A GUIDE TO ILLINOIS CONSTITUTIONAL REVISION: THE 1969 CONSTITUTIONAL CONVENTION

UNIVERSITY OF ILLINOIS

A Guide to Illinois Constitutional Revision
The 1969 Constitutional Convention

by Thomas A. Kitsos
and Joseph P. Pisciotte

Prepared for the
Illinois Constitution Study Commission

THE INSTITUTE OF GOVERNMENT
and PUBLIC AFFAIRS

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Robert Coulson, Chairman
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Institute of Government and Public Affairs
University of Illinois
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FOREWORD

Piecemeal constitutional revision is not an unfamiliar topic in Illinois, but when a constitutional convention is convened on December 8, 1969 to review the entire 1870 Constitution, it will be a part of state government which has been experienced by only a few people. There are many specifics involved in a constitutional convention which the voters of Illinois have not had to consider since the last convention was convened in 1920.

With this in mind, the Institute of Government and Public Affairs has made available this guide to the 1969 Illinois Constitutional Convention. It is designed to aid the delegate candidates as well as interested citizens in clarifying some of the components involved in assembling, initiating, and conducting the business of the Convention. Where pertinent, comparison is made with conventions that have been held recently in other states, but more frequently, references are made to the 1920 Illinois Convention since that convention assembled under the same constitutional guidelines as will the 1969 Convention.

The Convention Guide is one of several projects undertaken by the Institute of Government for the Illinois Constitution Study Commission. The Commission was re-created by the 76th General Assembly to continue making the necessary preparations for the Constitutional Convention. The Institute gratefully acknowledges the financial support for this project from the Commission and its Chairman, Robert Coulson, and its Co-Chairman, Robert W. McCarthy.

Samuel K. Gove, Director
Institute of Government and
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INTRODUCTION

On November 5, 1968 the voters of Illinois showed an unusual degree of unanimity on one of the issues on the general election ballot. On the question of whether a constitutional convention should be held in the state, 2.9 million voted "yes," 1.1 million voted "no" and only 590,000 failed to vote. This 600,000 vote plurality over the required constitutional majority represented the largest margin ever given to a constitutional issue in the state.*

As a result, 116 delegates will convene in Springfield on December 8, 1969 to begin the state's sixth constitutional convention. The 1969 Convention will be only the second convention held in this state in the last one hundred years, but it will become part of a nationwide trend toward state constitutional revision. As will be noted in the text of this paper, several other states are examining their constitutions in an effort to make their government more responsive to the problems of the 1970's and beyond.

Frequently, when one discusses state constitutional revision, many implicit assumptions are made. The result is that the complex relationship between one constitutional convention and other factors in the political system are often overlooked. The three words--state constitutional revision--should be separated and analyzed since they represent three different concepts. The place of the states, for example, should be examined within the context of our federal system of government. Illinois is, after all, only one of fifty constituent

*For an account of the vigorous campaign to get the call approved, see Joseph P. Pisciotte, "How Illinois Did It," National Civic Review, LVIII, No. 7 (July, 1969), pp. 291-96.

governments which comprise the United States as it operates under a federal structure. The United States Constitution gives us the formal guidelines of this system while custom and tradition have informally defined how it works. Constitutionalism is a concept seldom discussed by Americans although it developed, to a great extent, from our own colonial experience. Why will the delegates to the Illinois Constitutional Convention draft a proposed written document? Written constitutions were, at one time, a uniquely American phenomenon. Custom and law have not institutionalized the concept to such an extent that few people question it. The mechanics of revising a constitution should be examined within its historical context. Although there are now two methods of changing the Illinois Constitution, the state's original constitution--adopted with statehood in 1818-- could be changed only by convention. How our present system of revision evolved and what ramifications this has for the entire picture of state constitutionalism are important questions to consider.

The relationship of these concepts becomes apparent when one examines the American idea that constitutional law is superior to statute law. What ramifications has this belief had on the processes of state constitutional revision? And, more particularly, what effect do all these concepts have on the 1969 Illinois Constitiutional Convention?

It is important, of course, to focus on the machinery of the several phases of the total constitutional convention process. How are the delegates elected? How does the Convention get started? How much will it cost, and how long will it run? What happens to the

product of the Convention after it convenes? These are some of the many questions which are relevant at this time.

Although this paper is not structured exactly along these lines, it does combine these divergent concepts within the setting of the Illinois Convention. More specifically, the purpose of this paper is threefold:

(1) To place the 1969 Illinois Constitutional Convention in an historical and theoretical perspective.

(2) To trace the methods and history of constitutional revision in Illinois.

(3) To describe the powers, limitations, and part of the operational machinery of the Convention.

What is a State Constitution?[1]

Written Constitutions

The concept of a written charter which would establish the framework of government, stipulate its powers and duties, and specify the rights of the people, has deep roots in English and American history. England has no written constitution in the same sense that the United States does. However, English history furnishes many precedents for the idea that the principles of governmental structure and individual liberty should be written for all men to see.

Written constitutions, as embodied in our federal and state constitutions, are unique products of the American political experience. When this country was first settled, the basic framework of colonial government was founded upon charters issued by the English Crown. The idea soon emerged that the structure of government as well as the rights of the people should be united in a written document having the character of fundamental law and being superior to ordinary law. The

[1] A number of scholarly works were helpful in writing this section. For a more detailed discussion of some of these topics, the interested reader should consult: Clyde Snider, American State and Local Government (2nd ed.; New York: Appleton-Century-Crofts, 1965); Paul G. Kauper, The State Constitution; Its Nature and Purpose (Detroit: Citizens Research Council of Michigan, Con-Con Research Paper No. 2, 1961); Daniel J. Elazar, American Federalism: A View from the States (New York: Thomas Y. Crowell Co., 1966); Duane Lockard, The Politics of State and Local Government (New York: Macmillan Co., 1963); Samuel W. Witwer, "The Shape of the Illinois Constitution," DePaul Law Review, XVII (Summer, 1968); Frank P. Grad, The State Constitution: Its Function and Form For Our Time (New York: National Municipal League, 1968); and The Council of State Governments, The Book of the States, 1968-1969 (Chicago, 1968).

Mayflower Compact, signed by the Pilgrim fathers on shipboard in 1620, represents a further development in American constitutionalism--that government is a compact resting upon the agreement and consent of the people.

After the colonies declared their independence from England, it was necessary to establish some sort of instrument for their own self-government. Upon gaining their independence, the colonies became states and between 1776 and 1780 eleven of the thirteen original states drafted their own constitutions. Rhode Island and Connecticut had been given broad powers under their colonial charters and these charters served as their constitutions until well into the Nineteenth Century. The eleven state constitutions drafted during this period were written and implemented in a manner which would be considered unusual today. In most of the states, constitutions were drawn up by an ordinary legislative body--not by a convention of popularly elected delegates. And in a number of cases, the constitutions were not submitted to a popular referendum. However, the Massachusetts Constitution of 1780 was drafted by a popularly elected convention and approved by the voters. This method has come to be the accepted process of constitution-making.

