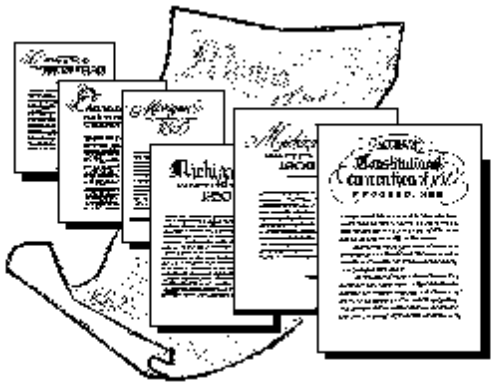
A Comparative Analysis of the Michigan Constitution

Volumes II

Articles XVI



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CHAPTER XVI MISCELLANEOUS PROVISIONS

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Section Detail

XVI MISCELLANEOUS PROVISIONS

1. Terms of Public Officers; Commencement

Article XVI: Section 1. The terms of office of all elective state officers and of all judges of courts of record shall begin on the first day of January next succeeding their election, except as otherwise prescribed in this constitution. The terms of office of all county officers shall begin on the first day of January next succeeding their election, except as otherwise prescribed by law.

Constitutions of 1835 and 1850

There was no comparable provision under the 1835 constitution. The governor and lieutenant governor were to hold office until the first Monday in January (Article XII, Section 10), but there was no specified date for any other officers. In the 1850 constitution, Sections 1 and 2, of Article VIII provided that the secretary of state, superintendent of public instruction, state treasurer, commissioner of the land office, auditor general, and attorney general were to hold office for a two-year term commencing on the first day of January. The schedule, Sections 8 and 9, provided the same day for county officers and for judicial officers.

Constitution of 1908

The only state officials whose terms as set forth in the constitution begin on a day other than January 1, are the superintendent of public instruction and the members of the state board of education whose terms commence on July 1 following their election (Article XI, Sections 2 and 7). The term of the state highway commissioner, not a constitutional officer however, also begins by law on July 1.

Judicial Interpretation

The courts have held that in the absence of any (express or implied) statutory prohibition a public officer holds office until his successor is elected and qualified.[1] A ruling of the attorney general excepted the office of state highway commissioner from this provision since it is not a constitutional office.[2]

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[1] Messenger v. Feagan, 106 Mich. 654.

[2] Opinion of the Attorney General, March 5,1958, No. 3204.

Statutory Implementation

The legislature has provided by statute that the regular terms of office of the county officers elected at the general election shall commence on January 1 next succeeding their election, but those elected to fill vacancies at the general election or at a special election may qualify and begin their terms of office immediately after being notified of their election.[3]

Other State Constitutions

Only 19 states have constitutional provisions setting a day upon which terms of public officers commence. Thirteen of these set a given day; only three of these (including Michigan) use January 1.[4] Four states use the first Monday in January; no other single date is used in more than one state. The Model State Constitution provides that the terms of office for both the governor and legislators shall begin on December 1, following their election.[5] The federal constitution sets January 20, as the beginning of the terms of office for the president and vice president and January 3 for senators and representatives.

Comment

If changes are made in the elective offices, time of election, length of term, etc., alterations will be necessary here. One problem that has arisen in relation to this section is in connection with state officers and judges of courts of record who are elected at the biennial spring election. The time lag between election in April and the "swearing in" in January can work a hardship on the "official-elect" and leaves a "lame-duck" in office for eight months after he has been replaced by the voters. This problem could be solved by eliminating the biennial spring election, or by providing that all officers elected at the spring election take office on July 1.

[3] Michigan Statutes Annotated 5.1087.

[4] Index Digest, pp. 845-6.

[5] Model State Constitution, Article III, Section 302 and Article V Section 500.

2. Oath of Office

Article XVI: Section 2. Members of the legislature and all officers, executive and judicial, except such officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office _____ of according to the best of my ability." No other oath, declaration or test shall be required as a qualification for any office or public trust.

