 *the State's outstanding indebtedness shall have*
 18 *been reduced during the next preceding bien-*
 19 *niium, unless the subject be submitted to the*
 20 *qualified voters of the State; and for any pur-*
 21 *pose other than these enumerated the General*
 22 *Assembly shall have no power to authorize*
 23 *counties or municipalities to contract debts,*

Section 6. Taxes levied for counties.

The total of the State and county tax on property shall not exceed twenty cents (20¢) on the one hundred dollars (\$100.00) value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by Article IX, Section 3, of the Constitution: Provided, further, the State tax shall not exceed five cents (5¢) on the one hundred dollars (\$100.00) value of property.

Section 7. Acts levying taxes shall state objects, etc.

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Section 4. Limitations upon the increase of public debts.

The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State and to authorize counties and municipalities to contract debts and pledge their faith and credit for the following purposes: To fund or refund a valid existing debt; to borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per centum of such taxes; to supply a casual deficit; to suppress riots or insurrections, or to repel invasions. For any purpose other than these enumerated, the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State; and for any purpose other than these enumerated the General Assembly shall have no power to authorize counties or municipalities to contract debts, and counties and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to a vote of the people of the particular county or municipality. In any election held in the State or in any county or municipality under the provisions of this section, the proposed indebtedness must be approved by a majority of those who shall vote thereon. And the General Assembly

24 and counties and municipalities shall not con-
 25 tract debts, during any fiscal year, to an
 26 amount exceeding two-thirds of the amount by
 27 which the outstanding indebtedness of the par-
 28 ticular county or municipality shall have been
 29 reduced during the next preceding fiscal year,
 30 unless the subject be submitted to the qualified
 31 voters of the particular county or municipality.
 32 In any election held in the State or in any
 33 county or municipality under the provisions of
 34 this section, the proposed indebtedness must be
 35 approved by a majority of those who shall vote
 36 thereon. The General Assembly shall have
 37 no power to give or lend the credit of the State
 38 in aid of any person, association, or corpora-
 39 tion, unless the subject be submitted to the
 40 qualified voters of the State, and be approved
 41 by a majority of those who shall vote thereon.

Section 6. Debts and taxation for other than necessary expenses.

1 No county, city, town, or other municipal
 2 corporation shall contract any debt, pledge its
 3 faith, or loan its credit, nor shall any tax be
 4 levied or collected by any officers of the same
 5 except for the necessary expenses thereof,
 6 unless approved by a majority of those who
 7 shall vote thereon in any election held for such
 8 purpose.

Section 7. Sinking funds.

1 The General Assembly shall not use or
 2 authorize to be used any part of the amount
 3 of any sinking fund for any purpose other
 4 than the retirement of the bonds for which
 5 said sinking fund has been created.

Section 8. Retirement funds.

1 The General Assembly shall not use, or
 2 authorize to be used, nor shall any agency of
 3 the State, public officer, or public employee use
 4 or authorize to be used the funds, or any part
 5 of the funds, of the Teachers' and State Em-
 6 ployees' Retirement System except for Retire-
 7 ment System purposes. The funds of the Teach-
 8 ers' and State Employees' Retirement System
 9 shall not be applied, diverted, loaned to or used
 10 by the State, any State agency, State officer, or
 11 public officer or employee except for purposes
 12 of the Retirement System: Provided, that
 13 nothing in this section shall prohibit the use
 14 of said funds for the payment of benefits, ad-

shall have no power to give or lend the credit of the State in aid of any person, association, or corporation except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon.

Article VII, Section 7. No debt or loan except by a majority of voters.

No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose.

Article II, Section 30. Inviolability of sinking funds.

The General Assembly shall not use nor authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which said sinking fund has been created.

Article II, Section 31. Use of funds of Teachers' and State Employees' Retirement System restricted.

The General Assembly shall not use, or authorize to be used, nor shall any agency of the State, public officer or public employee use or authorize to be used the funds, or any part of the funds, of the Teachers' and State Employees' Retirement System except for retirement system purposes. The funds of the Teachers' and State Employees' Retirement System shall not be applied, diverted, loaned to or used by the State, any State agency, State officer, public officer or employee except for purposes of the Retirement System: Provided, that nothing in this Section shall prohibit the use of said funds for the payment of benefits, administrative expenses and refunds as authorized by the Teachers' and State Employees' Retirement Law, nor shall anything in this provision prohibit the proper investment of said funds as may be authorized by law.

15 ministrative expenses and refunds as authoriz-
 16 ed by the Teachers' and State Employees' Re-
 17 tirement Law, nor shall anything in this pro-
 18 vision prohibit the proper investment of said
 19 funds as may be authorized by law.

Section 9. Certain debts declared invalid.

1 *Neither the State nor any county, city,*
 2 *town, or other governmental subdivision shall*
 3 *assume or pay, or authorize the collection of*
 4 *any debt or obligation, express or implied, in-*
 5 *curring in aid of the War between the States;*
 6 *nor shall any tax be levied or collected for the*
 7 *payment of any such debt or obligation.*

8 *The General Assembly shall never assume*
 9 *or pay, or authorize the collection of any tax*
 10 *to pay, either directly or indirectly, express or*
 11 *implied, any debt or bond incurred or issued by*
 12 *authority of the Convention of the year 1868,*
 13 *or any debt or bond incurred or issued by the*
 14 *General Assembly of the year 1868, either at*
 15 *its special session of the year 1868, or at its*
 16 *regular sessions of the years 1868-69 and*
 17 *1869-70, except the bonds issued to fund the*
 18 *interest on the old debt of the State, unless the*
 19 *proposal to pay the same shall have first been*
 20 *submitted to the people and by them ratified*
 21 *by the vote of a majority of all the qualified*
 22 *voters of the State at an election held for that*
 23 *purpose.*

Section 10. Drawing money from Treasury; publication of accounts.

1 No money shall be drawn from the Treasury
 2 but in consequence of appropriations made by
 3 law; and an accurate account of the receipts
 4 and expenditures of the public money shall be
 5 annually published.

Article I, Section 6. Public debt; bonds issued under ordinance of Convention of 1868, '68-69, '69-'70, declared invalid; exception.

The State shall never assume or pay, or authorize the collection of any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; nor shall the General Assembly assume or pay, or authorize the collection of any tax to pay, either directly or indirectly, expressed or implied, any debt or bond incurred, or issued, by authority of the Convention of the year one thousand eight hundred and sixty eight, nor any debt or bond incurred or issued by the Legislature of the year one thousand eight hundred and sixty-eight, either at its special session of the year one thousand eight hundred and sixty-eight, or at its regular sessions of the years one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, and one thousand eight hundred and sixty-nine and one thousand eight hundred and seventy, except the bonds issued to fund the interest on the old debt of the State, unless the proposing to pay the same shall have first been submitted to the people and by them ratified by the vote of a majority of all the qualified voters of the State, at a regular election held for that purpose.

