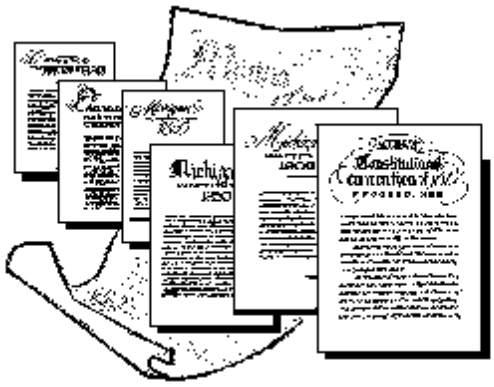
A Comparative Analysis of the Michigan Constitution

Volumes II

Articles XII



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Report Number 208

October 1961

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CHAPTER XII CORPORATIONS

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Section Detail

XII CORPORATIONS

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1. Creation of Corporations

Article XII: Section 1. Corporations may be formed under general laws, but shall not be created, nor shall any rights, privileges or franchises be conferred upon them, by special act of the legislature. All laws heretofore or hereafter passed by the legislature for the formation of, or conferring rights, privileges or franchises upon corporations and all rights, privileges or franchises conferred by such laws may be amended, altered, repealed, or abrogated.

Constitutions of 1835 and 1850

The 1835 constitution (Article XII, Section 2) provided that the legislature should pass no act of incorporation, unless with the assent of at least two-thirds of each house. It evidently did not forbid the formation of corporations by special acts. This prohibition appeared first in the 1850 constitution (Article XV, Section 1) which forbade the creation of corporations by special acts except for municipal purposes. A reservation of power in the legislature to amend or repeal corporate laws first appeared in the same section of the 1850 constitution as follows: “All laws passed pursuant, to this section may be amended, altered or repealed.”

Constitution of 1908

Section 1 has not been amended since the adoption of the present constitution.

In connection with the elimination of “except for municipal purposes” from the prohibition against forming corporations by special acts, Mr. Townsend chairman of the committee on private corporations, said in the course of the 1907-08 convention, “We know very well that a great portion of the time of our legislature for a number of years past, has been taken up by passing local laws, and it is evident that there has been nothing done by the legislature of Michigan that has brought it so much in disrepute with the people of the state as the passage of local acts.”

The draft provision presented to the legislature was amended by adding the words “of the legislature” after the phrase “by special act.” The purpose of the addition was to remove the inference that municipalities would be forbidden to confer franchises upon public service corporations, and thus to limit the prohibition to the legislature.

Judicial Interpretation

Elimination of even the partial power to create corporations by special acts in the 1908 constitution almost completely eliminated litigation under this provision. In 1942, however, the supreme court was called on to decide the constitutionality of Act 147, P.A. 139, which authorized the electorate of five counties in southeastern Michigan to form the Huron-Clinton Metropolitan Authority, against the claim, among others, that it violated the first clause of Section 1. The court held that the authority was not a corporation in the constitutional sense, but rather a state agency designed to function in a limited sphere in the accomplishment of public purposes for which existing municipal corporations were not suited.[1]

The reservation of power to amend, alter, repeal or abrogate corporation laws and franchises is clearly and comprehensively expressed and has not occasioned any substantial amount of controversy.

There was a substantial body of litigation under the comparable sections of prior constitutions, particularly with relation to special acts of incorporation and the reserved power to amend or repeal.

Statutory Implementation

The legislature has over the years extensively exercised its power to enact general corporation laws, the broadest in scope among which, in its present form, is the Michigan general corporation act, P.A. 327 or 1931, as amended, M.S.A. Section 450.1 et seq. Among others are: the insurance code of 1956, P.A. 218 of 1956, M.S.A. Section 24.1100 et seq.; summer resort associations, P.A. 230 of 1897, M.S.A. Section 21.661 et seq. and P.A. 137 of 1929, M.S.A. Section 21.751, et seq.; railroad, bridge and tunnel companies, P.A. 198 of 1873 as amended, M.S.A. Section 22.201 et seq.; union depot companies, P.A. 244 of 1881 as amended, M.S.A. Section 22.321, et seq.; train railway companies, P.A. 148 of 1855 as amended, M.S.A. Section 22.371 et seq.; street railway companies, P.A. 35 of 1867 as amended, M.S.A. Section 22.421 ; brine pipeline companies, P.A. 182 of 1881 as amended, M.S.A. Section 22. 1271, et seq.; telegraph companies, P.A. 59 of 1851 as amended, M.S.A. Section 22.1361 et. seq.; telephone and messenger service companies, P.A. 129 of 1883 as amended, M.S.A. Section 22.1411 et seq.; canal and harbor companies, P.A. 233 of 1875 as amended, M.S.A. Section 22.1481 et seq.; river improvement companies, P.A. 149 of 1869, M.S.A. Section 22.1511; water power companies, P.A. 232 of 1863, M.S.A. Section 22.1581, and P.A. 39 of 1883, M.S.A. Section 22.1611; power companies in the upper peninsula, P.A. 283 of 1905, M.S.A. Section 22.1651.