Constitutions of 1835 and 1850

This provision originated in the 1835 constitution (Article XII, Section 1). It originally excepted "such inferior officers" as might be exempted by statute. In the 1850 constitution (Article XVIII, Section 1) the word "inferior" was dropped.

Constitution of 1908

The present Section 2 was carried over from the l850 constitution with only inconsequential change.

Statutory Implementation

Consistent with the constitutional provision, the statutes provide: "The word 'oath' shall be construed to include the word 'affirmation,' in all cases where by law an affirmation may be substituted for an oath; and in like cases the word 'sworn' shall be construed to include the word 'affirmed.'" (M.S.A., 2.212, Section 3 (11)) The statutes also require that every person employed by or in the service of the state or any governmental agency thereof take and subscribe to this oath (or affirmation). (M.S.A. 3.855) Failure or neglect to take the oath constitutes cause enough for an office to become vacant (M.S.A., 6.693, Section 3 (7)).

Judicial Interpretation

Various court decisions have defined and applied the provision. The courts invalidated a law requiring the filing of an affidavit of party affiliation before names could be printed on a ballot, holding that, under this section, no other oath, declara-

tion or test could be required as a qualification for any office.[6] It has been judicially determined that this form of oath does not require an appeal to the Deity.[7] In a recent decision, the United States supreme court declared unconstitutional a Maryland constitutional provision requiring as a qualification for public office statement of belief in the existence of God.[8] This ruling will no doubt invalidate any such similar requirement included in present or future state constitutions or laws.

Opinions of the Attorney General

In a recent opinion, the attorney general felt that the taking of an oath was one of the factors in deciding that the delegates to a constitutional convention are state officers.[9] He referred to a 1907 court case involving a state legislator suing for a writ of mandamus to have his name placed on the ballot as a candidate for delegate. The court determined (1) that convention delegates are state officers and (2) that state legislators are thus ineligible to become delegates.[10]

Other State Constitutions

It is difficult to generalize about other state constitutions because of the very wide diversity of provisions. About a third of the states require their particular oath for all officers; included in this group are Alaska and Hawaii, with the most recent state constitutions.[11] The Model State Constitution makes explicit the fact that all officers must take the oath; it requires it of "All officers of the state—legislative, executive and judicial—and of all the civil divisions thereof... ."[12] The next largest group of states (including approximately seven states) requires an oath for all executive officers except those exempted by law.[13] The other states demand the oath from numerous combinations of officers. A total of 11 states require that no other oath or test be required for office.[14]

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[6] It might be pointed out that the delegates to the 1850 convention took no oath; there was a debate on the question in the 1867 convention and the delegates voted to take an oath. Opinion of the Attorney General, No. 3605, May 3,1961, pp. 4-5.

[7] People v. Mankin, 225 Mich. 246, 253.

[8] Torcaso v. Watkins, US, 6 L ed 2d 982, 81 S ct (No. 373), decided June 19, 1961.

[9] Opinion of the Attorney General, No. 3605, May 3, 1961, pp. 4-7.

[10] Fyfe v. Kent County Clerk, 149 Mich. 349.

[11] Index Digest, pp. 826-7.

[12] Model State Constitution, Article XII, Section 1202.

[13] Index Digest, pp. 826-7.

[14] Ibid., p. 828.

Comment

This provision has apparently sufficed in its present form. It is not in conflict with the United States supreme court decision mentioned above.

3. Extra Compensation; Increase or Decrease of Salaries

Article XVI: Section 3. Neither the legislature nor any municipal authority shall grant or authorize extra compensation to any public officer, agent, employe or contractor after the service has been rendered or the contract entered into. Salaries of public officers, except circuit judges, shall not be increased, nor shall the salary of any public officer be decreased, after election or appointment.

Constitutions of 1835 and 1850

There was no comparable provision in the constitution of 1835. In the 1850 constitution, Section 21 of Article IV prohibited the legislature from granting or authorizing extra compensation to any public officer, agent or contractor after the service was rendered or the contract entered into. Section 20 of the Schedule prohibited an increase in the salaries or compensation of all persons holding office under the then current (1835) constitution until superseded by their successors elected or appointed under the new constitution. In addition, it forbade thereafter an increase or decrease in the compensation of any public officer during the term for which he was elected or appointed.