The United States Constitution drafted by the Philadelphia Convention of 1787 and the Bill of Rights adopted soon after its ratification symbolize the idea that the basic frame of government and the rights of individuals should be reduced to writing. Furthermore, the United States Constitution created a separation of powers within the national government and established a federal system in which power was to be distributed between the central government and its constituent

states. Both the concepts of federalism and the separation of powers require a written document, primarily because the functions of the separate parts of the government should not be so vague as to generate perpetual conflict.

The tradition established by the early state constitutions, the adoption of the United States Constitution, and the requirements of the federal system inevitably resulted in the adoption of a written constitution by each new state as it entered the Union. In fact, no new state may be admitted into the Union until its constitution is adopted and submitted to Congress for approval. Consequently, when the delegates to the Illinois Constitutional Convention draft a proposed new written charter for the state, they will be carrying out a process that has deep roots in the political history, traditions, and practices of this country.

Constitutional versus Statute Law

In addition to the concept of a written constitution, American experience has also contributed the idea that constitutions are distinct from and superior to statute law. Evolving from this distinction is the idea that the people should make fundamental law while statute law can be made by legislative bodies composed of representatives of the people.

Consequently, the convention has come to be viewed as the legitimate and proper method to write and/or rewrite constitutions. Conventions are established solely for that purpose, delegates to the convention are elected by the people, and the convention is adjourned once its task is completed. Both convention proposals and constitutional amendments suggested by legislatures are subject to the approval or

disapproval of the voters in referendum.[2]

Another ramification of the distinction between constitutional and statute law is that the former is more difficult to change. Wholesale revision of a constitution, which is ordinarily the function of a convention, is contingent upon an extraordinary legislative majority to get the convention call on the ballot. Popular approval is then required of the convention itself, the individual delegates, and the final product. Individual constitutional amendments must normally receive an extraordinary legislative majority to get the proposal on the ballot followed by approval from a constitutional majority of the voters in the election.[3]

Federalism

Ours is a federal system of government. That is, the powers of government are divided between a central government and a number of constituent governments (the states). The division of power is spelled out in a written constitution that can be changed only by action of both the central and constituent governments. In some areas of governmental action, only the central government has authority to act, e.g., foreign policy. In other areas, major authority to act is vested in state governments, e.g., education. And some governmental functions are shared by both levels of government, e.g., taxes.

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[2]Delaware is the one major exception in regard to individual constitutional amendments. In that state, favorable action by two successive legislatures, without popular ratification, completes the amending process.

[3]The specific requirements for the legislative and popular vote necessary for approval of constitutional conventions and individual constitutional amendments varies from state to state but normally such requirements are rather stringent. The situation in Illinois is discussed below.

The concept of federalism, then, deals with the powers of government and sources of authority. There are a number of theoretical difficulties in these ideas, but it is generally agreed that all political power comes from the people. The Preamble to the United States Constitution explicitly states that the Constitution was established by "...the People of the United States." Also, every state constitution, except one, expressly provides that the people are the source of ultimate political power.[4] The Illinois Constitution (Article II, Section 1) provides that, "...(t)o secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed."

Another generally agreed upon concept of American constitutional law is the theory of delegated and reserved powers found in the Tenth Amendment to the United States Constitution. This Amendment is essentially the basis of our federal system of government. The powers of the federal government are considered to be delegated powers. In other words, that government must find authority for its actions in express or implied grants of power in the federal constitution.

There has been some difference of opinion with regard to the source of authority for state governmental actions. Essentially there are two different theories regarding this authority--the difference stemming from dissimilar interpretations of the Tenth Amendment.[5]

The first theory holds that state government is the recipient of all powers not explicitly or implicitly given to the national

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[4]The New York Constitution does not make the sovereignty of the people explicit, although it is implicit. See Witwer, p. 467.

[5]The Tenth Amendment reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

government. The government established by a state constitution has all the general powers of government except for limitations imposed by the United States or state constitution. Therefore, a state constitution does not have to contain an express enumeration of governmental powers. This theory holds that a state constitution is primarily a limitation on governmental power--not a grant of power.

The second theory postulates that, under the Tenth Amendment, ultimate power rests with the people. Agencies of state government must find their authority for action in grants of power conferred by the people. Consequently, state constitutions should be an enumeration of explicitly granted powers given to state government. The absence of a specific constitutional grant means the absence of authority to act.

A counter argument to this line of reasoning has been made by those subscribing to the first theory. They maintain that in establishing the agencies of state government, the people have given implied authority to those agencies to carry out the general powers of government subject only to express limitations. The following quote from a 1927 book on constitutional law is illustrative of this position:

> In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power as it rests in, and may be exercised by the sovereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the Constitution of the United States. The legislative department is not made a special agency for the exercise of specifically defined legislative powers, but is entrusted with the general authority to make laws at discretion.[6]

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[6] Cooley, 1 Constitutional Limitations 175 (8th ed.; Boston: Carrington, Little, Brown & Co., 1927), cited in Kauper, p. 28.

As a practical matter, the generally accepted view of state constitutions appears to be one of a mixture of these two theories. It is quite apparent that, historically, state constitutions have not been considered solely as limitations on power. In regard to many constitutional matters, state charters are viewed as express grants of power. The net result of all this has been an unusual mixture of grants of authority and limitations on power found in the same constitution.

This mixture has contributed to some rather long and detailed state constitutions which have tended to be restrictive on state governmental action. Constitutional restrictions, in part, have limited the states' capacity to respond to some contemporary problems. One ramification of all this is an increased concern over the growing power of the federal government. Students of state government frequently call for a clear delineation of the role of the states in our modern federal system. The appeal for constitutional revision is heard frequently--the central thrust of the argument being that the operations of state government should not be "shackled" by antiquated and restrictive constitutions.

Indeed, the two major trends in state government in the 1960's are apportionment (one-man, one-vote ruling) and constitutional revision. And both of these activities are related to the call for more responsive state government.

The constitutional revision tendency is clear. Since the beginning of this decade, 37 states have had some form of activity relating to constitutional change--whether by constitutional convention, commission studies, or other special agencies. In the three year

period of 1966-1968, constitutional conventions were held in Maryland, New Jersey, New York, Pennsylvania, Hawaii, and Rhode Island. In addition to the Illinois Convention in 1969, constitutional conventions are also being held in Arkansas and New Mexico. Tennessee will elect delegates in 1970 and hold a convention in 1971 and Massachusetts will have a 1971 Convention if the voters of that state approve the call in the 1970 election. Consequently, the 1969 Illinois Constitutional Convention is not a unique phenomenon in this decade, but rather one more link in the national picture of state constitutional revision.

The Illinois Constitution--How is it Revised?

There are two methods of changing the Illinois Constitution--by individual amendment or convention. The framework for each method is laid out in Article XIV of the 1870 Constitution. Under either method, amendments to the Constitution can be proposed and submitted to the voters for ratification although the convention method has the added advantage of being able to rewrite the entire document. In fact, every constitutional convention held in Illinois has submitted an entirely new constitution to the people whereas every proposed individual amendment has come from the legislature.

Revision by Amendment

When two-thirds of those elected in each house of the Illinois General Assembly approve an amendment proposal, it is put on the ballot at the next general election.[7] The amendment proposal is ratified and becomes part of the Constitution if approved by a majority of those

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[7] Illinois is one of 19 states which has this "two-thirds of those elected" requirement for legislative proposal of amendments.

voting in the election or by two-thirds of those voting on the proposal. The General Assembly may not submit amendment proposals to more than three articles in any one session nor to the same constitutional article more than once in four years.

