MICHIGAN CONSTITUTIONAL ISSUES

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INTRODUCTION

Major Constitutional Issues

This publication discusses briefly, and without editorial comment, those questions which appear to constitute the major points at issue.

There are two basic issues which transcend others to the extent that they would appear to be controlling in the decisions that the voter must make at the several steps in the process of revising the constitution.

One of these basic issues deals with the apportionment of the senate and, to a lesser degree, the apportionment of the house of representatives. The issue is both political and sectional. Politically, it involves what some feel to be present constitutional assurance of Republican control of the senate as opposed to a senate more evenly divided politically if elected on a strictly population basis. Sectionally, it involves the question of increasing the legislative power of the three southeastern Michigan counties of Wayne, Oakland, and Macomb, which have about 48 percent of the state's population, but only 26 percent of the senate seats and 43 percent of the house seats. An increase in representatives for these counties would have to be at the expense of the other 80 counties, which now have the other 52 percent of the state's population with 74 percent of the senate seats and 57 percent of the house seats.

It cannot be assumed that the political and sectional interests are necessarily identical. Crosscurrents are strong.

The second basic issue is whether the people wish to relax the constitutional restrictions they have placed on the executive and legislative branches of government. In respect to the legislature the following questions seem most important:

- Should the legislature be allowed to impose (or be prohibited from imposing) a graduated income tax?
- Should the legislature be freed of the restrictions on its taxing and spending powers that have been imposed through dedication of funds? (Sales tax diversion, primary school interest fund, gas and weight tax dedication, etc.)
- Shall the state's fiscal capacity be increased through increasing or eliminating the limitation on state borrowing?
- Shall local taxing power be increased by removing or raising property tax limitations?
- Shall the legislature's control over spending be increased by removing from the civil service commission the power to fix salaries?

In respect to the executive, the major questions are these:

— Should the governor be given a four-year term?

— Should the administrative structure of state government be integrated under the governor, with subordinate officials appointed rather than elected?

The Research Council takes no position on the question of calling a constitutional convention. It is hoped that this discussion of Michigan Constitutional Issues will promote discussion of vital issues and assist the citizen in his deliberations.

The Process of Constitutional Revision

The citizens of Michigan may be embarking on a six-step process of acquiring a new, or substantially revised, state constitution. The six steps will require over two years to complete and there are a number of hurdles to be met along the way. This process of constitutional revision has been initiated by the League of Women Voters and the Junior Chamber of Commerce.

Step 1. Signatures on Initiatory Petitions

The first step is the securing of 231,218 valid signatures on initiatory petitions by July 9, 1960. This phase of the process is under way at the present time. The initiatory petitions being circulated by the League and Jaycees seek to place before the voters in November, 1960, a five-point amendment to Article XVII, Section 4, of the state constitution providing for the following:

1. That the question of calling a convention be voted on by the people at the spring election in April, 1961, and each 16th year thereafter. (Under the present provision of Article XVII, Section 4, the question will not be submitted to the people until November, 1974.)
2. That approval of calling a convention require only a majority of those voting on the question, rather than the present requirement of a majority of those voting at the election.
3. That delegates to a convention be elected in a special election not later than four months after certification of approval.
4. That one delegate be elected for each senator and for each representative, rather than three delegates from each senatorial district as now required.
5. That the convention convene in Lansing the first Tuesday in October following the selection of delegates.

Failure to acquire the necessary signatures would close the issue for the time being and stop the process. If, however, the signatures are acquired by the July 9, 1960, deadline, the proposed amendment will appear on the November, 1960, ballot.

Step 2. Vote on the Amendment at the November, 1960, Election

The second step in the process is the submission of the proposed constitutional amendment to the people in the November, 1960, election. As a constitutional amendment the proposal requires for approval a majority of those voting on the question. If the proposed amendment is not approved, the process will be halted and under the present provisions of Article XVII, Section 4, the question of calling a convention will then be submitted to the voters in 1974.

If, however, the amendment is approved, the question of calling a convention will be submitted to the voters at the April, 1961, state election.

Step 3. The Vote on Calling a Convention

Approval of the amendment in the November, 1960, election will automatically place the question of calling a constitutional convention on the April, 1961, ballot. As a result of the amendment to Article XVII, Section 4, the call for a constitutional convention will require for approval only a simple majority of those voting on the question.

The last two times the question of calling a constitutional convention has been submitted to the voters, it has received approval of a majority voting on the question, but has fallen short of the majority voting at the election. The votes were as follows:

Year	"Yes" Votes Required For Approval	Yes	No
1958	1,170,915	821,282	608,365
1948	1,056,561	855,451	799,198
1942	613,387	408,188	468,506

If the League-Jaycee proposed amendment had been in effect, the convention would have carried in both 1948 and 1958.

If the call for a convention does not receive approval of a majority voting on the question, then the process is halted and the question will not be automatically submitted to the voters until the election in April, 1977. If the call is approved, then the process continues.

Step 4. Electing Delegates to a Convention

After approval of the call for a convention, the next step is electing delegates to a convention. The League-Jaycee amendment provides that delegates to the convention shall be elected not more than four months after certification of approval of the convention. Delegates are to be elected one for each state representative (110) and one from each state senatorial district (34) -- a total of 144 delegates (in contrast to the present constitutional provision of three from each senatorial district or a total of 102 delegates).

Neither the League-Jaycee amendment, nor the present Article XVII, Section 4, provides for the nomination of delegates, and neither specifies whether the election of delegates is to be partisan or non-partisan. However, a statute was enacted at the 1960 session of the legislature providing for the nomination and election of constitutional convention delegates on a partisan basis in much the same manner as state representatives and senators are nominated and elected.

Step 5. Holding the Convention

The delegates elected in the special election are to convene in Lansing on October 4, 1961, and continue their sessions until the business of the convention shall be completed. The convention of 1907-1908 lasted four months.

The convention can recommend an entirely new constitution, one or more amendments to the present constitution, or no changes at all. If the convention recommends no changes, then the process is halted. If, however, the convention recommends a new constitution or one or more amendments, the sixth and final step in the process would be undertaken.

Step 6. Voting on Amendments or a New Constitution

The last step is the submission to the voters of any proposals adopted by the convention. Any proposed constitution or amendments adopted by such convention are to be submitted to the voters on the first Monday in April following the final adjournment of the convention or, if at least 90 days are not available between the final adjournment and the first Monday in April, at the next general election.

The convention would have to complete its work and adjourn by about January 1, 1962, in order to meet the deadline for placing amendments or a new constitution before the voters in April, 1962. There is no regular election in April, 1962, so a special election would be required.

To meet that deadline the convention would have only three months in which to complete its work. It appears likely that the convention would not complete its work within that period and, consequently, the proposals of the convention would not be submitted to the voters until the November, 1962, regular general election or, possibly, even the April, 1963, election.

Approval of proposals of the convention would require a favorable vote of a majority of those voting on the question and a new constitution or amendments to the old would take effect on January 1 following approval (January 1, 1963, at the earliest).

Thus, the six-step process which might begin on July 9, 1960, will require at least two and one half years to be successfully concluded. However, the process might be terminated at any one of the steps indicated.

THE MICHIGAN CONSTITUTION

By way of background, there are several aspects of the Michigan constitution which are of interest. Three factors stand out because they underlie many of the arguments for and against calling a constitutional convention. These factors, which are discussed below, are the age, frequency of amendment, and length of the constitution.

Age of the Constitution

It is frequently argued in support of a constitutional convention that because Michigan's constitution of 1908 is 52 years old, it is outdated and inadequate to meet the needs of a modern state. Those opposed to a convention argue that age is not a satisfactory criterion and point out that the federal constitution of 1787 (173 years old) is much older than that of Michigan.

As state constitutions go, Michigan's constitution is of more recent vintage than those of 41 states. The only states with more recently adopted constitutions are Alaska and Hawaii (1959), New Jersey (1947), Missouri and Georgia (1945), Louisiana (1921), and Arizona and New Mexico (1912). Of the constitutions of the 41 states which are older than Michigan's: three were adopted during the 18th century; 11 others predate the Civil War; 24 more came before 1900; and the remaining three were adopted during the period 1900-1908. The dates of adoption do not indicate the extent to which revision may have "modernized" a constitution. The age of Michigan's constitution, particularly when compared to the age of other state constitutions, offers no particular criterion for or against calling a convention.

Frequency of Amendment of the Constitution

Another factor advanced both in favor of and against the calling of a convention is the number of times the Michigan constitution has been amended. There have been 66 amendments to the Michigan constitution during the past 52 years - - a rate of about five amendments every four years. During this period, 122 amendments have been submitted to the voters and 56 of these have been rejected. During the past decade, 21 amendments have been submitted to the voters of which 18 have been approved and only three rejected.

Michigan is one of 14 states which provide for the submission of constitutional amendments to the voter by initiative petition. Of the 122 proposed amendments submitted to the voters, 34 were placed on the ballot by initiative petition and 88 were placed on the ballot by joint resolution of the legislature. Interestingly, only 26 percent of the amendments placed on the ballot by initiative were approved by the voters while 65 percent of the proposals placed on the ballot by the legislature were adopted.