Other State Constitutions

It is noted that the preliminary discussion draft, sixth edition, of August 4, 1961, of the Model State Constitution, published by the National Municipal League, New York, contains no provisions whatsoever on the subject of corporations.

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[1] Huron-Clinton Metropolitan Authority v. Boards of Supervisors of Five Counties, 300 Mich. 1.

The constitutions of 39 states provide for the formation of corporations under general laws; constitutions of 36 states forbid the formation of corporations by special acts.

There are a variety of provisions permitting incorporation by special act in special cases: banking corporations (Indiana), cities (Wisconsin), charitable, educational, penal or reformatory corporations under state control (Arkansas, Colorado, Delaware, Idaho, Illinois, Montana, Nebraska, North Carolina, North Dakota, South Carolina, South Dakota), municipal (Minnesota, Nevada), and municipal purposes and cases where the objects of the corporation cannot otherwise be obtained (Maine, Maryland, New York and Wisconsin).

Twenty states specifically reserve power in the legislature to amend alter or repeal corporate charters under general laws; seven states reserve such legislative: power, "provided no injustice is done the incorporators."

Some constitutions set forth other causes for forfeiture of corporate charters: Texas permits the attorney general, for sufficient cause, to seek a judicial forfeiture; Virginia provides that failure to pay a registration fee for two successive years or to make an annual report within ninety days after two such years works a revocation of the charter Arizona, Idaho, Louisiana and Montana provide for forfeiture of corporations which form monopolies or trusts.

Comment

The convention may well believe that the legislature does not require constitutional authority to pass general corporation laws. It may well be, however, that the convention will believe that the public policy against creating corporations by special acts is important enough to have constitutional status; if so, clause 1 of the present section could well be retained as it stands. Clause 2 no doubt originally appeared in response to the Dartmouth College case.[2] Though perhaps no longer necessary, the convention may well believe that it should be retained, if only to avoid any inferences that might arise by reason of its removal.

2. Construction of "Corporation;" Suits

Article XII: Section 2. The term "corporation" as used in this article shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and be subject to be sued in all courts in like cases as natural persons.

[2] Trustees of Dartmouth College v. Woodward, 17 U.S. 5.18 (1819).

Constitutions of 1835 and 1850

This provision first appeared, in substantially identical form, in the constitution of 1850, Article XV, Section 11.

Constitution of 1908

The substance of this provision occasioned no debate in the 1907-08 convention. It has not been amended since the adoption of the constitution.

Judicial Interpretation

The first clause of Section 2 has occasioned little litigation.

Sections 7 and 8 of Chapter XIV of P.A. 314 of 1915, as amended, constituting the judicature act, relate to actions by and against corporations. Neither the constitutional clause nor the implementing statute has occasioned substantial litigation.

Other State Constitutions

Eighteen states have a constitutional definition of "corporation" substantially identical to that in Michigan. Oklahoma and Virginia exclude municipal corporations and state-controlled public institutions. North Dakota and South Carolina exclude municipal corporations; Minnesota excludes associations and joint-stock companies with banking privileges; and the Delaware constitution does not apply to religious corporations except as specifically set forth.

Twelve constitutions specifically permit corporations to sue as in the case of natural persons; Kansas provides simply that corporations may sue in their corporate name. Eleven states provide that corporations may be sued as in the case of natural persons; Kansas provides that such suit may be brought in the corporate name. Pennsylvania provides that the statute of limitations as to actions against individuals shall apply to corporations and the California constitution provides that a corporation may be sued in the county where a contract is made or to be performed, where an obligation or a liability arises or breach occurs or where the principal place of business of the defendant is located, subject to power of the court to change the place of trial.

Comment

Though it may be doubted whether the provisions of Section 2 are of sufficient moment to entitle them to constitutional status, and the convention might believe that they are subjects appropriate for legislative or judicial determination, their retention may be thought expedient in order to avoid inferences that might be drawn from their removal.