Constitution of 1908

The constitution of 1908 included the two provisions of the 1850 constitution, but made two additions: First, it prohibited the legislature and all municipal authorities from granting or authorizing extra compensation after the service had been rendered or the contract entered into; and second, it excluded circuit judges from the restriction against increases in compensation for the incumbent. The latter was done to make the section consistent with Section 12 of Article VII, which provides that each circuit judge, in addition to his salary from the state, "may receive from any county in which he regularly holds court such additional salary as may be determined from time to time by the board of supervisors of the county." There was a great deal of debate on this exemption of circuit judges from the general rule during the 1907-08 convention, put this view prevailed.

Judicial Interpretation

In 1907 the legislature increased the salary of the members of the Wayne County board of auditors. The matter was taken to court, the plaintiff holding that, under

Section 20 of the Schedule of the 1850 constitution, the salaries of the incumbents could not be increased. The supreme court held that since the provision in question was placed in the Schedule, it was not meant to be a permanent part of the laws and was thus not applicable.[15] The raise was thus held valid. It was to prevent the recurrence of such events that this section was made an integral part of the constitution.

A plethora of decisions and opinions of the attorney general have defined and applied this section. In 1956 a ruling by the attorney general declared that Michigan state government employees already retired were prohibited by this section from receiving increases in their pensions.[16] This opinion was overruled in 1957. The attorney general then decided that an act providing an increased minimum pension for retired employees having completed at least 15 years of service was constitutional.[17]

Other State Constitutions

Four constitutions other than Michigan's (Colorado, Montana, Pennsylvania and Wyoming) prohibit extra compensation after election or appointment. Delaware forbids only a decrease and Oklahoma prohibits any change unless the law is passed prior to election or appointment. About half the state constitutions have provisions prohibiting or restricting change in compensation during the term for which the official is elected or appointed.[18]

The U.S. constitution contains such a provision regarding the president; Section 1(7) of Article II requires that his compensation "shall neither be increased nor diminished during the Period for which he shall have been elected." Section 1 of Article III forbids diminishing the compensation of federal judges during their continuance in office.

Comment

Constitutional restrictions against increasing or decreasing salaries and other emoluments, including fees, of public officers after their election or appointment are adopted for the two-fold purpose of protecting the public by restraining those in public office from using their positions and official influence to obtain added compensation and also to secure the individual officer in his rightful emoluments against any unfriendly power which might seek to reduce or abolish them.[19]

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[15] Joseph L. Hudson v. Attorney General, 150 Mich. 67.

[16] Opinion of the Attorney General, July 13, 1956, No. 2472.

[17] Opinion of the Attorney General, December 4, 1957, No. 3126.

[18] Index Digest, p. 815.

[19] Michigan Statutes Annotated, 1959 Cumulative Supplement to Vol. 1, p: 214.

While this provision has admirable purposes and has generally seemed to be adequate, it has created problems, particularly as applied to judges. Justices elected to the supreme court can receive no increase in compensation for an eight-year period. In a time of inflation, this can work a serious hardship. Further, when the judges' terms of office are staggered, as they now are, the situation arises wherein the various judges receive different salaries. Thus, the most recently elected justice receives $25,500, while the remaining justices receive $18,500. This situation is not equitable and is not conducive to high morale.

Thought might be given to prohibiting all decreases in compensation during the term of the incumbent and prohibiting all increases to those directly responsible for the setting of pay scales; i.e., to the legislators and the governor, for the term for which they are elected. An alternative might be to exclude from the provision all officers, employees, etc. serving constitutional or statutory terms of over two years.

Article XVI: Section. 4.

This section relating to tie votes is discussed in Chapter III on Elective Franchise.