The fact that Michigan's constitution has been amended 66 times (18 times in the last 10 years) can be argued neatly, and inconclusively, in two ways: First, as evidence that the constitution is obsolete and in need of a general overhaul; and, second, that the number and comparative ease of amendments show that the constitution has been kept modern through amendment and that any needed changes can be achieved through future amendment.

Length of the Constitution

Length -- or lack of it -- is sometimes taken as a rule of thumb for judging the general excellence of a constitution. As incorporations of basic law, the shorter constitution is often considered preferable because it usually contains fewer procedural details or materials essentially of a statutory nature than the longer document. Judged by this criterion alone, Michigan, with a document estimated at some 15,323 words,* fares well by comparison. Thirty states have longer documents. Eight states have documents of fewer than 10,000 words; the two shortest being Rhode Island's (6,650) and Connecticut's (6,741). Prize for the longest constitution is easily taken by Louisiana with its more than 201,000 words, the next largest being a trifling 75,000 in California. An interesting point is that the ten shortest documents (none over 11,000 words) all date from before the Civil War, with the exception of Tennessee's 9,500-word document of 1870. If brevity is indeed a mark of excellence, drafters of the older documents have been rivaled only by the latest additions -- New Jersey's 12,500-word document of 1947, Alaska's 12,000-word document of 1959, and Hawaii's 11,412-word document of 1959.

* Source: Book of the States, 1960-61. The Council of State Governments, Chicago.

I. EXECUTIVE ISSUES

The executive-administrative structure of state government is an area where much controversy develops in regard to constitutional change. Five specific areas of controversy appear likely:

A. Make subordinate administrative officials appointive by the governor rather than elective.

B. Strengthen the governor's general power of appointment and removal.

C. Reorganize the administrative structure by grouping like governmental functions in a limited number of departments headed by administrators responsible to the governor.

D. Extend terms of office, particularly that of the governor, to four years.

E. Limit the special constitutional standing of civil service.

A constitutional convention would consider such issues in the general context of deciding either that:

— The executive article should be changed in order to give more power and authority to the governor within the executive department.

— Or, that some or all of the existing restrictions upon executive authority should be retained, or perhaps even reinforced.

A. Election or Appointment of Officials

(Reference: Michigan Constitution, Article VI, Section 1; Article XI, Section 2)

The Michigan constitution provides for the election of five administrative officials in addition to the governor and lieutenant governor. These officials are: secretary of state, state treasurer, auditor general, attorney general, and superintendent of public instruction. A highway commissioner is elected under statutory authority. The question of electing the board of education and the state university boards will not be considered here. (See "Education Issues.")

Few states elect more of such officers than Michigan. Most states elect a lesser number as indicated on the following page.

ELECTIVE STATE OFFICERS--EXECUTIVE-ADMINISTRATIVE

(Executive councils, legislative auditors, and agencies generally headed by boards are omitted.)

Number of Officers Elected	Number of States		Comments
1	1	New Jersey*	
2	2	Hawaii, Alaska*	Hawaii lieut. gov. acts as sec. of state; Alaska sec. of state elected as, and in lieu of, lieut. gov.
3	2	Virginia, New Hampshire*	N. H. officers other than gov. elected by legislature.
4	3	New York, Pennsylvania, Maryland*	Maryland treasurer elected by legislature.
5	4	Rhode Island, Wyoming,* Utah,* Tennessee	Tenn. officers other than gov. elected by legislature.
6	11	Massachusetts, Minnesota, Delaware, Colorado, Connecticut, Missouri, Ohio, Vermont, Wisconsin, Maine,* Oregon*	Maine officers other than gov. elected by legislature.
7	11	Texas, Nevada, Nebraska, Illinois, Indiana, Montana, California, Arkansas, Iowa, Arizona,* Florida*	
8	7	South Dakota, Kansas, Alabama, MICHIGAN, New Mexico, Kentucky, Idaho	
9	5	Washington, South Carolina, North Dakota, Louisiana, Georgia	South Carolina insurance commissioner elected by legislature.
10	4	Oklahoma, Mississippi, North Carolina, West Virginia*	

*States having no lieutenant governor.

Source: Book of the States, 1960-61, The Council of State Governments, Chicago, pp. 124-125.

COMPARATIVE FIGURES FOR SPECIFIC OFFICERS ELECTED IN MICHIGAN

Officer	States In Which Elected By Voters	States In Which Elected By Legislature
Governor	50	
Lieutenant Governor	38	1
Secretary of State	39	3
Attorney General	42	1
Treasurer	41	4
Auditor (or Controller)	40	(Legislative Auditor or Controller in 7)
Superintendent of Public Instruction	26	-
Highway Commissioner	2*	-

*Michigan; and three-member highway commission in Mississippi.

Source: Book of the States, 1960-61, The Council of State Governments, Chicago, pp. 124-125.

Many urge that these elected officials in Michigan be appointed by the governor (with or without consent of senate) except for the auditor general who should be appointed by and responsible to the legislature. The common arguments for appointment are:

1. The governor should have full responsibility for administration, yet he is limited in his control of officials elected separately and apart from him. The degree of independence given these officials by their election tends to reduce responsibility and accountability for results.

2. If such officials were made appointive, Michigan would follow the example of the federal government and elect only the governor and lieutenant governor (president and vice president). The president (governor) with power to appoint and remove his department heads can therefore control and be held responsible for administration.

3. States with newer or revised constitutions have tended to reduce substantially the number of elected officials.

4. The practice of electing minor administrative officials is an archaic hold-over from the Jacksonian craze for electing as many officials as possible.

5. The voters have proved to be largely uninformed about the duties and competence of these officials -- often they do not know even their names and cannot vote effectively.

Those who urge the continued election of such officials generally argue that:

1. Appointment of presently elected administrative officials by the governor would strengthen excessively the executive power to the detriment of the principle of balanced executive, legislative, and judicial power.
2. Removal of these elective officials from the ballot is contrary to basic principles of American democracy.
3. States need not follow the federal example. It is better that such officials are elected directly by the people in the most clearly democratic manner.
4. The process of election provides effective political training for lesser officials who may later become governor.

B. Governor's Power to Appoint and Remove

(Reference: Michigan Constitution, Article VI, Sections 2, 3, 10; Article IK, Sections 5, 7)

When the present constitution was adopted, the elected officials specified in it were expected to head all major departments. The constitution, in any event, did not provide for any specific method of securing other executive-administrative officials. Therefore, no provision was made for gubernatorial appointive power, except to fill vacancies. As the state government developed, the original six departments have been supplemented by scores of other departments, boards, and agencies of all kinds.

The silence of the constitution on appointment has enabled the legislature to use wide discretion in providing for new agencies and their administrative officers. By statute, some agency heads were made appointive by the governor, others by the governor with the consent of senate, others by the governor on nomination by private organizations, and some ex officio (boards composed of existing constitutional and statutory officers).

Many feel that this lack of constitutional structure for gubernatorial appointment should be remedied. It is urged that the governor be given constitutional power to appoint (with or without consent of the senate) all officers logically responsible to him, whether presently elected or not. This, it is said, would provide uniformity and would give the governor the means to exercise responsibility for administration.

Those who desire such changes assert of the present system that:

— It is haphazard and follows no logical pattern.

— States with newer constitutions, or reorganized administrative structures, have generally strengthened the governor's power to appoint.

This trend follows the pattern of the federal government with its wide presidential appointive power.

Those who oppose a change in the present system would argue that:

— State constitutions need not, and often do not, resemble features of the federal constitution.

— Strengthening gubernatorial power to appoint officials may too greatly enhance the governor's authority.

Removal Power

The power to remove from office has generally been considered incidental to the power to appoint. The Michigan constitution has a provision almost unique among state constitutions: that the governor may not remove administrative officials, even for cause, when the legislature is in session. When the legislature is not in session, the governor may remove any administrative official for cause (such as corrupt conduct and malfeasance). Removal only for cause is not unusual among state constitutions.

Those who favor strengthening the governor's power to appoint and remove feel that:

— The governor should have power to remove officials responsible to him whether or not the legislature is in session.

— The governor should also have power to remove, for administrative reasons as well as for cause, officials responsible to him, if he is to be held responsible for administration.

Those who oppose strengthening the governor's removal powers use much the same argument used in opposing strengthening his appointment power.

C. Administrative Reorganization

(Reference: Public Act No. 125, 1958)

The movement for reorganization of the administrative structure in Michigan has been carried on for over 40 years. Since 1951, the "Little Hoover Commission" recommendations have further stimulated this issue. The existence of some 120 separate state administrative agencies in Michigan has become a focal point of controversy. Many of these agencies are headed by boards and commissions only indirectly responsible to the governor. Terms of board and commission members vary widely as do the provisions for their appointment. A new governor in a two-year term normally has few opportunities to appoint new members. Therefore, policies of a previous administration continue after it has ended, and a new governor may be thwarted in his administrative efforts.

The executive organization statute of 1958 (Public Act No. 125) was brought about by a desire to reorganize the state administration by allowing consolidation of various agencies of similar function to achieve a more simplified structure. Under this statute, the governor may submit reorganization plans to the legislature. Any such plan may be implemented by executive order unless either the house or the senate disapproves of it within a set period of time. This procedure gives initiative to the governor who is most responsible for administration. But either house of the legislature has a veto check on action contemplated. This reorganization device has been used for many years by the federal government.