3. Duration of Franchise; Extension of Corporate Life

Article XII: Section 3. No corporation shall be created for a longer period than thirty years, except for municipal, railroad, insurance, canal or cemetery purposes, or corporations organized without any capital stock for religious, benevolent, social or fraternal purposes; but the legislature may provide by general laws, applicable to any corporations, for one or more extensions of the term of such corporations, while such term is running, not exceeding thirty years for each extension, on the consent of not less than two-thirds of the capital stock of the corporation; and by like general laws for the corporate reorganization for a further period, not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital stock.

Constitutions of 1835 and 1850

The subject covered by this section first appeared in Article XV, Section 10, of the constitution of 1850, which excepted from the thirty-year limit only corporations for municipal purposes or for the construction of railroads, plank roads and canals. The vote requirements for extension of corporate charters before and after expiration were identical, except that the legislature was given power to provide for such extension in the case of corporations with no capital stock.

Constitution of 1908

Section 3 has not been amended since the adoption of the constitution.

When this section was considered by the committee of the whole convention, there evidently was no debate whatsoever as to the advisability of carrying over the thirty-year limit to the 1908 constitution. The committee of the whole added cemetery purposes to the classes of corporations excepted from the limit. Insurance companies were excepted from the limit on the ground that there were certain life insurance companies whose policies did not expire within thirty years.

Judicial Interpretation

This section has occasioned almost no litigation since its adoption in 1908; in 1930 the supreme court decided that under a statute permitting extension of corporate charters, a municipal franchise granted to a gas company with no express time limitation is automatically extended by extension of the corporate charter pursuant to the statute.[3]

Statutory Implementation

Sections 60-63 inclusive of the general corporation law, P.A. 327 of 1931 as amended, M.S.A. Sections 21.60-21.63 inclusive, and predecessor acts, have exercised the legislative power to provide for extension of corporate charters.

[3] City of Benton Harbor v. Michigan Fuel and Light Co., 250 Mich. 614.

Other State Constitutions

Other than Michigan, Mississippi is the only state fixing a constitutional limit on the duration of corporate charters (99 years), applicable to private corporations for pecuniary gain. California, Utah and Washington provide that the legislature may not extend an individual franchise or charter, and the California constitution goes on to permit the legislature to provide for extension of existence of any corporation by general laws uniformly applicable to corporations formed for a limited period.

Comment

It may be seriously doubted whether this provision should be retained. It first appeared in the 1850 constitution at a time when corporations generally were the subject of lively public suspicion and distrust. It may be argued that the only practical effect of the provision is to require extensions of the terms of Michigan corporations every thirty years; the state maintains through this section no effective actual control not otherwise available to it. It may be pointed out that probably the only practical effect of the section is to encourage incorporating in other states, so as to avoid the franchise fees payable on the occasion of extension of term. It might also be argued that the reason for excepting, for instance, insurance companies on the grounds that their contracts may run beyond the expiration of their term if not excepted, nowadays applies to corporations of every sort.

4. Liability of Stockholders

Article XII: Section 4. The stockholders of every corporation and joint stock association shall be individually liable for all labor performed for such corporation or association.

Constitution of 1835 and 1850

This provision first made its appearance, in identical form, in the constitution of l850 (Article XV, Section 7).

Constitution of 1908

Section 4 has not been amended since the adoption of the constitution.

There was no debate on this subject in the 1907-08 convention.

Judicial Interpretation

This provision has been strictly construed. It was held as early as 1877 in Hanson v. Donkersley, 37 Mich. 184, that the constitutional provision and the then statute

(How. Stat. Section 4017) did not have the effect of making shareholders primarily liable for labor debts of their corporation, that the constitutional liability is not self-executing, and that statutory provisions implementing it must be fully complied with. The Hanson case held further that the secondary liability of a shareholder for labor debts of the corporation is discharged by a creditor's extending time for payment for his labor and accepting a note.

Statutory Implementation

The legislature has circumscribed the generality of the constitutional language by making the right available against a shareholder only after the return unsatisfied of a judgment against a corporation or an adjudication in bankruptcy, and the court has held that the winding-up of a corporation in receivership without payment for labor provided no rights against the shareholders, Knapp v. Palmer, 324 Mich. 694 (1949).

The legislature early implemented this section, Act 41, Section 17, Laws of Michigan, 1853, and has further provided for its enforcement, in somewhat varying terms, with respect to various classes of corporations as follows:

> Generally, Chapter XX, Section 13, P.A. 314 (1915) (Judicature Act), M.S.A., Section 27.1363.

