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# The Constitutional Convention Call

*George W. Hardy, Jr.\**

The question of constitutional revision has been exposed to the attention of the general public by the passage of Act 166 of 1956 providing for the call for a constitutional convention and the submission of the question of the holding of such convention, under said call, to a vote of the qualified electors of the state.

The bill, as originally introduced in the House, was a verbatim reproduction of a convention call drafted by a committee of the Louisiana State Bar Association,<sup>1</sup> with the exception of the provisions fixing the number and the method of selection of the delegates to the convention.<sup>2</sup> Subsequent to the introduction of the bill it was further altered by the adoption of a number of amendments. As amended, the bill was finally enacted. The amendments embrace the following directives:

- (a). The mandatory retention of the present Bill of Rights as specifically set forth in sections 1 to 15 of article I of the Constitution of 1921 as amended, and a prohibition against the adoption or insertion by the convention of any provision or ordinance detracting from or conflicting with the specified sections of the present Constitution.<sup>3</sup>
- (b). A prohibition against any enactment affecting the terms of office of any elected official of the state, or any subdivision thereof, prior to the expiration of the term for which such official might be holding at the time of the adoption of a new Constitution.<sup>4</sup>
- (c). A requirement for submission of the Constitution to the vote of the people of the state for ratification.<sup>5</sup>
- (d). A mandatory injunction upon the convention to incorporate in the new Constitution, verbatim, the provi-

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\* Judge, Second Circuit, Court of Appeal, State of Louisiana.

1. 1 LA. B.J. 24 (1953).

2. La. Acts 1956, No. 166, § 2.

3. *Id.* § 1(1).

4. *Id.* § 1(2).

5. *Id.* §§ 1(2), 7.

sions of sections 1, 5, 6, and 18 of article VIII (Suffrage and Elections) of the Constitution as amended, and a prohibition against the incorporation of any provisions derogating from or conflicting with any of said sections.<sup>6</sup>

- (e). An appropriation to defray the expenses of the convention.<sup>7</sup>

The amendments dealing with the Bill of Rights and with matters under the title of Suffrage and Elections were adopted at the insistence of the so-called "segregation bloc." Parenthetically, it is appropriate to observe that while these mandates serve to prevent the *weakening* of existing constitutional provisions, the converse proposition appears to be equally true in that the same mandates effectively prevent the *strengthening* of the existing provisions.

The provision for submission of the Constitution to a vote of the electorate unquestionably resulted from a preponderant sentiment that the people should be given this final means of protection against any innovations which might be deemed to affect their interests adversely.

It would appear that the aura of controversy which has surrounded Act 166 is more political than legal in nature. As a matter of fact, the author of this article is cognizant of only one legal question that has been suggested.

In hearings on the bill before the judiciary committee of the House and Senate it was strongly indicated that legal proceedings contesting the validity of the act would be instituted. The assertion was made that such an action would be predicated upon the contention that the bill was passed in the House by less than the two-thirds vote required by the Constitution with respect to constitutional amendments.

It must be conceded that if an act providing for the holding of a constitutional convention should be construed as an amendment to the existing Constitution, then such an act requires passage by not less than a two-thirds vote of House and Senate.

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6. *Id.* § 1(2). The specified sections relate to qualifications for voting, disqualifications from the exercise of the right of suffrage or of holding office, the method of appointment of Registrars of Voters, and the composition of the Board of Registration.

7. *Id.* § 4(3).

However, that does not appear to be the law, and it would seem that almost the identical question has been decisively answered by our Supreme Court in *State v. Favre*.<sup>8</sup> The court reached the positive and unqualified conclusion that *a Constitution adopted by a convention is not an amendment to an existing Constitution*. The point was adequately resolved in the opinion as follows:

"The first proposition rests upon the hypothesis that the instrument framed by the constitutional convention of 1898 is a mere amendment to the constitution of 1879, and, not having been submitted to the people for their ratification or rejection thereof, same is null and void. If it be an amendment, counsel's proposition is undoubtedly correct; but we think it is manifestly incorrect. The principal contention of counsel in favor of his theory is that the legislative act, which proposed the convention scheme, suggested certain restrictions to be placed upon the delegates to be thereto accredited, when in convention assembled, and that, in consequence thereof, certain provisions of the constitution of 1879 were left in full force; hence the present constitution is essentially an amendment thereof. Taking a comprehensive view of the question, the exact converse of that proposition would seem to be the correct one; for, in general acceptance, a proposed constitutional amendment is a legislative suggestion that certain specified things be done through the instrumentality of a vote of the people, whereby a change is effected in the organic law, and not that the constitution remain unaltered in certain specified particulars. That the terms of the statute proposing a constitutional convention were not unlimited and sweeping would seem to make no practical difference, as the convention was called upon the lines which were suggested by the legislature, and in exact conformity with the will of the sovereign, as expressed at an election duly held in keeping therewith, and the delegates duly chosen thereto were regularly convened and organized, and thereafter framed and promulgated an instrument which is styled a 'Constitution for the State of Louisiana.' We deem it to be our duty to accept that instrument as the organic law of the state, without any hesitation or resort to any refined distinctions or subtle argument on the question; and, thus accepting same, *it is, in our opinion, ex-*

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8. 51 La. Ann. 434, 435, 25 So. 93, 94 (1898).