Many who approve of this statute contend, however, that administrative reorganization should be given constitutional status. They do so for the following reasons:

— Few administrative changes have come about in the last two years as a result of this statute. Fear of controversy has tended to delay wide-scale reorganization.

— States with new or revised constitutions, such as Missouri, New York, New Jersey, Hawaii, and Alaska, have attacked the problem of administrative fragmentation by constitutionally restricting the number of separate departments to 20 or less. This makes mandatory the integration and consolidation of agencies in a small number of departments that can be adequately supervised by the governor. Michigan could well follow this example in order to achieve widescale reorganization rapidly.

— The present organization of many boards and commissions is a serious obstacle to responsible administrative control by the governor. Most of those agencies not quasi-judicial or quasi-legislative in function should have an individual head or director responsible to the governor.

— Some assert that the 1958 statute is unconstitutional. A constitutional provision authorizing this statute, or incorporating its principle, would settle matters.

— A constitutional mandate for thorough reorganization would foster economy in state government. A streamlined functional administrative structure would operate far more efficiently.

There are few who oppose all efforts to bring about administrative reorganization. However, many object to wide-scale reorganization for the following reasons:

— A streamlined administration under the direct control of the governor would tend to make him too powerful.

— Many of the existing 120 or more agencies are concerned with matters that do not really need close gubernatorial supervision.

— Many of the agencies somewhat independent of gubernatorial control operate efficiently.

Initiative in Reorganization

Those who urge that the governor should have initiative in administrative reorganization point out that:

— The governor is more cognizant of administrative problems and structure.

— Legislatures have historically demonstrated an incapacity to reorganize -- or control the orderly development of -administrative agencies.

— The principle of separation of powers is not weakened, since the legislative veto on executive reorganization is a notable safeguard.

— The legislature retains its own initiative in legislation regarding administration.

— The federal government has used the executive reorganization device for many years with considerable success.

Those who oppose executive initiative in administrative reorganization assert that:

— It is a violation of the principle of separation of powers, since it is a sharp reversal of the usual legislative process.

— The legislature should retain exclusive initiative in organizing and reorganizing administrative structure for it is strictly a legislative matter.

D. The Four-Year Term

(Reference: Michigan Constitution, Article V, Sections 2, 3; Article VI, Section 1)

Two-year terms for all state executive officers (and legislators) are now provided by the constitution. The one four-year term, for the state highway commissioner, is provided for by statute.

There are many who argue that four-year terms would better help the governor and lieutenant governor (and other administrative officials, ff not made appointive) discharge their duties. They point out that the four-year term would:

1. Decrease the time an incoming administration operates under its predecessor's budget from six months out of two years to six months out of four.

2. Give the voter more time and opportunity to appraise performance and to form qualified judgments.

3. Permit officials a greater amount of time devoted to the management task; as much as six months may be spent learning the ropes and another six in campaigning for reelection, or one-half of a two-year term in all.

Those who oppose extending terms of office point out that officials required to face frequent elections are more accountable to the electorate.

Comparative Terms

At present, 35 states have a four-year gubernatorial term while 15 have a two-year term. The trend for many years has been for states to increase gubernatorial and other terms from two to four years. Thirty-five states now have a four-year senate term. It is likely that any move for a four-year gubernatorial term in Michigan would arouse agitation for a similar senate term. Seven states have a four-year governor with both houses of the legislature elected for two years. The most prevalent among existing combinations of terms is indicated by 24 states with four-year terms for governor and senate and two-year terms for the house.

The federal example of longer senate terms than for the lower house is followed in 31 states having four-year senate terms with two-year house terms. However, it has been suggested that election of both house and senate for four-year terms with the governor might tend to lessen friction between the governor and the legislature. The provisions of state constitutions are depicted below:

Governor's Term	Senate Term	House Term	Number of States
4 years	4 years	4 years	4
4 years	4 years	2 years	24**
2 years	4 years	2 years	7
4 years	2 years	2 years	7
2 years	2 years	2 years	8*

*Includes Nebraska's unicameral legislature.

**Includes Minnesota--Four-year term for Governor, effective in 1962.

Source: Book of the States, 1960-61, The Council of State Governments, Chicago, pages 37 and 122.

Non-Presidential Election

If four-year terms are considered for elected state executive officials (and legislators), there is some justification for electing them in non-presidential years. Such an arrangement would allow state issues to be judged in an atmosphere divorced from considerations affecting national elections. At the same time, all biennial general elections would command voter interest, since the election of either a president or a governor would be at stake.

More than four-fifths of the states now have either a four-year term for the governor or for the senate, and more than half the states have both. The question, at least for the governor, lieutenant governor (and other administrative officials if not made appointive), and senators would undoubtedly come up for serious consideration at a constitutional convention.

E. Civil Service

(Reference: Michigan Constitution, Article VI, Section 22)

An amendment in 1940 gave constitutional status to the civil service system for state employees. Many who favor the merit system of employment under civil service nevertheless believe that there are features in the present Michigan system that should be altered. Objections to the present system revolve around two major criticisms:

1. Features of the existing system tend to obstruct proper administrative control and efficiency - by the commission's power over abolition of positions; by the rigid limit on exempt positions; and by vesting service and control functions in one agency beyond the control of the governor.

2. The legislature has been improperly deprived of its customary prerogatives with respect to determining the compensation of employees and by mandatory appropriation of funds to the civil service commission.

Those who criticize the present operation of the civil service system point out the following constitutional problems that have developed and alterations in the system that they feel would improve it:

Administrative Problems

1. The civil service commission must, by court ruling, approve all abolitions of positions in the civil service by administrative agencies. This power should be modified for it is a necessary management function to establish or abolish positions. Merit protection of the employee should not hamper administrative requirements of operational efficiency and economy. State agencies should be free to

abolish positions for such purposes. Transfer and fair treatment of affected personnel could be safeguarded by the control function of the civil service commission.

2. Each administrative agency can have no more than two positions exempt from civil service. Even with the existing large number of agencies, this limit has proved too rigid, particularly for the larger agencies. It is generally agreed that policy-making officials should be exempt from civil service control. This rigid limit, therefore, hampers policy direction. Extensive administrative reorganization would make this restriction completely unworkable. Agencies consolidated into a fewer number of departments would lose many exempt positions. Each remaining department would still have only two exempt positions. To insure lasting flexibility in the system, the number of exempt positions could be determined by law.

3. The civil service commission presently has two functions. First -- its service function -- to provide competent personnel to state agencies. Second -- its control function -to protect personnel from political, religious, or racial discrimination, and to insure the use of merit principles in state employment. The service function could be carried out more efficiently by a personnel director serving as a management aid to the executive branch. The civil service commission might well be restricted to the control function of enforcing the merit system, hearing employee appeals, and auditing the operations of the personnel office.

Legislative Prerogatives

1. The civil service commission now has constitutional authority to fix pay rates in the state service. Thus, the commission's power impinges upon the legislature's authority to make appropriations for an amount now approximating $150 million annually. Control by the legislature is limited to the number of positions for which it appropriates. Its discretion in this is considerably limited in practice. The commission itself has no further relation to other phases of the state budget, nor is it concerned with sources of revenue to meet pay increases ordered by it.

   In order to rectify this condition, there should be a restoration to the legislature of its power to fix pay rates, or pay ranges, within which the commission could set specific salaries. The latter solution would restore the power to appropriate these funds to the legislature, while foreclosing possible salary and wage manipulation.

2. The constitution presently requires the annual appropriation of one per cent of the payroll for all civil service positions for the preced-

ing fiscal year for the operation of the civil service commission. No other branch or agency of the government has such a constitutional guarantee. In fiscal 1949, the commission spent $441,468; in fiscal 1959, $1,101,000. For many years the commission has not spent all of its funds. In fiscal 1959 $211,150 of its appropriation remained unspent. This more than doubling of money available contrasts with about a 35 percent increase in the number of employees covered by civil service in the same period.

The commission's appropriation rises with salary increases ordered by it, as well as with an increase in the number of employees. The original motive for the "automatic" appropriation -- fear of inadequate support for the new commission in 1940 -- is no longer necessary. The legislature should be restored its basic prerogative of discretion in making such appropriation.

Those who favor some, or all, of the changes listed above feel that they would bring about more workable flexibility in the civil service system.

There are many, however, who feel that the civil service principle is so important that the commission should retain some or all of the features questioned. They warn that a movement for legitimate changes in the system may be used as an attempt to alter the basic principle of civil service, or even to scuttle it.

II. LEGISLATIVE ISSUES

The legislative article of the constitution is certain to be the subject of considerable controversy in a constitutional convention. Probably the most controversial issue before a convention would be the apportionment of legislative seats. An indication of the importance of the legislative apportionment issue is that considerable opposition to the holding of a constitutional convention has been based on the proposed selection of delegates from present legislative districts.

Two other legislative issues concern the proposal to lower the voting age to 18 and the proposal to allow the legislature to authorize charity bingo.

A final legislative issue, discussed in Section IV of this report on "Finance and Taxation Issues," involves the removal or imposition of restrictions on the legislature's taxing and spending power. This area of controversy will be one of the most important confronting a convention.