1. Partnership Association, P.A. 191, 1877 as am.; M.S.A. 20.92.
2. Summer Resort Associations, Section 17, P.A. 230, 1897 as am.; M.S.A 21.677.
3. Canal and Harbor Companies, Section 14, P.A. 233, 1875 as am. M.S.A. 22.1494.
4. Pipeline Companies, Section 10, P.A. 182 of 1881 as am.; M.S.A. 22.1280.
5. Railroad, Bridge, Etc. Companies, Article V, Section 1, P.A. 198, of 1873 as am.; M.S.A. 22.282.
6. River Improvement Companies, Section 26, P.A. 149, of 1869 as am. M.S.A. 22.1536.
7. Street Railway Companies, Section 22, P.A. 35, of 1867 as am.; M.S.A. 22.441.
8. Telegraph Companies, Section 8, P.A. 59, of 1851 as am.; M.S.A. 22.1368.
9. Telephone Companies, Section 7, P.A. 129, of 1883 as am.; M.S.A 22.1416.

10. Train Railway Companies, Section 18, P.A. 148 of 1855 as am.; M.S.A. 22.388.

11. Municipal Water Companies, Section 11, P.A. 113, of 1869 as am.; M.S.A. 22.1691.

12. Water Power Companies, Section 21, P.A. 232, of 1863 as am.; M.S.A, 22.1601.

13. Water Power Companies, Section 15, P.A. 39 of 1883 as am.; M.S.A. 22.1624.

14. Water Power Companies, Section 15, P.A. 202, of 1887 as am.; M.S.A. 22.1645.

15. Water Power Companies, Section 15, P.A. 283 of 1905 as am.; M.S.A. 22.1665.

16. Cooperative Savings Associations, Section 20, P.A. 206, of 1877 as am.; M.S.A. 23.530.

With respect to shareholder contribution generally, see Section 19 R.S. 1946, Ch. 55, M.S.A. 21.253, and Section 30, P.A. 327, of 1931 as am.; M.S.A. 21.30 (General Corporation Act).

Other State Constitutions

Michigan is the only state whose constitution provides for stockholder liability for labor performed. Constitutions of five states (Nebraska, Oregon, South Carolina, Washington and West Virginia) provide positively for stockholder liability up to the amount of stock subscribed and unpaid for, except, in Oregon and West Virginia, bank stockholders; and the constitutions of four states (Alabama, Idaho, Missouri and Ohio) specifically prescribe stockholder liability in excess of the amount of unpaid stock owned. The Nevada constitution provides that incorporators of domestic corporations are not individually liable for debts of the corporation. Indiana, Kansas, New York and North Carolina provide that dues from corporations may be secured by individual liability as may be provided by law.

Comment

It could be argued that this provision, particularly as circumscribed by the legislature and the supreme court, affords no substantial protection to corporate employees with respect to their wages. Evidence of this might be found in the almost total absence of successful litigation against stockholders by employees. If this is so, consideration might be given to omitting it from the constitution. The convention might also take the view that the presence of this section in the Michigan constitution argues in favor of incorporating in other states, where such potential liabilities do not exist.

5. Limitation of Time of Holding Real Estate

Article XII: Section 5. No corporation shall hold any real estate for a longer period than 10 years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises.

Constitutions of 1835 and 1850

Article XV, Section l2 of the constitution of 1850 saw the appearance of this language, in identical form, except that the phrase "hereafter acquired," appearing in the 1850 constitution after "shall hold any real estate" was dropped in the present constitution.

Constitution of 1908

This section has not been amended since the constitution was adopted.

Section 5 of present Article XII was carried over by the 1908 convention from the 1850 constitution substantially unchanged, over vigorous objection on the part of Mr. Pratt who said, "I cannot see any possible good reason for that provision being inserted in the Constitution." The debates make it clear that the ten-year limitation on the power to hold real estate does not apply to corporations in the real estate business or corporations actually using real estate in the conduct of their own business. Mr. Townsend, the chief proponent of the provision, said, "This provision is here for the purpose of preventing them (corporations) from owning real estate in large tracts, for which they have no use at all in the exercise of their franchises, and which they do not use in their business. I do not think it is of any great importance in the Constitution, but it has been there for all this period of years and was thought to be useful at the time it was placed there. I do not see any reason why it is not still useful." Mr. Pratt pointed out that the general distrust of corporations, which was evident in 1850, had largely disappeared.