Article VII, Section 12. Debts in aid of the rebellion not to be paid.

No county, city, town, or other municipal corporation shall assume or pay, nor shall any tax be levied or collected for the payment of any debt, or the interest upon any debt, contracted directly or indirectly in aid or support of the rebellion.

Article XIV, Section 3. Drawing money.

No money shall be drawn from the Treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.

Eliminated from draft:

Section 1. Capitation tax; exemptions.

The General Assembly may levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which said tax shall not exceed two dollars, and cities and towns may levy a capitation tax which shall not exceed one dollar. No other capitation tax shall be levied. The commissioners of the several counties and of the cities and towns may exempt from the capitation tax any special cases on account of poverty or infirmity.

Section 2. Application of proceeds of State and county capitation tax.

The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated for the latter purpose.

Article VI, Suffrage and Eligibility to Office

PROPOSED TEXT

Section 1. Who may vote.

1 Every person born in the United States, and
2 every person who has been naturalized, twenty-
3 one years of age, and possessing the qualifica-
4 tions set out in this article, shall be entitled to
5 vote at any election by the people of the State,
6 except as herein otherwise provided.

Section 2. Qualifications of voters.

1 *Any person who shall have resided in the*
2 *State of North Carolina for one year, and in the*
3 *precinct, ward, or other election district in*
4 *which such person offers to vote for thirty days*
5 *next preceding an election, and possessing the*
6 *other qualifications set out in this article, shall*
7 *be entitled to vote at any election held in this*
8 *State: Provided, that removal from one pre-*
9 *cinct, ward, or other election district to another*
10 *in this State shall not operate to deprive any*
11 *person of the right to vote in the precinct,*
12 *ward, or other election district from which*
13 *such person has removed until thirty days*
14 *after such removal. No person who has been*
15 *convicted, or who has confessed his guilt upon*
16 *trial in open court, of any crime the punish-*
17 *ment of which now is, or may hereafter be,*
18 *imprisonment in the State's prison, shall be*
19 *permitted to vote, unless the said person shall*
20 *first be restored to citizenship in the manner*
21 *prescribed by law.*

Section 3. Voters to be registered.

1 Every person offering to vote shall be at the
2 time a legally registered voter as herein pre-
3 scribed, and in the manner hereafter provided
4 by law, and the General Assembly of North
5 Carolina shall enact general registration laws
6 to carry into effect the provisions of this
7 article.

Section 4. Qualifications for registration.

1 *Every person presenting himself for regis-*
2 *tration shall be able to read and write any*
3 *section of the Constitution in the English*
4 *language.*

PRESENT TEXT

Section 1. Who may vote.

Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote in any election by the people of the State, except as herein otherwise provided.

Section 2. Qualifications of voters.

Any person who shall have resided in the State of North Carolina for one year, and in the precinct, ward or other election district in which such person offers to vote for thirty days next preceding an election, and possessing the other qualifications set out in this article, shall be entitled to vote at any election held in this State; provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal. No person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote unless the said person shall be first restored to citizenship in the manner prescribed by law.

Section 3. Voters to be registered.

Every person offering to vote shall be at the time a legally registered voter as herein prescribed, and in the manner hereafter provided by law, and the General Assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this article.

Section 4. Qualification for registration.

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed:

Section 5. Elections by people and General Assembly.

1 All elections by the people shall be by bal-
2 lot, and all elections by the General Assembly
3 shall be *viva voce*.

Section 6. Eligibility to office; official oath.

1 Every voter in North Carolina, except as in
2 this article disqualified, shall be eligible to
3 office, but before entering upon the duties of
4 the office he shall take and subscribe the follow-
5 ing oath:

6 "I, do solemnly swear (or affirm)
7 that I will support and maintain the Constitu-
8 tion and laws of the United States, and the
9 Constitution and laws of North Carolina not
10 inconsistent therewith, and that I will faith-
11 fully discharge the duties of my office as
12, so help me, God."

Section 7. Disqualification for office.

1 *The following shall be disqualified for office:*
2 *First, all persons who shall deny the being of*
3 *Almighty God; second, any person who is not*
4 *qualified to vote in an election for such office;*
5 *third, any person who has been convicted or*
6 *has confessed upon trial in open court guilt*
7 *of treason, or corruption or malpractice in any*
8 *office, or has been removed by impeachment*
9 *from any office, and who has not been restored*
10 *to the rights of citizenship in a manner pre-*
11 *scribed by law.*

Section 4. (cont'd.)

Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article.

Section 6. Elections by people and General Assembly.

All elections by the people shall be by ballot, and all elections by the General Assembly shall be *viva voce*.

Section 7. Eligibility to office; official oath.

Every voter in North Carolina, except as in this article disqualified, shall be eligible to office, but before entering upon the duties of the office, he shall take and subscribe the following oath:

"I,, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as, so help me, God."

Section 8. Disqualification for office.

The following classes of persons shall be disqualified for office: First, all persons who shall deny the being of Almighty God. Second, all persons who shall have been convicted or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

Eliminated from draft:

Section 5. Indivisible plan; legislative intent.

That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and make them so dependent upon each other, that the whole shall stand or fall together.

Section 9. When this chapter operative.

That this amendment to the Constitution shall go into effect on the first day of July, nineteen hundred and two, if a majority of votes cast at the next general election shall be cast in favor of this suffrage amendment.

Article VII, Education

PROPOSED TEXT

Section 1. Education shall be encouraged.

1 Religion, morality, and knowledge being
2 necessary to good government and the happi-
3 ness of mankind, schools and the means of
4 education shall forever be encouraged.

Section 2. General Assembly shall provide for schools.

1 *Subject to, and except as provided in,*
2 *Section 6 of this article, the General Assembly*
3 *shall provide by taxation and otherwise for*
4 *public schools, wherein tuition shall be free*
5 *of charge to all the children of the State be-*
6 *tween the ages of six and twenty-one years;*
7 *each county of the State shall be divided into*
8 *a convenient number of school districts, in*
9 *which one or more public schools shall be*
10 *maintained at least six months in every year.*

Section 3. Children must attend school.

1 *The General Assembly is hereby empower-*
2 *ed to enact that every child of sufficient men-*
3 *tal and physical ability shall attend the public*
4 *schools during the period between the ages of*
5 *six and eighteen years, unless educated by*
6 *other means.*

Section 4. State Board of Education.

1 *The State Board of Education shall super-*
2 *vis and administer the educational funds*
3 *provided for the support of the free public*
4 *schools, except those mentioned in Section 8*
5 *of this article. The State Board of Education*
6 *shall consist of the Lieutenant-Governor,*
7 *State Treasurer, the Superintendent of*
8 *Public Instruction, and ten members to be ap-*
9 *pointed by the Governor, subject to confirma-*
10 *tion by the General Assembly in joint session*
11 *under such procedures as the General Assembly*
12 *may provide. The General Assembly shall di-*

PRESENT TEXT

ARTICLE IX

Section 1. Education shall be encouraged.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Section 2. General Assembly shall provide for schools; separation of the races.