A. Reapportionment

(Reference: Michigan Constitution, Article V, Sections 2, 3, 4)

Reapportionment -- or changing the basis for the election of state senators and representatives -- is certain to be one of the key issues for consideration if a convention is called. There are still sharp differences of opinion over the existing basis although it was established as recently as 1952, when an amendment to the constitution was proposed by initiative and adopted by the voters.

The constitution now establishes the size of the legislature; defines the boundaries of senate districts (outside of Wayne and Kent counties); establishes equal representation on a population basis for the house (modified by the moiety provision); defines the method for determining the population ratio (latest U. S. census divided by 100); and provides for reapportioning the house every 10 years (next time -- 1963).

House of Representatives

The 110-member house of representatives is apportioned on a straight population basis with the modifying provision of moiety. Any county, or group of counties, is entitled to a representative if its population is equal to a moiety, or one-half of the established ratio of representation. The ratio of population is determined by dividing the total population of the state by 100. The effect of moiety is to give low density population areas a proportionately greater representation than the densely populated urban areas.

The use of a lower factor (100) than the actual number of representatives (110) in determining the population ratio, and thus in determining moiety,

prevents a greater discrepancy in the representation between urban and rural areas.

Although senatorial districts are fixed in the constitution, reapportionment of the house of representatives must be undertaken at least once every 10 years by constitutional provision. The task is the responsibility of the legislature, or the board of canvassers if the legislature should fail to reapportion. The next regular reapportionment is due following January 1, 1963. The ten-year interval between reapportionments is the most common provision throughout the country although in some cases there is no requirement and in others the interval is a fewer number of years. The provision for the board of canvassers (or some group of state officials) to act if the legislature does not, is becoming more common. Such a provision has been made in several state constitutions because legislatures have often neglected to reapportion as constitutionally required, and the refusal of the courts to attempt to force them to do so, on the basis that they could not interfere with another branch of government.

Senate

The constitution now provides for a senate of 34 members and defines the 25 senatorial districts outside of Wayne and Kent counties. Each one of these 25 districts is entitled to one senator. Two senators are allotted to Kent County and seven to Wayne County. These are elected from single-member districts as defined by the county board of supervisors. The effect of this basis of senatorial representation is to recognize area, but to modify it by assigning additional senators to urban areas, especially in Wayne County.

The following table presents the existing apportionment of the house and the senate and the percentages of the state's population in 1950 and in 1960, for each of the counties indicated.

			House of Representatives*		Senate	
County	Per Cent of 1950 Pop.	Per Cent of 1960 Pop.	No. of Repre-sentatives	Per Cent of Total	No. of Senators	Per Cent of Total
Wayne	38.2	34.2	38	34.5	7	20.6
Oakland	6.2	8.8	6	5.5	1	2.9
Macomb	2.9	5.2	3	2.7	1	2.9
Kent	4.5	4.6	5	4.5	2	5.9
Genesee	4.3	4.7	4	3.6	1	2.9
78 Others	43.9	42.4	54	49.1	22	64.7
Total	100.0	100.0	110	100.0	34	100.0

*The house of representatives will be reapportioned in 1963 on the basis of the 1960 census.

Bases of Representation in Other States

The bases, upon which representation in the legislature rests, could be almost anything. Practically, however, these bases may be reduced to population, area, or a combination of these two. In the case of either population or area, the one basis is frequently modified by the other. In fact, in the case of senatorial representation, the most common basis -- area -- is often modified by giving more than one senator to more populous districts; and in the case of the lower house, the most common basis -- population -- is usually modified to recognize area by guaranteeing at least one representative to each county, or group of counties, even though their populations do not equal the full ratio of representation.

The Apportionment Problem in Michigan

The controversy over apportionment would likely be focused upon the desire of the large metropolitan areas for increased representation, especially in the senate. Their argument would be that population is the only equitable basis for representation. Opposing this view would be the remaining areas of the state which contend that area and sectional interests should be considered in establishing the basis of representation in at least one house of the legislature. Persons so arguing point to the U. S. senate as a model for equal representation of area and the "balance" resulting in congress from having one house based on population and the other on area. Protection of minority interests is their rallying cry and domination of the state by a few urban counties their fear.

B. Voting Age

(Reference: Michigan Constitution, Article III, Section 1)

The constitution provides that the minimum age for voting is 21. In the past decade constitutional amendments have been proposed frequently in the Michigan legislature which would change the minimum from 21 to some lesser age. Some of these proposals would have lowered the voting age to 19 and some to 20, but 18 was the most commonly suggested minimum.

Interest in extending the voting privilege to age 18 picked up after President Eisenhower advocated it in his State of the Union message in 1954. Since that time, bills or amendments on this subject have been introduced in the legislatures of more than 20 states. At present only three of the 50 states have minimums lower than 21. In 1943, when young men were being drafted for military service, Georgia lowered the age requirement to 18. In 1955, Kentucky, in a referendum, extended the vote to age 18. Alaska in its new constitution has set the minimum voting age at 19.

The minimum voting age that a state establishes is of national significance since the constitution of the United States provides that any person having the qualifications requisite for electors of the most numerous branch of the state legislature is entitled to vote in national elections.

The following are some of the more common arguments in favor of lowering the voting age:

1. Since young people are permitted to assume the responsibility of marriage and are required to serve in the armed forces and perhaps fight for their country at an age lower than 2 1, they should also be permitted to vote at such an age.
2. Young people are now educated in citizenship in the schools but lose interest during the period of time they must wait before they are permitted to participate in government.
3. Better schools and improved methods of mass communications enable young people to be better informed than in the past.
4. Young people would have a fresh viewpoint consistent with the contemporary way of life.

Those opposed to lowering the voting age generally offer the following arguments:

1. Public affairs are becoming increasingly complex and thus require more time and effort on the part of young people in order to become properly qualified to vote.
2. Young people who are more easily swayed would become prey to pressure groups and be greatly influenced by their parents.
3. Lowering the voting age would bring politics into the schools.
4. Surveys have shown there is no overwhelming demand on the part of those directly affected by lowering the voting age.
5. The idea that a person is old enough to vote if he is old enough to fight is invalid, because the qualities required for fighting and voting are not the same. Voting requires a high degree of individual decision-making, while fighting is done under orders and direction.

C. Lotteries

(Reference: Michigan Constitution, Article V, Section 33)

Section 33 of Article V of the constitution provides that "the legislature shall not authorize any lottery nor permit the sale of lottery tickets." The constitutions of 1835 and 1850 contained substantially the same provision. The Michigan supreme court has held that the essentials of a lottery are consideration, chance, and prize. This provision has been held to apply even though the benefit is to charitable organizations.

On November 2, 1954, the voters of Michigan rejected by a vote of 944,388 to 903,303 a constitutional amendment placed on the ballot by initiatory petition which provided that "the legislature shall not authorize any lottery nor permit

any sale of lottery tickets, except subject to statutory limitations, lotteries conducted by or lottery tickets sold by non-profit, charitable organizations, as hereafter defined by law." Other proposals to amend the constitution so as to permit various lotteries in Michigan have died in the legislature.

Nine states, however, have legalized bingo when operated under certain conditions, and for worthy causes. In November, 1953, New Jersey voters, by a 3 to 1 margin, approved an amendment to that state's constitution which allows every town to determine on a local option basis whether bingo and raffles will be legal. In New York a constitutional amendment legalizing bingo on a local option basis was approved by two successive legislatures and by the voters in a 5 to 3 vote on November 5, 1957.

Those who favor legalizing lotteries argue as follows:

1. Many charities, churches, fraternal organizations, and veterans groups would be aided financially by bingo and raffle receipts.
2. There can be no moral distinction between lotteries and pari-mutuel horse race betting, which has been legalized.
3. Charitable bingo provides a harmless form of recreation, particularly for some older people who have few other interests.
4. The legal prohibition is not successful in eliminating lotteries and bingo, but only encourages privileged illegal games, often ignored by the authorities.

Those opposed to legalizing lotteries offer the following arguments:

1. Making lotteries legal opens the way to large-scale invasion by commercial gambling interests.
2. Legalized gambling once instituted is difficult to control.
3. Charity and welfare needs can and should be met by voluntary contributions and existing tax sources.
4. The invasion of charities by racketeers will hurt charities, and donors will be discouraged. Dummy charities will compete with bona fide ones for donations.
5. Legalized gambling hurts business and reduces tax receipts such as the sales tax.
6. Legalized gambling is expensive because of increased police costs necessary to control it.
7. Legalized lotteries would lead to the bingo addict with resultant neglect of the family.

III. JUDICIARY ISSUES

A constitutional convention would be confronted with two major constitutional issues concerning the judicial system: the method of selecting judges and the justice of the peace system. Various proposals have been made for appointment rather than popular election of judges and to correct alleged abuses in the justice court system.

A. Selection of Judges

(Reference: Michigan Constitution, Article VII)

The judicial article makes provision for a court system consisting of a supreme court, circuit courts, probate courts, and justices of the peace. It provides for their election, terms of office, and their jurisdictions.

Judges are selected by popular non-partisan nomination and election, with the exception of supreme court justices who are nominated in the political party conventions, but elected on a nonpartisan ballot. Vacancies are filled through appointment by the governor with the person so appointed holding office until a su*ccessor is* elected and qualified.