Despite the 1950 passage of the Gateway Amendment which eased some of the original stringent requirements found in the 1870 Constitution,[8] it is still difficult to change the Constitution through this "piecemeal" method. In the last one hundred years there have been only 35 amendment proposals submitted to the voters; 14 of these have been approved and are now part of the Constitution. If paucity of amendments is a virtue, then Illinois compares favorably with such states as California (350 amendments to its 1879 Constitution), Louisiana (460 amendments to its 1921 charter), and Alabama (266 amendments to its 1901 Constitution). However, some students of Illinois politics argue that stringency in the amending process rather than constitutional quality explains the small number of amendments and amendment proposals. Indeed, the relatively slow pace of the piecemeal method of revision was one argument in favor of calling a constitutional convention in the recent campaign.

Revision by Convention

There have been five constitutional conventions in Illinois including the first one when statehood was achieved. When a convention is held, it normally operates under some very general guidelines found in the particular constitution in effect at the time. For example, Section 1, Article XIV of the 1870 Illinois Constitution sets up a

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[8]For a more detailed analysis of trends in voting on constitutional amendment proposals since Gateway see Thomas Kitsos, Constitutional Amendments and the Voter 1952-1966 (Urbana: Commission Papers of the Institute of Government and Public Affairs, University of Illinois, 1968).

general framework for the establishment and operation of the 1969 Illinois Constitutional Convention. This constitutional provision also provides that the General Assembly should draft an enabling act which would, in effect, fill in many of the procedural gaps not covered by the Constitution. Normally, for example, the enabling act stipulates that the rules of the convention are to be established by its members.

Consequently, the establishment, powers, organization, and rules of procedure of the convention are essentially found in the constitution, legislative enabling act, and rules. The following sections of this Guide will deal with convention organization as outlined by these and other sources; however, a brief presentation of the history of constitutional conventions in Illinois will help put the 1969 Convention in proper perspective.[9]

The first significant step in the initiation of civil government in the Northwest Territory (from which Illinois was carved) was the enactment of the Ordinance of 1787 by the Continental Congress. This was the organic law of the Illinois Territory until its admission as a state. In April, 1818 Congress approved the legislation which authorized the formation of a constitution and state government by the people of the Illinois Territory with a view to seeking statehood. The state's first constitutional convention quickly assembled at Kaskaskia and within 23 days had drawn up a constitution. It was presented directly to Congress for approval. Congress approved the

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[9] A project prepared for the Illinois Constitution Study Commission presents a detailed account of Illinois constitutional history. See Janet Cornelius, A History of Constitution Making in Illinois (Urbana: Institute of Government and Public Affairs, University of Illinois, 1969). See also, Neil F. Garvey, The Government and Administration of Illinois (New York: Thomas Y. Crowell Co., 1958), particularly Chapter 2.

document and it became effective when Illinois was admitted as the twenty-first state of the Union in December, 1818.

The slavery article produced more discussion than any other provision in the 1818 Constitution. It was a type of compromise between pro- and anti-slavery people but the article was restrictive enough to have Illinois considered a free state. The only way the 1818 charter could be amended was by convention.

Agitation to relax even further the constitutional prohibition against slavery partially led to the legislature's call for a constitutional convention in 1824. However, the voters failed to approve this call.

Slavery soon ceased to be a major element in the history of state constitutional reform but the rapid settlement and development of the state eventually led to more agitation for reform. In 1842 the voters rejected another call for a constitutional convention but five years later a convention won approval by the electorate and it drafted a new document. The proposed 1848 Constitution was adopted by the voters and it became the state's second constitution.

When it became apparent that there were a number of defects and too much detail in the 1848 document, a proposal for a constitutional convention was placed on the ballot in 1856 but it was rejected by the voters. Six years later, the electorate approved the convening of a convention but rejected the convention's proposed new constitution.

In the general election of 1868, the voters approved a call for a constitutional convention. The convention convened in December of 1869 and submitted the proposed new document to the voters in July of 1870. It was adopted by the voters and became the state's third

constitution. This is the constitution under which the state has operated for almost one hundred years.

As Illinois has progressed from a predominately agricultural state to a highly industrialized one, public discussion about constitutional revision has occurred periodically. In the Twentieth Century there have been two major attempts to overhaul the state charter. At the general election of 1918, Illinois voters approved the calling of a constitutional convention. The Convention convened on January 6, 1920 and the delegates met for 33 months before submitting a proposed new document at a special election in December, 1922. The proposed constitution contained some significant changes in the 1870 document. The 1920 Convention proposed a constitution which would have permitted a graduated income tax, would have fixed the ratio of Cook County representation in the Senate and eliminated the cumulative voting system, would have reorganized the state's judiciary, would have given Chicago a considerable degree of home rule, and would have slightly eased the amending provision. The voters overwhelmingly rejected the proposed constitution with only 17 per cent of the electorate voting for adoption. The constitution was submitted in toto so that voters who strongly opposed any one article were inclined to vote against the entire document. This method of submission is in contrast to the 1870 ballot on which the main body of the proposed constitution was separated from eight controversial provisions for which different votes could be cast.

The second and most recent Twentieth Century attempt at major constitutional revision in Illinois was in 1934 when the voters rejected a call for a convention. Consequently, when the 1969 Illinois

Constitutional Convention submits its proposed new document to the people for ratification, it will mark only the second time in this century that the voters of Illinois have had an opportunity to vote on a new state constitution.

The 1969 Illinois Constitutional Convention: Powers and Limitations

The Convention's Task

It was pointed out above that the traditional American distinction between constitutional and statute law holds that a convention is the proper method to write a new constitution--subject, of course, to ratification by the voters.

Following this thinking, Illinois constitutional conventions have historically performed complete constitutional revisions. In other words, each convention that has been convened in Illinois has submitted a final product to the people which has been a proposed new constitution. The present 1870 Constitution, for example, was a substantial overhaul of the 1848 document. The constitution proposed by the 1920 Convention would have made some significant substantive changes in the 1870 Constitution.

The submission of new constitutions is in contrast to the operation of so-called "limited" conventions in some other states. A constitutional convention which is limited is one in which the scope of its revision powers is restricted by the legislative resolution which established it. In other words, a limited convention may be instructed to revise only certain sections or articles of the present constitution. When presented to the voters, such revisions normally take the form of amendments to the constitution. For example, in 1966 New Jersey

held a convention limited to questions of apportionment. In 1967-68, Pennsylvania held a convention which dealt with legislative apportionment, the judiciary, taxation, and local government. In 1965, Tennessee assembled a convention which was limited to matters pertaining to the legislature, particularly reapportionment. The final products of these three conventions were constitutional amendments dealing only with those substantive areas involved.

The 1969 Illinois Constitutional Convention is not limited by its legislative resolution.[10] It may completely revise the 1870 Constitution or it may simply offer a series of amendments to it. In fact, the only mandate in the present Constitution dealing with the substance of the Convention's work provides that the "...Convention shall . . . prepare such revision, alteration or amendments of the Constitution as shall be deemed necessary . . ." (Article XIV, Section 1). Given the historical precedent of previous Illinois constitutional conventions and the 1968 campaign in which proponents of the Convention argued for "complete review," it is probable that the main thrust of the 1969 Convention will be toward a major overhaul of the 1870 document culminating in the submission of a proposed new constitution for Illinois.