Judicial Interpretation

It was held in 1904, under substantially identical language in the 1850 constitution, that this provision can be enforced only at the instance of the public.[4]

In 1948 it was held that a foreign insurance company duly authorized by its state of incorporation to construct, maintain and operate a housing project would "actually occupy" real estate owned by it in Michigan, as landlord and through its agents and employees within the meaning of the constitutional limitation, in the light of a Michigan statute empowering such insurance companies doing business in Michigan to invest their funds "in housing projects including incidental retail and service

[4] Pere Marquette Railroad Co. v. Graham, 136 Mich. 444.

facilities ...if such investment is within the franchise of such insurer under the laws of the State or country under which such insurer organized."[5]

The court thus construed "actually occupied by such corporation in the exercise of its franchise" broadly to encompass occupancy through ownership and managership, if such ownership and managership was authorized by the corporation's charter.

Other State Constitutions

The Louisiana constitution forbids corporations to hold real estate longer than ten years, except for legitimate corporate purposes; and Missouri, Pennsylvania, and South Dakota forbid holding real estate at all except such as is necessary and proper for legitimate business, provided that Missouri permits holding for ten years and such longer period as general law may provide real estate acquired in payment of a debt by foreclosure or otherwise. The Kentucky constitution forbids holding real estate longer than five years except as is necessary and proper for business; and California provides that the holding of large tracts, uncultivated and unimproved, is against the public interest and is to be discouraged by lawful means. The New Mexico constitution provides that corporations in which the majority stock is owned by aliens ineligible to citizenship may not acquire any interest in real estate until otherwise provided by law.

Comment

Two points may be made about this section. First, it could be plausibly argued that the ten-year limitation, as construed by the supreme court, is in fact illusory: since a corporation can exercise no powers whatsoever that are not permitted by its charter and the laws of its state of incorporation, and since "actual" occupancy of real estate is accomplished simply by compliance with such charter and laws, the constitutional limitation is more apparent than real. Second, it may be argued equally plausibly that if the reasons for the limitation had not disappeared by 1908, they probably have today. Consideration might well be given to omitting this restriction from the constitution.

6. Prohibition of Extension of Special Incorporation Acts

Article XII: Section 6. The legislature shall pass no law renewing or extending any special act of incorporation heretofore granted.

Constitutions of 1835 and 1850

Article XV, Section 8 of the constitution of 1850 provided:

[5] John Hancock Life Insurance Co. v. Ford Motor Company, 322 Mich. 209.

> The legislature shall pass no law altering or amending any act of incorporation heretofore granted, without the assent of two-thirds of the members elected to each house; nor shall any such act be renewed or extended. This restriction shall not apply to municipal corporations.

The step-by-step attrition of power in the legislature to create corporations by special act no doubt accounts for the shorter treatment given to this subject in the 1908 constitution as against the 1850 constitution.

Constitution of 1908

This section has not been amended since the adoption of the constitution.

A specific provision with respect to the incorporation and power of cities and villages appears as Article VIII, Sections 20-25 inclusive of the 1908 constitution which, parallel to private corporations, contemplates their incorporation under the aegis of general rather than special laws.

Mr. Burton in the course of the debate moved to retain in this section the following language from the 1850 constitution:

> This restriction shall not apply to municipal corporations.

As originally proposed in the convention, the new language forbade the legislature from "altering and amending" as well as "renewing or extending" special acts of incorporations. It was evident that Mr. Burton's concern was that this would freeze forever the act under which the city of Detroit was incorporated. Removal of the prohibition against altering and amending satisfied the convention that the charter of the city of Detroit and similar charters would not be frozen. Further, the so-called "home rule" provision of the 1908 constitution radically altered the usual methods of forming municipal corporations.

This section has occasioned no litigation, nor, of course, have statutes been passed thereunder.

Other State Constitutions

Some of the notes under Section 1 of Article XII concerning the reserved power to amend incorporation statutes and franchises generally are relevant to special acts. The constitutions of New York, North Carolina and Wisconsin specifically permit legislatures to alter or repeal special corporation acts; the constitution of Iowa grants like permission by a two-thirds vote. The Utah and Washington constitutions forbid the legislature to extend any franchise or charter; and the California constitution does the same, but permits the legislature to provide for extension of the existence of any corporation by general law as uniformly applicable to corporations formed for a limited period.

Comment

It appears that the only corporations presently existing under special acts of incorporation are municipal corporations; it further appears that as recently as 1960 only 19 of 221 cities in Michigan retained their "special act" charters. Furthermore, Article VIII, Section 21 of the constitution as amended now provides that even cities whose charters were formed by special acts may amend their own charters. If the substance of Article VIII, Section 21 should be carried over to a new constitution, the convention might well find that Section 6 of Article XII has become unnecessary.