The General Assembly, at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years. And the children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of, either race.

Section 3. Counties to be divided into districts.

Each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirement of this section, they shall be liable to indictment.

Section 11. Children must attend school.

The General Assembly is hereby empowered to enact that every child, of sufficient mental and physical ability, shall attend the public schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means.

Section 8. State Board of Education.

The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in Section five of this Article, shall, from and after the first day of April, one thousand nine hundred and forty-five, be vested in the State Board of Education to consist of the Lieutenant-Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts, which may be altered from time to time by the General Assembly. Of the appointive members of the State Board of Education, one shall be appointed from each

13 *vide the State into eight educational districts,*
 14 *which may be altered from time to time by the*
 15 *General Assembly. Of the appointive members*
 16 *of the State Board of Education, one shall be*
 17 *appointed from each of the eight educational*
 18 *districts, and two shall be appointed as mem-*
 19 *bers at large. All appointments shall be for*
 20 *terms of eight years. Any appointments to fill*
 21 *vacancies shall be made by the Governor for*
 22 *the unexpired term, which appointments shall*
 23 *not be subject to confirmation. The Board shall*
 24 *elect a chairman and vice-chairman. A majority*
 25 *of the Board shall constitute a quorum for the*
 26 *transaction of business. The per diem and ex-*
 27 *penses of the appointive members shall be pro-*
 28 *vided by the General Assembly.*

29 *The State Superintendent of Public Instruc-*
 30 *tion shall be secretary and chief administrative*
 31 *officer of the Board.*

Section 5. Powers and duties of the Board.

1 *The State Board of Education shall succeed*
 2 *to all the property rights and trusts of the*
 3 *President and Directors of the Literary Fund*
 4 *of North Carolina, and the State Board of*
 5 *Education as heretofore constituted. The State*
 6 *Board of Education shall have power to divide*
 7 *the State into a convenient number of school*
 8 *districts; to regulate the grade, salary, and*
 9 *qualifications of public school teachers; to pro-*
 10 *vide for the selection and adoption of the text-*
 11 *books to be used in the public schools; to ap-*
 12 *portion and equalize the public school funds*
 13 *over the State; and to exercise such powers*
 14 *and perform such duties as the General As-*
 15 *sembly may from time to time prescribe. All*
 16 *the powers enumerated in this section shall*
 17 *be exercised in conformity with this Consti-*
 18 *tution and subject to such laws as may be*
 19 *enacted from time to time by the General*
 20 *Assembly.*

Section 6. Education expense grants and local option.

1 *Notwithstanding any other provision of this*
 2 *Constitution, the General Assembly may pro-*
 3 *vide for payment of education expense grants*
 4 *from any State or local public funds for the*
 5 *private education of any child for whom no*
 6 *public school is available or for the private*
 7 *education of a child who is assigned against*

Section 8 (cont'd)

of the eight educational districts, and two shall be appoint-
ed as members at large. The first appointments under
this section shall be: Two members appointed from
educational districts for terms of two years; two members
appointed from educational districts for terms of four
years; two members appointed from educational districts
for terms of six years; and two members appointed from
educational districts for terms of eight years. One member
at large shall be appointed for a period of four years and
one member at large shall be appointed for a period of
eight years. All subsequent appointments shall be for
terms of eight years. Any appointments to fill vacancies
shall be made by the Governor for the unexpired term,
which appointments shall not be subject to confirmation.
The State Superintendent of Public Instruction shall be
the administrative head of the public school system and
shall be secretary of the board. The board shall elect a
chairman and vice-chairman. A majority of the board shall
constitute a quorum for the transaction of business. The
per diem and expenses of the appointive members shall
be provided by the General Assembly.

Section 9. Powers and duties of the board.

The State Board of Education shall succeed to all the
powers and trusts of the President and Directors of
The Literary Fund of North Carolina and the State
Board of Education as heretofore constituted. The State
Board of Education shall have power to divide the State
into a convenient number of school districts; to regulate
the grade, salary and qualifications of teachers; to pro-
vide for the selection and adoption of the textbooks to
be used in the public schools; to apportion and equalize
the public school funds over the State; and generally to
supervise and administer the free public school system
of the State and make all needful rules and regulations
in relation thereto. All the powers enumerated in this
section shall be exercised in conformity with this Consti-
tution and subject to such laws as may be enacted from
time to time by the General Assembly.

Section 12. Education expense grants and local option.

Notwithstanding any other provision of this Constitu-
tion, the General Assembly may provide for payment of
education expense grants from any State or local public
funds for the private education of any child for whom
no public school is available or for the private education
of a child who is assigned against the wishes of his parent,
or the person having control of such child, to a public
school attended by a child of another race. A grant shall

8 the wishes of such child's parent, or the person
 9 having control of such child, to a public school
 10 attended by a child of another race. A grant
 11 shall be available only for education in a non-
 12 sectarian school, and in the case of a child
 13 assigned to a public school attended by a child
 14 of another race, a grant shall, in addition, be
 15 available only when it is not reasonable and
 16 practicable to reassign such child to a public
 17 school not attended by a child of another race.

18 Notwithstanding any other provision of this
 19 Constitution, the General Assembly may pro-
 20 vide for a uniform system of local option
 21 whereby any local option unit, as defined by the
 22 General Assembly, may choose by a majority
 23 vote of the qualified voters in the unit who vote
 24 on the question to suspend or to authorize the
 25 suspension of the operation of one or more or
 26 all of the public schools in that unit.

27 No action taken pursuant to the authority
 28 of this section shall in any manner affect the
 29 obligation of the State or any political sub-
 30 division or agency thereof with respect to any
 31 indebtedness heretofore or hereafter created.*

Section 7. Property and funds devoted to educa- tional purposes.

1 The proceeds of all lands that have been or
 2 hereafter may be granted by the United States
 3 to this State, and not otherwise appropriated
 4 by this State or the United States; also all
 5 moneys, stocks, bonds, and other property now
 6 belonging to any State fund for purposes of
 7 education; also the net proceeds of all sales of
 8 the swamp lands belonging to the State; and
 9 all other grants, gifts, or devises that have
 10 been or hereafter may be made to the State,
 11 and not otherwise appropriated by the State
 12 or by the terms of the grant, gift, or devise,
 13 shall be paid into the State Treasury, and,
 14 together with so much of the ordinary revenue
 15 of the State as may be by law set apart for that
 16 purpose, shall be faithfully appropriated for
 17 establishing and maintaining the free public
 18 schools, and for no other uses or purposes
 19 whatsoever.*

Section 12 (cont'd)

be available only for education in a nonsectarian school,
 and in the case of a child assigned to a public school at-
 tended by a child of another race, a grant shall, in addi-
 tion, be available only when it is not reasonable and prac-
 ticable to reassign such child to a public school not at-
 tended by a child of another race.