Substantive Limitations from the United States Constitution

Although the Illinois Constitution makes no substantive limitation on the work of the Constituitonal Convention, the United States Constitution and the very nature of federalism does impose some restrictions.

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[10]In fact, there is some question whether the Illinois General Assembly would have authority to call a limited convention.

Illinois is one state among fifty making up the Federal Union. This is an important consideration in determining the nature and function of the state's constitution. It goes to the question of sovereignty and the source of the state's governmental power as well as to limitations on those powers. The fact of the matter is that each state, while possessing a distinctive constitutional status, is not completely sovereign in the normal sense of the word.[11]

Illinois, and indeed all states in the Union, are restricted by certain federal constitutional provisions. Generally speaking, the delegation of certain express and implied powers to the national government, the express and implied denial of certain powers to the states, and the recognition of individual rights in the United States Constitution--rights that can be enforced as a matter of federal law against the states, all operate to limit the complete sovereignty of a state.[12]

More specifically, Article VI of the United States Constitution states that it (the Constitution) is the "supreme law of the land." In a conflict between the United States Constitution and a state charter, the former prevails. Within the context of this "supremacy clause," there are a number of other federal constitutional limitations on the states. Article I, Section 10, for example, is essentially a list of powers denied to state governments such as that of entering into treaties, coining money, or passing bills of attainder.[13]

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[11] Kauper, p. 4.

[12] Ibid.

[13] For a more extended discussion of United States constitutional limitations on the states, see a paper done for the 1968 Hawaii Constitutional Convention, "Constitutional Convention Organization and Procedures," Hawaii Constitutional Convention Studies (Honolulu: University of Hawaii, Legislative Reference Bureau, 1968), especially

Another United States constitutional limitation is Article IV, Section 4 which states that "The United States shall guarantee to every state in this Union a Republican form of Government..." There has been some discussion concerning what a republican form of government really is, although generally it is considered to mean a government of representatives chosen by the people.

A fourth limitation on the states is the national Bill of Rights. The first ten amendments to the United States Constitution were originally intended to apply to the federal government. The passage of the Fourteenth Amendment and subsequent court decisions have led to the application of a certain portion of the Bill of Rights to the states. However, this has been accomplished on a case by case basis and only parts of the national Bill of Rights have been adjudicated in relation to their state applicability. Nevertheless, those sections which have been applied to the states are further limitations on their constitutions.

Article IV, Section 2 of the United States Constitution provides that "(t)he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Consequently, drafters of a new state constitution cannot insert a provison which would discriminate against the privileges and rights of citizens from other states.

Finally, the Fourteenth Amendment to the United States Constitution provides substantive restrictions on state governments as well as being the procedural vehicle through which many other provisions have been applied to the states. Basically, the Fourteenth Amendment contains the guarantees of (1) equal protection, (2) due process, and

(3) privileges and immunities. These concepts have been defined and enlarged by Congress and the United States Supreme Court to insure the protection of civil liberties to everyone in the country. The logical consequence of all this is a further limitation on state action.

Procedural Limitations from the 1870 Illinois Constitution

As previously mentioned, the present Illinois Constitution does not impose any substantive limitations on the work of the convention. The general guidelines set out in Article XIV, Section 1 are procedural in nature and they affect both pre-convention activity and some operations of the convention itself.

In order to call a convention, the Constitution stipulates that two-thirds of those elected in each house of the legislature must approve such a call.[14] If approved by the legislature, the question is then submitted to the voters at the next general election. At that election, the convention call must receive affirmative votes from a majority of those voting in the election.[15] This is the only method of approving the convention since the Gateway Amendment changed the voting criterion only for proposed amendments--not for constitutional conventions. Consequently, those who fail to vote on the convention call are, in fact, voting against it. It should also be noted that the Constitution requires that the convention question be on the ballot at the next general election, thus increasing the probability that it will be lost among more controversial election contests and issues.

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[14] Illinois is one of 21 states which has the legislative two-thirds requirement for placing a convention call on the ballot.

[15] Eleven other states, in addition to Illinois, require approval from a majority of those voting in the election for ratification of the convention call.

If the call for a convention is approved, the Constitution provides that two delegates[16] should be elected from each state senatorial district and "in the same manner" as senate election. The qualification of delegates is the same as the qualification of state senators. Also, the convention must convene within three months after the election of delegates.

Once the convention convenes, the 1870 Constitution stipulates that the delegates shall take an oath to support the constitutions of the United States and Illinois. If vacancies occur in the convention's membership, they are to be filled in the same manner as vacancies are filled in the General Assembly.

The submission of the convention's work to the people for ratification must be carried out in an election set up by the convention for that purpose. This election must be held sometime between two and six months after the convention adjourns. Ratification of the proposed constitution is accomplished if a majority of those voting in the election approve it.[17]

These,then, are the only guidelines relating to the holding of a convention found in the 1870 Illinois Constitution. Not only

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[16]The Illinois Constitution and the 1969 Enabling Act refer to elected participants in the convention as "members." Through common usage, however, the terms "members" and "delegates" are often used interchangeably and they will be so used in this discussion.

[17]Lack of precise language in the Constitution and the 1969 Enabling Act presents a technical problem in regard to the ratification election. The Constitution provides that the election shall be "appointed by the Convention for that purpose...." The Enabling Act simply repeats this language. Although this wording strongly implies it, there is no explicit stipulation that the election shall be a special election with no other issues on the ballot. In contrast to this vagueness, the Enabling Act does provide that the primary and general election of delegates shall be special, without other issues on the ballot. One could argue, therefore, that the Convention is free to include the ratification question on the ballot in any election as long as that

are many of the necessary details for setting up a convention missing from the constitutional provision, but a number of guidelines mentioned above are so vague as to require interpretation. For example, when the Constitution states that the election of delegates should be conducted in the same manner as the election of state senators, does this mean that the delegate election must be partisan, i.e., with party labels on the ballot? Dealing with this type of question of interpretation plus the task of filling in many procedural gaps becomes the responsibility of the legislature.

The legislative enabling act: Section 1, Article XIV of the Constitution provides, in part, that if the calling of a constitutional convention is approved by the voters,

> (t)he General Assembly shall, in the act calling the Convention, designate the day, hour, and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the Convention in the performance of its duties. (emphasis added)

This constitutional mandate authorizes the General Assembly to enact enabling legislation for a constitutional convention. The main purpose of this legislation is to facilitate the selection of delegates and the operation of the convention. The legislature is actually given wide latitude in most details of the convention while it is constitutionally restricted in only a few. In addition to this, the constitutiona

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17 (Continued)
election occurs between two and six months after adjournment. Presumably, this will not be the interpretation given to the constitutional mandate regarding the ratification election. Not only does the constitutional language strongly imply that voting on any proposed revision to the Constitution should be carried out in a special election but historical precedent also argues for such an election. The vote on the constitution proposed by the 1920 Convention (which operated under the provisions of the 1870 Illinois Constitution) was held in a special election on December 12, 1922. This was the only issue on the ballot. Of course, if the vote of the revision proposed by the 1969 Convention is conducted in a special election, the "unconscious" negative vote will not be a factor. All those voting in the election will be voting on the proposed revision.

mandate does not include all details which should be in the enabling act. Out of necessity, there are other convention details which should be included in the legislation in order to assure a procedurally smooth beginning for the convention. And, as previously noted, it may be appropriate for the legislature, through the enabling act, to clarify some of the vagueness in the state constitution relative to a convention.