A major issue in connection with the court system is whether judges should be elected or appointed. Past, as well as existing, practices throughout the states present varied methods of selection. However, the essential difference among these systems is that of either electing or appointing judges. Most prevalent among the states is popular election of judges. In a few states judges are elected by the legislature. In ten states the governor appoints most of the judges with, in some cases, the consent of the senate or some special commission. In Missouri, California, and Alaska, the appointive procedure is conjoined with the elective process. After a judge has been appointed and has served a stipulated period of time, he must stand unopposed for election, running only against his record as a judge.

A plan similar to that in Missouri, California, and Alaska, dubbed the "Michigan Plan for Better Judges," has been advocated for Michigan. In short, the plan called for nomination of three candidates for each vacancy in the supreme court and the circuit court by commissions made up of laymen, lawyers, and judges. From these nominees the governor would appoint one to fill the vacancy. The newly appointed judge would serve a preliminary one-year term after which he would run unopposed for election at the next general election. This same re-election procedure would occur should a judge choose to run again at the end of his full term of office. If a judge was not so elected, the office would be declared vacant and a new appointment would be made. In 1954, an initiative petition embracing the "Michigan Plan" failed because of an insufficient number of petitioners. In 1957, a senate joint resolution to have supreme court justices selected by the method advocated in the "Michigan Plan" was unsuccessful.

The arguments usually cited in favor of the "Michigan Plan" for selecting judges include the following:

1. The appointment method tends to eliminate, or at least to reduce, political partisanship as a consideration in selecting judges.
2. Appointed judges are more likely to possess qualities appropriate to the performance of judicial duties.
3. If the appointment method includes nominations by a commission including lawyers and members of the supreme court, expert consideration of judges' qualifications is provided.
4. Appointment eliminates the necessity of campaigning for judgeships.
5. In large metropolitan areas the electorate is unable to acquaint itself with the individual qualifications of candidates for the large number of judgeships.
6. The electorate has little understanding of the qualities necessary in the judiciary.

Those who oppose changing the present method of selecting judges offer the following arguments against the "Michigan Plan":

1. Under the "Michigan Plan" selection of judges is taken away from the people. They cannot determine who shall judge them, but only exercise a "veto" over appointments.
2. Nomination by a commission might involve undue influence of special interest groups, especially the bar association.
3. Appointments made by the governor would be more political in nature.
4. Appointment by the executive threatens the independence of the judicial branch.
5. Appointment would mean that judges would be only indirectly responsible to the people.

B. Justices Of The Peace

(Reference: Michigan Constitution, Article VII, Sections 15, 16)

The constitution provides for the election of not more than four justices of the peace in each township and permits the legislature to provide for justices in cities. It fixes their term of office, their civil jurisdiction, and permits the legislature to provide for their duties and criminal jurisdiction.

The justice of the peace system originated in colonial days. A widely scattered population combined with poor communications and transportation required a

system of courts that could settle petty complaints more quickly and effectively than the circuit riding judges of the higher courts. Justices of the peace have been part of the judicial system in Michigan since 1835, and the system was continued, largely unchanged, in the constitutions of 1850 and 1908.

The justice of the peace system has been increasingly criticized, not only in Michigan, but throughout the country. Either reform or complete elimination of the justice of the peace system is frequently advocated. In some states justices of the peace are not constitutional officers, thus permitting changes by legislative action. For example, New Jersey and Ohio have recently abolished the justice court system and established a system of county district courts and municipal courts. In several states the system has been retained, but some of the most criticized features have been changed, such as the fee method of compensation and the absence of adequate qualifications required of justices. Some states have constitutional provisions allowing the legislature to abolish justices of the peace.

Following are some of the arguments used in favor of changing the constitution in order to eliminate, or allow the legislature to eliminate, justices of the peace.

1. There are no qualifications such as legal training required, so justices may be ignorant of the law. This encourages them to be dependent on lawyers and policemen with a resulting lack of impartiality.
2. The fee system of compensation makes the justice of the peace depend on the quantity of litigation as well as other means of livelihood which in some cases may interfere with impartial decisions.
3. The great number of justices makes supervision difficult and results in a lack of uniformity in the justice dispensed, unsatisfactory court records, and an absence of a performance or operational audit.
4. The method of assigning cases is unsatisfactory.

Those in favor of maintaining the justice of the peace system argue:

1. The informal justice which characterizes justice courts is desirable in the types of cases heard by justices of the peace.
2. The justice court is a locally controlled court and the justice of the peace is close to the people he serves and acts often as a friendly arbiter rather than as a stern dispenser of technical justice.
3. Justices are usually accessible and undue delays in settling minor matters are avoided.
4. Costs are lower than in other types of courts.
5. The justice administered is satisfactory as evidenced by a low rate of appeals.

IV. FINANCE AND TAXATION ISSUES

Article, X of the Michigan Constitution, which deals with finance and taxation has been the subject of considerable controversy. The major areas of controversy, which are discussed herein, are whether the legislature should continue to be subjected to rigid constitutional restrictions on taxing, spending, and borrowing, or whether these restrictions should be removed and the legislature given a relatively free hand. Another issue, of primary concern to local units of government is whether the 15-mill property tax limit should be revised.

A. Restrictions on Taxing Power

The Uniformity Rule

(Reference: Michigan Constitution, Article X, Sections 3, 4)

The present constitution provides (Article X, Section 3): "The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes. . . ."

Section 4 of Article X allows the legislature to impose specific taxes (in contrast to ad valorem taxes) "which shall be uniform upon the classes upon which they operate."

These two sections provide for an ad valorem property tax and specific taxes, the general methods of taxation in Michigan.

Section 3 has two results of major importance. First, the uniform rule of taxation is deemed in the thinking of some persons to block the enactment of a graduated income tax. The issue turns on the narrow point as to whether "income" is or is not "property" within the constitutional meaning of that word. While the legislature has broad discretionary power in taxing under section 4 (specific taxes), any new tax that is not levied like the traditional property tax can be challenged as violating the "uniformity rule" of section 3.

An explanation of the distinction between a specific tax and a property tax should throw light on the constitutional problem involved. It is generally held that a specific tax is the same as an excise tax. The main difference between an excise tax and a property tax is that the latter is on ownership as such and is considered a tax levied against property; while an excise or specific tax is imposed on certain acts incident to ownership--sales, transfer, use, disposal, or receipt of property. The underlying difficulty is that specific taxes often fall upon and must be paid by a property owner.

Thus, the line between ad valorem (property) taxes (subject to the uniformity rule of section 3) and specific taxes (not subject to the uniformity rule of section 4) is not always easy to distinguish. While the weight of court

decisions is said to lean toward the view that "income" is not "property" and therefore the taxation of income **is** not controlled by constitutional limitations respecting property taxes, nevertheless, there **is** authority for the contrary proposition that a graduated and progressive income tax law cannot be enacted where there is a uniformity clause in the constitution. If the latter thinking is correct, it means that an income tax would have to apply to all incomes at a flat rate.

One decided trend of tax decisions by the Michigan supreme court has been to attempt, where possible, to classify new taxes as specific and not ad valorem, thus allowing the use of varying rates of taxation. Examples are the inheritance tax, the intangibles tax, and the franchise tax on corporations. Whether a graduated income tax is a specific or an ad valorem tax remains to be decided in Michigan.

A constitutional convention will almost certainly be confronted with the question of clarifying the constitutional wording to permit or prohibit a graduated income tax.

A second major result of section 3--and of less interest to most people than to taxation experts--is that all ad valorem property taxes (non-specific taxes) must be levied at an equal rate. This prevents the classification of tangible personal property so that different rates might apply to different types of property. If personal property is to be included in the general property tax, as is now the case, most tax experts agree that it should be subject to special or classified tax rates. But, the so-called uniformity rule prohibits this.

On the other hand, technical rules of law have been evolved that would justify the imposition of a specific tax, or an additional tax other than the traditional property tax. By changing the measure of a tax from ad valorem to quantity, or by taxing the disposal or receipt of property instead of taxing ownership as such, the legislature may circumvent section 3.

As a measure to prevent discriminatory application of tax rates and assessment, it is widely held that the individual has as much protection under the "equal protection" clause of the federal constitution as under the uniformity provision.

The lines of opinion on the uniform rule of taxation and the requirement that all property be taxed on an ad valorem basis are probably well fixed. But it is a question with which a constitutional convention would almost certainly be confronted.

B. Restrictions on Spending Power

Dedication of Revenues

(Reference: Michigan Constitution, Article X, Sections 1, 22, 23; Article XI, Section 9.)

Several provisions in the constitution restrict the spending power of the state legislature. Restrictions are placed on state taxes and revenue from licenses and fees that are state-collected and administered which, in effect, earmark certain revenues for particular purposes.

Revenues from certain licenses and fees are dedicated, for example, for state waterways purposes and fish and wildlife management. The three major constitutionally dedicated tax revenues are the primary school interest fund taxes (for public schools); gas and weight taxes* (for highways); and 2.5 cents of the three-cent sales tax (two cents for schools, one-half cent for cities, villages, and townships).