Notwithstanding any other provision of this Constitu-
 tion, the General Assembly may provide for a uniform
 system of local option whereby any local option unit,
 as defined by the General Assembly, may choose by a
 majority vote of the qualified voters in the unit who
 vote on the question to suspend or to authorize the
 suspension of the operation of one or more or all of the
 public schools in that unit.

No action taken pursuant to the authority of this section
 shall in any manner affect the obligation of the State or
 any political subdivision or agency thereof with respect
 to any indebtedness heretofore or hereafter created.

Section 4. What property devoted to educational purposes.

The proceeds of all lands that have been or hereafter
 may be granted by the United States to this State, and
 not otherwise appropriated by this State or the United
 States; also all money, stocks, bonds, and other property
 now belonging to any State fund for purposes of educa-
 tion; also the net proceeds of all sales of the swamp lands
 belonging to the State, and all other grants, gifts or
 devises that have been or hereafter may be made to the
 State, and not otherwise appropriated by the State, or by
 the terms of the grant, gift or devise, shall be paid into
 the State Treasury, and, together with so much of the
 ordinary revenue of the State as may be by law set apart
 for that purpose, shall be faithfully appropriated for
 establishing and maintaining in this State a system of
 free public schools, and for no other uses or purposes
 whatsoever.

Section 8. County school fund.

1 All moneys, stocks, bonds, and other prop-
 2 erty belonging to a county school fund, and the
 3 clear proceeds of all penalties and forfeitures
 4 and of all fines collected in the several counties
 5 for any breach of the penal or military laws of
 6 the State shall belong to and remain in the
 7 several counties, and shall be faithfully appro-
 8 priated for establishing and maintaining free
 9 public schools in the several counties of this
 10 State. The amount collected in each county
 11 shall be annually reported to the Superinten-
 12 dent of Public Instruction.

Section 9. Election of trustees; provisions for maintenance of the University.

1 The General Assembly shall have power to
 2 provide for the election of trustees of the Uni-
 3 versity of North Carolina, in whom, when
 4 chosen, shall be vested all the privileges, rights,
 5 franchises, and endowments thereof in any
 6 wise granted to or conferred upon the trustees
 7 of the University; and the General Assembly
 8 may make such provisions, laws, and regula-
 9 tions from time to time as may be necessary
 10 and expedient for the maintenance and man-
 11 agement of the University.

Section 10. Benefits of the University.

1 The General Assembly shall provide that
 2 the benefits of the University, as far as prac-
 3 ticable, be extended to the youth of the State
 4 free of expense for tuition; also, that all the
 5 property which has heretofore accrued to the
 6 State, or shall hereafter accrue, from escheats,
 7 unclaimed dividends, or distributive shares of
 8 the estates of deceased persons, shall be ap-
 9 propriated to the use of the University.

Section 5. County school fund; proviso.

All money, stocks, bonds, and other property belonging to a county school fund; also the net proceeds from the sale of estrays; also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State; and all moneys which shall be paid by persons as an equivalent for exemption from military duty shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State: Provided, that the amount collected in each county shall be annually reported to the Superintendent of Public Instruction.

Section 6. Election of trustees, and provisions for maintenance, of the University.

The General Assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof in anywise granted to or conferred upon the trustees of said University; and the General Assembly may make such provisions, laws, and regulations from time to time, as may be necessary and expedient for the maintenance and management of said University.

Section 7. Benefits of the University.

The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition; also, that all the property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.

Eliminated from draft:

Section 10. Agricultural department.

As soon as practicable after the adoption of this Constitution, the General Assembly shall establish and maintain, in connection with the University, a department of agriculture, of mechanics, of mining, and of normal instruction.

Article VIII, Homesteads and Exemptions

PROPOSED TEXT

Section 1. Exemption of personal property.

1 The personal property of any resident of
2 this State, to the value of five hundred dollars,
3 to be selected by such resident, shall be and is
4 hereby exempted from sale under execution
5 or other final process of any court, issued for
6 the collection of any debt.

Section 2. Homestead exemptions.

1 (1) *Exemption from sale; exceptions.* Every
2 homestead, and the dwellings and buildings
3 used therewith, not exceeding in value one
4 thousand dollars, to be selected by the owner
5 thereof, or in lieu thereof, at the option of the
6 owner, any lot in a city, town, or village with
7 the dwellings and buildings used thereon, own-
8 ed and occupied by any resident of this State,
9 and not exceeding the value of one thousand
10 dollars, shall be exempt from sale under execu-
11 tion or other final process obtained on any
12 debt. But no property shall be exempt from
13 sale for taxes or for payment of obligations
14 contracted for the purchase of said premises.

15 (2) *Exemption for benefit of children.* The
16 homestead, after the death of the owner there-
17 of, shall be exempt from the payment of any
18 debt during the minority of the owner's chil-
19 dren, or any of them.

20 (3) *Exemption for benefit of widow.* If the
21 owner of a homestead die, leaving a widow but
22 no children, the homestead shall be exempt
23 from the debts of her husband, and the rents
24 and profits thereof shall inure to her benefit
25 during her widowhood, unless she be the
26 owner of a homestead in her own right.*

Section 3. Homestead may be conveyed; limita- tion.

1 Nothing contained in this article shall
2 operate to prevent the owner of a homestead
3 from disposing of the same by deed; but no
4 deed made by the owner of a homestead shall
5 be valid without the signature and acknowledg-
6 ment of his wife.

PRESENT TEXT

ARTICLE X

Section 1. Exemptions of personal property.

The personal property of any resident of this State, to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Section 2. Homestead.

Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town or village with the dwellings and buildings used thereon, owned and occupied by any resident of this State, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for the purchase of said premises.

Section 3. Homestead exemption from debt.

The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of his children, or any of them.

Section 5. Benefit of widow.

If the owner of a homestead die, leaving a widow but no children, the same shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she be the owner of a homestead in her own right.

Section 8. How deed for homestead may be made.

Nothing contained in the foregoing sections of this article shall operate to prevent the owner of a homestead from disposing of the same by deed; but no deed made by the owner of a homestead shall be valid without the signature and acknowledgment of his wife.

Section 4. Laborer's lien.

1 The provisions of Section 1 and Section
 2 2 of this article shall not be so construed as
 3 to prevent a laborer's lien for work done and
 4 performed for the person claiming such ex-
 5 emption, or a mechanic's lien for work done
 6 on the premises.

Section 5. Property of married women secured to them.