After Illinois voters approved the call for a constitutional convention at the 1968 general election, the 76th General Assembly, pursuant to its constitutional mandate, passed enabling legislation setting the ground rules for the convention. The constitutionality of certain sections of the Enabling Act were tested in the courts, resulting in some changes in the legislation. The combination of the Enabling Act and these court decisions within the context of some general constitutional guidelines, established the basic machinery necessary to set up the 1969 Illinois Constitutional Convention. The following sections will examine that machinery as provided mainly in the Enabling Act and the judicial decisions.

The Delegates

Number and Apportionment

The constitutions of a number of states, although not specifying the exact number of delegates to be elected to their constitutional conventions, do indicate that the number shall be in some way related to the membership of one or both houses of the state legislature. Illinois is one of these states, stipulating that two delegates are to be elected from each state senatorial district. Since the state

presently has 58 senatorial districts, the number of delegates is fixed at 116. Because of the present apportionment of senate districts, 42 delegates will come from districts within the city of Chicago, 18 will represent districts outside the city but within Cook County, and 56 delegates will represent "downstate" counties, i.e., all counties outside of Cook.

In the suit challenging the Enabling Act, one of the arguments was that Illinois senate districts are malapportioned and therefore the election of delegates from these districts would violate the United States Supreme Court's one-man, one-vote principle. The constitutionally required ratification of the proposed new constitution by the people was the major point on which the Illinois Supreme Court based its decision to reject this argument. The Court said that the convention has no real lawmaking power and since final approval of any proposed changes must come from the voters in a statewide election (in which each vote has equal weight), no violation of the equal representation principle exists.

Qualifications and Public Official Eligibility Question

The Illinois Constitution states that delegates should possess the same qualifications as members of the state senate. This means that a delegate must be 25 years old, a United States citizen, five years a resident of Illinois and two years a resident of the district from which he is elected.

Because of some conflicting interpretations of certain sections of the Illinois Constitution, one of the major issues confronting the General Assembly when it was drafting the enabling legislation was

whether public officials could serve as delegates. Section 3 of the Enabling Act provided that "...any person who otherwise qualifies but is a member of the General Assembly or holds any other elective or appointive office under the Constitution or laws of this state may also serve as a member of the Convention." The Illinois Supreme Court altered this slightly by holding that neither the Governor, Lieutenant Governor, Auditor of Public Accounts, Secretary of State, Superintendent of Public Instruction nor Attorney General could serve as delegates. The Court's opinion also held that any person who has been convicted of an infamous crime or any officer who has misused public funds or been impeached cannot serve as a delegate. The decision stated that judges must vacate their judicial office if they sit as a member of the Convention. With these exceptions, all other public officials, including state legislators, can be Convention delegates.

The Election of Delegates

The Election Process: The election of delegates to the Constitutional Convention is a two-step process. The primary election, held on September 23, 1969, reduced the field of candidates to four in each senatorial district. Two of these four will be elected as delegates in a general election to be held on November 18, 1969. The Enabling Act provides that the election is to be nonpartisan, i.e., without party labels on the ballot. This also was a section of the enabling legislation challenged in the suit which reached the Illinois Supreme Court. This particular challenge was based on the position that the constitutional prescription that delegate elections must be conducted

"in the same manner" as elections for state senators meant that delegates must run under party labels as senators do. The Court rejected this argument, however, holding that "in the same manner" means only that delegates must be "elected by the people" in "free and equal" elections by "ballot." Thus, it did not become necessary to follow exactly the guidelines of the Illinois Election Code in the delegate election.

The provision of the Enabling Act which has caused the greatest controversy has been the placement of candidate's names on the election ballots. Section 5 of the Act stipulated that in the primary election "the name of the person first filing his nominating petition with the Secretary of State shall be certified first on the ballot, and the names of the other candidates shall be listed in the order that their nominating petitions were filed with the Secretary of State." However, as a result of a dispute involving mailed petitions and those delivered to the State Capitol in person, the legislative procedure was altered by the United States Court of Appeals. In its ruling, the Court required the Secretary of State to draw lots to determine the candidates' ballot position. More specifically, numbers were drawn for candidates whose petitions arrived at the Secretary of State's office in the same mail, and their names were placed on the ballot in accordance with the number drawn. The names of the candidates who waited in line at the Secretary of State's office on the first day of filing were then placed in the open spots on the ballot, in the order they were waiting in line.

For the general election, in those districts where a primary was held,[18] the Enabling Act requires that "the name of the person receiving

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[18]The Enabling Act allowed for the elimination of a primary in those districts where four or fewer persons filed petitions qualifying them as delegate candidates. Accordingly, primaries were not held in the 19th, 20th, 21st, 22nd, 26th, 27th, 29th, and 45th senatorial districts.

the highest number of votes shall be certified first on the ballot, and the names of the other candidates shall be listed in the order of the number of votes received by them respectively in the primary election." In those districts where no primary election was held, the Act required the same procedure to be followed as that originally provided by the legislature for the primary elections. However, the United States District Court overturned this latter provision and required that in the non-primary districts, the order of ballot position was to be determined by lottery.

Each voter may cast two votes in the general election but the votes may not be cumulated. Therefore, a voter cannot give his two votes to one candidate. The two candidates in each district receiving the greatest number of votes will receive certificates of election as members of the Convention. These certificates will be issued by the Governor.

Where possible, the last election judges to serve before September 1, 1969 should serve in precincts and districts for this election. As previously noted, the Enabling Act stipulates that no other issues should be on the ballot for this election. Except as otherwise provided in the legislative act, the Illinois Election Code is applicable.

Qualification of Voters: The Enabling Act provides that any person who is qualified to vote under the Constitution or laws of the State of Illinois is entitled to vote in both the September primary and November election. This means that an individual, at the time of the election in question, must have resided in the state for one year, in the county for 90 days, and in his election district for 30 days. He must, of course, be duly registered as required by law.

Filling of Vacancies: There are two different methods of filling delegate vacancies--depending on when the vacancy occurs. If a vacancy occurs after the November election of delegates, whether it be before or during the actual convention, the Governor is constitutionally required to issue writs of election to fill the seat. This is in accordance with the method of filling vacancies in the General Assembly as required by Article XIV, Section 1. The Enabling Act states that elections held to fill such vacancies are to be conducted in the same manner as provided in that Act for the initial election of Convention members.

If, through death, resignation or some other reason, a vacancy occurs after the primary but before the November election, the candidate who received the next highest number of votes in the primary will be put on the ballot. Although the wording of the Enabling Act is somewhat confusing, this presumably means that if one of the top four candidates in the primary vacates his position on the November ballot, the fifth highest vote-getter in the September election will take his place.

Privileges and Immunities

None of the state constitutions prescribe any privileges and immunities of delegates to constitutional conventions. However, the legislatures of a number of states have granted convention delegates many of the privileges and immunities ordinarily given to state legislators. The Enabling Act for the 1920 Illinois Convention provided:

> In going to and returning from the Convention and during the sessions thereof the delegates shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest; and they shall not be questioned in any other place for any speech or debate in the Convention.