The dedicated portions of these three revenue sources in 1948 amounted to $217.2 million, or 45 percent of total state income. In fiscal 1959, they yielded $508.2 million, or 50 percent of the total state income.

Once embarked on the course of dedicating particular revenue sources to particular purposes, it becomes both difficult to oppose and easy to acquiesce in the extension of the principle to other governmental purposes. Certain dedications, such as the use of the gas tax for highway purposes, have such universal appeal and practice that they have assumed a virtually sacrosanct quality.

The arguments of the advocates of earmarking run as follows:

1. The legislature cannot always be trusted to reflect the wishes of the electorate in determining which services and activities are to be claimants for public funds.
2. Certain taxes are justified because of the special privileges and benefits the taxpayer derives from government. For example, roads are considered primarily of benefit to motorists and highway users. Therefore, highway costs should be appropriately financed from levies on the motorist and highway user. Revenues from the gasoline tax and motor vehicle fees, in turn, should be tied to the benefits received by the highway user from the construction and maintenance of good highways.

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* Insurance premium taxes, inheritance tax, telephone and telegraph tax, railroad taxes, corporate organization tax.

3. Certain tax bases are attractive to legislators in search of easily produced revenue from new or additional taxes and dedication of revenues from these sources tends to limit the rate at which they are taxed. For example, when the state is faced with a general fund revenue shortage, it would do no good to raise gas and weight taxes, since these taxes are dedicated for highway fund purposes.

4. Historically, there is good reason and established precedent for the governmental practice of dedicating funds. Certain specific taxes have been earmarked for the purpose of financing education since 1850. Gas taxes were dedicated early to road construction and were used later to complete the main web of the state highway system. The argument for a dedicated highway fund is no less compelling today, when the state has not yet completed its expressway system and its share of the federal defense roads program.

The following are some of the common arguments against dedicated funds:

1. They place restrictions upon the legislature in the expenditure of state monies, preventing that body from allocating revenue for other purposes regardless of the public need involved. A system of dedicated funds means that state money is held in escrow, beyond the full control of the governor and the legislature and results in a fragmentation of the fiscal program and policy of the state.

2. Those arguing for dedicated funds apparently ignore the fact that the pattern of government spending that is most desirable in one year may be inferior in another. At certain times the flow of revenue would exceed by a wide margin the amounts of money necessary to meet needful expenditures of a department with the result that funds would accumulate and remain idle, while other needs of the state would be neglected for want of usable funds. The most important single factor in determining what a department is allowed to spend should be the public value of its services.

3. Earmarking of revenues tends to create a vested interest in continuing arrangements -- perhaps leading other interests or the same interests to seek additional constitutional protection -- while experience and lapse of time may prove this to be contrary to the public interest.

4. Dedicated or earmarked funds are largely responsible for the intricate and confusing financial reports and accounting procedures, resulting in a confused and incomplete picture of state finances.

5. The dedication of funds is incompatible and irreconcilable with a comprehensive budget system and seriously impairs the desired effectiveness of the budgetary control of expenditures.

Apart from the general objections to dedicated funds, frequent criticisms are leveled against the sales tax diversion specifically. The effects of sales tax

diversion are frequently cited as a major cause underlying the recurring fiscal crises the state has experienced since its adoption. The criticisms of sales tax diversion are as follows:

1. The original sales tax diversion amendment in 1946 apparently attempted to incorporate into the constitution by reference a then one percent levy of the state retail sales tax as it existed at the date of the amendment. An amendment adopted in 1954 provides that the legislature cannot levy a sales tax of more than three percent. Hence, the sales tax diversion amendment serves to place the rates, the base, and the method or purpose of distribution beyond the control of the legislature. This highly rigid situation is in contrast to the other major dedicated revenue, gas and weight taxes, the rates and distribution of which are subject to legislative control.

2. The distribution of sales tax to cities, villages, and townships is on a straight decennial population basis which frequently does not reflect actual needs of the unit. Furthermore, during periods between each federal census the decennial population figure is apt to be out of accord with actual population figures.

3. The primary school interest fund and the school aid fund alone do not now secure adequate revenues for current levels of state school aid. Such dedicated funds have been completely robbed of any justification, because the dedications must now be supplemented from other general tax resources to maintain the statutory level of school support.

Tax dedication in general and the specific mechanics of sales tax distribution will undoubtedly be issues to come before a constitutional convention.

Debt Limitation

(Reference - Michigan Constitution, Article X, Section 10)

The use of circulating notes by the colonies has been called the origin of American state debts. The development of state debts as they are more commonly recognized today occurred after 1820 when the states began to borrow for internal improvements. In the midst of this program of internal improvements, the states found themselves confronted by the Panic of 1837, followed by the banking collapse of 1839.

In 1842, Rhode Island became the first state to adopt a constitutional amendment limiting the debt which the legislature might incur. Michigan followed in 1843 by adopting an amendment restricting the borrowing power of the legislature, but not limiting the aggregate debt to any specific amount. Subsequently, a provision was written into the 1850 constitution limiting the aggregate debt to $50,000 -- the estimated expense of the state government in 1850, or a sum sufficient then to run the state for a year. Had the delegates at the 1908 convention proceeded on the same basis, they would have set the

limit at three and a half million dollars. The finance and taxation committee recommended, however, that the debt limit be set at $250,000, which limit was written into the 1908 constitution. Hence, a constitutional amendment is required to authorize the legislature to incur debt in any amount which in the aggregate with previous debts exceeds $250,000. This means that each borrowing operation, where credit of the state is being pledged, must be submitted to a popular vote. Since 1910, ten proposals have been submitted to the electorate to amend the constitution and authorize borrowing for such purposes as highway construction, hospital construction, and veterans' bonus payments. Seven of the proposals were adopted. Michigan now has $178 million of such debt authorized by constitutional amendments.

Arguments for debt limitations are:

1. The legislature cannot always be trusted to exercise the inherent powers of the state to incur debt in a manner conducive to the public interest. Providing for debt limitations in the constitution is the most effective means of curbing abuses of state credit by the legislature.

2. The provisions limiting the debt-creating power of the legislature have done much to foster a partial pay-as-yougo policy in state finance and thus have acted as a brake upon excessive indebtedness.

3. Debt limits serve to protect the solvency of the governmental unit so that it can perform its necessary and proper functions; debt limits make it difficult or impossible for debt service costs to become so high that essential services have to be curtailed.

4. The debt limit has become a symbol of fiscal integrity. Such evidence of debt control is a significant source of confidence among investors with regard to the stability of a long-range investment.

The following are some of the more common arguments against debt limits:

1. Constitutional debt limitations stem from a lack of confidence in the legislature and as such violate the principle of representative government. The people should defer to the knowledge and judgment of their representatives, even if it means suffering because of their having made an unwise choice in the selection of the representatives. The representatives should be given the necessary authority to carry out their responsibilities.

2. Debt limits encourage the development of methods of circumventing or otherwise ignoring the limits, which result in forms of borrowing completely freed of constitutional and statutory regulations. A traditional method of evasion is the creation of special districts. Two other devices commonly used are the lease-financing (often through creation of special authorities) -- and revenue bonds. Both usually

involve higher interest rates than full faith and credit bonds. Michigan now has over $105 million of such debt.

3. Since debt controls force the governor and legislature to limit expenditures or to tax for current expenditures, a debt ceiling merely forces changes in the methods of raising revenue -- from borrowing to increasing taxes.

4. Debt limits are prohibitions based on past errors, or the imaginary horrors of the future. They narrow the choice available to future legislatures faced with changed economic and political conditions.

C. Fiscal Controls

Balanced Budget

(Reference: Michigan Constitution, Article X, Section 2)

The Michigan constitution does not specifically require the legislature to pass a balanced budget, although one constitutional provision touches on the subject of relating appropriations to revenues.

> "The legislature shall provide by law for an annual tax sufficient with other revenues to pay the estimated expenses of the state government, the interest on any state debt and such deficiency as may occur in the resources."

Michigan now has a statutory requirement for a balanced budget as provided in section 21.lla of the Compiled Laws of 1948. However, the legislature is not bound by a statute requiring a balanced budget, except where constitutional recognition has been given the principle. The question of embodying the principle in the constitution is one which almost certainly will come before a constitutional convention.

Legislative Auditor

(Reference- Michigan Constitution, Article VI)

It has been urged that legislative fiscal controls be strengthened by creating the office of legislative auditor. The duty of such an officer would be to conduct performance audits as well as fiscal post audits of the administrative programs controlled by the executive arm. Responsible only and directly to the legislature, this officer would provide the primary means for checking on executive administration of legislative policy. Such an officer would, presumably, replace the present elected auditor general.

D. The 15-Mill Limit

(Reference: Michigan Constitution, Article X, Section 21)

The 15-mill limit on property taxes in the constitution will undoubtedly be an issue at a constitutional convention. The amendment was adopted in 1932

and was amended in 1948. The Michigan 15-mill limit was the result of a depression-born property tax limitation movement. Five other states adopted various types of property tax limitations during the depression era.

In 1959, 22 states had some type of constitutional provision limiting the amount of taxes levied against property by the state legislature, local units, or both. These states are Alabama, Arkansas, California, Georgia, Idaho, Louisiana, Missouri, Montana, New Mexico, Michigan, North Carolina, Virginia, North Dakota, Ohio, Oklahoma, Washington, West Virginia, Kentucky, Nevada, New York, Texas, and Wyoming. In addition, there are legislative or statutory limitations in other states.