1 The real and personal property of any fe-
 2 male in this State acquired before marriage,
 3 and all property, real and personal, to which
 4 she may, after marriage, become in any man-
 5 ner entitled, shall be and remain the sole and
 6 separate estate and property of such female,
 7 and shall not be liable for any debts, obliga-
 8 tions, or engagements of her husband, and may
 9 be devised and bequeathed, and, with the writ-
 10 ten assent of her husband, conveyed by her as
 11 if she were unmarried. Every married woman
 12 may exercise powers of attorney conferred
 13 upon her by her husband, including the power
 14 to execute and acknowledge deeds to property
 15 owned by her, or by herself and her husband,
 16 or by her husband.

Section 6. Insurance for sole benefit of wife and children.

1 The husband may insure his own life for
 2 the sole use and benefit of his wife or children
 3 or both, and upon his death the proceeds from
 4 the insurance shall be paid over to them, or
 5 to a guardian, where required, free from all
 6 claims of the representatives or creditors of
 7 the decedent. Such insurance shall not be sub-
 8 ject to claims of creditors of the insured during
 9 his lifetime.*

Section 4. Laborer's lien.

The provisions of sections one and two of this article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

Section 6. Property of married women secured to them.

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her or by herself and her husband or by her husband.

Section 7. Husband may insure his life for the benefit of wife and children.

The husband may insure his own life for the sole use and benefit of his wife and children, and in case of the death of the husband the amount thus insured shall be paid over to the wife and children, or to the guardian, if under age, for her or their own use, free from all claims of the representatives of her husband, or any of his creditors. And the policy shall not be subject to claims of creditors of the insured during the life of the insured, if the insurance issued is for the sole use and benefit of the wife and/or children.

Article IX, Punishments, Penal Institutions, and Public Charities

PROPOSED TEXT

Section 1. Public, charitable, reformatory, and penal institutions.

1 *Such charitable, benevolent, sanitary, re-*
2 *formatory, and penal institutions as the claims*
3 *of humanity and the public good may require*
4 *shall be established and operated by the State*
5 *under such organization and in such manner as*
6 *the General Assembly may prescribe.*

7 *It shall be required by competent legisla-*
8 *tion that the structure and superintendence of*
9 *penal institutions of the State, the county jails,*
10 *and city police prisons secure the health and*
11 *comfort of the prisoners and that male and*
12 *female prisoners be never confined in the same*
12 *room or cell.*

Section 2. Board of Public Welfare.

1 *Beneficent provisions for the poor, the un-*
2 *fortunate, and the orphan being one of the first*
3 *duties of a civilized and Christian state, the*
4 *General Assembly shall provide for and define*
5 *the duties of a Board of Public Welfare.*

Section 3. Institutions self-supporting.

1 It shall be steadily kept in view by the Gen-
2 eral Assembly, the State Board of Public Wel-
3 fare, and the governing boards of all penal and
4 charitable institutions that such institutions
5 should be made as nearly self-supporting as is
6 consistent with the purposes of their crea-
7 tion.*

PRESENT TEXT

ARTICLE XI

[Note: The provision opposite takes the place of the following sections.]

Section 3. Penitentiary.

The General Assembly shall, at its first meeting, make provision for the erection and conduct of a State's prison or penitentiary at some central and accessible point within the State.

Section 4. Houses of correction.

The General Assembly may provide for the erection of houses of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed.

Section 5. Houses of refuge.

A house or houses of refuge may be established whenever the public interests may require it, for the correction and instruction of other classes of offenders.

Section 6. The sexes are to be separated.

It shall be required, by competent legislation, that the structure and superintendence of penal institutions of the State, the county jails, and city police prisons secure the health and comfort of the prisoners and that male and female prisoners be never confined in the same room or cell.

Section 8. Orphan houses.

There shall also, as soon as practicable, be measures devised by the State for the establishment of one or more orphan houses, where destitute orphans may be cared for, educated, and taught some business or trade.

Section 9. Inebriates and idiots.

It shall be the duty of the Legislature, as soon as practicable, to devise means for the education of idiots and inebriates.

Section 10. Deaf-mutes, blind, and insane.

The General Assembly may provide that the indigent deaf-mute, blind, and insane of the State shall be cared for at the charge of the State.

Section 7. Provisions for the poor and orphans.

Beneficent provisions for the poor, the unfortunate and orphan, being one of the first duties of a civilized and Christian state, the General Assembly shall, at its first session, appoint and define the duties of a board of public charities, to whom shall be entrusted the supervision of all charitable and penal State institutions, and who shall annually report to the Governor upon their condition, with suggestions for their improvement.

Section 11. Self-supporting.

It shall be steadily kept in view by the Legislature and the board of public charities that all penal and charitable institutions should be made as nearly self-supporting as is consistent with the purpose of their creation.

Section 4. Punishments.

1 *The following punishments only shall be*
2 *known to the laws of this State: death, im-*
3 *prisonment with or without hard labor, fines,*
4 *removal from office, and disqualification to*
5 *hold and enjoy any office of honor, trust, or*
6 *profit under this State. The object of punish-*
7 *ments is not only to satisfy justice, but also to*
8 *reform the offender, and thus prevent crime.*
9 *Therefore, murder, arson, burglary, and rape,*
10 *and these only, may be punishable with death,*
11 *if the General Assembly shall so enact.*

Section 1. Punishments; convict labor; proviso.

The following punishments only shall be known to the laws of this State, viz: death, imprisonment with or without hard labor, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State. The foregoing provision for imprisonment with hard labor shall be construed to authorize the employment of such convict labor on public works or highways, or other labor for public benefit, and the farming out thereof, where and in such manner as may be provided by law; but no convict shall be farmed out who has been sentenced on a charge of murder, manslaughter, rape, attempt to commit rape, or arson: Provided, that no convict whose labor may be farmed out shall be punished for any failure of duty as a laborer, except by a responsible officer of the State; but the convicts so farmed out shall be at all times under the supervision and control, as to their government and discipline, of the penitentiary board or some officer of this State.

Section 2. Death punishment.

The object of punishments being not only to satisfy justice, but also to reform the offender, and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Article X, Militia

PROPOSED TEXT

Section 1. Who are liable to militia duty.

1 All able-bodied male citizens of the State of
2 North Carolina between the ages of twenty-
3 one and forty years shall be liable to duty in
4 the militia: Provided, that all persons who
5 may be averse to bearing arms, from religious
6 scruples, shall be exempt therefrom.*

Section 2. Organization.

1 The General Assembly shall provide for the
2 organizing, arming, equipping, and discipline
3 of the militia, and for paying the same, when
4 called into active service.

Section 3. Governor Commander-in-Chief

1 The Governor shall be Commander-in-Chief,
2 and shall have power to call out the militia to
3 execute the law, suppress riots or insurrec-
4 tions, and to repel invasion.

Section 4. Exemptions; control.

1 The General Assembly shall have power to
2 make such exemptions as may be deemed
3 necessary, and to enact laws that may be ex-
4 pedient for the government of the militia.