7. Regulation of Transportation Rates; Discrimination Prohibited

Article XII: Section 7. The legislature may, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on different railroads in this state, and may pass laws establishing reasonable maximum rates of charges for the transportation of property by express companies in this state, and may delegate such power to fix reasonable maximum rates of charges for the transportation of freight by railroad companies and for the transportation of property by express companies to a commission created by law; and shall prohibit running contracts between such railroad companies whereby discrimination is made in favor of either of such companies as against other companies owning connecting or intersecting lines of railroad.

Constitutions of 1835 and 1850

Article XIX-A, Section 1, of the constitution of 1850 provided:

> The legislature may, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on different railroads in this state, and shall prohibit running contracts between such railroad companies whereby discrimination is made in favor of either of such companies as against other companies owning connecting or intersecting lines of railroad.

The 1908 constitution expanded this provision to include express companies and specifically to authorize delegation of a portion of the rate-fixing power to a commission created by law.

Constitution of 1908

Section 7 has hot been amended since the adoption of the constitution.

Section 7 was originally proposed to the convention in the same form as in the constitution of 1850. There were also presented to the convention a large variety of proposals to authorize the creation of a public utilities commission, which should have power to regulate the services and rates of all public utilities and such other powers as the legislature might prescribe. None of these was adopted. The convention clearly felt that in the absence of such a provision the legislature was without power to delegate rate-fixing powers to a commission. Mr. Sharpe, chairman of the committee on public service corporations, said on this subject: “I want to suggest this one thing, that this is not a matter that can be regulated by legislation. I think the lawyers of the convention will all agree upon the proposition that it is very doubtful whether the legislature has any authority to delegate to a commission the right to regulate the rates. The legislature has given authority under the old constitution to fix rates for transportation companies but not given authority to delegate that power of fixing rates to someone else.” Further, Mr. Barbour said, “It is in the first place conceded that the legislature has no power to organize such a commission or to create such a commission, or to create it in a way so that it will stand, without some provision in the constitution to give it effect.” As noted, the proposals for a public utilities commission were defeated.

An amendment was proposed to amend Section 7 as initially presented, authorizing the legislature to delegate power to fix rates to a commission. It was objected that such delegation, having been rejected in the public utilities commission proposal, could not be considered. It was pointed out in debate that the authority to delegate with respect to railroads was an effort simply to legalize the already existing railroad commission. In fact, Public Act 312 of 1907 established a railroad commission for the express purpose of regulating railroads and the transportation of persons and property, preventing the imposition of unreasonable rates and unjust discrimination and the ensuring of adequate service. It was a detailed and comprehensive regulatory statute, giving the commission power, on complaint and after investigation, to change rates found to be unreasonable or unjustly discriminatory and to make appropriate orders as to service found to be inadequate. At the time of the convention this act had not been judicially tested, and doubts as to its validity were expressed in the course of debate.

Regulatory power over express companies was added in the course of floor debate, again partly for the reason that the railroad commission act of 1907 already include regulation of express company rates and service.

The issue of whether to authorize the legislature to establish a commission to regulate railroad and express company rates and services was warmly and extensively debated.

Note that the section authorizes the legislature to establish maximum rates for transportation of passengers and freight, but permits it to delegate such power to a commission with respect only to freight the proponents of the provision argued that

there was no necessity for administrative determination with respect to passenger fares because they involved comparatively few neceties and distinctions, whereas the freight rate structure was "too intricate, extensive and difficult to be regulated by so large a body as the legislature." There was a substantial minority in the convention in favor of permitting the legislature to give a commission power over both.

There was also substantial objection to delegation of passenger rate control from the delegates from the cities, on the ground that the existence of such power in a commission would imperil the freedom of the cities to control the fares on their street railways.

Statutory Implementation and Judicial Interpretation

Public Act 312 of 1907, establishing a railroad commission, was in 1909, held constitutional against the claim that it purported to give courts power to fix railroad rates.[6]

Act 312 of 1907, establishing a railroad commission, was replaced by Act 300 of 1909, which covered the same subject matter. Thereafter, P.A. 419 of 1919 created a public utilities commission with broad regulatory powers over all public utilities within the state, including railroads. This act was eventually supplanted by P.A. 3 of 1939, which established the present public service commission, whose regulatory powers are set forth in all-inclusive and comprehensive terms. It supplements and, to a large extent, supplants a large number of statutes previously providing for the regulation of union depot companies, train and street railway companies, electric gas and light companies, motor vehicle carriers, carriers by water, etc.

The validity of the predecessor act and the reviewability of the decisions of the commission by the supreme court are discussed in re Consolidated Freight Co., 265 Mich. 340 (1933), holding the statute invalid insofar as it purports to give the supreme court power to review the commission's findings of fact, and valid with respect to the supreme court's power to review the commission's conclusions of law.