The Michigan constitution provides that the total amount of taxes assessed against property for all purposes in any one year shall not exceed one and one-half percent (15 mills) on the assessed valuation. There are, however, several major exceptions to this provision:

1. Taxes levied for debt service on bonds issued prior to the amendment are excluded from the limitation. Also, in April, 1955, another constitutional amendment was adopted as an aid in the financing of school building construction. This amendment (Article X**,** Section 27) removes from the 15mill limitation taxes levied for debt charges on new or refunded school district bonds issued prior to July 1, 1962. The legislature has placed on the November, 1960, ballot an extension of this provision.

2. The total amount of taxes assessed against property may be increased an additional 35 mills, up to 5 percent (50 mills), by majority approval of the voters, for a period not to exceed 20 years.

3. The 15-mill limitation may be increased when provided for by the charter of a municipal corporation. For example, a home rule city may levy up to 2 percent, or 20 mills, on its assessed valuation when provided for in its charter. A recent Michigan supreme court case has held that the provision excluding municipal corporations from the 15-mill limitation applies only to cities, incorporated villages, chartered townships, and under restricted circumstances school districts.

4. Special assessments are excluded from the provisions of the amendment, except special assessments made against governmental units at large (all properties subject to taxation within a governmental unit).

5. The courts have-ruled that the 15-mill limit applies against local assessments as adjusted by the statutory process of county and state equalization. This decision has resulted in an expansion of the tax base and the amount of taxes which can be levied within the 15-mill limitation, since state equalized valuations are usually higher than local assessed or county equalized valuations.

The following arguments are commonly used by advocates of a property tax limitation:

1. A property tax limitation holds down the cost of government.
2. In holding down the cost of government, a limitation tends to reduce waste and inefficiency by encouraging governmental units to seek out and utilize more efficient processes and procedures.
3. Property tax limitation forces a more equitable distribution of the tax load by encouraging governmental units to seek other sources of revenue, or other subjects of taxation.
4. Limitation forces governmental officials to weigh more carefully the relative merits of new and additional programs which must be financed with voter approval of special millage in excess of the constitutional limitation. Also, the requirements of special-voted millage results in better citizen understanding of proposals and issues which are submitted to the electorate for approval.

Arguments against a limitation include:

1. There is a much more direct relationship between governmental efficiency and economy as a result of direct taxation. A limitation on property taxes encourages indirect taxes and state grants-in-aid, with a resultant loss of citizen interest and control.
2. Critics of a limitation contend that when property taxes are considered as a percentage of total revenues collected by all levels of government, property does not bear a disproportionate share of the tax load. It is argued that those favoring limitation often base their estimates of the tax burden carried by property on local taxes alone and ignore state and federal taxes.
3. A limitation is also opposed on the grounds that a property tax is justified partially on the ability to pay and is largely a benefit tax, because property owners receive specific benefits in the form of police and fire services, street and sidewalk maintenance, refuse collection and disposal, and. other direct benefits to property.
4. It is contended that a tax limitation discourages “pay-as-you-go” financing; brings about a curtailment in services; and weakens credit and financial stability. Also, tax limitations are really quite meaningless since the constitutional 15-mill limit. contrasts with a current average tax rate in Michigan of $32.89 per $1,000 of state equalized valuation.

V. EDUCATION ISSUES

(Reference: Michigan Constitution, Article XI)

The constitution provides for a superintendent of public instruction; for the University of Michigan, Michigan State University, Wayne State University, and their respective governing bodies; for a state board of education to supervise the former state normal schools; for the primary school system; for the college of mines; and for the establishment of libraries and certain types of charitable institutions. It also provides that proceeds from the sale or rent of school lands, certain escheats, and funds arising from salt spring lands shall be dedicated to the support of education.

Organization for Education

An elected superintendent of public instruction has general supervision of public education in the state. In addition, there are four constitutional boards and seven statutory boards which have authority over the various aspects of the state's educational responsibilities. The constitutional boards consist of the board of regents of the University of Michigan, the board of trustees of Michigan State University, the board of governors of Wayne State University, and the state board of education. The latter board has responsibility for Western Michigan, Eastern Michigan, and Central Michigan Universities and Northern Michigan College, as well as for the schools for the deaf and the blind.

Statutory boards supervise the various activities of vocational rehabilitation, libraries, historical commission, teachers' tenure, and vocational schools. The College of Mining and Technology and Ferris Institute, institutions of higher education, each have statutory governing boards.

The control of the superintendent of public instruction over primary and secondary education, for the most part, has been delegated by the legislature to the local school districts. The superintendent has varying degrees of participation in the supervision of the remainder of the education function. He is an ex officio member of six governing boards concerned with educational activities, including the three large universities. He is a member and secretary of the state board of education, but is not a member of the board for libraries, the historical commission, or the social welfare commission, which controls the Boys' Vocational School and the Girls' Training School.

Major Issues

Four major issues are raised:

1. It has been contended that the existing fragmented system of control of the several universities and colleges is not in the best interests of the state.

a. The 1958 Survey of Higher Education in Michigan for a joint legislative study committee suggests the establishment of a college and university coordinating board as a means of improving legislative appropriation and control procedures in respect to higher education.

b. Integrated administration of the colleges and universities would better serve the ends of a comprehensive higher education system free of uneconomical overlapping of individual agency functions and services.

Among the objections to integration of college and university administration are statements that:

a. Complexities and individual differences between institutions are so great that only those directly involved in the operation of a given institution can know the needs of that institution and adequately speak for them.

b. The individuality of each institution is too important to a satisfactory system of higher education to be jeopardized by any form of central control.

2. Is it advisable to accord special constitutional powers and privileges to the University of Michigan, Michigan State University, and Wayne State University?

a. The above-mentioned 1958 "Survey" points to the high standing of Michigan State University and the University of Michigan (Wayne State received constitutional status in 1958) as adequate reason to give similar status to the governing boards of all other Michigan state institutions of higher education.

b. Higher education and its institutions constitute a special problem in government. These institutions should be sheltered from normal legislative and executive administrative controls.

Opposition to special constitutional status for institutions of higher education rests on three propositions:

a. The relatively extensive fiscal autonomy afforded by special constitutional status is inadvisable in that all of the funds involved are public funds and public funds should be under public control through the legislative process.

b. The resulting power of the universities to control the size of their student body and their curriculum potentially short-circuits the

basic legislative process in democratic government in that the legislative body may be left in a position where it can only supply the money requested or deliberately fail to meet "needs" already established.

c. Preferred status of any type of service or group of services among many reduces the efficiency and flexibility of the whole government in an unwarranted degree.

3. Should the members of the state board of education be appointed rather than elected?

4. And, should the superintendent of public instruction be appointed by the state board of education rather than elected by the people?

These issues are considered jointly because of the mutual similarity of argument pro and con. Those favoring appointment feel that:

a. Separation of these offices from the requirements imposed by running for popular election would broaden and enrich the field of candidates for the offices.

b. The requirements and functions of the offices are such as to provide little effective basis for qualified voter judgment.

c. The office of superintendent of public instruction in particular is administrative rather than policy-forming in nature and thus should be appointive.

Arguments for continued election of similar offices and other arguments for appointment are found in the section on "Executive Issues" as they relate to other elective officials. It is argued further that the office of superintendent of public instruction is elective in over harf of the states and that these offices are too vital to place beyond the control of the people as exercised by direct election.

VI. LOCAL GOVERNMENT ISSUES

The Michigan constitution establishes the framework of local government, creates many of the elective offices, and defines, within broad limits, the role of local governmental units. The constitution also gives to the legislature authority to make laws defining the scope and extent of local governmental services and activities by authorizing it to confer on townships and counties powers of a local, legislative, and administrative character.

The issues of local government involve, in part, conflicting philosophies on the role of local government. Critics of the present system charge that increasing urbanization, and improvements in transportation and communication especially, require a re-definition of the role of existing governmental units toward the end of eliminating duplication, waste, and inefficiency, while retaining democratic and responsible government. Critics also contend that adequate provisions have not been made for meeting area-wide or metropolitan problems which extend beyond the present political boundaries.

Those who advocate retention of the present system of local government contend that existing constitutional provisions insure that local government is kept close to the people. Township officials, particularly, oppose any trend toward centralization or toward the appointment, rather than election, of governmental officials. In addition, proponents of the present system point out that despite the inflexible features of the existing system, it does work well through informal cooperation and compromise -- that area-wide problems are adequately met through the use of special districts and authorities, inter-governmental compacts and contracts, and formal and informal conferences and committees of governmental officials.

While these are some of the broad general differences of opinion on the adequacy or inadequacy of the constitutional provisions respecting local government, there are, of course, many specific issues which are covered in the following sections.

A. Township Government

(Reference: Michigan Constitution, Article VIII, Sections 7, 16, 17, 18, 19)

Michigan township government has its roots in the Northwest Ordinance of 1787 and an act of the legislative council of the Territory of Michigan. In 1950, there were 1,264 townships in Michigan with an average population of 1,821. Their populations ranged from seven to 50,972.