4. Vacancies in Office; Continuity of Government; Emergencies

Article XVI: Section 5. The legislature may provide by law the cases in which any office shall be deemed vacant and the manner of filling vacancies, where no provision is made in this constitution.

The legislature, in addition to and not in derogation of the power heretofore conferred in section 5 of this article XVI, in order to insure continuity of state and local governmental operations in periods of emergency only resulting from disasters occurring in this state caused by enemy attack on the United States shall have the power to such extent as the legislature deems advisable (1) to provide by legislative enactment for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt by legislative enactment such other legislation as may be necessary and proper for insuring the continuity of governmental

> operations. Notwithstanding the power conferred by this amendment elections shall always be called as soon as possible to fill any elective vacancies in any office temporarily occupied by operation of any legislation enacted pursuant to the provisions of this paragraph.

Constitutions of 1835 and 1850

There was no such provision in the constitution of 1835. As discussed previously in the executive article, the nature of the executive branch under the 1835 constitution was entirely different from that to which we are accustomed today. The chief subordinates in the executive branch were appointed by the governor rather than elected, as is true today. This obviated the need for provision for succession in office.

Section 11 of Article XII read:

> When a vacancy shall happen, occasioned by the death, resignation, or removal from office of any person holding office under this state, the successor thereto shall hold his office for the period which his successor had to serve, and no longer, unless again chosen or re-appointed.

This section clearly left the matter of succession in the governor's hands.

The first paragraph of the present provision originated in the constitution of 1850, though not in these exact words. The 1850 constitution provided for the election of the secretary of state, superintendent of public instruction, state treasurer, commissioner of the land office, auditor general and the attorney general (Article VIII, Section 1). The governor was to fill all vacancies by appointment, by and with the consent of the senate, if in session. This particular provision gave the legislature the power to determine when vacancies actually existed and to provide for succession to offices for which no specific constitutional provision was made.

Constitution of 1908

The wording is the same as in the 1850 constitution except for changes made for the purpose of improving the phraseology. There were no debates on the provision.

Amendment Since 1908. At the April, 1959, election, the electorate approved an amendment to this section of the 1908 constitution. The amendment is comprised of the second paragraph of the section as it now stands. The purpose of this amend-

ment was to give the legislature power to provide for continuity of state and local governmental operations in periods of emergency only caused by enemy attack.

Statutory Implementation

Public Act 40 of 1954 defines the instances in which an office would be deemed vacant (M.S.A. 6.693). Public Act 116 of 1954 sets forth in detail how vacancies in certain offices (i.e., those for which no specific constitutional provision is made) shall be ascertained and how these vacancies shall be filled. The 1959 amendment was implemented by Public Act 203 of 1959 (M.S.A. 5.5000 (1) et seq.). The act authorizes the passage of local ordinances or resolutions providing for emergency interim successors to local political subdivision offices, except for judicial and civil service offices. Officers included were to designate five emergency interim successors and specify the order of succession. It is interesting to note that the temporary successors are to receive no compensation beyond actual expenses (Act 203,1959, Section 9).

Other State Constitutions

About two-fifths of the state constitutions provide that vacancies may be filled as directed by law except where there are specific constitutional provisions. Apparently no other states have detailed emergency provisions such as that found in this section of the Michigan constitution.

Comment

There is probably no reason why this provision need be changed. It is an emergency provision and, hopefully, the latter paragraph will never be needed.

5. Laws, Records, and Proceedings; Use of English Language

Article XVI: Section 6. The laws, public records and the written judicial and legislative proceedings of the state shall be conducted, promulgated and preserved in the English language.

Constitutions of 1835 and 1850

The 1835 constitution had no comparable provision. This provision appeared originally in the constitution of 1850 (Article XVIII, Section 6).

Constitution of 1908

The section emerged from the convention of 1907-08 unchanged and seems not to have been debated.

Other State Constitutions

A provision such as this found only in a very few other state constitutions; California, Nebraska and Illinois require official publications to be in English.[20] Such a provision is found neither in the Model State Constitution nor in any of the newer state constitutions; similarly there is no mention made of it anywhere in the federal constitution.