*actly what it purports to be, — a constitution, — and not an amendment to an existing constitution."*

In *State v. American Sugar Refining Company*<sup>9</sup> the court thoroughly considered the question as to the method and manner of calling constitutional conventions. This point was developed not only through interpretation of prior state constitutions but also in the light of the prevailing custom in the United States.<sup>10</sup> In resolving this question the court said:

"When the people, acting under a proper resolution of the Legislature, vote in favor of calling a convention, they are presumed to ratify the terms of the call, which thereby becomes the basis of the authority delegated to the convention."

These holdings of our Supreme Court are unquestionably in line with the well developed majority concept. The distinction between amendment and revision is clearly made by authoritative commentators. Judge Cooley<sup>11</sup> marks this distinction between revision and amendment in the following comment:

"But the will of the people to this end — [constitutional revision or amendment] — can only be expressed in the legitimate modes by which such a body politic can act, and which must either be prescribed by the constitution whose *revision or amendment* is sought, or by an act of the legislative department of the State, which alone would be authorized to speak for the people upon this subject, and to point out a mode for the expression of their will in the absence of any provision for *amendment or revision* contained in the Constitution itself."

Judge Jameson, in his work on Constitutional Conventions, traces the evolution of the method of constitutional revision from a direct assembly of the people in convention to the issuance of a convention call by the legislature, as the appropriate department of government for the purpose of initiating and authorizing the holding of a convention. The author rejects the fallacy that the legislature is denied power to call conventions for a general constitutional revision because of the existence of express provisions governing the method of amendment.<sup>12</sup>

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9. 137 La. 407, 411, 68 So. 742, 745 (1915).

10. Citing 6 R.C.L. §§ 17, 18 (1914-21); 1 COOLEY, CONSTITUTIONAL LIMITATIONS 56 (7th ed. 1903).

11. 1 COOLEY, CONSTITUTIONAL LIMITATIONS 84-85 (8th ed. 1927).

12. JAMESON, CONSTITUTIONAL CONVENTIONS § 219 et seq.

The conclusion that the procedure for constitutional *revision* is not subject to regulation applicable to constitutional *amendment* seems to be established beyond question. In the instant case the call for a convention, enacted by the Legislature and submitted to the people, as the sovereign power, for ratification or rejection, undoubtedly conforms to recognized procedure. The additional precaution requiring submission of the Constitution, drafted by the convention, to the people as the sovereign, is another consideration which prejudices the validity of the somewhat technical basis of the original objection.

Understandably, the greater part of the act itself consists of more or less pro forma provisions dealing with the appointment and election of delegates, the conduct of the election, qualifications and compensation of delegates, and the time and procedure with respect to the meeting and opening of the convention. These provisions were derived from similar acts calling prior conventions and from study of the most approved and best established principles and precedents.

Attention should be called to the provisions of section 5 of the act which represent two novel departures from previous convention calls. The first deals with specific authorization for the election or appointment of public officials of the state and its subdivisions, and relieves such officials from the application of laws prohibiting dual office-holding. The second provision of this section specifically establishes the right of any attorney at law, serving as a delegate to the convention, to the continuance of any case in which he is bona fide counsel of record. This authorization was deemed necessary in view of holdings of the Supreme Court<sup>13</sup> refusing to recognize a resolution of the convention of 1921 authorizing the continuance of cases, on the ground that a convention cannot assume legislative powers. This provision was designed to establish a legislative basis for the relief specified.

Perhaps the principal contribution of the act is found in the detailed provisions governing the organization of the convention itself.<sup>14</sup> The background for the meticulously devised organizational scheme lies in a recognition of the waste of effort, the overlapping jurisdiction and the inevitable cross-purposes of the

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13. State *ex rel.* Hoffman v. Judge, 149 La. 363, 89 So. 215 (1921); Pender v. Gray, 149 La. 184, 88 So. 786 (1921).

14. La. Acts 1956, No. 166, § 6.

multiplicity of committees created by preceding conventions, particularly the convention of 1921. The organization of the convention of 1921, somewhat haphazardly undertaken, called for the appointment of thirty-five standing committees. This division of effort, instead of contributing to efficient consideration and operation, produced exactly the opposite result and seriously hampered the deliberations of the convention.

The scientifically devised organizational plan of the convention, while permitting the establishment of additional committees and sub-committees, distributes the work of the convention, according to subject matter, among seven working committees. The plan of organization is best demonstrated by the chart set forth on page 129 which graphically illustrates the effective correlation of the authority of the officers of the convention and the subject matters of constitutional concern which are vested in the working committees. It is apparent from an examination of this chart and a comparison of the topics assigned to the several committees that every major field of constitutional action is adequately recognized.

It should be observed that several features of the convention call, as incorporated in Act 166, have been the subject of violent controversy. Particularly is this true with respect to the provision for the appointment of delegates by the Governor.<sup>15</sup> It is felt that the pros and cons of this question lie entirely beyond the scope of this discussion, and, accordingly, it has been the purpose of the development of this article to deal objectively with what may be regarded as the primary concerns of the act itself. Undoubtedly, any act providing for so important an undertaking as the complete revision of the constitution of our state is subject to objection and opposition, much of which, as has been heretofore observed, is political in origin and development. However this may be, and regardless of what action has been taken by the people of the state, it is only fair to conclude that the enactment of the convention call of 1956 represents, in many particulars, an imaginative and constructive development.

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15. *Id.* § 2.