PRESENT TEXT

ARTICLE XII

Section 1. Who are liable to militia duty.

All able-bodied male citizens of the State of North Carolina, between the ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in the militia: Provided, that all persons who may be averse to bearing arms, from religious scruples, shall be exempt therefrom.

Section 2. Organizing, etc.

The General Assembly shall provide for the organizing, arming, equipping, and discipline of the militia, and for paying the same, when called into active service.

Section 3. Governor commander-in-chief.

The Governor shall be commander-in-chief, and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasion.

Section 4. Exemptions.

The General Assembly shall have power to make such exemptions as may be deemed necessary, and to enact laws that may be expedient for the government of the militia.

Article XI, Conventions; Constitutional Amendment and Revision

PROPOSED TEXT

Section 1. Convention of the people.

1 *No Convention of the People of this State*
2 *shall ever be called unless by the concurrence*
3 *of two-thirds of all the members of each House*
4 *of the General Assembly, and except the propo-*
5 *sition, "Convention or No Convention," be first*
6 *submitted to the qualified voters of the State,*
7 *at such time and in such manner as may be*
8 *prescribed by law. If a majority of the votes*
9 *cast upon the proposition be in favor of a Con-*
10 *vention, it shall assemble on such day as may*
11 *be prescribed by the General Assembly. The*
12 *General Assembly shall, in the act submitting*
13 *the convention proposition, propose limitations*
14 *upon the authority of the Convention; and*
15 *should a majority of the votes cast upon the*
16 *proposition be in favor of a Convention, those*
17 *limitations shall then become binding upon the*
18 *Convention. Delegates to the Convention shall*
19 *be elected by the qualified voters of the State*
20 *at such time and in such manner as may be*
21 *prescribed in the act of submission. The Con-*
22 *vention shall consist of a number of delegates*
23 *equal to the membership of the House of Rep-*
24 *resentatives of the General Assembly which*
25 *submits the convention proposition; and the*
26 *delegates shall be apportioned as is the House*
27 *of Representatives of the General Assembly*
28 *which submits the convention proposition. A*
29 *Convention may adopt no ordinance except*
30 *such as shall be necessary to the purpose for*
31 *which the Convention shall have been called.*

Section 2. Power to revise or amend Constitution reserved to people.

1 *The people of this State reserve the power*
2 *to amend this Constitution and to adopt a new*
3 *or revised Constitution. This power may be*
4 *exercised by either of the methods set out*
5 *hereinafter in this article, but in no other way.*

Section 3. Revision or amendment by Convention of the People.

1 *A Convention of the People of this State*
2 *may be called pursuant to Section 1 of this*
3 *article, to propose a new or revised Constitu-*

PRESENT TEXT

ARTICLE XIII

Section 1. Convention, how called.

No convention of the people of this State shall ever be called by the General Assembly unless by the concurrence of two-thirds of all of the members of each House of the General Assembly, and except the proposition, Convention or No Convention, be first submitted to the qualified voters of the whole State, at the next general election, in a manner to be prescribed by law. And should a majority of the votes cast be in favor of said convention, it shall assemble on such day as may be prescribed by the General Assembly.

4 tion, or to propose amendments to this Con-
5 stitution. Every new or revised Constitution
6 and every constitutional amendment adopted
7 by a Convention shall be submitted to the quali-
8 fied voters of the State at such time and in such
9 manner as may be prescribed by the Conven-
10 tion. If a majority of the votes cast thereon
11 be in favor of ratification of the new or revised
12 Constitution or the constitutional amendment
13 or amendments, the new or revised Constitu-
14 tion or constitutional amendment or amend-
15 ments shall become effective January first next
16 after ratification by the voters, unless a differ-
17 ent effective date be prescribed by the Conven-
18 tion.

Section 4. Revision or amendment by legislative initiation.

1 *Proposals of a new or revised Constitution,*
2 *or of an amendment or amendments to this*
3 *Constitution, may be initiated by the General*
4 *Assembly, but only if three-fifths of all the*
5 *members of each House shall adopt an act or*
6 *acts submitting such proposals to the qualified*
7 *voters of the State for their ratification or re-*
8 *jection. Such proposals shall be submitted at*
9 *such time and in such manner as the General*
10 *Assembly may prescribe. Should a majority*
11 *of the votes cast upon a proposed new or revis-*
12 *ed Constitution or constitutional amendment*
13 *be in favor of ratification, it shall become ef-*
14 *fective January first next, after ratification by*
15 *the voters, unless a different effective date be*
16 *prescribed in the act submitting the proposal*
17 *to the voters.*

Section 2. How the Constitution may be altered.

No part of the Constitution of this State shall be altered unless a bill to alter the same shall have been agreed to by three-fifths of each House of the General Assembly. And the amendment or amendments so agreed to shall be submitted at the next general election to the qualified voters of the whole State, in such manner as may be prescribed by law. And in the event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the Constitution of this State.

Article XII, Miscellaneous

PROPOSED TEXT

Section 1. Seat of government; boundaries.

1 *The permanent seat of government in this*
2 *State shall be at the City of Raleigh, and the*
3 *limits and boundaries of the State shall be and*
4 *remain as they now are.*

Section 2. Holding office until successor qualified.

1 In the absence of any contrary provision of
2 this Constitution, incumbents of public office,
3 both elective and appointive, shall hold office
4 until their successors are lawfully selected and
5 qualified.*

Section 3. Dual office-holding.

1 *No person who shall hold any office or place*
2 *of trust or profit under the United States, or*
3 *any department thereof, or under this State, or*
4 *under any other state or government, shall*
5 *hold or exercise any other office or place of*
6 *trust or profit under the authority of this*
7 *State, or be eligible to a seat in either House*
8 *of the General Assembly: Provided, that noth-*
9 *ing herein contained shall extend to officers in*
10 *the militia, notaries public, commissioners and*
11 *trustees of public charities and institutions,*
12 *school committeemen, United States Commis-*
13 *sioners, commissioners for special purposes,*
14 *or delegates to a Convention of the People.*

Section 4. Mechanic's lien.

1 The General Assembly shall provide, by
2 proper legislation, for giving to mechanics and
3 laborers an adequate lien on the subject-matter
4 of their labor.

Section 5. Intermarriage of whites and Negroes prohibited.

1 All marriages between a white person and
2 a Negro, or between a white person and a per-
3 son of Negro descent to the third generation,
4 inclusive, are hereby forever prohibited.

Section 6. Continuity of laws; protection of office-holders.

1 *The laws of North Carolina, not repugnant*
2 *to this Constitution, shall be and remain in*
3 *force until lawfully altered. Except as other-*

PRESENT TEXT

ARTICLE XIV

Section 6. Seat of government.

The seat of government in this State shall remain at the city of Raleigh.