Constitutional Provisions

The Michigan constitutions of 1835, 1850, and 1908 recognized the existence of organized townships, and provided that each should be a body corporate

with powers and immunities as prescribed by law. The Michigan constitution of 1908 also provided for the election in each organized township of a supervisor, treasurer, clerk, commissioner of highways, and up to four constables for two-year terms. It also provided for up to four justices of the peace for four-year terms. The constitution also stipulated that the township supervisor of each organized township was, by virtue of his office, a member of the county board of supervisors.

The constitution gave to the state legislature authority to confer upon the several townships powers of a local legislative and administrative character.

In addition, four trustees elected for two-year terms in townships with more than 5,000 population are provided for by statute. The trustees, clerk, treasurer, and supervisor compose the township board which is the policy-making body as well as the executive agency of the township.

Arguments in favor of retaining existing constitutional provisions relating to township government are:

1. Township government, as presently organized, provides an adequate system to meet the needs of the great majority of townships which are rural in character.

2. The present constitution provides for the direct election of the principal township officials. The direct election of these officials guarantees that local government will remain responsive to the will of the people. The elected township official is the last bulwark against a trend toward more centralized and less responsible government.

3. The township form of government is less expensive to operate than an incorporated municipality and at present is the only alternative for rural areas with limited resources and population.

   Where townships are subject to urban pressures, alternatives for incorporation are available to meet this need.

4. The constitutional provision which requires that township supervisors serve ex officio as members of the county board of supervisors is most satisfactory. In this way rural areas are not completely dominated by incorporated cities in the county. Since the state has transferred to the county many of the functions previously lodged in the townships, it is especially important that townships retain a strong voice in the administration of these services at the county level.

Opponents of the present constitutional provisions on township government contend that:

1. The present constitution does not provide a flexible pattern of governmental organization to meet the needs of urban townships.

2. County officers and agencies can administer more efficiently many of the services now provided by townships.

3. Public apathy and disinterest in township government negate the concept that elective township officials are close to and responsive to the will of the people. In addition, improvements in transportation and communication make officials from a larger governmental jurisdiction readily accessible to the citizenry.

4. The existing constitutional provision that townships, regard*less* of size or population, are entitled to representation on on the board of supervisors has resulted in large and unwieldy boards of supervisors, in inequities between the several townships, and between cities and townships in many counties.

B. County Government

(Reference: Michigan Constitution, Article VIII, Sections 1-15)

There are 83 counties in Michigan. In 1958, population estimates of these counties ranged from 2,580 in Keweenaw to 2,845,250 in Wayne. The constitution stipulates that each organized county must elect biennially a sheriff, county clerk, county treasurer, register of deeds, and prosecuting attorney. The board of supervisors of any county may unite the offices of the clerk and register of deeds by a majority vote of the members elect. The constitution provides that the township supervisor from each township is a member of the board of supervisors and that cities are to receive representation as provided by law.

The constitution also empowers the legislature to confer upon the several boards of supervisors powers of a local legislative and administrative character. Counties, therefore, have no inherent governmental powers but exercise only those established by law.

Issues

The basic issue in county government is whether the existing provisions of the constitution are satisfactory or too rigid to allow for the wide divergence of population and the varied service needs of Michigan counties. Specific issues involve the election or appointment of officials; representation and size of the board of supervisors; and home rule powers for counties.

Proponents of existing constitutional provisions argue:

1. County government with all of its limitations in formal organization works well through informal cooperation between the numerous county officers and agencies. Also, a more streamlined organization does not guarantee increased efficiency and economy. The election

and appointment of qualified officers and employees are a much more reliable guarantee of the satisfactory performance of county functions.

2. The election of the sheriff, clerk, and other county officers insures that these officials will be directly responsive to the wishes of the people. The appointment of any of the present constitutional officers would further remove governmental control from the people. In addition, these officers generally cooperate with the governing body as a practical matter, because their budgets are controlled by the board of supervisors.

3. The constitution provides that each township supervisor is (by virtue of his office) a member of the county board of supervisors. In accordance with the constitution, the legislature provides for city representation on the basis of a population formula. Advocates of this system point out that while some of the more urban counties have large boards of supervisors, the present system does insure that townships and rural areas will not be completely dominated by incorporated municipalities.

   This federated approach also insures that officials of local units in the county will have a voice in matters which affect the interests of their constituents. Since the functions and activities of counties are becoming more municipal in character, and because townships especially have lost many of their functions to the county, it is increasingly important that local units in the county control policy decisions at the county level.

4. The county is fundamentally an arm or agency of state government, and therefore the powers, duties, and organization of county government must be uniform throughout the state to insure that state law is equitably administered by the 83 counties. Any changes in the constitution which would grant to counties independence from state control would create confusion and undermine the essential role of the county as an agent of the state at the local level. Such county functions as judicial administration, law enforcement, and the safeguarding of public records must be administered uniformly throughout the state.

Advocates of reform in county government say:

1. The present constitutional provisions for county government create a rigid and uniform system of county government which is inadequate to provide for the unique needs of each county. It is -argued that comprehensive reforms are impossible without basic changes in the constitution.

2. Critics point to the fact that each county must elect specified constitutional officers even though many of these officials perform administrative or ministerial functions. Since these officials must run for

election every two years, they are subject to political pressures and are often selected on the basis of political popularity rather than demonstrated competence in their respective fields. Also, elective officials, because they receive a direct mandate from the people, tend to operate independently of the board of supervisors and other county officers and agencies. This adds to the diffusion of responsibility and lack of coordination common to county government.

3. The existing provision that township supervisors are ex officio representatives on the board of supervisors and that cities will receive representation as provided by law has resulted in large, unwieldy boards of supervisors in the more urban counties. Further, it has resulted in inequities in representation between townships of differing population and between cities and townships in each county. Representatives on the board are principally concerned with the interest of their local municipalities and seldom concerned with the interests of the county as a whole.

4. County government generally is characterized by a diffusion of responsibility among the numerous appointive officials and elective and appointive boards or commissions. There is seldom any effective coordinating executive agency or officer. Further there is little opportunity for instituting a more effective administrative organization until counties obtain a degree of home rule or self-government. In recent years, the role of many counties has been changing and local units look to the county for many of the functions previously lodged with cities, villages, and townships in each county. In order to perform these services properly, counties must be released from detailed state control and direction.

C. Metropolitan Area Government

(Reference: Michigan Constitution, Article VIII, Section 31)

Over the past decade, numerous studies of metropolitan areas have been made by legislative committees; national, state, and local commissions; state and local officials; and universities and citizen groups.

A constitutional amendment approved in 1927 authorizes the legislature to provide by general law for the incorporation by any two municipalities or parts of same to form metropolitan districts for the purpose of owning or operating parks or public utilities for supplying sewage disposal, drainage, water, light, power, or transportation or any combination of these. The amendment further provides that no city, village, or township can surrender any rights, obligations, or property without the approval of a majority vote of the electors voting on the question.

The amendment also stipulates that a general law (adopted in 1939) must limit the rate of taxation, restrict the power to borrow, and give to the district electors power and authority to frame, adopt, and amend a charter when approved by a majority vote of the electors of each constituent municipality.

The basic issue revolves around the ability or inability of local governmental units to cope adequately with area-wide problems.

Those in favor of maintaining the status quo contend that:

1. Existing provisions are adequate to meet area-wide needs. The use of authorities, special districts, annexation, and the numerous formal and informal contracts and compacts are sufficient to solve problems which overlap municipal boundaries. In addition, cities can sell services and counties can provide certain area-wide services.
2. The efficiency which is possible under a metropolitan super-government can be achieved only at the expense of local control and individual liberty.
3. There has never been a satisfactory understanding of the nature of metropolitan area problems. Until there is a more precise definition of the problem, any attempt to deal with it effectively is at best misdirected, at worst dangerous to our basic concept of local self-government, particularly city home rule.

Critics of the present constitutional provisions contend that:

1. The problems of metropolitan government cannot be solved on a piecemeal basis. The Michigan constitution does not provide sufficient authority for urban areas to apply more advanced concepts of metropolitan government such as the home rule federated approach.
2. Critics point to the fact that only six metropolitan districts have been incorporated under the enabling Metropolitan District Act of 1929. In addition, rarely does any one district provide more than one or two functional services. In fact, it is pointed out that the amendment strictly limits the types of services which a district can render. Also, the formation of metropolitan districts requires complex procedures and it is difficult in many instances to get agreement between municipalities.
3. Critics also contend that the present policy of creating single-purpose special districts and authorities under other enabling legislation is a stop-gap procedure which results in the formation of additional governmental units in an increasingly complex governmental pattern. Further, extensive use of special districts will make effective coordination of services and expenditures among local governments exceedingly difficult.

4. Critics also note that other methods available for solving area-wide problems, such as the sale of services by the central city, contractual services from the county, and other formal and informal inter-municipal compacts, have not been satisfactory for a variety of reasons. A cooperative spirit is often absent and the sale of services by a city forestalls, temporarily, eventual annexation or incorporation. It also creates conflicts since units outside the city frequently pay higher rates. Until county government is reorganized, critics contend that the use of county contractual services by local units is undesirable. Also, many problems cut across county boundaries, particularly in the larger metropolitan areas.