The role of the commission in the setting of rates and granting of certificates of convenience and necessity are discussed in several cases, notably, recently, Michigan Bell Telephone Company v. Public Service Commission, 332 Mich. 7 (1952) and Huron Portland Cement Company v. Public Service Commission, 351 Mich. 255 (1958)

Though Section 7 of Article XII of the constitution in terms permits the legislature to establish a commission with respect only to freight and express rates, the establishment by the legislature of a public service commission with vastly broader regulatory powers has evidently not been the source of serious constitutional argument.

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[6] Michigan Central Railroad Co. v. Wayne Circuit Judge, 156 Mich. 459.

Other State Constitutions

The constitutions of Illinois, Nebraska, Utah, Washington, and West Virginia authorize the legislature to establish maximum rates for passengers and freight. The Georgia constitution authorizes the legislature to regulate the charges of public utilities generally. The constitutions of nine states (Arizona, California, Colorado, Louisiana, Nebraska, New Mexico, Oklahoma, South Carolina and Virginia) authorize delegation to an administrative agency of authority over public utility rates generally. The constitutions of 24 states include provisions prohibiting various forms of discrimination, authorizing the legislature to do so, or authorizing the legislature to delegate authority to do so. State constitutions generally contain a wide variety of more or less specific provisions with respect to public utilities. Subjects covered include frequency of directors' meetings, reporting requirements, uniform accounting systems, appeal from public utility commission orders, compensation and qualifications of public utility commissioners, common carrier safety appliances, railroad passes or reduced rates, location of railroad stations, consolidation and merger of public utilities, warehouse storage charges, etc., etc.

Comment

Doubts were expressed in the convention of 1907-08 as to the constitutional validity of the railroad commission act of 1907. These doubts were largely responsible for the inclusion of this section in the 1908 constitution. The constitutional climate soon became so hospitable to exercise of police power by the states, however, that no full-scale testing of the validity of the public utilities commission act, even in the absence of specific constitutional authorization for a general regulatory commission, has been attempted. In the light of current constitutional hospitality to exercise of the police power, particularly with respect to public utilities, consideration may well be given to omitting the subject matter of this section from the constitution.

8. Consolidation of Railroads

Article XII: Section 8. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon at least sixty days public notice to all stockholders in such manner as shall be provided by law.

Constitutions of 1835 and 1850

The constitution of 1835 did not have a comparable provision.

Article XIX-A, Section 2 of the constitution of 1850 is identical in substance with Section 8.

Constitution of 1908

This section has not been amended since the adoption of the constitution.

Statutory Implementation

Article II, Section 29 of P.A. 198 of 1873, relating to the incorporation and regulation of railroad, bridge and tunnel companies (M.S.A. Section 22.233, as amended) provides in detail for the consolidation of railroad companies and the effect thereof. There are also statutes with respect to the consolidation of union depot companies with suburban railway companies and the consolidation of street and electric railways.

This section has not generated any substantial amount of litigation.

Other State Constitutions

The constitutions of eleven states (Arkansas, Colorado, Illinois, Kentucky, Montana, North Dakota, Pennsylvania, South Dakota, Texas, Utah and Washington) forbid the consolidation of stock, property or franchises of railroads with parallel or competing lines, and the constitution of West Virginia forbids such consolidation without the consent of the legislature.

The constitutions of four states (Illinois, Missouri, North Dakota and South Dakota) have a provision paralleling the Michigan requirement of sixty days public notice as provided by law in the case of all consolidations.

The constitutions of three states (Mississippi, Missouri and South Carolina) forbid consolidation with railroad corporations of other states if the resulting corporation is a foreign corporation, and the Oklahoma and Texas constitutions forbid consolidations with any foreign corporations.

Comment

The convention may well reach the conclusion that the subject matter of this section is one for legislative consideration, and need not be included in the constitution.

9. Banking and Trust Company Laws

Article XII: Section 9. No general law providing for the incorporation of trust companies or corporations for banking purposes, or regulating the business thereof, shall be adopted, amended or repealed except by a vote of two-thirds of the members of each house of the legislature. Such laws shall not authorize the issue of bank notes or paper credit to circulate as money.

Constitutions of 1835 and 1850

Article XV, Section 2 of the constitution of 1850 provided:

> No general banking law shall have effect until the same shall, after its passage, be submitted to a vote of the electors of the state at a general election and be approved by a majority of the votes cast thereon at such election.