Section 7 of the Enabling Act for the 1969 Convention uses this exact wording in granting privileges and immunities to the delegates. (However, the 1969 Act does use the word "members" in place of "delegates.")

Compensation

The Illinois Constitution instructs the legislature to provide for the delegate's compensation. Delegates to the 1920 Convention received $2,000 and the same mileage allowed members of the General Assembly. They also received $50 for postage, stationery, newspapers, and other incidental expenses.

Rather than establishing one salary figure for the work of the entire 1969 Convention, the 76th General Assembly provided for monthly payments of $625 for a maximum of eight months. The President of the Convention will receive $1500 per month for a period not to exceed nine months; and the Vice-President will receive a monthly salary of $1200 for a maximum of nine months.

Each member of the Convention will be paid $75 per day for each day he attends sessions of the Convention or its committees. However, there is a one hundred day maximum of this daily attendance payment. The Enabling Act provides that the Convention may compel the attendance of its members.

Delegates will also receive a rebate for travel expenses incurred in going to and returning from Convention sites at a rate of 15 cents per mile. A $120 allowance for postage expenses is also provided.

Members are entitled to compensation for other expenses at the rate established by the 75th General Assembly for members of interim legislative commissions and committees. This means that the delegates

will be allowed $15 per day for a hotel room in Chicago or $12 per day for a room elsewhere, $10 per day for meals, and $10 per day for incidentals.

There is one exception to this system of compensation. To avoid possible complications over the "lucrative office" provision in the state Constitution (Article IV, Section 3), the Enabling Act provides that legislators and other public officials who retain their elected or appointed positions and are delegates to the Convention receive compensation for only mileage, expenses, and postage, i.e., no salary.

The President of the Convention is required to certify the pay and mileage of each delegate and this is to be entered in the Convention's journal.

The Convention Process

The Illinois Constitution, the Enabling Act, and the court decisions have provided the basic machinery for initiating the 1969 Constitutional Convention. In addition to such previously discussed topics as procedural requirements for the elections associated with the Convention and the regulations governing the qualifications, elections, and compensations of delegates, these sources (and others) also provide the framework for other aspects of the Convention.

Place and Date of First Meeting

Illinois, like eight other states, constitutionally requires that a constitutional convention must meet within three months after the election of delegates. For example, the 1920 Convention convened on January 6, 1920--approximately two months after the election of delegates.

The Enabling Act for the 1969 Convention provides that the Convention will convene at 12 o'clock on December 8, 1969--less than three weeks after the delegate election. As has been the practice in Illinois, it is anticipated that the Convention will conduct much of its business in the House of Representative chambers in Springfield. Actually, the Illinois Constitution specifies that the legislature shall fix the meeting place, but the Enabling Act stipulates only that the first meeting of the Convention must be in the House chambers. It explicitly provided that "...further proceedings of the Convention shall be held at such places and in such manner as may be determined by the Convention." Consequently, after the Convention convenes in Springfield on December 8, it will have to decide where to hold future sessions. It is very likely that the Convention's several committees will conduct hearings throughout the state.

With the exception of the first convention in Kaskaskia in 1818, all other Illinois conventions have been held in the House chambers. Holding constitutional conventions in the state capitol is the general rule in most states although other sites have been used in a few cases. For example, the 1947 New Jersey Convention met on the campus of Rutgers University and the 1955-56 Alaska Convention met outside Fairbanks on the campus of the University of Alaska.

Length of Session

There is no constitutional or legislative provision regarding the duration of the 1969 Convention. The most recent Illinois convention convened on January 6, 1920, and adjourned on October 10, 1922. However, the convention actually was in session for 140 convention days

because it took some rather lengthy recesses. The Convention held only one meeting between July 7, 1920 and November 8, 1920; and only one meeting in 1921. In 1922 the Convention was in session quite regularly until June 28 when it adjourned until September 12 for a one day meeting. The enabling legislation for this Convention also did not provide for an adjournment date.

The 76th General Assembly may have put a practical limit on the duration of the 1969 Convention by providing delegate salaries for a maximum of eight months.

Call to Order

Organization of any meeting is facilitated if there is some mechanism for getting activities started. Enabling acts from most states which have had recent conventions specify who shall preside at the convention until a temporary or permanent organization has been perfected. The legislation for the 1920 Illinois Convention designated the Governor as the official responsible for this function.

The Enabling Act for the 1969 Convention also provides that the Governor shall call the first meeting to order and shall preside until a temporary president is elected. (The chief executive's responsibilities regarding the election of a temporary president are discussed below.) The Governor is to call the roll of the delegates elected to the Convention and administer the oath as provided in the Constitution.

Officers

The Illinois Constitution, like those in the other states, does not specify what officers are to be elected. Occasionally, an enabling act will provide for the election of certain officers. Sometimes, the

legislative act will stipulate how the top officer is to be elected with a provision that he may appoint, or the convention may elect, any other officers which may be deemed necessary. More often than not, however, the designation of officers is left to the delegates and this is normally spelled out in the rules of the convention.

Regardless of the source of authority, there is a pattern from state to state regarding which officers are to be elected. Ordinarily a convention will elect a president, any number of vice-presidents, and a secretary. The office of president is institutionalized; there is only one president and he is the chief administrative officer of the convention.

The number of vice-presidents varies from state to state--frequently reflecting geographical or political considerations. For example, the 1968 Hawaiian Convention had five vice-presidents; one from each of three counties, and two from the City and County of Honolulu. The rules of the 1967 Pennsylvania Convention stipulated that the president and the second vice-president were to be of the same political party while the first vice-president and the secretary were to be of another party.

The Enabling Act for the 1920 Illinois Convention instructed the delegates to elect a president but no mention was made of a vice-president. The secretary was to be appointed by the Convention (he was <u>not</u> a delegate). The rules of the Convention did not elaborate further on the question of whether more officers should be elected.

Part of the duties of the Governor in the 1969 Convention will be to call for nominations for the office of temporary President, administer the roll call for the election of the office, and then turn the Convention over to the delegate who receives a plurality of

the votes. The temporary President will then conduct an election for permanent President in the same manner as the temporary President was elected except that the President must receive a majority of votes cast in the election. After the President is elected, the Convention will then elect a Vice-President. These are the only two officers mentioned in the Enabling Act. However, Section 15 of the Act states that oaths may be administered by the President or any other officer of the Convention and subpoenas may be signed by the President or any other officer of the Convention. Presumably, the Convention is free to appoint any other officers it deems necessary and such appointment could be included in the rules of the Convention. For example, the Convention may feel it is appropriate to appoint a secretary and the authority to do so could be included in the rules. In a number of other states which have recently had conventions, the secretary was chosen from outside the convention membership.

Election Returns and Election Contests

The Convention is given sole authority to judge the election returns and qualifications of its members. It also has authority to hear and make a final determination of any contested delegate election. Both of these provisions were in the 1920 Enabling Act and are standard features of such legislation.

