

# Council Comments:

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## A NEW APPROACH TO CON-CON

The Junior Chamber of Commerce and the League of Women Voters are about to circulate initiatory petitions to place on the November, 1960 ballot, a constitutional amendment designed to facilitate the calling of a Constitutional Convention. Their proposal has been endorsed by the Governor and by the Republican State Central Committee, both of whom have urged the Legislature to place this or a similar proposal on the ballot and thereby eliminate the necessity for a petition campaign.

The Jaycee-League proposal will be submitted to the voters at the November, 1960 general election if the necessary 231,218 signatures are secured on the petitions, or if placed on the ballot by a two-thirds vote of the Senate and the House of Representatives. As a constitutional amendment, the proposal requires for approval only a simple majority voting on the question. If the amendment is approved at the November, 1960 election, the question of calling a Constitutional Convention will be submitted to the voters at the April, 1961 election.

The Jaycee-League proposal will amend Article XVII, Sec. 4, of the constitution. The following is a summary comparison of the Jaycee/League proposal and the present provision for calling a Constitutional Convention;

<u>Provision</u>		<u>Proposed</u>
1. When question submitted to electorate	1926 and each 16th year thereafter (1942, 1958, 1974, etc.) at the November election	1961 and each 16th year thereafter at the biennial spring election
2. Vote required	Majority voting at the election	Majority voting on the question
3. Method of selecting delegates	3 from each senatorial district	1 for each senator and 1 for each representative
4. Date of election of delegates	Biennial spring election following favorable vote on the question at November general election	Special election to be held not later than 120 days after the proposal is certified as having been approved.

## Analysis of Major Provisions

### 1. When question is to be submitted to electors

The Jaycee-League amendment, if approved in the November election, will require that the question of calling a Constitutional Convention be submitted to the voters at the April, 1961 election (and each 16th year thereafter). In addition to providing for a speedy vote on the question of calling a Constitutional Convention, placing the question on the ballot in April, as opposed to November, might enhance the possibility of the proposal being approved. Past experience shows that constitutional amendments submitted at the April election have a two-to-one chance of adoption, while those submitted in November have less than a 50-50 chance.

### 2. Vote Required

The amendment proposed by the Jaycees and League will change the vote requirement for approving the calling of a Convention from the present majority of those voting at the election to a majority of those voting on the question. The calling of a Convention was approved by a majority of those voting on the question at the 1948 and 1958 elections. However, the Supreme Court ruled following the 1948 election that a majority of those voting at the election was required. In 1948, the proposal received a vote of 855,451 for, to 799,198 against, but 1,057,000 affirmative votes were required. Again, in 1958, the proposal received a majority of those voting on the question, 821,282 for, to 608,365 against, but 1,171,000 votes were needed to meet the requirement of a majority voting at the election. The Supreme Court has been asked to over-turn its earlier ruling and hold the majority received at the November, 1958 election sufficient. This case is still pending.

The change proposed by the Jaycee and League to a simple majority voting at the election would greatly facilitate the calling of a Constitutional Convention.

### 3. Method of selecting delegates

The Jaycee-League proposal will change the basis of representation of con-con delegates from the present three from each state senatorial district, to one for each senator and one for each representative. This proposal is of considerable significance.

Under the present provision for three delegates from each senatorial district, control of a Constitutional Convention by Republicans appears assured. At the present time, 22 of the 34 Senate seats are held by Republicans, and 12 by Democrats. Assuming that Constitutional Convention delegates would be of the same political party as the senator from the district, this would give the Republicans 66 delegates and the Democrats 36.

Under the Jaycee-League proposal, one con-con delegate would be elected for each senator and each representative. This would provide a 144-delegate convention compared to the present provision for 102 delegates. Based on the present political representation in the Senate and House, there would be 77 Republicans and 67 Democrats, a much closer division of the Convention party-wise.

#### 4. Election of delegates

The present provision provides that delegates to the Convention be elected at the biennial spring (April) election following approval of the Convention call. The Jaycee-League proposal will require a special election to elect delegates to the Convention.

Neither the present nor the proposed provision prescribes how the delegates are to be nominated and whether the election is to be partisan or non-partisan. Determination of these questions is left to legislative enactment. There is no existing statutory provision for this. The Legislature adopted such a bill in 1958, but it was vetoed by the Governor.

The bill provided for partisan election of con-con delegates, using the same procedure for nominating and electing delegates as is used for members of the Legislature. This bill provided that delegates be nominated at the regular spring primary election in February. Candidates' names were to be placed on the primary ballot by petition, and three nominees were to be selected in the primary for each political party. The delegates were to be elected on a partisan ballot at the April election.

The Jaycee-League proposal necessitates a special election for delegates, and probably a special primary election also. A special primary and special election would cost approximately \$750,000.

### Alternative Procedures

Several alternative procedures have been suggested to secure a Constitutional Convention. Governor Williams has recommended that the Legislature place on the ballot a modified version of the Jaycee-League proposal. The Governor's proposal is designed to expedite the holding of a Convention and to eliminate the added costs involved (\$750,000) in holding a special primacy and election to select Convention delegates. The Governor's proposal calls for voting on the constitutional amendment in November, 1960; nominating delegates to the Convention at the February, 1961 primary; and, at the April, 1961 election, voting on the question of calling a convention and at the same time electing con-con delegates. If the voters fail to approve the calling of a Convention, then the election of delegates would be voided. Under this procedure, the Convention could convene in June 1961, instead of October, 1961, as provided in the Jaycee-League proposal.

This procedure of nominating and voting for con-con delegates prior to a decision as to whether or not there is to be a Convention is similar to that employed in the incorporation of cities. At the same election in which a city votes on incorporation, charter commissioners are elected. If the incorporation proposal is defeated, then the election of charter is voided.

In other respects, the Governor's proposal is similar to the Jaycee-League proposal-- a convention call can be approved by a simple majority of those voting on the question and one delegate is to be elected for each senator, and each representative.

A second alternative to the Jaycee-League proposal has been discussed. This alternative would provide that at the November, 1960 election, the voters would vote on a constitutional amendment that would require the holding of a Constitutional Convention in 1961. Such an amendment might be worded as follows:

"A Constitutional Convention for the purpose of considering a general revision of the constitution shall be held in 1961."

The amendment would then spell out how the delegates are to be selected, the timetable, etc. As a constitutional amendment, it would require for approval a majority of those voting on the question. However, some constitutional lawyers have indicated that they believe, that inasmuch as this amendment would be a call for a Constitutional Convention, it would be subject to the requirement contained in Article XVII, Sec. 4, of the Constitution that a majority of the voters voting at the election must approve the calling of a Constitutional Convention. Otherwise it might invite legal challenge as being in contravention with that section providing a specific procedure for calling a convention.