Comment

There appears to be little, if any, controversy on this section. Consideration might be given to the question of whether this provision is still necessary.

6. Courts of Conciliation

Article XVI: Section 7. The legislature may establish courts of conciliation with such powers and duties as shall be prescribed by law.

Constitutions of 1835 and 1850

This provision is not found in the 1835 constitution, but is present in identical language in the 1850 constitution.

Constitution of 1908

This section has not been amended.

Statutory Development and Judicial Interpretation

The legislature established a court of conciliation and arbitration as a court of record and limited its jurisdiction to labor disputes. The constitutionality of this court was upheld although the jurisdiction established by the legislature was limited to one type of situation.

Subsequently the state labor mediation board was created to handle labor disputes. Today, Michigan has no courts of conciliation.

Other State Constitutions

The legislature is authorized by constitutional provision to provide for deciding differences by arbitration in the states of Colorado, Kentucky, South Carolina,

[20] Index Digest, p. 856.

Texas and Louisiana. In four other states arbitration courts are authorized with such powers and duties as may be prescribed by law, but the constitution provides that judgments are not binding unless the parties voluntarily submit their differences and agree to abide by the judgment. These states are Indiana, North Dakota, Ohio and Wisconsin. The constitution of Wyoming authorizes the legislature to establish courts of arbitration for labor disputes and provides that appeals may be taken from the compulsory board's decisions to the highest cost.

7. Estates of Married Women

Prepared in Part by
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Article XVI: Section 8. The real and personal estate of every woman, acquired before marriage, and all property to which she may afterwards become entitled by gift, grant, inheritance or devise shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be devised or bequeathed by her as if she were unmarried.

Constitutions of 1835 and 1850

There was no provision of this type in the constitution of 1835; this provision originated in the 1850 constitution (Article XVI, Section 1)

Constitution of 1908

Only a few minor changes in phraseology were made in this section by the 1907-08 convention. The convention rejected a proposal to exclude from the provision property acquired after marriage that was held in joint ownership with others.

In the convention debates, several reasons were given as to why this proposal to exclude jointly owned property was unnecessary:

1. In the first place, all real property held jointly by husband and wife is held as tenants in entirety and is survivorship property.
2. In the second place, she cannot be a partner with her husband and, therefore, her property could not be involved with his in that form.
3. In the third place, if she does engage in a partnership business, her property is amenable to the claims of creditors exactly the same as though she were single.[21]

[21] Proceedings and Debates, p. 497.

Statutory Implementation

This provision was written into, law by Act 168 of l855.[22] The statute followed the wording of the constitutional provision very closely, but expanded the powers of married women over the disposition of their property; it could be "contracted, sold, transferred, mortgaged, conveyed, devised or bequeathed by her in the same manner and with the like effect as if she were unmarried."

Judicial Interpretation

Literally scores of cases have applied the law in specific instances.[23]

Other State Constitutions

Fourteen state constitutions have provisions safeguarding the property rights of women and two others provide that laws shall be passed on the subject. None of the newer state constitutions is included in this group. The Model State Constitution contains no similar provision.

Comment

At common law a married woman had very limited rights with respect to her property. Section 8 of Article 16 is the provision which, to a large extent, has changed the common law so that property which the married woman owns at time of marriage and property which she thereafter acquired is her property to deal with as she may see fit. It is no longer subject to the debts, obligations and engagements of the husband, as was formerly the case. This section of the constitution is one of the basic factors of our modern law relating to married women. Statutes have, been enacted further extending the married woman's rights as set forth in Michigan Statutes Annotated 26.161 et seq. A tremendous volume of judicial law interpreting the constitution and statutes with respect to married women is to be found in our books. Nevertheless, married women are in certain respects still inhibited by some of the old common law restrictions and attitudes. Many people feel that all such common law restrictions and attitudes should be eliminated so that a married woman in every respect would have the same rights and the same duties as she would have if she were unmarried or as her husband has.