Quorum

Some state constitutions and a few enabling acts have specified what constitutes a quorum for the transaction of business. Illinois has no constitutional provision in this regard, nor did the Enabling Act for the 1920 Convention specify a particular quorum. Normally,

this type of detail is left to the convention. The rules of the 1920 Convention defined a quorum as a majority of all delegates elected to the Convention. The 1969 Enabling Act is suggestive but not final. It provides that a quorum shall consist of 59 delegates (one-half of the elected membership plus one), or such other number as the Convention may determine.

Punishing Non-Members for Contempt

The Enabling Act provides that the Convention has the power to punish non-members for contemptuous or disorderly behavior in its presence. Imprisonment may not continue for more than 24 hours unless such behavior persists. A similar provision was included in the 1920 legislation but the records of that Convention do not indicate whether this power was ever used.

Record Keeping and Investigations: Powers and Duties

Scattered throughout the 1969 Enabling Act are provisions relating to the record keeping function of the Convention. Proper filing procedures and record keeping not only can contribute to a smooth and even operation but also are invaluable aids to future interpreters of the Convention's work. Adequate investigatory power is also a necessary prerequisite for the proper functioning of the Convention.

The Convention has the power to require and receive any and all records which it requests from public officials. It must keep a verbatim journal of its proceedings and a transcript of its debates. Convention committees must also keep a record of their proceedings. The Convention is instructed to provide for the publication of the

journal, debates, committee reports, and any other documents and reports pertaining to its work. Also, copies of the journal proceedings, debates, and committee records must be filed in the Secretary of State's office.

As part of its investigative power, the Convention and its committees have the authority to compel the attendance, testimony, and records of any witnesses who may be called. Any officer of the Convention has subpoena power in this regard and any circuit court in the state can enforce Convention requests.

Lobbyists

At the Constitutional Convention, as in any session of the legislature, lobbyists will be promoting interests which they represent. Two major pieces of legislation relating to lobbyists and their activities were passed by the 76th General Assembly. Senate Bill 105 made some significant changes in registration and reporting requirements of lobbyists during sessions of the General Assembly. One major change is to require an expenditure report from lobbyists.

Senate Bill 104, using essentially the same language as Senate Bill 105, relates such registration and reporting requirements to lobbyists at the Constitutional Convention. Entitled the "Constitutional Convention Lobbyist Registration Act," Senate Bill 104 requires anyone who, on behalf of another person, promotes or opposes the inclusion of provisions in the proposed constitution, must register with the Secretary of State.

There are a number of exemptions to this registration requirement. For example, persons who appear as witnesses without compensation

for the Convention and persons employed by the news media in pursuit of their news dissemination duties need not register.

Lobbyists must register the following information with the Secretary of State: 1) lobbyist's name and address; 2) employer's name and address; 3) the constitutional provisions with which the lobbyist is concerned; and 4) a picture of the lobbyist. In addition to this registration information, lobbyists must also file monthly reports as long as the Convention continues or until the registrant terminates his lobbying activities. These reports must include a listing of all expenditures made by the lobbyist for the purpose of promoting or opposing the inclusion of provisions in a constitution drafted by the Constitutional Convention or its committees. It must indicate the person or delegate to whom or for whose benefit such expenditures were made. There are some types of expenditures which are exempt from this report; essentially these exemptions include all reasonable and bona fide expenditures associated with lobbying activities, e.g., living and office expenses, research expenses, etc.

The Secretary of State is instructed to provide appropriate forms for registering and reporting. He must keep all registration forms on file for three years and he must maintain a register of information which is open to public inspection.

Senate Bill 104 also prohibits anyone from employing or being employed on a contingent fee basis. In other words, no one may receive his compensation based on the success or failure of his lobbying activities.

Violation of any of the provisions of this Act entails the levying of some rather stiff fines or prison sentences. For individuals, the fine must not exceed $1000 or imprisonment from one to ten years, or both. A corporation will be fined up to $10,000. In addition to these penalties, anyone convicted of violating this Act is prohibited from continuing his lobbying activities in the Convention for three years from the date of his conviction. A lobbyist violating this particular section is subject to a fine not to exceed $10,000 or imprisonment from one to ten years, or both.

Convention Services and Aids

Staff and Employee Assistance: The Convention, like most deliberative bodies with a formidable task to perform, will rely heavily on staff services. It is customary for enabling legislation to stipulate that the convention, or the president, has authority to appoint all necessary employees and fix their compensation. Frequently, the rules adopted by a convention will elaborate on this authority providing, for example, that certain offices must be filled plus any others deemed necessary.

The 1920 Enabling Act gave that Convention power to appoint a secretary (at $15 per day) plus additional employees which the delegates thought were necessary (compensation to be determined by the convention). The rules of the 1920 Convention also instructed the president to appoint a sergeant-at-arms. The number and compensation of other employees was to be determined by a majority vote of the elected delegates although actual appointment of such employees was the president's responsibility.

The Enabling Act for the 1969 Convention makes no mention of employees. Obviously, on the executive and committee level, good administrative, research, and legal skills are essential. On the service level, good secretarial and stenographic assistance must be acquired. And there are normally errand-running and custodial functions to be performed. One of the first tasks of the Convention after it convenes will be to determine what administrative, research, and service posts are to be filled. Actually, much of the work of gathering a staff for the Convention may be carried out by the 1969-70 Constitution Study Commission. In the bill which created it, the Commission is instructed, among other things, to arrange for the assembling and hiring of an interim staff for the Convention. Presumably some or all of this staff could be retained once the Convention convenes.

Other Aids for the Delegates: Generally speaking, when the Convention convenes in December, some regular legislative aids will remain in existence. For example, the Legislative Reference Bureau and the Legislative Council have each received $50,000 appropriations to provide drafting, research, and other services for the delegates. The Illinois State Library, with funds up to $25,000 from the recently created Constitution Study Commission, will set up a special Convention library for use by the delegates.

In addition to this, some preparatory research has been or is in the process of being compiled.

Background Papers: A widespread practice in preparing for a constitutional convention has been the preparation of a series of background papers to be used by the delegates and research staff in

conducting the business of the convention, and which serve as a media for informing the public about the issues involved. Background papers have been used as a means of researching and compiling information on the constitutional revision process since the 1915 New York Convention. Several years later the Illinois Legislative Reference Bureau prepared a series of reports for the 1920 Convention. Virtually all of the preparatory commissions in states which have recently held conventions have published such papers.

In accordance with this practice, Governor Richard B. Ogilvie established the Governor's Constitution Research Group, headed by Professor Samuel K. Gove, Director of the Institute of Government and Public Affairs, University of Illinois, Urbana. Distinguished scholars in many areas of state and local government are preparing background papers on major constitutional issues. These papers are being disseminated as individual papers, but will be assembled into a single volume for use by the delegates.

Preparatory Research by the Constitution Study Commission: The major preparatory agency for constitutional revision in Illinois has been the Constitution Study Commission. Actually there have been three commissions in recent years.

Recognizing the possible need for wholesale constitutional revision, the 74th General Assembly created the first Constitution Study Commission in 1965. This Commission was instructed to make recommendations regarding the amendment or revision of the 1870 Constitution. One of the major contributions of the 1965 Commission was its recommendation to the 75th General Assembly that the constitutional convention question be placed on the 1968 general election ballot.