Article I, Section 34. State boundaries.

The limits and boundaries of the State shall be and remain as they now are.

Section 5. Governor to make appointments.

In the absence of any contrary provision, all officers of this State, whether heretofore elected or appointed by the Governor, shall hold their positions only until other appointments are made by the Governor, or, if the officers are elective, until their successors shall have been chosen and duly qualified according to the provisions of this Constitution.

Section 7. Holding office.

No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, justices of the peace, commissioners of public charities, or commissioners for special purposes.

Section 4. Mechanic's lien.

The General Assembly shall provide, by proper legislation, for giving to mechanics and laborers an adequate lein on the subject-matter of their labor.

Section 8. Intermarriage of whites and Negroes prohibited.

All marriages between a white person and a Negro, or between a white person and a person of Negro descent to the third generation, inclusive, are hereby forever prohibited.

4 *wise specifically provided, the adoption of this*
5 *Constitution shall not have the effect of vacat-*
6 *ing any office or term of office now filled or*
7 *held by virtue of any election or appointment*
8 *made under the prior Constitution of North*
9 *Carolina and the laws of the State made in*
10 *pursuance thereof.*

11 *The provisions of the prior Constitution*
12 *shall, except as inconsistent with the provi-*
13 *sions of this Constitution, remain in force as*
14 *statutory law subject to the power of the*
15 *General Assembly to repeal or modify any or*
16 *all of them.*

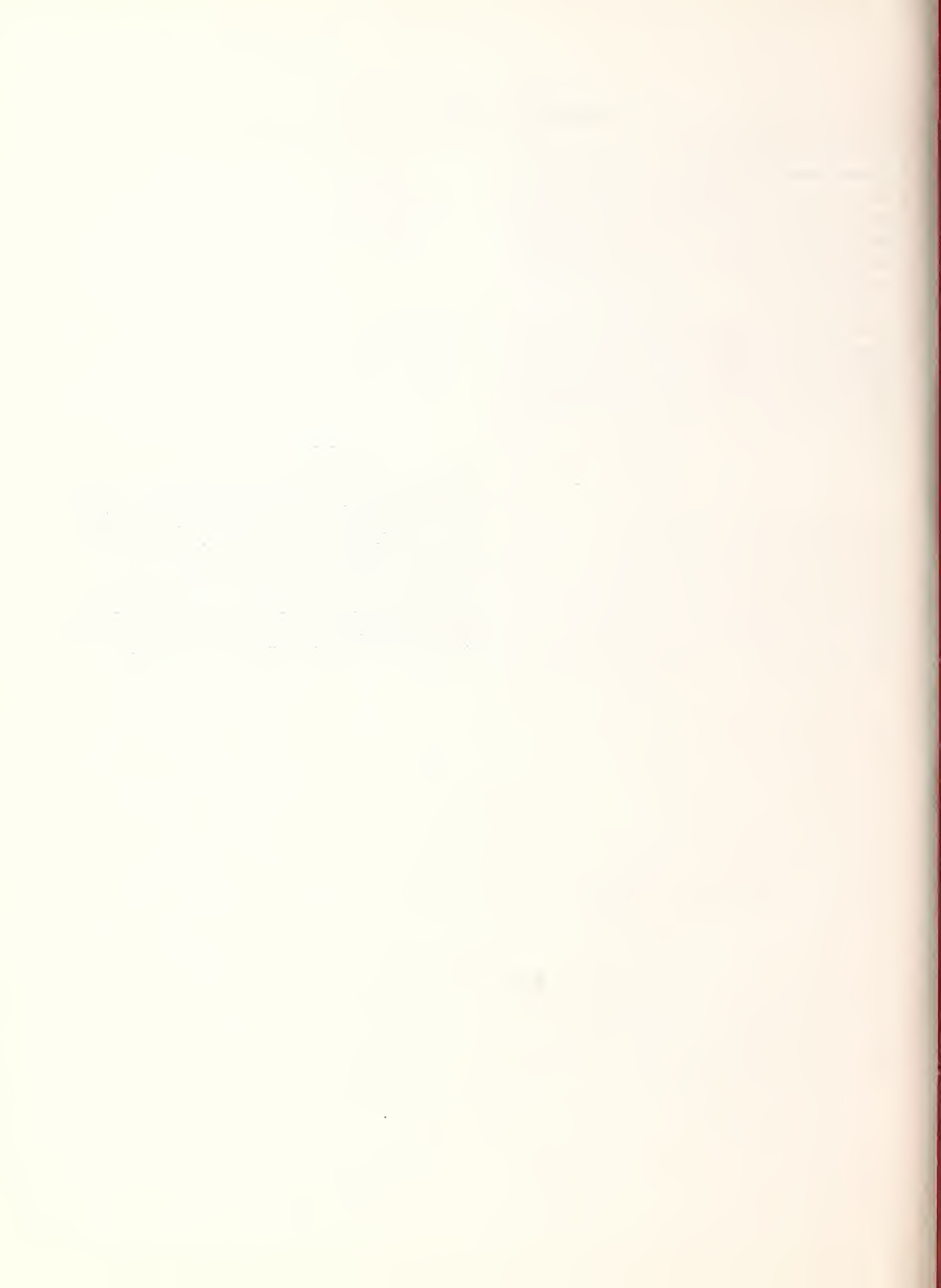
Eliminated from draft:

Section 1. Indictments.

All indictments which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon in the proper courts, but no punishment shall be inflicted which is forbidden by this Constitution.

Section 2. Penalty for fighting duel.

No person who shall hereafter fight a duel, or assist in the same as a second, or send, accept, or knowingly carry a challenge therefor, or agree to go out of the State to fight a duel, shall hold any office in this State.



APPENDIX



Resolution 33 *

S. R. 372

A JOINT RESOLUTION AUTHORIZING THE GOVERNOR TO APPOINT A COMMISSION TO STUDY THE STATE CONSTITUTION AND SUBMIT RECOMMENDATIONS WITH RESPECT TO AMENDMENTS OR A REVISION THEREOF.

WHEREAS, in his message to the General Assembly, Governor Luther H. Hodges recommended that the General Assembly authorize the appointment of a commission to study and make recommendations with respect to making amendments or revisions to the State Constitution; and

WHEREAS, it has been suggested that a careful study of the various Articles and Sections of the State Constitution will reveal that many of its provisions are now outmoded, or should be revised; and

WHEREAS, a complete and thorough study of the fundamental laws of our State will be beneficial to our people and to the General Assembly which may be called to act thereon; and

WHEREAS, a thorough and detailed study of the problem should be undertaken by a competent commission appointed for this purpose:
Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Governor of North Carolina is authorized and empowered to appoint a commission to be composed of fifteen members and to be known as the North Carolina Constitutional Commission.