[22] M.S.A., 26.161-26.164.

[23] For some of the particular decisions, see the editor's note on the law, M.S.A., Vol. 18, pp. 590-618.

8. Property Rights of Aliens

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Article XVI: Section 9. Aliens, who are or who may hereafter become bona fide residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens.

Constitutions of 1835 and 1850

This provision originated in the constitution of 1850 (Article XVIII, Section 13).

Constitution of 1908

The 1908 constitution made only minor changes in phraseology in the 1850 provision. There was a great deal of discussion in the convention about altering the provision to safe-guard property owned by aliens who were not covered in the provision (e.g., residents of Canada who owned substantial property in Detroit).[24] Most of the discussion dealt with 1) whether the legislature has the power to protect the property rights of non-resident aliens under this provision; 2) whether this legislative discretion should be taken away; 3) whether non-resident aliens should be given all the protection of citizens and of resident aliens; 4) whether this should be dealt with in the constitution or by statute; and 5) what the relation of such a provision (whether constitutional or statutory) was to federal treaties. After much debate it was decided that the 1850 provision was adequate.

Other State Constitutions

Twenty other state constitutions have provisions dealing with property rights of aliens. These provisions deal with: acquisition (two states), disposition (only West Virginia) and possession (eight states, including Michigan), inheritance (nine states, including Michigan), taxation (Wyoming) and tenure (West Virginia). Several states restrict rights of non-resident aliens. Other constitutions leave the regulation to the legislature. None of the newer constitutions or the Model State Constitution deal with the subject.

Comment

Section 9 of Article XVI deals with the property rights of aliens and sets forth that

[24] Proceedings and Debates, pp. 98-99,113-116.

aliens who are bona fide residents of Michigan shall have the same property rights as native born citizens.

State law bearing upon the rights of aliens has, in many respects, been modified by federal law. Such modifications generally relate to enemy aliens in time of war and property rights of citizens of countries deemed to be involved in an emergency faced by the United States.

Generally, the provisions of this section of the constitution would seem to be desirable. Insofar as modifications may be needed from time to time, it would seem that the requirements should be met by the United States government.

9. Agricultural Land Leases

Article XVI: Section 10. No lease or grant of agricultural land for agricultural purposes for a longer period than 12 years, reserving any rent or service of any kind, shall be valid.

Constitutions of 1835 and 1850

The 1835 constitution had no comparable provision. This provision originated in the 1850 constitution. It included the word "hereafter" following the word "grant."

Constitution of 1908

Two minor changes were made in the 1908 convention. The word "hereafter" was omitted at the suggestion of the committee on arrangement and phraseology. The phrase "for agricultural purposes" was inserted to clarify which lands were included, since some agricultural lands were used for mining.

The debates of the 1907-08 convention suggest that there was some question as to the necessity of this entire section. They indicate the purpose of this provision to be the following:

> It was a clause in the old constitution and was for the purpose of prohibiting the leasing of farm lands for a period longer than twelve years; in some cases the leases might be made for ninety-nine years and thus cut off the heirs, ... , long leases being detrimental to the land owners.[25]

Judicial Interpretation

In dealing with the above distinction, the court said, "A lease of agricultural land for a

[25] Proceedings and Debates, II, p. 1264.

term of 50 years for mining and removing ore was not within the prohibition....[26]

Other State Constitutions

A similar provision is included only in the constitutions of Minnesota (with a 2l-year limit), Iowa (20-year limit) and Wisconsin (15-year limit).[27]

Comment

Consideration might be given to deleting this provision, leaving the matter to legislative regulation.

10. Liquor Control

Article XVI: Section 11. The legislature may by law establish a liquor control commission, who, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof; and the legislature may also provide for an excise tax on such sales: Providing, however, that neither the legislature nor such commission may authorize the manufacture or sale of alcoholic beverages in any county in which the electors thereof, by a majority vote, shall prohibit the same.

Constitutions of 1835 and 1850

Neither of the preceding constitutions had any provisions pertaining to liquor or alcoholic beverages.