That particular legislative session also passed Senate Bill 1376 which created the second Constitution Study Commission. The 1967-68 Commission was directed "to compile information...and to undertake studies and research, collect and organize necessary background materials, and provide for the dissemination thereof to the end that a constitutional convention may function expeditiously and efficiently."

The work of the second commission was twofold. First, it was concerned with the drafting of legislation pertinent to the Convention. Its major work in this regard was in making recommendations to the legislature regarding the Enabling Act. Many of the Commission's recommendations were incorporated into the Act although the legislature made several changes. Secondly, the Commission worked to provide Convention delegates with research material. The Institute of Government and Public Affairs of the University of Illinois at Urbana was engaged to assist the Commission in its research activities. Among the research projects undertaken by the Commission are:

-- The Illinois Constitution: An Annotated and Comparative Analysis. Prepared by two acknowledged legal scholars, George D. Braden of New York and Rubin G. Cohn of the University of Illinois College of Law, this major research project will be available for distribution in November, 1969.

-- A History of Constitution Making in Illinois. The details of the efforts at constitutional revision have been historically recounted in one document prepared for the Commission by Mrs. Janet Cornelius of the Institute of Government and Public Affairs. This study is now available for distribution.

-- Bibliography of Constitutional Revision in Illinois. Prepared in mimeograph form by the Institute of Government and Public Affairs, this compilation of the relevant literature contains some 200 entries. It will be revised by the Illinois State Library prior to the Convention as additional materials are prepared.

The Commission engaged in other research activities including the compilation of materials from other states pertaining to constitutional revision developments. It also recognized that other preparations will be needed prior to the convening of the Convention. Accordingly, the Commission recommended that its work be continued so that the Convention could function "expeditiously and efficiently."

House Bill 1957 of the 76th General Assembly created the third Constitution Study Commission and directed it to prepare for the organization of the Convention. The Commission is instructed to:

> compile information and materials, to undertake studies and research, to contract for, prepare and furnish the facilities for the meeting of the Constitutional Convention and to arrange for the assembling and hiring of an interim staff...

Within thirty days after the Convention convenes, the Commission must report its findings, make any necessary recommendations, and transfer its files to the Convention. One hundred thousand dollars was appropriated to the Commission for these purposes, of which $25,000 may be allotted to the Illinois State Library for the Convention library mentioned above.

In general, then, the background papers prepared by the Governor's Study Group, the completed and the continuing work of the Constitution Study Commission, and the various legislative aids which will remain operative, should make the 1969 Illinois delegate a most informed Convention member.[19]

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[19] These, of course, are more or less "official" groups and agencies who will be giving aid and assistance to the delegates. In addition to these, the delegates will undoubtedly receive material from private groups throughout the state.

The Proposed New Constitution

As previously noted, the Illinois Constitution provides that any proposed revision must be submitted to the people for ratification. This referendum must be held between two and six months after the Convention adjourns. In order to be adopted, any revision must be approved by a majority of those voting in the election.

The Enabling Act for the 1969 Convention elaborates further on the powers and responsibilities of the Convention relative to the referendum. Information documents, explaining each revision or amendment, must be disseminated to the voters after the Convention adjourns but not later than one month preceding the election. The Secretary of State's office normally administers such information pamphlets regarding regular constitutional amendments. However, the Enabling Act does not specify which agency should handle this.

The Convention has the authority to determine when the proposed revisions will take effect if approved by the voters. The notice, manner, and form of the referendum as well as the method of voting shall be prescribed by the Convention. This is an important power because the delegates will be able to decide how to present the proposed revision to the people. There are many possible methods of submission although two have historical precedent in Illinois.

When the 1869 Convention completed its work, it submitted a basic constitution plus eight separate and somewhat controversial provisions. Separate votes could be cast for each of the nine items on the ballot. This particular method was designed to prevent one or more controversial issues from dragging the entire constitution down to defeat. As it turned out, the voters in 1870 referendum approved the basic document and all eight supplemental provisions.

Conversely, the 1920 Convention submitted its final product in one package--to be accepted or rejected in toto by the voters. As already noted, the electorate overwhelmingly rejected the proposed constitution. Frequently, one of the major reasons for a total submission is the complex interrelatedness of the proposed constitution which makes separate submissions practically impossible. This seemed to be the case, for example, in recent conventions in New York, Rhode Island, and Maryland, the products of which were all defeated at the polls.

In any event, although there are other variations of these two methods,[20] the responsibility for choosing a strategically sound submission procedure lies with the Convention. It may well be one of its most important decisions.

Appropriations

The 76th General Assembly appropriated $2,880,000 for the work of the Convention.[21] The Enabling Act breaks this total sum into three very general categories: $1,750,000 for the salaries and expenses of the delegates; $1,100,000 for mileage and postage allowances of members and for other expenses properly incident to conducting the business of the Convention; and $30,000 for administrative expenses incurred by the Auditor of Public Accounts in connection with the Convention.

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[20]The 1968 Hawaii Convention presented its new document to the voters in the form of 23 amendments for which a three-part ballot was used. With this ballot, the voters were able to opt for one of three choices: (1) the voter could vote "yes" on all amendments; (2) he could vote "no" on all amendments; or (3) he could vote no on each of the 23 amendments except those which he approved. As a result, 22 of the 23 propositions received the required vote for approval.

[21]The 1920 Illinois Convention spent the full $500,000 appropriated by the 51st General Assembly.

The $2.8 million appropriation does not include the cost of conducting the three elections associated with the Convention. The Enabling Act provides that the state will reimburse local election officials for the costs of holding these three elections. Expenditures associated with the elections will be the costliest aspect of the Convention. Senate Bill 194 of the 76th General Assembly appropriates $5 million for the expenses incurred in the primary and general election of the delegates; and Senate Bill 1276 makes an appropriation of $1.5 million for those costs which may exceed $5 million. The funds for the election at which the Convention's proposed document will be submitted to the voters will be appropriated by the legislature at a later date.

Rules and Regulations

Throughout this paper frequent reference has been made to the "rules" of the Convention. These are the guidelines and regulations which structure the internal operation of the Convention. They do not owe their existence to the Constitution, the legislature,[22] or the courts.

Normally the rules cover such diverse topics as: convention officers and their duties; the proper order of business each day; the procedures for submitting and voting on proposals; the number, subject area, and structure of committees; the method of seating delegates; the conduct of delegates; etc. In other words, the real "guts" of the day-to-day business of the Convention is structured by the rules.

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[22] Although the Enabling Act provides that the Convention shall determine its own rules and regulations, it is questionable whether this legislative permission was necessary. On the other hand, the Enabling Act stipulates that Roberts Rules of Order (Revised) shall govern the Convention until the delegates adopt their own rules and this provision presumably will be followed.

The rules are adopted by the convention itself. The pattern in a number of states has been to form a committee on rules shortly after the delegates convene. Ordinarily the work of such a committee is facilitated if some preparatory work has been done in advance.[23] When the work of the committee is finished, the proposed rules are presented to the entire convention for adoption, revision, or rejection. Only when a set of rules has been adopted can the convention begin the major task of constitutional revision.

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[23]Frequently some official preparatory agency or private group will draft a set of rules to which the convention (or the committee on rules) can react. Ordinarily this procedure saves a considerable amount of time and confusion since the committee does not have to start from scratch in drafting rules.