Section 1 of the same Article XV permitted the legislature, by a vote of two-thirds of the members elected to each house, to create a single bank with branches, by a special act, and Section 3 provided:

> The officers and stockholders of every corporation or association for banking purposes, issuing bank notes or paper credits to circulate as money, shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation or association, equally and ratably to the extent of their respective shares of stock in any such corporation or association.

Sections 4, 5 and 6 of Article XV of the 1850 constitution respectively provided for the registry of bills or notes issued or circulated as money provided for priority of bill-holders of banks as against other creditors in the event of insolvency, and forbade the suspension of specie payments by any person, association or corporation. Elimination of the power to authorize the issuance of bank notes or paper credit to circulate as money has evidently made these provisions unnecessary.

Constitution of 1908

Section 9 has not been amended.

In the 1907-08 debates there was extensive discussion of these sections. Debate centered on the question of whether banks or trust companies should be specifically forbidden to issue bank notes or paper credit to circulate as money; if they were to be so forbidden, the provisions of Sections 3, 4, 5 and 6 of Article XV of the 1850 constitution would be unnecessary. The convention vacillated somewhat during the debates; eventually the power to issue bank notes or paper credit to circulate as money was forbidden, the other sections became unnecessary and were removed. The prohibition of issuance of money by state banks was stated to be “justified by experience in the state and throughout the country and well authenticated public sentiment on the question.”

The 1908 constitution substituted the two-thirds legislative requirement for the referendum provision that had previously existed. It was pointed out in the debates that the general banking law in existence in 1908 was submitted to the people in accordance with the 1850 constitution, and it provided for its own amendment by two-thirds vote of the legislature. There apparently was some doubt as to the consti-

tutionality of that provision in the light of the referendum requirement of the 1850 constitution; incorporation of the two-thirds vote requirement in the 1908 constitution was intended to remove that doubt. Delegate George W. Moore, chairman of the banking committee, said, "I do not think a banking law should be amended lightly, and I think the provision in the general law is a good one, and it should be cleared up in this manner, that is the reason for the proposal." Further, Mr. H. M. Campbell said, "The reason... is simply to provide all the safeguards possible around the passing of acts creating financial corporations whose operations might and do affect the public generally."

Objection to the substitution of a two-thirds legislative vote for a referendum was made on the ground that, in the words of delegate James H. Hall, "It looks to me as though it was unjust to the small towns and the people, and in favor of the large banking corporations," and it was moved to strike out the two-thirds requirement. His motion was defeated, 54 to 13.

Statutory Implementation

Since at least 1887, the legislature has prescribed rules under this section. The incorporation and regulation of banks and trust companies are now comprehensively regulated in the Michigan financial institutions act, P.A. 341 of 1937 as amended, M.S.A, Section 23.711 et seq. There are other statutes in related fields, relating to the formation or regulation, or both, of:

Credit unions, P.A. 285 of 1925, M.S.A. Section 123.481 et seq.

Cooperative savings associations, P.A. 206 of 1877, M.S.A., Section 23.511 et seq.

Building and loan and saving and loan associations, P.A. 1887, M.S.A., Section 23.541 et seq.

There has evidently been little or no litigation under this section.

Other State Constitutions

The banking commissioner is a constitutional officer in Louisiana, and Oklahoma, and the constitution of Virginia specifically authorizes the legislature to create a division or bureau of banking.

The circulation of paper money by state banks is constitutionally forbidden in Arkansas, California, Nevada, Oregon and Washington.

Fifteen state constitutions specifically authorize the passage of a general banking law. The Minnesota constitution requires a two-thirds vote of the legislature for

adoption of a general banking law and the Wisconsin constitution requires a two-thirds vote of all members elected to each house. The Iowa, Illinois, Kansas and Ohio constitutions require banking laws to be approved by a majority of all votes cast at a general election after passage by the legislature.

10. Provisions Omitted in the 1908 Constitution

Aside from the sections of Article XV of the 1850 constitution discussed above in connection with Section 9 of Article XII of the 1908 constitution, certain other provisions relating to corporations in the 1850 constitution did not survive. They are:

Section 16 of Article XV provided that previous notice of any application for an alteration of the charter of any corporation shall be given in such manner as may be prescribed by law. This provision, evidently referring to the alteration of charters of corporations formed by special acts, People ex rel. Ellis v. Calder, 153 Mich. 724, outlawed by Section 1 of Article XII in the 1908 constitution, was of course no longer necessary.

Article XIX, Section 9 of the 1850 constitution provided for legislative modification of charters of mining corporations in the Upper Peninsula. Referring to corporations organized under special acts, this section also had no place in the 1908 constitution.