Constitution of 1908

The constitution as adopted in 1908 had no provisions pertaining to liquor. In 1916 an amendment was proposed by the initiative procedure and ratified which prohibited the manufacture and sale of alcoholic liquors except for medicinal, mechanical, chemical, scientific or sacramental purposes. The present language was also proposed by initiative petition and was ratified at the November election in 1932.

[26] DeGrasse v. Verona Mining Co., 185 Mich. 514, quoted in M.S.A., I, pp. 470-471.

[27] Index Digest, p. 5.

Legislative Implementation and Judicial Interpretation

The language of the constitutional provision is sufficiently broad to permit the legislature to set up a state monopoly system, an open state system, (i.e. one in which private licensees engage in the wholesale and retail trade), or to establish a system with a mixture of the features of the two.

The legislature pursuant to Section 11 established a three-member liquor control commission. It made the commission responsible for the operation of a system of state stores which sell both at wholesale and retail. The state maintains a monopoly as a wholesale vendor but permits retail sales through licensed outlets known as specially designated distributors, and by Class C license holders for sale of liquor by the glass. In addition to the responsibility for operating the distribution system, the commission is charged with enforcement of the state liquor laws and of its own regulations.

The courts have upheld broad authority for the liquor control commission. The courts held that this provision of the constitution was limited only by the express provisions of the legislative act creating the liquor control commission. In a case challenging the state's right to monopoly operation on the wholesale vending, the court held that in the absence of other limitations, the words "complete control" carry with them the power for the state to engage in the business of buying, selling and storing liquor.

The legislature has also created a board of hearing examiners to hold hearings on cases of licensees charged with violations of the liquor control act. The court found that the creation of this hearing board did not violate the constitutional provision of complete control over alcoholic beverage traffic being placed in the liquor control commission since the commission retains complete power to accept or reject the examiner's findings and to revoke or issue licenses as the commission determines.

The constitutional provision establishes the right of any county to prohibit the manufacture or sale of alcoholic beverages within its boundaries. The legislature has extended this right to municipal units as well as the counties. The court, in a local option case, held that a county-wide Sunday closing vote prevailed over the previous rejection of Sunday closing by the village electors of a village within the county. The courts have upheld the authority of the legislature to permit sale of liquor by the glass in private clubs within political jurisdictions that have either refused or failed to authorize such sale by the glass in public restaurants.

The court had occasion to decide the interrelationship of the constitutional provision for state civil service and the constitutional provision for the liquor control commission. The case arose when the liquor control commission abolished the position of executive director which was within the classified civil service of the state. The court

held that the two amendments should be considered together and, in case of conflict, the civil service amendment which was adopted later was controlling. The specific holding was that the commission did not have the power to abolish the position of executive director without the prior approval of the civil service commission.

Other State Constitutions

Approximately one-fourth of the states make some provision in their constitutions pertaining to liquor control. The other three-fourths of the states provide for the subject entirely by legislation.

Most of the constitutional provisions are grants of permissive authority to the legislature. For example, Florida's constitution provides that the legislature may authorize the manufacture and sale of liquor by individuals and firms, or by the state, its subdivisions, or by any governmental commission or agency created for that purpose. South Carolina's constitution provides that the legislature may license or prohibit the manufacture and retail sale of liquor, or it may prohibit such activities by private individuals and firms and authorize the state, county or municipal officers to purchase and retail liquor under statutory regulations. And it further provides that the income derived from the regulation of liquor traffic shall be dedicated to public schools. Texas specifically authorizes monopoly operation as one of the alternate ways of controlling the sale of liquor.

The constitutions of nine state require the legislature to provide for local option; in addition to Michigan, the other states are Delaware, Florida, Kentucky, Maryland, Oregon, Texas, Virginia, and West Virginia. The constitution of South Carolina provides that the legislature may not delegate to municipal corporations the power to issue licenses to sell liquor.

Comment

The legislature would have inherent power to provide for liquor control without specific constitutional provision.