Sec. 2. It shall be the duty of this commission to make a complete and thorough study of the Constitution of North Carolina with the view of determining whether or not there should be an amendment or amendments to the Constitution. To accomplish its study, the commission is authorized, with the approval of the Governor, to contract for or employ research, clerical and other assistants as may be deemed necessary in the performance of its duties.

Sec. 3. It shall be the duty of the Governor to appoint said commission on or before July 1, 1957, and the Governor may designate the chairman of this commission. In the performance of their duties, the members of the commission shall be paid the sum of ten dollars (\$10.00) per day plus such subsistence and travel allowances as is provided by law for State officials and employees generally. All expenses incurred by the commission in the performance of its duties are to be paid out of the Contingency and Emergency Fund.

Sec. 4. It shall be the duty of the commission to make its reports, setting forth its conclusions and recommendations for amendments or revisions of the Constitution, on or after December 1, 1958. Copies of the commission's report shall be furnished to the Governor and to each member of the General Assembly.

Sec. 5. This Resolution shall be in full force and effect from and after its adoption.

In the General Assembly read three times and ratified, this the 31st day of May, 1957.

* Session Laws of North Carolina (1957), p. 1689.

February 4, 1959

The Honorable Malcolm B. Seawell
Attorney General for the State
of North Carolina
Raleigh, North Carolina

Dear Malcolm:

The Commission to study the Constitution of North Carolina, appointed pursuant to resolution of the 1957 General Assembly, has requested me as its Chairman to submit to you two questions, as follows:

1. Could the General Assembly of 1959 legally submit a proposed revised Constitution in its entirety to the people of the State?
2. Should the General Assembly of 1959 see fit to submit a revised Constitution to the voters of North Carolina, may this be submitted at an election to be held for this purpose prior to the general election to be held in November of 1960 for the election of members to the General Assembly, or would it have to be submitted at the general election in November of 1960?

Thanking you in advance for your opinion on these questions, I am, sir, with much respect.

Very truly yours,

Victor S. Bryant

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE
RALEIGHMALCOLM B. SEAWELL
ATTORNEY GENERAL

4 February 1959

SUBJECT: Constitution; Amendment of
Constitution; Submission of
Revised Constitution in its
Entirety; Time of Election
Thereon.

Honorable Victor S. Bryant
Bryant, Lipton, Strayhorn & Bryant
Attorneys at Law
111 Corcoran Street
Durham, North Carolina

Dear Mr. Bryant:

In a letter dated February 4, 1959, you request an opinion on two questions.

(1) Could the General Assembly of 1959 legally submit a proposed revised Constitution in its entirety to the people of the State?

Article XIII, Section 2, of the Constitution provides as follows:

No part of the Constitution of this State shall be altered unless a bill to alter the same shall have been agreed to by three-fifths of each house of the General Assembly. And the amendment or amendments so agreed to shall be submitted at the next general election to the qualified voters of the whole State, in such manner as may be prescribed by law. And in the event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the Constitution of this State.

It is my opinion that the wording of the above quoted constitutional provision would authorize the General Assembly to submit a proposed revised Constitution in its entirety. Even though submitted as a complete Constitution, many portions of the present Constitution, as a matter of fact, would be incorporated in the new Constitution and the proposed Constitution would relate chiefly to the same subjects as the existing Constitution. While I have not been able to discover a North Carolina decision on this question, I do find authority for this position in SUTHERLAND on STATUTORY CONSTRUCTION, Vol. 1, Section 1901, at Page 325:

The nature of an amendatory act, or more commonly but loosely, an amendment is incapable of a definition satisfactory for all purposes because the term is used in differing senses when different issues are involved. For the purpose of compliance with the constitutional limitation that no act shall be amended by mere reference to its title but the act as amended shall be re-enacted and published at length, the form of the statute is the test of its amendatory character—i.e., does it purport to amend directly a prior statute. But in interpreting other constitutional and statutory provisions using the term and in interpreting constitutional and statutory provisions in general a substantive definition of amendment has usually been adopted. Thus, any change of the scope or effect of an existing statute, whether by addition, omission, or substitution or provisions, which does not wholly terminate its existence, whether by an act purporting to amend, repeal, revise, or supplement, or by an act independent and original in form, is treated as amendatory." (Underlining Added)

(2) Should the General Assembly of 1959 see fit to submit a revised Constitution to the voters of North Carolina, may this be submitted at an election to be held for this purpose prior to the general election to be held in November of 1960 for the election of members to the General Assembly, or would it have to be submitted at the general election in November of 1960?

The section of the Constitution quoted above provides that a legislative proposal to amend the Constitution "shall be submitted at the next general election". Therefore, in my opinion, constitutional amendments must be submitted at a general election but such general election is not required to be the regular biennial election in which members of the General Assembly are elected. This view is supported by the following:

In 1933, as you recall, the General Assembly enacted Chapter 383 of the Public Laws of 1933 which provided for submitting a new Constitution "at the next general election". Nothing else occurring, the next general election would have been held in November 1934. However, the same General Assembly enacted Chapter 403 of the Public Laws of 1933 providing for submitting to the people the question of holding a convention to consider ratification of what is now the Twenty-First Amendment to the Federal Constitution, such election to be held as provided by Section 1 of said Chapter 403, "at a general election to be held in the State of North Carolina on Tuesday after the first Monday in November, one thousand nine hundred thirty-three. . . ."

Chapter 403, adopted pursuant to Article XIII, Section 1, of the Constitution relating to holding of conventions, contains identical language as to when the proposition must be submitted to the voters of the State, namely, "at the next general election". Advisory opinions of the Chief Justice and Associate Justices of the Supreme Court, to be found at 204 N. C. 811, et seq., with Justice Clarkson, in effect dissenting, were to the effect that the election provided for in November 1933 would meet the requirements of the Constitution as to submitting the question "at the next general election".

As you further recall such election was duly held in November 1933, and the people voted on the question of calling a convention to consider the proposed amendment to the Constitution, but the proposed new State Constitution provided for in Chapter 383 of the Public Laws of 1933 above referred to was not submitted at the 1933 election. Shortly before the regular biennial election to be held in 1934, Governor Ehringhaus requested an advisory opinion from the Chief Justice and Associate Justices as to whether the November 1933 election held pursuant to Chapter 403, referred to above, was "the next general election" following the adjournment of the 1933 session of the General Assembly within the meaning of Article XIII, Section 2 of the Constitution. The Chief Justice and the Associate Justices unanimously agreed that the November 1933 election held pursuant to said Chapter 403 was "the next general election" within the meaning of Article XIII, Section 2.

Therefore, it is my opinion that, if the General Assembly of 1959 should see fit to submit a revised Constitution to the voters of North Carolina, it would not be necessary to submit the same at the general election in November of 1960, but that it could be held at an earlier general election participated in by "the qualified voters of the whole State," if the General Assembly should so provide.

Very truly yours,
Malcolm B. Seawell
Attorney General



